

Policy Gaps and Challenges: Analysing Key Informants' Experiences of Policies and Practices for Transgender and Intersex Individuals in Zimbabwean Criminal Justice Institutions

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ABSTRACT

The article highlights policy gaps and challenges identified through a qualitative research study on current institutional practices, policies, and perspectives regarding transgender and intersex individuals within Zimbabwean Criminal Justice Institutions. The key institutions involved in the study are the Zimbabwe Republic Police, the Zimbabwe Judicial Service Commission, the Zimbabwe Prisons and Correctional Services, and the Zimbabwe Human Rights Commission. Using non-random sampling, a total of 17 officials from these institutions were selected to participate in key informant interviews, which were analysed using thematic analysis. The key findings highlight significant gaps in Zimbabwean Criminal Justice Institutions' policies and procedures related to transgender and intersex individuals. Key themes from the data include the binary legal framework guiding service delivery, the lack of placement policies for detained or imprisoned transgender and intersex individuals, and reliance on discretionary practices that often result in the abuse of transgender and intersex people's rights. The article emphasises the urgent need for inclusive policy reforms, training, and safeguarding measures to improve the treatment of transgender and intersex individuals in Zimbabwean Criminal Justice Institutions.

Keywords: Criminal Justice, Transgender, Intersex, Access to Justice

Introduction

This article explores the findings of a qualitative research study aimed at understanding current institutional practices, policies, and perspectives regarding transgender and intersex (TGI) individuals within Zimbabwean criminal justice institutions (CJIs). The key institutions examined include the Zimbabwe Republic Police (ZRP), Zimbabwe Judicial Service Commission (ZJSC), Zimbabwe Prisons and Correctional Services (ZPCS), and Zimbabwe Human Rights Commission (ZHRC). The existing design of these CJIs primarily recognises only the traditional binary sex categories of male and female. Consequently, there is a systematic exclusion of TGI individuals as non-conforming identities who must also navigate these CJIs during arrest,

detention, and imprisonment, despite the traditional binary framework. This exclusion renders these identities vulnerable to discrimination, violence, and abuse, and results in the denial of their constitutionally enshrined rights to equality, dignity, and non-discrimination.

The study was conducted in Harare, Zimbabwe, from 2022 to 2024, with key objectives of determining whether the conventional binary classification of male and female for gender and sex markers influences how Zimbabwean CJIs treat TGI individuals as perpetrators of crime. Another primary aim was to examine existing policies and practices-if any-that criminal justice officials rely on, especially those aligned with international standards on care, equal treatment before the law, and respect for the human dignity of TGI people, to improve access to substantive criminal justice for TGI communities in Zimbabwe.

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To assess whether Zimbabwean CJIs adequately support or systematically marginalise non-binary sex and gender identities, such as those of TGI individuals, an extensive literature review was undertaken. This review identified best practices outlined in key instruments, such as the Yogyakarta Principles, the Luanda Guidelines, and the United Nations Nelson Mandela Rules for the Treatment of Prisoners, which Zimbabwe has ratified [1,2]. These benchmarks were used to evaluate whether current Zimbabwean CJIs have inclusive policies and infrastructure that ensure safeguarding and equitable access to justice for arrested, detained, or imprisoned TGI individuals.

Alongside an extensive literature review to establish best practices related to the arrest, detention, and imprisonment of these vulnerable and marginalised identities outside the traditional binary, the research was also guided by key informant interviews (KIIs) with CJI officers from the identified CJIs. Using non-random sampling, data were gathered through key informant interview guides from a total of 17 Zimbabwean CJI officials.

Thematic analysis of the data revealed significant gaps in Zimbabwean CJI policies and procedures concerning TGI individuals. Key themes identified include the binary legal framework guiding service delivery, the lack of placement policies for detained or imprisoned TGI individuals, and reliance on discretionary practices that often result in the abuse of TGI people's rights. Moreover, Zimbabwean CJIs lack confidential procedures for disclosing TGI status, specialised care policies, and mechanisms to address vulnerabilities to violence. Institutional training and policies do not include TGI issues, and there are no consistent strategies for developing inclusive practices. Additionally, CJIs do not keep statistics on TGI individuals, reflecting a broader neglect of their needs.

Given the current paucity of research on the treatment of identities outside the traditional binary, such as transgender and intersex individuals in the Zimbabwean criminal justice institutions, this research fills the gap by providing context-specific insights. It highlights the policy deficiencies and offers actionable recommendations for reforms. The recommendations emphasise the urgent need for inclusive policy reforms, training, and protective measures to improve the treatment of TGI individuals within Zimbabwean criminal justice institutions.

The article offers an overview of literature that highlights patterns of exclusion and violations faced by marginalised identities when interacting with the criminal justice system (CJS). It also reviews international best practices and theoretical frameworks. This is followed by the presentation and analysis of key findings from the key informants in the Zimbabwean CJIs. The article concludes with evidence-based recommendations to reform the Zimbabwean CJIs, addressing policy gaps through proposed inclusive reforms that align with international best practices.

Literature Review

Scholarly research on the state of African correctional centres highlights systemic deficiencies and ongoing human rights issues marked by overcrowding, poor healthcare, and inadequate infrastructure [3]. The effects of these widespread problems and

particular vulnerabilities in African correctional facilities on marginalised groups, such as those outside the traditional binary, including TGI individuals, largely remain underexplored.

In this article, reliance is placed on the International Lesbian, Gay, Bisexual, Trans and Intersex Association definition of the term “intersex” as an umbrella term for the spectrum of variations in sex characteristics (such as sexual anatomy, reproductive organs, hormonal levels and/or chromosomal patterns) that do not conform to the typical definitions of male or female [4]. Intersex people are therefore often described as outliers in sex categorisation, as they do not fit neatly within the limited binary biological sex criteria based on male and female sex markers (United Nations High Commissioner for Refugees [5]). In this article, the term “transgender” serves as an umbrella term, occasionally abbreviated to “trans,” referring to individuals whose appearance and traits are seen as gender atypical and who have a gender identity different from their assigned sex at birth [4].

Jenness and Rowland point out that the binary legal logic concerning definitions of lawfully recognised binary sex and related gender concepts, which are rooted in bioessentialism, exclude nonbinary and gender nonconforming identities, such as transgender bodies, from legal protection [6]. Furthermore, there has been a consistent manipulation of legal definitions influenced by factors such as differentiating sex from sex change [7]. This also involves using pathologising and bioessentialist definitions of sex, attributing mental illness to nonbinary sex identities and gender nonconformity, leading to the categorisation of transgender individuals as existing outside the recognised sexes (and the associated binary that limits legibility), and labelling them as nonhuman [6-9].

Criminal Justice Personnel Training and Interactions with Transgender Individuals

There is a significant lack of training for criminal justice personnel on how to interact appropriately with transgender communities, which leads to substantial knowledge gaps and systemic biases [10-12]. Redfern and Sinclair's study in the United States of America (USA) revealed that 71% of surveyed law enforcement officers (n=44/62) had not received any training on effectively engaging with transgender individuals, even though 95% (n=59/62) were aware of the term transgender [12]. This lack of sensitivity training has contributed to polarised attitudes towards transgender communities, ranging from empathetic acceptance to overt intolerance [12].

Historically, relationships between CJIs and gender-nonconforming populations have been marked by violence, intimidation, and mistrust due to stigma surrounding Sexual Orientation and Gender Identity Expression (SOGIE) [8,13]. Law enforcement officers frequently face criticism for discriminatory or derogatory treatment, which significantly undermines procedural fairness and perpetuates human rights violations against TGI populations [14-16]. As a result, TGI detainees are seen as particularly vulnerable, subjected to mistreatment and the erasure of their identities within correctional environments that are designed around rigid binary gender frameworks [16].

The traditional approach has often led CJIs to develop policies and design facilities, whether for accommodation or ablation services, that cater to these legally recognised categories of sex and gender, thereby entirely excluding other classifications [7]. As Peck observes, the entire judicial process, from initial contact with law enforcement to court proceedings, is troubled by its historical roots of homophobia and transphobia [16]. Consequently, there has been ongoing non-legal recognition of sex and gender identities beyond the conventional binary, including biological sex categories such as intersex and nonbinary genders, which encompass transgender individuals [8,16].

Criminalisation

The criminalisation of transgender identities is often a social justice issue closely linked to transphobia and related systems of exclusion [17]. Herring and Widra, in their research findings on the lived experiences of 29 incarcerated transgender individuals across the USA state prisons, note that “trans people are criminalised and discriminated against for simply being trans” [18]. Therefore, it is likely that transgender people, despite being minority groups that intersect with multiple forms of oppression, may be an overrepresented yet under-researched population in CJIs [18].

The challenge of over-representation of TGI people in criminal justice institutions

A clear link exists between the risk of criminalising Lesbian Gay, Bisexual Transgender, Intersex, Queer, plus (LGBTIQ+) identities and the resulting high number of LGBTIQ+ individuals at every stage of the CJS [19]. Extensive research has been carried out in the USA on the presence of TGI people in prisons [19-22].

Scott asserts that transgender individuals challenge society’s rigid view of what it means to be male or female [23]. Due to this nonconformity, they are marginalised, humiliated, and discriminated against [19]. Widespread transphobia, homophobia, and the strict enforcement of heteronormative norms to exclude the LGBTIQ+ community significantly contribute to their discrimination and victimisation across various spheres of society [14,19,23-27].

The bias against perceived and actual queer people has been identified as the leading cause of severe ostracism from mainstream society, which acts as a barrier to full economic participation, leading to the over-representation of incarcerated TGI individuals in CJIs worldwide [28].

Scholars suggest that the over-representation of transgender individuals in incarceration settings partly results from societal stigma across different cultures and increased stigma related to multiple marginalities [14,29]. Jones notes that this over-representation is mainly caused by the challenges faced by LGBTIQ+ youth after escaping abuse and experiencing a lack of acceptance at home due to their sexual orientation or gender identity [22].

Despite the vulnerability of LGBTIQ+ people to health risks (such as Human Immuno deficiency Virus (HIV) and sexual exploitation) and their involvement in crimes related to poverty

due to factors like a high likelihood of homelessness in youth and other disadvantages, many countries where same-sex activity is criminalised continue to prosecute sexual minorities, including transgender individuals [20,30,31]. Consequently, due to social exclusion and both direct and indirect discrimination, transgender individuals are disproportionately represented in prison, as noted by Brooke, Biernat, Shamaris and Skerrett [24].

Violence against transgender and intersex people in the criminal justice system institutions

Criminal justice officials, such as police officers, have consistently faced criticism for discriminatory or derogatory treatment of transgender individuals [14,15]. Furthermore, this form of unfavourable evaluation by law enforcement often results in procedurally unfair treatment of transgender individuals [15]. Arrested, detained, and imprisoned nonbinary individuals and those with sex identities and gender bodies outside the traditional binary, such as TGI people, are often classified as more vulnerable compared to the general incarcerated population [22]. This vulnerability manifests as significant mistreatment, human rights violations, and erasure of their gender identity, through the demoralising imposition of masculine stereotypes or the violent organisation of gender nonbinary conforming bodies and identities [14,16].

When gender nonconforming identities, such as transgender and nonbinary individuals, as well as intersex people, interact with the CJS as victims or offenders, the system is often ill-equipped to address their specific needs and circumstances [10,13,16]. The criminalisation of gender nonconforming identities in many countries frequently worsens this. Miles-Johnson argues that a heteronormative view of society and a white, masculine, heterosexual ethos underpins most criminal law enforcement models and actions targeting the LGBTIQ+ community [32].

Research Methodology

The research employed a qualitative approach within the interpretive paradigm to investigate whether any policies and existing practices address the treatment of TGI people in the Zimbabwean CJIs. This method enabled a thorough understanding of how these CJIs currently handle TGI individuals, focusing on the meanings and perspectives of each participant. Semi-structured key informant interview (KII) guides were used to gather data from criminal justice officials, providing a comprehensive view and yielding rich, detailed insights into prevailing practices and attitudes related to the realisation of human dignity for TGI people.

The research target group included senior officials from the four Zimbabwean CJIs involved in the study: Zimbabwe Republic Police (ZRP) (n=3), Zimbabwe Judicial Services Commission (ZJSC) (n=1), Zimbabwe Human Rights Commission (ZHRC) (n=1), and Zimbabwe Prisons and Correctional Services (ZPCS) (n=12). The greater number of participants from ZPCS was justified due to the institution’s direct and significant role in the detention, rehabilitation, and management of incarcerated individuals, including TGI persons—a crucial aspect of the research conducted as part of the first author’s doctoral studies in criminal justice and corrections management. The KII participants exhibited a high level of competence in discussing policies and practices within their respective institutions. As

the data were collected at the Harare headquarters of these respective Zimbabwean CJIs, a thorough understanding of each institution's prevailing and official positions was obtained.

Purposive sampling was relied on in the research, with a total of 17 officials from the targeted CJIs based on their expertise, experience, and roles within the various CJIs. The KII participants had nine years or more of experience working for their respective institutions. They were employed in relevant departments and could speak authoritatively on practices applicable at the national level. The KIIs indicated that they were well-versed in the policies and practices prevalent in their institutions. Therefore, the researcher is confident that the years of experience among the KIIs significantly contribute to a clearer understanding of existing policies and practices as they could authoritatively speak and contribute to the research's objectives.

To enhance reliability, the research employed several measures pilot testing of the KII guide, to ensure clarity and refinement of the questions. Triangulation was achieved by corroborating findings from different institutions and cross-examining themes that emerged from the research. Detailed field notes were also kept in a secure location throughout the data collection phase to preserve the accuracy of participant responses.

The qualitative methodological approach applied was influenced by queer criminology in practical terms, from the formulation of research questions to the design of data collection instruments. It has influenced the interpretation and analysis of data, enabling a more sophisticated comprehension of the intersections between criminal justice, gender identity, and broader social dynamics in Zimbabwe. Panfil and Miller warn against applying the heteronormative conceptual model when researching the LGBTIQ+ community [15]. As a way forward, these scholars call on criminologists to critically consider how heteronormative assumptions guide their research and how incorporating a queer lens might enhance their research and theorising.

The methodological approach outlined above thus anchored the research and led to nuanced insights into the intersection of criminal justice, gender identity, and systemic exclusion. This resulted in findings that highlight the persistent challenges faced by TGI people within the Zimbabwean CJS, which is currently designed to accommodate traditional binary identities.

Data analysis and theme generation

The data analysis was conducted using thematic analysis, which involved coding and categorising recurring themes from the KIIs from a process of transcribing the responses and systematically identifying themes aligned to the study objectives. Incrementally, other less recurring themes as the process, were refined. The recurring themes identified focused on the existing, non-existent, and institutional practices applied by the respective CJIs when handling TGI people who pass through their systems when arrested, detained, or imprisoned.

The themes and categories that emerged from the KIIs with the officials employed by the ZRP, ZJSC, ZPCS and ZHRC are discussed below and linked to verbatim quotes from the KII participants. The themes are clustered around the responses given to the general semi-structured KII guide administered to

key informant officials representing the ZRP, ZJSC, ZPCS, and the ZHRC, which sought to establish the existence of certain policies, procedures, and practices concerning access to criminal justice due process and protection of the human dignity of TGI people as they interface with their respective institutions.

A queer criminology lens also informed the analysis, critically interrogating heteronormative assumptions embedded within various CJIs.

Findings and Discussion

The findings outlined below are based on Sections B, C, D, and E of the interview guide.

Section B: Record keeping and intake key populations data management.

Section C: Placement Section D: Safety and Risk Assessment on Placement.

Section E: Key Populations Care, Safeguarding and Management

The semi-structured KII guides were divided into eight general segments with similar general headings differentiated by sector-specific questions designed to probe and gain a deeper understanding of each criminal justice institution's existing policies, prevailing practices, and procedures. As they relate to access to justice and criminal and procedural due process for TGI people, the questions in the semi-structured KII guide sought to gain an understanding of the reality linked to the key objectives of the study, which are centred on establishing and gauging:

- (1) If and how the current traditional binary male and female biological classification for gender and sex markers affects the treatment of TGI persons in Zimbabwean CJIs as perpetrators of crime.
- (2) Criminal justice officials' awareness of international best practices on care treatment, upholding equal treatment before the law, and preserving the human dignity of TGI people will enhance access to substantive criminal justice for TGI people in Zimbabwe.

The themes identified and discussed below are grouped accordingly under the similarly styled headings contained in the interview guide administered to the key informants.

Themes emerging from Section B: Record keeping and intake key populations data management

Practices and policies of the key population are based on the procedures followed by the respective CJIs concerning the recognition and recording of gender identity or biological sex during the intake of remanded or imprisoned individuals. It examines whether Zimbabwean CJIs have verification processes for TGI individuals, the availability of confidential disclosure procedures, and the collection of statistics related to these populations. The analysis of the findings reveals significant themes around the lack of standardised procedures and the challenges faced by individuals. The themes identified from the data are briefly discussed below.

The criminal justice institutions do not record statistics of transgender and intersex people who come through their systems

A significant theme emerged from the responses from the KIIs in relation to questions about record-keeping data management. All the KIIs indicated that their institutions did not keep specific

statistics with respect to TGI people who come through their respective institutions.

Participant A (ZHRC-Monitoring and Inspections): “Unfortunately, we do not have those stats. We mostly get statistics from prisons, especially, but that is for the general population, never specified to the extent of indicating other minorities. From the police, we have just done a few monitoring and inspection exercises, but we do look at their record books to see who came in, why they came in, did they have their health checked and so forth.”

Participant C (ZRP Crime, PGQH): “Our department is responsible for overseeing the investigation of all crimes. At the national level, we receive statistics for consolidation. These statistics only categorise the people counted based on male and female cells because we only have male and female cells.”

Participant E (ZJSC-Legal and Policy Services): “As the Judicial Service Commission (JSC), our statistics are mainly to do with the responsibility that is given to the JSC in terms of the Constitution to ensure that justice is served, so it is more of operational. Those statistics are meant to look at the nature of cases being brought before the court, the clearance rate of case backlogs, the number of cases that have been received and completed, and pending cases and also to look at certain specific categories of cases, such as gender-based violence, sexual offences, political violence offence and so forth... We do not have a section where they report or record on the issue of that you have raised of minority sex and gender identities.”

Participant H (ZPCS-Chikurubi Female Security Department): “Yes, we record statistics. We currently don’t have a section for recording these people you mention.”

Participant I (ZPCS Harare Remand Prison): “No, we do not have statistics or policies that relate to transgender and intersex people.”

Participant M (ZPCS-Harare Central Prison): “In the admin and correctional department, we definitely keep track of statistics. We have a daily statistic log book. These statistics are relevant and tracked from the day an inmate comes to us to the day they are discharged ... we do not have a policy. However, for intersex and transgender people ... usually, when someone comes to us, we take what the court records on their records.”

These findings indicate the absence of any systematic data collection or recording regarding TGI individuals within the Zimbabwean CJIs. Currently, data are generally organised according to binary classifications of male and female, with no set policies or protocols in place for the monitoring of minority sex and gender identities. The lack of specific data points to a significant shortage in identifying and addressing the needs of such populations within the CJS. The absence of a practice or policy on data collection of TGI data is a glaring gap that undermines access to substantive due process and criminal justice for these minority identities. This gap reflects the broader challenge of invisibility and systemic exclusion of TGI individuals within the CJS.

The structural deficit depicted by the lack of specific policies on the collection of data of TGI people is also present at a global stage as this finding mirrors a common trend in many countries where criminal justice systems remain rooted in binary sex classifications [7]. Historically, the perceptions of access to criminal justice and procedural fairness, as well as equitable treatment of arrested, detained, or imprisoned people, have been dominated by the limited and unquestioned entrenchment of the traditional binary sex classification and corresponding gender [6,7,10,]. The fulfilment of civil rights and the realisation of equitable treatment within the CJS under this limited classification of sex into binary categories of male and female, thus calls for equitable treatment regardless of the binary gender identity/sexual orientation [10].

The absence of data collection mechanisms is also significant because it prevents institutions from recognising and addressing the unique challenges faced by TGI individuals when engaging with the CJS. These challenges include providing suitable accommodation, accessing healthcare, and protection from violence. Previous research contributing to theories of institutional invisibility of minority identities from scholars such as Jenness and Fenstermaker highlights how erasure functions as a form of systematic discrimination that sustains inequality [15]. As Peck observes, the entire judicial process, from initial contact with law enforcement to the courtroom, is rooted in its historical foundations of homophobia and transphobia [16]. Consequently, there has been ongoing non-legal recognition of sex and gender identities beyond the traditional binary, encompassing biological sex categories such as intersex and non-binary identities, including transgender people [8,16].

Comparative analysis with data management in other jurisdictions

In contrast to the policy gaps identified within the current data management practices in Zimbabwean CJIs when it comes to TGI people, jurisdictions have implemented progressive and inclusive practices as part of broader reforms to recognise and protect equal access to justice for TGI people. For instance, Canada enacted the Interim Policy Bulletin on Gender Identity or Expression, informing procedures and handling of these minority identities. South Africa has the Department of Corrections Standard Operating Procedures for the Management of LGBTIQ+ Inmates which makes it possible to collect disaggregated data that includes gender identity and sex characteristics thereby enabling implementation of policies to the needs of TGI individuals. Malta Correctional Services in 2016 introduced a Correctional Services policy inclusive of TGI inmates to address physical and sexual violence as it explicitly mandates the recording of declared gender Identities thereby demonstrating the feasibility of such inclusive practices in resource limited settings [33,34].

Queer criminology scholars have it that the erasure of TGI individuals from CJIs policies reflects the dominance of heteronormative frameworks that privilege traditional binary identities while marginalising non-traditional binary identities such as TGI individuals and queer populations [14]. Moreover, this exclusion exacerbates the vulnerabilities of TGI individuals who are already at heightened risk of violence and victimisation within the CJS setting [31].

The lack of data also makes it impossible to monitor or evaluate the treatment of TGI individuals, assess their access to procedural justice, or ensure compliance with their constitutional entitlements to equality and human dignity [35]. Addressing the lack of specific data collection for TGI individuals, therefore requires urgent policy reform. This can take the form of creating data management practices that include fields for self-reported gender identity and sex characteristics that can be integrated into existing record-keeping frameworks.

The binary recognition of the law currently informs the service delivery and gender recognition policies of the Zimbabwean criminal justice institutions

The binary understanding of the law currently influences the service provision and gender recognition policies of Zimbabwean CJIs. Research indicates a lack of training for criminal justice personnel on how to properly engage with the transgender community [10-12]. Since the Zimbabwean legal system strictly follows a binary view of gender, the absence of legal recognition for TGI is further complicated by Zimbabwe still only criminalising same-sex relations between consenting adult males, as outlined in the crime of sodomy. Additionally, there is a broad law that can affect TGI individuals under the offence of criminal nuisance, which can be used to arrest, prosecute, or at least persecute people for cross-dressing against their assigned sex at birth. As the KII participants described their roles, a consistent theme emerged: a restrictive legal environment has been maintained by upholding existing laws, impacting the human rights and treatment of LGBTIQ+ persons within the CJS.

Participant A (ZHRC-Monitoring and Inspection): “Yeah, unfortunately, you know, your topic sort of like awakened something because our monitoring tool currently only speaks to, like, when we say sex, we are just referring to the female and the male. We have not really put a section on intersex or transgender, yeah, so in our monitoring, we have not been able to pick up that aspect, unfortunately.”

Participant B (ZRP-Legal services): “We do not make the law but merely enforce it. When the relevant legislative texts like the Criminal Procedure and Evidence Act and the Criminal Code are amended to say there is diversity, then we can also say we have other categories of sex.”

Participant D (ZRP-VFU, CID HQ): “Currently, the IRB (initial reporting book) records male and female as the law does not recognise any other identities beyond these two.”

Participant E (ZJSC-Legal and Policy Services): “Remember, when an accused person is arrested, that person passes through different stages from the police to the prosecution to the court. So... at the point that the matter is initially brought on initial remand, a person’s identity or sex would have been identified.”

Participant J (ZPCS-Harare Metropolitan Rehab Centre): “What we do on booking is that it is based on face evaluation or, what I can say, outward evaluation of someone looking male or female. Those are the two categories that I know.”

Participant L (ZPCS-Harare Central): “What I know is that we have male and female categories in terms of the law. I have

never seen any written document that has any other categories.”

Participant M (ZPCS-Harare Central Prison): “These are sporadic cases for which I cannot say there is any policy. Much like the law, which is not clear, we rarely have to deal with these cases.”

Participant N (ZPCS-Harare Central Prison): “Given that anti-sodomy laws exist, there is a reluctance to acknowledge even these clear other genders and this intersex identity you mention.”

The binary configuration of Zimbabwe’s CJIs based on the current legal system heavily influences the service delivery and gender recognition policies of the Zimbabwean CJS. CJIs uniformly operate within the framework of laws that only recognise male and female genders, leaving no room for the legal acknowledgement of transgender or intersex identities. This means that the restrictive legal environment of criminalising same-sex relations between consenting male adults often fuels blatant intolerance even among criminal justice officials [10-12].

The Zimbabwean criminal justice institutions do not have a confidential procedure available to arrested and detained or imprisoned people which can be relied on to disclose if they are intersex or transgender

There is no confidential pathway available to arrested and detained or imprisoned TGI people. This has grave implications on their access to justice, which often manifest in challenges when it comes to body searches that can be done in a manner that preserves their dignity and also affects matters such as cell placement.

Participant B (ZRP-Legal Services Department, PGHQ): “For the reasons I mentioned about the portion of the law being silent, we therefore do not have a policy on the recognition of intersex in place because a policy must align to the law which is currently not speaking to these things.”

Participant D (ZRP-VFU, CID HQ): “If someone discloses, we take cognisance. I would not say there is a policy per se.”

Participant E (ZJSC-Legal and Policy Services): “Let me start by saying we have not really had any reports about such kind of situation where someone discloses to the court that they are intersex or transgender on initial remand. But in such a scenario, a judicial officer is supposed to investigate the allegations that have been brought and make a finding on the allegations. For example, where one says they have been discriminated based on their gender, they have to look at the nature of the discrimination, investigate that, and make a finding on that. But to say that we really have a distinct policy that relates specifically to gender identity or minorities, there is none in place.”

Although confirming the non-existence of a specific confidentiality procedure, a participant from the ZPCS intimated that a practice in place of confidentiality may result in the protection of confidentiality. According to the participant,

Participant J (ZPCS-Harare Central Prison): “I would not say there is a formal written policy for TGI. But, in general, we are bound to secrecy and not divulge personal information relating

to a prisoner. This is why you don't see us talking about prisoners on the news and stuff. If a person discloses that is how they are, we keep it confidential."

From the foregoing, it is evident that Zimbabwean CJIs lack structured and confidential protocols that allow arrested, detained, or imprisoned TGI individuals to disclose their identities. This shortcoming has serious implications for the dignity and rights of TGI individuals, affecting essential procedures such as body searches and cell assignments. Although several respondents mentioned informal practices of confidentiality, including general discretion when managing information about incarcerated people, there are considerably fewer clear policies to systematically and reliably guarantee confidentiality for transgender and gender non-conforming individuals. This gap underscores the need for institutional reform to safeguard and uphold the rights of vulnerable groups.

Without clear policies or protocols, essential processes such as body searches, cell placements and access to gender affirming healthcare fail to adequately account for the dignity and access to criminal and procedural fairness when it comes to TGI individuals. Resultantly, when gender nonconforming individuals, such as TGI individuals, interact with the CJS as victims or offenders, the system is ill-equipped to appropriately handle them or respond to their unique needs and circumstances [19-21].

The absence of structured and confidential procedures is a serious policy gap as confidentiality is a fundamental component of ensuring safety of these marginalised identities in custodial settings as it allows them to disclose their identities without fear of victimisation also enabling the activation of safeguarding protocols to protect their dignity. This is because, in addition to physical and sexual assault, that incarcerated individuals can be exposed to, point out that gender-based mistreatment of TGI individuals by correctional officers and healthcare professionals can take the form of misgendering (intentionally using the wrong name or pronoun) [28].

International standards on the care and treatment of incarcerated people underscore the necessity of preserving their dignity. The Yogyakarta plus 10 principles explicitly call for the establishment of safeguarding mechanisms [15]. Confidential intake mechanisms are one such practice that can ensure humane treatment of TGI individuals. Similarly, the UN Standard Minimum Rules for the Treatment of Inmates advocate for the preservation of dignity during custodial procedures, particularly in body searches and placement decisions [36]. Therefore, jurisdictions currently without these confidential procedures, including the Zimbabwean CJIs, must address the policy gap by adopting confidentiality-centered policies aligned with best practices to ensure TGI people are treated with dignity throughout their interaction with any given CJIs.

Themes emerging from Section C: Placement and Section D: Safety and risk and assessment on placement

This section in the KII guides addressed the Zimbabwean CJI's policies on the accommodation of incarcerated individuals based on their gender identity. It included questions aimed at examining whether placement decisions align with the gender

individuals identify with, especially for TGI persons. The findings reveal themes related to the absence of clear protocols for accommodating gender identity in placement decisions and the potential for discrimination in housing arrangements.

There are currently no placement policies or procedures guiding criminal justice institutions concerning transgender and intersex people who are detained and imprisoned

The CJIs currently recognise the binary sex and gender to the exclusion of TGI people. The CJIs are thus guided by a binary sex and gender cell placement, which translates detention and imprisonment accommodation facilities without any apparent policies on how to be inclusive of TGI people.

Participant C (ZRP-Crime PGHQ): "Our cells only have male and female sections. We do not have any policy that I can think of that directs us on how to handle cell allocation when you arrest such a person."

Participant D (ZRP-CID, HQ, VFU): "At the national level, we, as the police, appreciate the specialised units helping to identify and protect the vulnerable. We tackle sexual gender-based violence and domestic violence issues, mostly looking at women and children. Our cells are for males and females. When such situations arise where someone is not male, or we can say female, we currently do not have a policy on the way forward."

Participant E (ZJSC-Legal and Policy Services): "Regarding placement, it is not within the purview of the JSC. We do not choose where a person is placed if you are sentencing a female person... we believe the ZPCs are well within their mandate, capable and aware of where to place the person, and they are well aware of the human rights issues relating to various categories of prisoners...even with minors, we do not tell them to place the minor there. But when we go for our inspection visits, we want to see a minor in a juvenile prison... So, it becomes the duty of prisons to ensure that when a person is remanded in custody, they are given proper care, including access to medication."

Participant G (Chikurubi Female Prison-Health): "No, we have never had any such policies, but I think they are necessary. They will likely also speak on key health issues and how to treat such people."

Participant N (ZPCS-Harare Central Prison): "I am certain we currently do not have any sort of policy to say which kind of cell and treatment should be given to a trans or an intersex person. To have a clear policy on how to handle such cases of intersex people would be good, but I do not know how that would go, given the close association with homosexuality issues. It is all blended together in our minds."

Participant J (ZPCS-Harare Central Prison): "The reception determines placement based on the documents received from the court. If there is an unusual occurrence, we relay to the medical office, who then can verify for sure if someone is transgender or intersex."

There are currently no policies are guiding the placement of TGI people within the CJIs in Zimbabwe. The traditional binary approach currently determines their allocation and accommodation, excluding individuals with TGI. The KIIs also

indicated that policies of this kind do not exist and contribute to inconsistency as well as human rights violations during arrest, detention, or imprisonment.

This lack of policies for TGI individuals who interface with the Zimbabwean CJIs is a significant gap that perpetuates systemic discrimination. The reliance on a traditional binary approach to cell allocation often results in heightened vulnerability for these TGI individuals. Many prison systems throughout the world lack a comprehensive response to the everyday traumas and safety concerns that TGI inmates face due to the compulsory genitalia-based placement, which results in the allocation of prisoners and detainees to institutions based on the binary categorisations of male and female. The genital-based placement practices often result in TGI people being involuntarily incarcerated in facilities that align with their natal sex rather than their self-identified sex/gender [32-36].

There is an immediate risk linked to a placement that does not recognise TGI sex and gender identity, which manifests as high vulnerability to sexual violence from prison staff and prisoners [16,17]. Due to the hyper-gendered nature of prisons, there is a heightened level of vulnerability for TGI [18,19]. Resultantly, the law and policies that rely on binary classification fail to account for individuals who do not fit perfectly into the social normative definitions [37].

In the case of *September v Subramoney NO and Others*, the South African Equality Court indicated that neutral treatment of people who do not conform to the binary sex and gender identification amounts to discrimination and highlighted that, "... neutral application of the rules applicable to all its inmates at Helderstroom (and correctional services facilities generally), including the applicant, is discriminatory as it does not make provision for transgender inmates [15]. As a result, the neutral application of the rules to the applicant causes discrimination against her on the basis of her gender identity."

Under section 14(3)(i) and (ii) of the Equality Act, the principle of "reasonable accommodation" requires the respondents to take reasonable steps to accommodate diversity. Thus, the respondents are under an obligation to do so (*September v Subramoney NO and Others*) [38].

The lack of policies thus undermines the principle of non-discrimination enshrined in the Zimbabwean Constitution, thereby exacerbating the hazards encountered by TGI people while they are detained or imprisoned in CJIs [12,16]. These dangers increase their vulnerability since people with marginalised status are more likely to stand out for violating typical binary sex and gender norms [25,31]. Addressing the existing gap thus requires the urgent formulation and implementation of placement policies that prioritise the rights and dignity of TGI individuals within Zimbabwean CJIs.

Exercise of discretion by criminal justice officials without clear placement policies. This is often infused with the practice of isolating transgender and intersex prisoners

The absence of clear policies and non-legal recognition has led criminal justice officers to rely on discretion when dealing

with arrested transgender or imprisoned intersex individuals. This theme focuses on the use of discretion when faced with the challenge of providing criminal justice services that ensure access to justice and due process within a system that is strictly sex segregated. At least four participants from ZPCS and one from ZRP shared personal experiences or witnessed incidents where they had to devise solutions to accommodate a remanded or imprisoned person whose sex and gender did not align with male or female categories. The ZJSC KII also emphasised the difficulties caused by the lack of inclusive policies, especially regarding equitable service provision and standards of due process that oblige officials to treat TGI people with respect and dignity.

Participant D (ZRP-CID, HQ, VFU): "I would say an officer uses discretion when faced with such a situation. The practice I have seen in place is that an officer raises the Officer in Charge. We then refer to the medical for gender verification by a public medical officer. We may also outright not place a person in a cell when such scenarios arise. We can just tell the person to come to court while never having been detained after arrest ... It is a matter of discretion."

Participant E (ZJCS-Legal and Policy Services): "Judicial officers are faced with different cases, which they deal with as best as they can based on the facts within the confines of the law. They apply discretion, and each matter is dealt with on its own merits. However, I can say that there is no set policy"

Participant H (ZPCS-Chikurubi Female Prison, Security): "When faced with a situation, we have an intersex or transgender, I believe isolation is best. It may be safer for such a person to have separate isolated sleeping quarters. During the day, they can mingle with the rest of the prison population, but sleeping, it would be best if we have isolation because they may be abused."

Participant I (ZPCS-Harare Metropolitan Province, Rehabilitation): "The allocation of cells is very much a question of looking at what the papers say and how one appears. Obviously, where it means one is not what they appear or what the papers say, like for intersex specifically, discretion may have to be applied to separate them and place them in isolation, which also has its challenges. I appreciate that, at the moment, we have no choice but to isolate because there is no other clear policy or facility...The issue of isolation is not ideal but a practical starting point, looking at how our facilities are constructed. We just adapt as best as we can because, currently, there is no policy guideline to lead us."

Participant J (ZPCS-Harare Central Prison): "It is rare, but if we encounter such a situation, we obviously isolate such a person because we have different inmates who can be practising homosexuality, so we isolate them for their protection. I have had a personal experience of encountering such a person, and they were intersex. I was stationed at the reception while at Harare Remand Prison. This person was taken to another station, where they were put in isolation. They took him to medical, and the results indicated that this person was not medically male or female. They were kept in the medical section until they were released on bail."

Participant L (ZPCS-Harare Central Prison, Security and Intelligence): “I faced this scenario in 2022. While at Harare Remand, a person came who, upon stripping, it was apparent they were not male. It really was not clear what they were. We took them to the medical personnel, but they were held in an isolated cell before that.”

Participant M (ZPCS-Harare Central Prison): “Given that we have open prisons, which will increase, I think they can also be put in separate places and be alone rather than in the general population. If we receive a transgender or intersex prisoner, it definitely involves telling the Officer in Charge to get guidance on the best way forward which usually has to do with them living separately.”

Participant O (ZPCS-Headquarters, Mbuya Nehanga Offices, Rehabilitation and Reintegration Offices): “I would like to say there is no policy really, but the practice has sort of emerged over the years. Our current accommodation is not ideal ... we already [have] a problem of overcapacity holding issues. Our maximum capacity is 17,000, but in general, we are above about 5,000. There was an incident sometime back and this was handled through the medical personnel. We moved the intersex person to the medical wing so that they could stay isolated.”

Without clear policies, criminal justice officials rely on discretion to handle TGI individuals, often resorting to isolation for their “safety”. Although some of the KIIs justified isolation as a practical solution to prevent abuse, they also acknowledged its challenges, including the risk of violating the human rights and dignity of the affected individuals. Overcrowding in facilities and the lack of inclusive infrastructure further exacerbate these issues, forcing officials to adapt on a case-by-case basis. Scholarly research undertaken on the state of African correctional centres indicates that most facilities are characterised by overcrowding, inadequate medical care with a lack of amenities, medical personnel, and medications [17]. In addition to the prevalent problems in African detention remand centres and correctional centres, the non-recognition at law of intersex, as a separate biological sex marker, and transgender, as a separate gender, in Zimbabwe. This in turn manifests in the criminal justice infrastructure designed around “anatomy-based housing policies” that advance the social organisation of a binary sex/gender system [22-26].

A lack of training for criminal justice personnel regarding how to appropriately interact with the transgender community has also been observed by various scholars [10,19,32]. To close knowledge gaps about significant challenges encountered by transgender people in law enforcement settings and to enhance interactions with transgender people, Redfern conducted research in the USA [37]. The findings provided a brief overview of relations between law enforcement agencies and transgender people. The findings pointed to the stereotypical perception of transgender individuals as sexual deviants existing in the shadows of society [32]. The researcher, however, qualifies that this is often based on the perceptions of a few media-sensationalised cases. Furthermore, she points out that, contrary to this negative perception, thousands of transgender individuals in the USA are well-educated professionals making a meaningful contribution to society [22].

Overall, the findings under this section underscore the urgent need for inclusive policies to ensure fair treatment, dignity, and safety for TGI individuals within Zimbabwe’s CJS.

Themes emerging from Section E: Key populations care, safeguarding and management policies

This section of the KII guide included questions seeking responses from the KIIs regarding the respective Zimbabwean CJI’s institutional policies on the care and management of TGI individuals. It assesses the existence of guidelines that ensure equitable treatment, access to healthcare, and proper body search procedures. The findings reveal a notable gap in dedicated policies and services for these populations, pointing to a lack of tailored care within the facilities.

The criminal justice institutions do not have any specific care, safeguarding or management policies that focus on transgender and intersex people

The key informant interviewees indicated that there are no specific care, safeguarding, or management policies that focus on TGI people in CJIs. This lack of policies is consistent with the criminalisation of same-sex activities in Zimbabwe, which makes TGI people susceptible to discrimination and violence.

Participant A (ZHRC-Monitoring and Inspection): “Yeah, we have a thematic working group that looks at special interest groups, and interestingly, it looks at Indigenous communities. It looks at persons with disabilities, women, children, and women covered by the other thematic groups...those are the special interest groups focused on so far... nothing on tolerance of intersex transgender people specifically”

Participant B (ZRP-PGHQ, Crime): “Our safety and risk management practices focus on reducing abuse. We do not have anything on transgender and intersex people. We have policies that protect men and women. For example, when a person is being searched, we ensure that women are searched by female officers and men by male officers. In some cases, for both, it can be done by a medical doctor or the wife of a male officer who may be staying in the police camp if, let us say, we arrest a female and there is no female officer. Considering the rareness, I do not think there are any plans to have clear policies or procedures ...”

Participant E (ZJSC-Policy and Legal Services): “As I mentioned earlier, a judicial officer looks at different issues concerning human rights daily. We cannot categorise to the minute details to say ok, people who are transgender, people who are intersex, but we have managed to sift through people with vulnerabilities, for example, with respect to people with disabilities, women I have mentioned, children... We do not have a specific timeline, but we believe we have in place adequate systems that can take care of transgender and intersex people.”

Participant G (ZPCS-Chikurubi Female Prisons, Health): “We have never had any, but I believe the policies that help us to treat transgender and intersex people are necessary. The medications that an inmate is allowed to bring depend on the type of prescriptions allowed in terms of the schedule of prescribed medication allowed. If there was some guidance, we could probably use it for early diagnosis of depression and unique medical conditions.”

Notable divergent views were proffered by two KIIs from the ZPCS on the vulnerability of criminal justice officials whom TGI people fear. Bouts of violence can attack or overpower the prison officers, thereby also making them victims due to the lack of clear guidelines or policies.

Participant I (ZPCS-Central Prisons, Security): “The law is silent, and placement is based on how one is identified on their national identity documents, but this presence is a risk to us as officers as well. One thing definitely on mind is the kind of manpower that needs to be allocated to a person who is transgender. How do I subdue such a person in the event of a violent challenge to my authority? You must not forget that some of these people will be convicted criminals, and they can overpower me because of some resentment they harbour against the criminal justice system or some other reason.”

Participant K (ZPCS-Harare Central Prison, Medical Department): “The need to remodel our policies to incorporate more security measures for those who are vulnerable in prison is critical on both sides. It is not just about transgender and intersex people, but serious safeguarding and quality security measures that promote dignity are key for officers as well. Holistically speaking, the correctional system is male-dominated. Therefore, our procedures must be revised to protect all officers, particularly female officers.”

The findings from the KIIs have highlighted deficiencies in the Zimbabwean CJIs regarding specific care, safeguarding, and management policies tailored to TGI individuals. This gap makes TGI people vulnerable to discrimination, violence, and limited access to healthcare. Although some KII participants recognised the need for inclusive policies, no institutional framework currently addresses these issues. Divergent opinions raised concerns about the safety of correctional officers, emphasising the necessity for policies that protect the dignity and rights of vulnerable inmates while ensuring officer security. These findings underline the urgent need to develop comprehensive, inclusive policies that promote equitable treatment for all involved.

The absence of specific care, safeguarding and management policies for TGI individuals in Zimbabwean CJIs reflects broader structural exclusion that perpetuates discrimination and undermines their access to justice. This exclusion aligns with global patterns where criminal justice systems rooted in colonial era frameworks fail to accommodate diverse identities, exposing TGI individuals to violence and neglect in CJIs [26-28]. The findings thus align with the theoretical framework of institutional invisibility, which argues that the lack of explicit policies renders marginalised groups invisible, thereby exacerbating their vulnerabilities [10]. The findings therefore demonstrate the urgent need to reform Zimbabwean CJIs to foster an environment of equity and dignity for all.

Recommendations

The current setup of Zimbabwean CJIs worsens the legal disenfranchisement of TGI people. Particular recognition should be given to TGI individuals who are even more vulnerable and in need of specific measures, policies, and infrastructure as outlined in the Yogyakarta Principles [29]. Research indicates that Zimbabwean CJIs are presently structured around policies

and infrastructure based on a binary understanding of sex and gender, influenced by heteronormative standards of male and female. Those who do not fit within these binary categories are excluded. Dignity, safety, and security are fundamental to correctional policies designed to support TGI communities.

It is recommended that all CJIs collect data and statistics on TGI people who go through their doors. This is an effective way of gathering information through government institutions. It can lead to evidence-based transformations of the CJIs. These changes will enhance access to substantive criminal justice and uphold the dignity of all individuals passing through the Zimbabwean CJIs. Other key recommendations include:

i) Inclusive housing and placement policies should be established

The Zimbabwean CJS must establish guidelines with specific procedures to address the safety, security, housing, and medical needs of TGI detained and imprisoned people. This responsibility should not be left to the discretion of each officer or CJI. Although cases involving transgender or intersex persons may be infrequent, due to unconfirmed statistics on these populations, every Zimbabwean CJI must have policies in place.

ii.) Training of criminal justice personnel combined with enacting inclusive policies

Zimbabwean CJIs must establish clear and precise policies and procedures. Criminal justice officers should be sensitised to LGBTIQ+ individuals. Additionally, officers need training to understand diversity as well as the human rights of sex and gender identities beyond the legally recognised binary.

iii) Legal recognition of intersex and gender and sex identity categories

Zimbabwe does not recognise non-heterosexual sexual orientations and currently criminalises same-sex relations between consenting male adults. Non-binary sex and gender identities must be distinguished from orientation. The existing lack of legal recognition for sex and gender identities beyond the traditional binary imposes identities on TGI people that may not reflect their true identities. The state-endorsed binary identities imposed on these minority groups amount to state-sponsored discrimination based on sex and gender. This current practice is ultra vires the letter and spirit of the Constitution of Zimbabwe.

Rectifying these systemic identified inadequacies will not only protect the rights of TGI individuals but also connect Zimbabwe's CJIs with international human rights norms, including those delineated in the Yogyakarta Principles the Mandela Rules and the Luanda Guidelines. It is vital, therefore, to establish a CJS that honours diversity, fosters equality, and guarantees equitable access to justice for all individuals, including those identifying as transgender or intersex.

Conclusion

The research highlighted significant gaps in Zimbabwean CJIs, which currently have housing policies that generally require inmates to fit into one of two sex categories: male or female, and that arrested and detained individuals are treated according to their natal sex. Additionally, the CJIs typically do not collect data on how many people in the CJS are transgender or intersex,

nor on their experiences during imprisonment. As a result, a notable lack of information exists regarding nonbinary people who are arrested, remanded in custody, or imprisoned.

Currently, criminal justice officials are neither trained nor sensitised to the specific needs of TGI individuals. This can result in inhumane and degrading treatment, including misgendering. Due to the absence of formal policies or guidelines, TGI people receive inconsistent treatment during arrest, remand, or imprisonment, especially concerning safety assessments before placement, housing allocation, and access to ablution facilities. The culture and staff practices within the Zimbabwean CJI currently reflect a lack of awareness of international best practices for inclusivity across diverse gender and sex identities.

To establish an inclusive and equitable CJS, the Zimbabwe CJIs must implement measures to: legally recognise TGI identities as distinct sex and gender categories, ensuring they are protected under anti-discrimination laws; reform institutional policies and procedures to accommodate non-binary identities, including modifications to infrastructure, detention protocols, and court processes; and provide human rights-based training to law enforcement, judiciary, and correctional services personnel to promote understanding and sensitivity towards TGI individuals.

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