

Pre-trial detention in Zambia:

Understanding caseload management
and conditions of incarceration

01



O?ENLEARNING



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OSISA

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Executive summary Zambia

Like elsewhere in Africa, the excessive and extended use of pre-trial detention in Zambia is symptomatic of failings in the criminal justice systems relating to the effective and efficient management of case flow. Excessive and extended pre-trial detention violates a number of rights, key among which are the right to liberty, dignity, a fair and speedy trial, and to be free from torture and other ill treatment. It is especially the poor and powerless who bear the brunt of excessive and extended pre-trial detention. But the impact of pre-trial detention, even for short periods, reaches well beyond the individual concerned, affecting families and communities.

In order to better understand the use of pre-trial detention in southern Africa and its impact on the rule of law, access to justice and adherence to human right standards, the Open Society Initiative for Southern Africa (OSISA) – in partnership with the Open Society Foundation for South Africa (OSF-SA) and the Open Society Foundations Global Criminal Justice Fund (GCJF) – commissioned an audit of a sample of police stations, prisons and courts in Zambia to gather information on both the legal status of awaiting trial detainees and issues pertaining to conditions of detention in prisons and police stations.

Following a review of the literature, data was collected from a number of police stations, prisons, subordinate courts and High Courts.

This focused on quantitative data on case flow management and qualitative data on conditions of detention.

The institutions of the criminal justice system and their functions

Limited resources place constraints on all criminal justice institutions in a variety of ways. However, cost-effective and sustainable solutions need to be sought to improve record keeping and monitoring of case flow.

In respect of the **police**, it was found that a number of problem areas create bottlenecks in respect of effective and efficient case flow management, including logistical challenges (transport, printing and stationery); non-selective charging of suspects by police prosecutors; lack of forensic capacity to investigate cases; abuse of police powers to arrest and detain; and, poor communication between the prosecutors and investigators of cases.

The research found that a number of issues relating to the **Directorate of Public Prosecutions (DPP)** hamper effective case flow management, such as delays in sending instructions from the DPP to the police; under-staffing of the DPP; lack of autonomy of the DPP vis a vis the Ministry of Justice; lack of supervision of police prosecutors by the DPP; lack of, or limited, follow-up of cases by police prosecutors; and, lack of transport to transfer case files between police stations and DPP offices.

While the **Legal Aid Board (LAB)** is intended to provide legal advice and representation to indigent clients, its work is constrained by limited human resource capacity within the LAB, lack of accessibility and knowledge of the LAB, and prohibitive fees charged by the LAB.

The analysis of **the judiciary** revealed that the following factors affected case flow management – confusion between judicial independence and accountability for undue delays in the disposition of cases; excessive delays in the committal of cases to the High Court; excessive delays in the confirmation of sentences in the High Court; lack of effective court roll management; under-staffing; lack of office equipment for necessary support functions; and, lack of child-friendly courts.

The **prison service** experiences a range of problems that impact on the conditions of detention, including under-funding that permeates nearly all operational areas (cost per prisoner per day is estimated to be less than US\$2) and high mortality rates among both staff and prisoners.

Despite these challenges, the following were identified as **promising and/or good practices** – the Coordinated Communication and Co-operation Initiative aimed at improving cooperation and communication between the five institutions of the criminal justice system; increase in the High Court establishment from

20 to 50 judges; increase in the capacity of the LAB through the use of private practitioners; and, legal reform efforts (i.e. National Prosecutions Authority Act and Community Crime Prevention Methods under the Police Amendment Act).

The legislative framework for pre-trial detention

The Constitution of Zambia and the other legislation regulating the criminal justice system provides a sufficient framework for regulating pre-trial detention and fair-trial rights. The legislation provides for bail; due process guarantees; the right to be informed of the reasons for arrests and compensation for unlawful arrest; the right to be brought to court within in 24 hours; the right to be tried within a reasonable time by a competent tribunal or authority; the presumption of innocence; access to legal representation; and the general rights to liberty and security of the person.

Conditions of detention – police cells

While some good practices were identified, the overwhelming picture is that conditions of detention are poor, violate the rights of detainees in material ways and frequently exceed the 24-hour rule. The ageing state of many Zambian police stations (many are more than 40 years old) and the insufficient capacity and nature of cell accommodation are the cause of many of the major concerns. Sufficient funds will remain a challenge for the foreseeable future, but this

should not prevent an incremental process of reform and improvement.

The police service should develop a time bound and monitored plan of action to incrementally improve conditions of detention, while police management should provide assertive and demonstrable leadership in relation to the human dignity of detainees and their right to physical and moral integrity – as well in relation to transparency and accountability, which are the cornerstones of a human rights-based detention system. The police training curriculum also needs to be reviewed.

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legislative limit of 24 hours does not appear to be achievable for the majority of detained people. Deprivation of liberty by the police for a range of minor offences also raises concerns. Admission to police detention could be reduced by 20 percent simply by removing people arrested on offences such as loitering.

The impact of legislation restricting bail for some offences, particularly drug offences, is readily apparent from a comparison of the remand population offence profile with the profile of cases before the courts. Remand is also highly likely for people before the courts, with more than half of people tried in the subordinate courts being held on remand.

A great source of concern is the long time periods applicable to cases transferred to other courts or committed to the High Court. In addition, the long time periods (compared to conviction) applicable to cases that are ultimately withdrawn is also an issue that needs to be addressed and suggests a failure to properly screen cases at an early stage. Finally, variations in time periods by location indicate the influence of local factors.

Further research and/or reform is recommended to:

- Re-train police on the right to police bond as well as initiate changes to local practice on the requirements for police bond;
- Review bail legislation restricting bail by

- o offence type;
- Review the penal code to decriminalise certain actions resulting in unnecessary police detention;
- Review the committal process and design an expedited process to enrol matters in the High Court;
- Implement an early screening process to be adopted by prosecutors to expedite withdrawals; and,
- Identify and implement mechanisms to identify instances of inordinate delay in relation to people on remand and trigger a review of these cases.

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CONTENTS

06 - 07
Map of Zambia

08 - 12
Introduction

13 - 20
Methodology

21 - 23
Basic facts on the criminal justice system

24 - 38
Structural description of the criminal justice system

39 - 48
The legislative framework for pre-trial detention

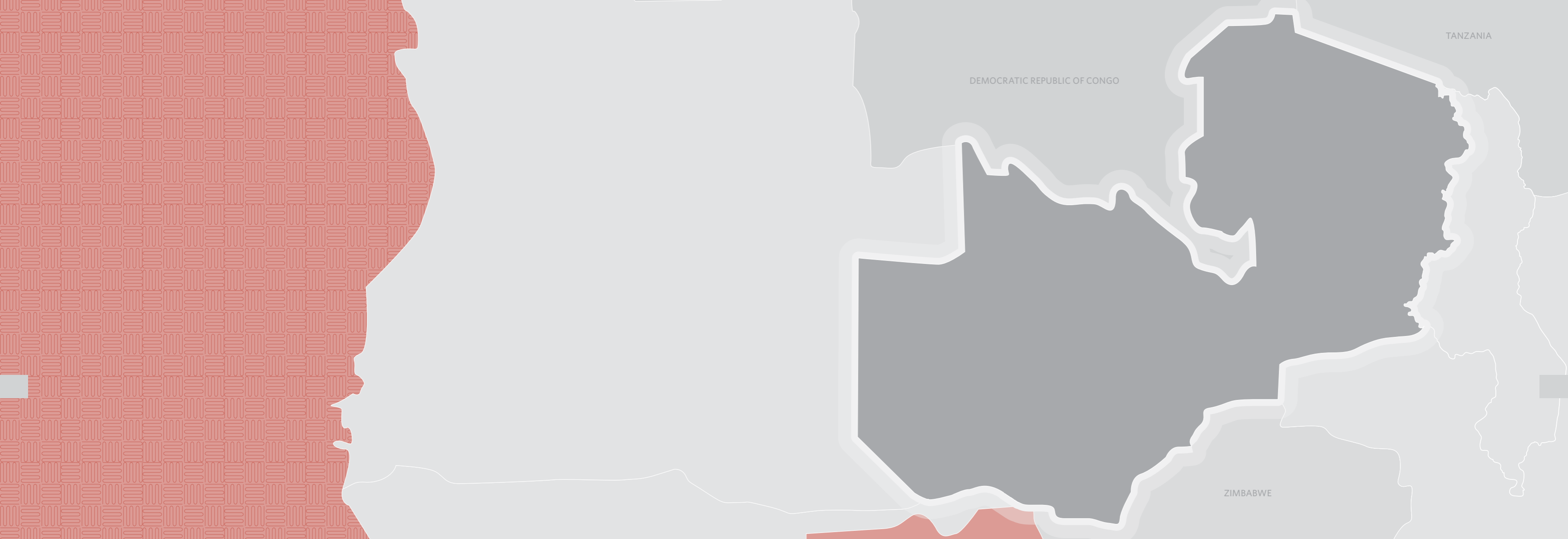
49 - 59
Prison law and conditions of detention

60 - 76
Survey results on conditions of detention in police cells

77 - 92
Survey results on conditions of detention in prisons

93 - 106
Case flow management research

107 - 119
Endnotes



DEMOCRATIC REPUBLIC OF CONGO

TANZANIA

ZIMBABWE

INTRODUCTION

By Lukas Muntingh and Louise Ehlers

“This deprivation of liberty exposes detainees to a range of human rights violations, particularly torture and ill treatment.”

A global problem

Article 9 of the International Covenant on Civil and Political Rights (ICCPR) provides extensive protection against the arbitrary deprivation of liberty as well as enshrining the right to challenge the deprivation of liberty and the right to a fair trial.¹ Despite this there are an estimated three million people in pre-trial detention globally and more than nine million are detained each year – with many remaining in custody for weeks, months or even years before they go to trial, if at all.² This deprivation of liberty exposes detainees to a range of human rights violations, particularly torture and ill treatment.

According to the Global Campaign for Pre-trial Justice, people in pre-trial detention risk:

- Exposure to institutional violence, initiation rituals and gang violence, which contribute to the significantly higher homicide and suicide rates among pre-trial detainees compared to sentenced prisoners;
- Contracting infectious diseases due to overcrowded and unsanitary conditions – diseases which the detainees carry back to their home communities when they are released;

- Social stigmatisation, including estrangement from family and community, and difficulty finding and retaining employment;
- Increased propensity for crime since those who experience prolonged pre-trial detention are more likely to commit a criminal offence after release and their children are also more likely to commit a criminal offence later in life; and,
- Losing their employment during excessive periods of detention and watching their families slip deeper into poverty, hunger and homelessness.³

The African context

African prison systems face a host of serious problems, including poor conditions of detention; torture and ill treatment; dilapidated and inadequate infrastructure; overcrowding; no or limited services; antiquated legislation; poorly trained staff; and, a lack of oversight. These problems are widely acknowledged and several declarations by African stakeholders have demonstrated their concerns about the

continent’s poor prison conditions⁴. One of them – the Ouagadougou Declaration, adopted by the African Commission on Human and People’s Rights (ACHPR) in 2003⁵ – pays particular attention to un-sentenced prisoners and recommends:

- Better co-operation between the police, the prison services and the courts to ensure trials are speedily processed and to reduce delays in remand detention through regular meetings of caseload management committees, including all criminal justice agents at the district, regional and national levels; making costs orders against lawyers for unnecessary adjournments; and, targeting cases of vulnerable groups;
- Ensuring that people awaiting trial are only detained as a last resort and for the shortest possible time through increased use of cautioning, greater access to bail by expanding police bail powers and involving community representatives in the bail process, restricting time in police custody to 48 hours, and setting time limits for people on remand in prison;
- Good management of case files and regular reviews of the status of remand prisoners; and,
- Greater use of paralegals in the criminal process to provide legal literacy, assistance and advice at the earliest possible stage.

However, despite the aims of the Ouagadougou Declaration and the efforts of numerous stakeholders, progress towards prison reform has been limited across the continent and in most countries, prison conditions do not meet minimum

standards of humane detention. In poor nations, conditions generally fall well below accepted international standards and frequently amount to ill treatment. Overcrowded facilities, inadequate nutrition, poor health and hygiene standards, exposure to communicable diseases, inter-prisoner violence and victimisation, and limited supervision contribute to detention conditions that are an affront to human dignity. And pre-

trial prisoners are frequently worse off than their sentenced counterparts.

It has been noted by other researchers⁶ that the average detention duration and percentage of prisoners on remand in developing countries is relatively high.⁷ In eight countries, for example, over two thirds of prisoners are remand detainees, as seen in Table 1.⁸

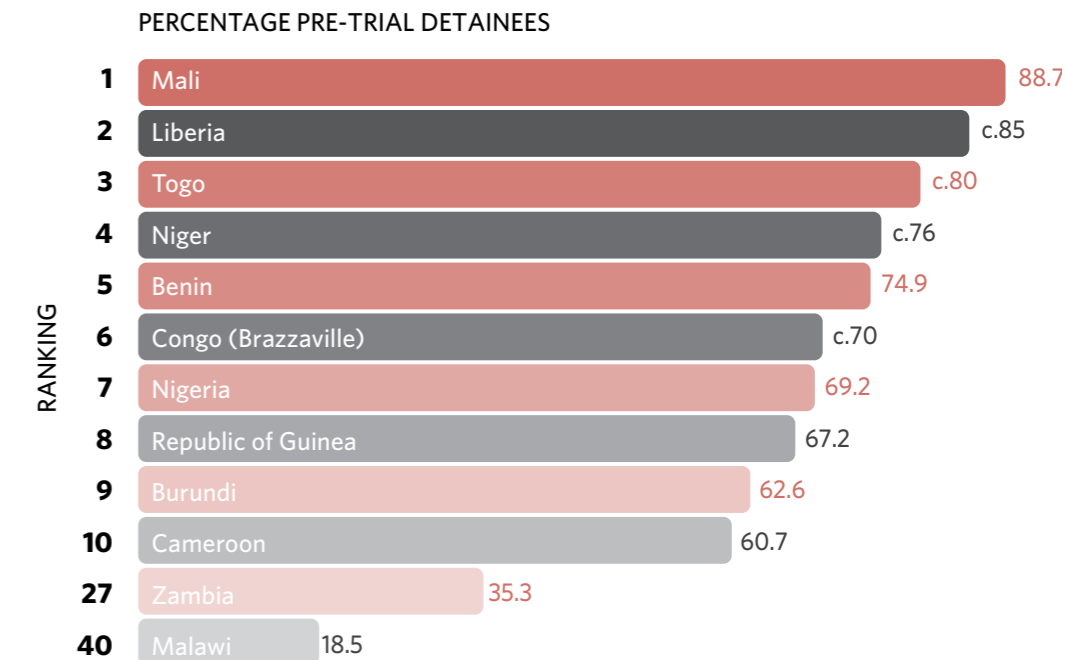


TABLE 1

As Ballard notes, “such figures indicate that remand detention is not considered an exceptional measure or seen as a last resort, but used excessively and frequently without sufficient justification.” This ‘last resort’ principle is articulated in Article 9(3) of the ICCPR:

“It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”

But along with the excessive number of pre-trial detainees in many African countries, there are a number of other issues that need to be understood. It is primarily the poor and the powerless that are discriminated against.⁹ Without the means to secure legal representation, they often spend months – if not years – in detention while waiting

Background to the research project

Recognising the challenges described above and in order to better understand the use of pre-trial detention in southern Africa and its impact on the rule of law, access to justice and adherence to human right standards, the Open Society Initiative for Southern Africa (OSISA) – in partnership with the Open Society Foundation for South Africa (OSF-SA) and the Open Society Foundations Global Criminal Justice Fund (GCJF) – commissioned an audit of a sample of police stations, prisons and courts in Zambia to gather information on both the legal status of awaiting trial detainees and issues pertaining to conditions of detention. A similar process was undertaken in Malawi and a separate report has been compiled for that country.

The information contained in this report provides rigorously researched, empirical evidence, which can be used to underpin future efforts by both government and civil society to influence legislation, policy and practice with a view to ensuring the appropriate use of pre-trial detention,

promoting the speedy resolution of trials and improving prison conditions in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMR).

OSISA and its partners will also explore how this information and the tools that were designed during the audit process might contribute to regional work on criminal justice reform e.g. how might this research be used in the development of regional standards for the management of pre-trial detainees.

As noted above, a similar project was undertaken in Malawi. Given both countries' histories as well as their socio-economic and demographic profiles, the findings are in many instances very similar and so are many of the recommendations. Indeed, there may be significant scope for cooperation and synergy between the two counties in respect of criminal justice reform.

2.

METHODOLOGY

By Lukas Muntingh

2.1 Partners and institutional arrangements

The project was the result of an agreement between the Zambia Human Rights Commission (ZHRC) and the Open Society Initiative for Southern Africa (OSISA) with the Community Law Centre (CLC) at the University of the Western Cape, South Africa. CLC was responsible for overseeing the research whilst ZHRC was responsible for conducting the fieldwork and commissioning the literature reviews. Over the course of the project a number of partner meetings were held to review progress and plan the following phases.

2.2 Goal and objectives

The overall goal of the project was to collect accurate and reliable information relating to pre-trial detainees (PTDs) so that future policy reform and development in Zambia would be based on firm evidence. To achieve this, the partners agreed to:

- Conduct a comprehensive assessment and analysis of case flow management in the Zambian criminal justice system in so far as it relates to PTDs;
- Conduct a comprehensive assessment of the PTD population with respect to the conditions of detention and the management of the PTD population; and,
- Provide the Government of Zambia and other stakeholders with a comprehensive report, including detailed recommendations, on the realities of pre-trial detention.

In pursuit of these objectives, the partners committed themselves to:

- Undertake an in-depth review of the current legislative and policy architecture, any pending legislation and all previous research on Zambia's criminal justice system that had been conducted in the last five years;
- Use data collection tools that were appropriate to case flow management, the conditions in police cells and prisons, and prison management;
- Collect primary data through fieldwork at selected prisons and courts;

“The project was divided into five broad phases - scoping of the project, research on case flow management, conditions of detention and prison management, and the consolidation and release of the findings.”

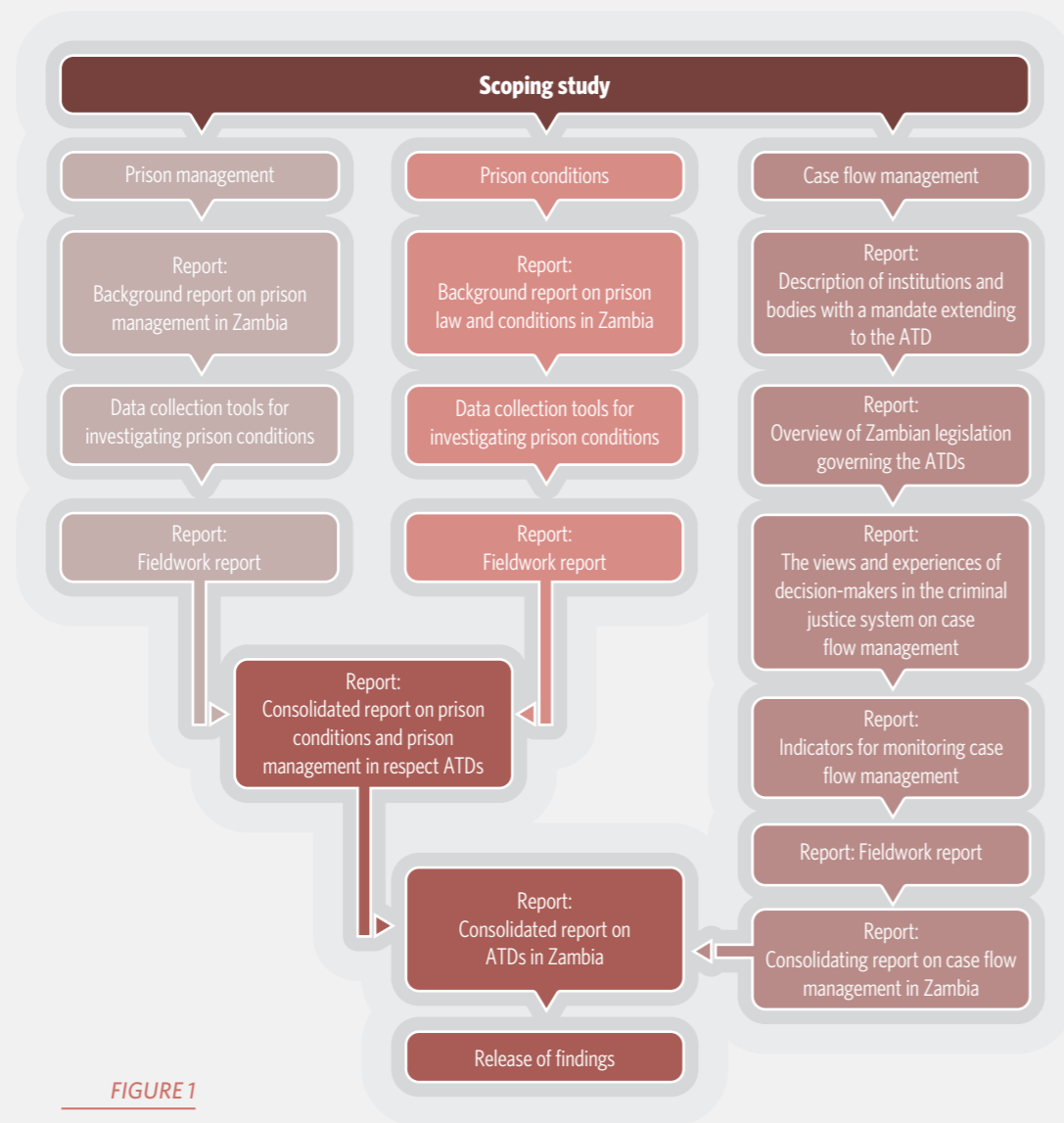


FIGURE 1

- Produce a final report containing all the findings from the study as well a set of recommendations for further intervention; and,
- Organise a seminar to present the findings.

2.3 Structure

The project was divided into five broad phases - scoping of the project, research on case flow management, conditions of detention and prison management, and the consolidation and release of the findings (see Figure 1).

2.3.1 Scoping of the project

The aim of this phase was to determine the exact scope of the project and to ensure that as much relevant information as possible was gathered. To this end, the partners undertook a number of key activities, including:

- Verifying sources of information with reference to documented records at prisons and courts, including the availability of, and information contained within, case files and registers. What information was recorded by which official during the case flow process and in what form – paper archive, electronic archive or in disarray – was also analysed. Particular attention was paid to archiving rules at police stations, courts and prisons.

- Identifying specific sites for the fieldwork phase to ensure an appropriate cross-section. Data was gathered from nine sites – Chipata, Kabwe, Livingstone, Lusaka, Mansa, Mongu, Nakonde, Ndola, and Solwezi – where there is a police station, a court and a prison, with the exception of Nakonde where there is no prison. Data was also collected from the High Courts with jurisdiction over these sites.

2.3.2 Research on case-flow management

The link between case flow management during trials and the detention of PTDs has been thoroughly described at the global level¹ – so a detailed analysis of case-flow management in Zambia was always going to be a central component of this project with the research focusing on:

- The number of prisoners currently awaiting trial - including their age, gender, geographical distribution and charges as well as their knowledge of the legal system and the rights of accused people;
- The current ratio of sentenced to un-sentenced prisoners – including age, gender, offence and bail conditions;
- The length of time spent in police cells prior to transfer to the prison – including age, gender, offence and bail conditions;
- The average length of time spent in prison awaiting trial – including time in custody, court

- level, geographical distribution, age, gender, charges and bail conditions;
- The length of time that it takes for cases to be finalised – including an analysis of the adjudication of cases: conviction, acquittal, struck from roll or withdrawn;
- The number of court appearances per prisoner;
- The reasons for the postponement of cases – including further investigations, availability of information and witnesses;
- The level of access to qualified legal counsel;
- The level of access to legal aid services; and,
- The time from conviction to sentence.

In order to understand case flow management in Zambia thoroughly, the partners also:

- Prepared a report providing a structural-functional description of the institutions and bodies that have a mandate in respect of case flow management and the detention of PTDs;
- Compiled a report detailing current Zambian legislation and subordinate legislation governing pre-trial detention;
- Held a workshop on case flow management with key stakeholders, including magistrates, prosecutors, attorneys, paralegals and NGO representatives, which provided critical data on current practices and – along with the two reports focusing on the legal and institutional arrangements – assisted the researchers to identify the correct variables to investigate in the subsequent stages of the project; and,
- Collected data from a sample of case file

records and registers to investigate case flow management based on the range of identified outcomes, indicators and measures.

2.3.3 Research on conditions in prisons and police cells

In this phase, the researchers assessed access to basic services – such as health care, food, water, sanitation, exercise, recreation etc. – in prisons as well as whether detainees had contact with their families and the outside world.

In order to investigate conditions of detention pertaining to PTDs, the researchers also:

- Prepared a report describing Zambian prison law and conditions of detention from the available literature to provide the background information necessary for subsequent data collection;
- Conducted fieldwork using structured data collection instruments at eight selected prisons where PTDs are detained;
- Compiled a consolidated report on prison conditions and prison management using the fieldwork data; and,
- Expanded the terms of reference to include an assessment of detention conditions at police stations, using a similarly structured data collection tool.

2.3.4 Research on prison management

Prison management refers to the complex set of intertwined functions relating to security, human resource management, administrative functions, financial management, services management and interactions with external stakeholders. For the purposes of this project a particular understanding of prison management was adopted based on a human rights approach to prison management.² The following were regarded as important dimensions of prison management: record-keeping in respect of PTDs at prison level; access to services; accessibility to visitors; efforts by heads of prisons to address problems around PTDs; and, access to legal representation by PTDs at prisons.

As part of this component, the researchers conducted fieldwork at eight prisons where PTDs are detained.

2.3.5 Consolidation and release of findings

All the research findings and project reports were combined into this final report – with a focus on ensuring that the recommendations:

- Prioritise reforms that will produce the maximum benefit at the lowest cost; and,
- Identify government officials who will be responsible for implementing the recommendations.

2.4 Fieldwork and data collection

Six different data collections tools were used (and can be accessed on the internet: www.osisa.org). Two forms related to conditions of detention – in police cells and prisons. The four other data collection tools required the drawing of random samples from registers at police stations, prisons or courts. Forty entries for each of the past five years were recorded, except for the High Courts, where 40 entries from the whole five-year period were recorded.

The institutions, data collection tools and sources are summarised in Table 1.

Staff members from the ZHRC were trained to conduct the fieldwork and to provide training to other researchers to enhance the capacity of the team. The training included classroom based training as well as practical training at a subordinate court, a police station and a prison to ensure that the researchers gained a thorough understanding of the fieldwork process. The training materials were consolidated into a manual (which can be accessed on the internet: www.osisa.org)

The project planned to collect quantitative data from a number of prisons, police stations and courts from 2006 – 2011. Tables 2-5 show the number of observations targeted and the actual number received in respect of the case flow management component of the research.

Institution	Data collection tool	Sources
Prison	Conditions of detention - Awaiting trial prisoners	• Observation and existing records
	Data sheet - Remandee Prison Register	• Remandee Prison Register • Bail book • Warrants • Monthly returns
Police	Data tool : Police Station Arrested Person's Property Book (APPB)	• Arrested Person's Property Book (APPB)
	Conditions of detention - Police Detention	• Observation and existing records
Subordinate Court	Data tool : Subordinate Court Master Register and Case File	• Master register (Criminal) • Case files • Monthly returns
High Court	Data tool : High Court Master Register Summary	• Master Registry
	Data tool : High Court - Criminal Trial Register	• Criminal trail registry • Case files

TABLE 1

Prisons	Observations received	Target
Chipata	80	240
Kabwe	80	240
Kabwe Maximum	159	240
Kamwala (Lusaka)	120	240
Livingstone	120	240
Lusaka Central	40	240
Mansa	160	240
Mongu	0	240
Nakonde	0	240
Ndola	239	240
Solwezi	240	240
Total	1238	2640

TABLE 2

Police Station	Observations received	Target
Chipata	281	240
Kabwe	160	240
Livingstone	120	240
Lusaka	120	240
Mansa	120	240
Mongu	200	240
Nakonde	200	240
Ndola	240	240
Solwezi	160	240
Total	1601	2160

TABLE 3

Subordinate Court	Observations received	Target
Chipata	90	90
Kabwe	90	90
Livingstone	90	90
Lusaka	0	90
Mansa	0	90
Mongu	0	90
Nakonde	90	90
Ndola	90	90
Solwezi	90	90
Total	540	810

TABLE 4

High Court	Observations received	Target	Summary
Chipata	0	40	Yes
Kabwe	0	40	No
Livingstone	0	40	Yes
Lusaka	40	40	No
Mansa	40	40	No
Mongu	0	40	Yes
Nakonde	0	40	No
Ndola	0	40	Yes
Solwezi	0	40	No
Total	80	360	

TABLE 5

It was also planned to collect qualitative data on conditions of detention at nine selected prisons and eight police stations. Table 6 shows that data from all the selected police stations and prisons were received.

Qualitative data	Site	Received
Prisons	Kabwe	Yes
	Livingstone	Yes
	Lusaka (Kamwala Remand)	Yes
	Mansa	Yes
	Mongu	Yes
	Ndola	Yes
	Solwezi	Yes
Police stations	Lusaka Central Prison	Yes
	Kabwe	Yes
	Livingstone	Yes
	Lusaka	Yes
	Mansa	Yes
	Mongu	Yes
	Nakonde	Yes
	Ndola	Yes
	Solwezi	Yes
Chipata	Yes	

2.4 Methodology and limitations for case flow management

The estimate of time periods and analysis of the characteristics of the remand population are reliant on sources of data that are usually kept in the institutions of the criminal justice system. The four institutions targeted in this research were the police, the courts (subordinate and High Court) and the prisons - all of which keep registers. The time period 2006-2011 was targeted because of the possibility of very long time periods being present in the criminal justice system. Samples which only targeted people or cases registered in recent years would fail to capture these longer time periods.

In general, a sample of 40 from each register was chosen for each year from 2006-2011. A smaller sample of 40 for the entire five-year period was drawn in the High Courts, as these process fewer cases each year. After training carried out in Livingstone revealed the difficulty of obtaining case files in the subordinate courts, the sample for the subordinate courts was reduced to 90 observations covering the entire period from 2006-2011.

Fieldworkers were instructed to record a random sample for each available year of the relevant register ('Arrested Persons Property Book' in police stations, 'Numbering Register'

and 'Incoming' register in the courts, and the remand prison register in the prisons) dating back to 2006 (except in the courts, where the sample covered the entire time period). The random samples were chosen by establishing how many entries there were in the relevant register in a year and then dividing by 40 to determine the selection interval. In the subordinate courts, the total number in the register from 2006 to 2011 was divided by 90 to obtain the selection interval, while in the High Courts the total number was divided by 40 to obtain the selection interval.

Details from each randomly selected entry were recorded from the relevant register and also from any associated documentation. In particular, in the courts it was necessary to locate the relevant case files for each selected entry to establish much of the information required in the dataset, while in the prisons the relevant warrants associated with the remand record selected had to be perused. In the High Court, a summary of the kinds of cases before the High Court was also collected for each site, in order to provide an indication of the overall burden faced by the High Court in relation to criminal matters.

The aim of the project was to collect a large enough representative dataset covering enough sites to make a reliable estimate of average time periods in the various stages of the criminal justice process for the whole of

“The aim of the project was to collect a large enough representative dataset covering enough sites to make a reliable estimate of average time periods in the various stages of the criminal justice process”

Zambia, as well as an accurate description of the characteristics of the people before these institutions. Where relevant or markedly different from the average, detailed information on each site is presented.

Calculations for time periods are in days. Since the sample contains only observations from 2006 onwards, reported time periods do not reflect time periods endured by people entering the criminal justice system prior to 2006.

The tables presenting time periods describe the time periods measured (e.g. at a police station – the time from detention to admission) and present calculations for each time period – the number of days, the mean (or the average), the minimum in the sample (the shortest number of days), the first quartile (the number of days that a quarter of the sample was less than), the median (the middle number of days), the last quartile (the number of days that a quarter of the sample was more than) and the maximum (the longest number of days).

Where characteristics such as age and tribe are reported on, these are compared to the relevant regional or national population figures as obtained from the website of the Central Statistical Office of Zambia (<http://www.zamstats.gov.zm>).

2.5 Methodology and limitations for data on conditions of detention

Data on conditions of detention in police cells and prisons were collected by means of a structured instrument that looked into a number of thematic areas, including the right to physical and moral integrity, prisoner's property, the right to an adequate standard of living, adequate food and drinking water, clothing and bedding, health care, safety and security, contact with the outside world, complaints and inspection procedure, women in prison, children and management. Questions pertaining to each thematic area were adapted to suit police detention and prison detention.

The data collection instrument included some open-ended questions and some questions that could be answered yes or no. However, fieldworkers were instructed to record comments and/or a motivation if the answer were yes or no since more information means a more accurate analysis.

The level of recorded detail was the major limitation in these two datasets. Fieldworkers would sometimes tick the Yes/No option but provide no motivation so the response means very little. In other instances, fieldworkers did not record the responses to certain questions.

Sites differ: During the scoping exercise attention was paid to sites in and around Lusaka. However, during the fieldworker training in Livingstone, it was noted that there are minor differences between how records are kept in Lusaka and how they are kept in Livingstone. Therefore, it must not be assumed – in a national survey of this nature – that everything will be the same everywhere and scoping should deliberately include target sampling in different geographical locations.

Maintain flexibility during development of the data collection tools: Since sites differ, it is necessary to be flexible so that last minute adjustments can be made to the data collection tools. This was done as far as possible.

Use international standards due to antiquated domestic law: In the development of the qualitative data collection tools to assess conditions of detention, it was decided to rely on accepted international norms and standards due to the antiquated Zambian legislation regulating conditions of detention.

Give practical training to fieldworkers: Providing practical training on the use of the data collection

tools is essential since classroom-based training was clearly not sufficient to deal with the practicalities of gaining access, finding records and establishing a good rapport with officials in the various government departments. In hindsight, more time should have been spent on this.

Use small training groups: When training fieldworkers it is advisable to work with groups of five or less. Larger groups present problems, especially during practical training as records' offices in courts, police stations and prisons are often small, since they do not allow every trainee to participate fully.

Senior level authorisation does not always filter down to lower levels: Even though the ZHRC followed the required procedure at national level by informing the relevant government departments about the project and obtaining the necessary authorisation, this did not always mean that officials at a particular police station, for example, were aware of the project and understood that access to certain records had been approved. Much time and energy can be saved by ensuring that officials at the local, operational level are informed of the project well in advance.

Authorisation must be very specific: Detailed authorisation is needed so that officials at the operational level are clear about which records will be accessed, how data will be recorded and what data collection instruments will be used. Maximum transparency will greatly assist the process.

A legal mandate to access facilities does not mean access in practice: Even though the ZHRC does have a general legal mandate to access prisons and police stations, this did, at least in one instance, not translate into actual access. Even one belligerent official can cause significant delays in gaining access to records.

Distance makes it difficult: The researchers were based in Cape Town while the fieldwork was being conducted in Zambia. Despite email and phone communication, there is no doubt that distance can result in delays in project implementation.

3.

BASIC FACTS ON THE CRIMINAL JUSTICE SYSTEM

By Lukas Muntingh

Police force

- 13,000 officers (establishment 27,000)¹

Prison service

- 86 prisons: 33 are open-air or farm-prisons and 53 are standard prisons.²
- 10 medium security prisons, three remand prisons and one reformatory school.³

Table 1 Zambia prison system basic facts ⁴

Category	Number	Percent
Total number of prisons	54	100%
Total number of prisoners	15 544	100%
Total number of pre-trial prisoners	5487	35.5%
Female prisoners	404	2.6%
Children	342	2.2%
Occupation level		207.3%
Prison population rate (per 100,000 of national population)	120	

Table 2 Prosecutions and convictions (2005)⁵

Division	Nr of offences	Nr prosecuted	Prosecution rate	Nr of convictions	Conviction rate	Percentage convictions of nr of offences
Lusaka	22,683	8811	31.1	7170	81.4	31.6
Copperbelt	41,553	19714	33.6	15794	80.1	38.0
Southern	12,032	2279	13.7	1566	68.7	13.0
Eastern	4,299	2232	37.5	1497	67.1	34.8
Central	6,786	1922	25.5	1395	72.6	20.6
Western	4,513	2487	26.8	1085	43.6	24.0
North Western	3,406	1258	24.3	1109	88.2	32.6
Luapula	1,751			171		9.8
Northern	3,595	652	9.5	532	81.6	14.8
TOTAL	100,618	39,355		30,319		
AVERAGE			25.3		72.90	24.4

“25.3 percent of reported crimes resulted in prosecutions;

72.9 percent of prosecutions resulted in convictions; and,

24.4 percent of reported crimes resulted in convictions.”

From Table 2, it can be concluded, based on the 2005 data, that:

- 25.3 percent of reported crimes resulted in prosecutions;
- 72.9 percent of prosecutions resulted in convictions; and,
- 24.4 percent of reported crimes resulted in convictions.

Legal Aid Board

- 21 attorneys⁶
- Offices in provincial capitals, with at least one lawyer per office.

Judiciary

- 31 High Court Judges⁷
- 134 magistrates out of 242 positions⁸
- 9 percent of magistrates possess a law degree⁹

Prison inspections

In 2004, the ZHRC inspected some prisons in the Central Province and concluded that:

In general, the morale of prison and police officers is at its lowest due to a number of factors such as lack of accommodation, transport, inadequate salary and allowances. These officers are critical not only in upholding of inmates' rights but also in

the maintenance and enhancement of the country's internal security. The prevailing situation in both the prisons and police cells visited in the Central Province is depressing. There is a lot to be done if Zambia is to meet the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs), the Basic Principles for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹⁰

A year later, in 2005, the ZHRC inspected Lusaka prison and police cells and concluded:

This report has highlighted the terrible situation under which inmates are kept and also the difficult living and working conditions of the police and prison officers. It is clear that detention and prison facilities in Lusaka Province still lag far behind the recommended international standards. Most of the facilities were not in a suitable condition necessary for the respect of human rights and human dignity. Congestion and filth characterised most of the facilities. With regard to congestion, the Commission noted that this was aggravated by inmates held on minor offences most of which were in fact bailable. This problem was particularly prevalent in the high-density areas. In addition, a good number of detention facilities were not purpose built and lack sanitary facilities. This is particularly the case with donated structures.¹¹

A 2011 study on prison health care in Zambia also painted a grim picture:

This study presents the first published research conducted by international human rights monitors in Zambian prisons, and found that significant challenges exist in guaranteeing prisoners' human rights and adequate or equal access to health care, including HIV and TB prevention, testing and treatment. Greater resources are needed for prison-based medical services in Zambia, and accountability measures need to be developed to ensure that both the government and international donors ensure non-discrimination and equal access in the provision of health resources in the country.

Improving prison-based HIV and TB prevention and treatment, and general medical services, as well as eliminating the criminal justice system failures that contribute to overcrowding and extended pre-trial detention, are essential to protecting the human rights and health of inmates and the general population of Zambia.¹²

Despite these reports, a search of the academic literature yielded very few articles in peer reviewed journals – and those that were found focused on HIV and AIDS research in prisons in Zambia. The overall impression is that there has been very little, if any, recent research that is available in the public domain on prisons and the criminal justice system in Zambia. This is a gap that needs to be filled since policy and practice reform must be informed and continuously assessed against a growing body of knowledge focusing on the criminal justice system.

STRUCTURAL DESCRIPTION OF THE CRIMINAL JUSTICE SYSTEM

By Lungowe Matakala

“I have [been detained] for four years now, but my case is not disposed of. There is no justice.”

1. Introduction

Article 18(1) of the Zambian Constitution provides for the right to secure protection of the law.¹ It demands, among other things, that every person facing criminal charges should be prosecuted on that charge within a reasonable time. Yet a remandee by the name of Rodgers, at Lusaka Central Prison, had this to say: “Remandees are kept here a long time. I have [been detained] for four years now, but my case is not disposed of. There is no justice.”² He concluded, “Justice delayed is justice denied. It is better even to be found guilty. When you come out, you’ve spent 10 years in prison.”³ In the words of Chalwe Mchenga, the Director of Public Prosecutions (DPP), “prolonged remand detention is a symptom of problems with the functioning of the system.”⁴

Case Flow Management (CFM) can be defined as the supervision or management of the time and events necessary to move a case from initiation to disposition.⁵ In the Zambian criminal justice system, a case may involve as many as five institutions – namely the police, the DPP,

the Legal Aid Board, the judiciary and the prison service. Effective CFM requires that – within each one of these institutions – bottlenecks, challenges and gaps that could prevent a case from being disposed of in timely fashion should be addressed as early as possible. Therefore, the goal of effective CFM is to create a predictable process and a timetable for early disposition of the great majority of cases.⁶

In Zambia, effective CFM under the criminal justice system would entail that every person facing criminal charges be prosecuted on that charge within a reasonable time. This means that the period of time from when a suspect is arrested by the police, to when he is prosecuted by the DPP before the courts and if found guilty handed over for incarceration to the prisons service should not be unreasonable. Reasonable time, under the prevailing criminal justice system, also entails accommodating time that would be taken by the Legal Aid Board to provide representation to people legally deserving of such representation.

This chapter describes the legal framework, structure and functions of the five institutions that have a mandate in respect of CFM and the detention or protection of pre-trial detainees (PTDs). It also outlines the bottlenecks and problems in each of these institutions, both of which have a negative effect on CFM. The chapter notes a number of initiatives that have been undertaken by the Government of Zambia and its partners (e.g. donors and non-governmental organisations) to address some of these bottlenecks and problems.

Zambia does not have an established, formalised and co-ordinated CFM system. As such, communication and co-operation among the five criminal justice sector institutions are not co-ordinated, or only to a limited extent. This contributes to prolonging pre-trial detention and increasing the violations of the legally guaranteed rights of PTDs.

2. Methodology

The following methods were used to collect information for this report:

2.1 Literature review

Numerous primary documented sources such as the Constitution of Zambia⁷, Acts of Parliament⁸,

policies, guidelines and subordinate court records were reviewed. The researchers also relied on secondary sources (i.e. past evaluations, annual reports, budget speeches and reviews) from various organisations, including the Zambia Human Rights Commission (ZHRC), the Ministry of Justice, the Ministry of Finance and NGOs such as the Prisons Care and Counselling Association (PRISCCA). Electronic sources published by regional and international bodies such as United Nations, the Institute for Security Studies and Human Rights Watch, were also examined.

2.2 Field Study

To supplement the data acquired through the literature review, limited field research was conducted in three districts – Kabwe, Lusaka and Mazabuka. In each district, interviews were conducted with the officer-in-charge of the prison, the senior resident magistrate and an official from the Police Prosecution Division. Focus group discussions were conducted with adult male and female as well as juvenile detainees in the prisons in the three districts.

2.3 Consultative Workshop

An important source of information was the consultative workshop convened by the ZHRC on 24 March 2011 in Lusaka. The workshop brought together various stakeholders in the criminal

justice system, including representatives of the ZHRC, Ministry of Community Development and Social Welfare, Zambia Police Service, Directorate of Public Prosecutions, Prisons Service, Judiciary, Legal Aid Board, PRISCCA and the Immigration Department.⁹

The research team shared its field and research findings at this forum and consulted the participants. In total, the team consulted over 140 people for this study.

3. Overview of the Zambian Criminal Justice System

Zambia is a democratic state with a supreme Constitution that creates the three organs of government – the executive, the legislature and the judiciary. The legal system is plural in nature as customary law co-exists with, and applies parallel to, written law.

Zambia is a State party to many international human rights treaties. By virtue of having ratified these treaties, Zambia is bound to ensure the realisation and fulfilment of rights protected therein. Yet in the Case of Zambia Sugar Plc v Fellow Nanzaluka,¹⁰ the Supreme Court held that international instruments, though ratified by the State, could not be applied unless they are domesticated. (In that case, the respondent had

sought to rely on provisions of the International Labour Convention (No. 158 of 1982) to which Zambia was a party but the treaty had not been domesticated into the national legal system.)¹¹ This decision means that the courts in Zambia are not bound to apply treaty law, and can merely ‘take judicial notice’ of it, as the High Court did with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in the 1993 discrimination case of Longwe v Inter Continental Hotels.¹² Despite this position, Zambia’s supreme Constitution does protect the rights of PTDs¹³ – and so do various other pieces of legislation.

Article 91 of the Constitution creates the judiciary and outlines the following hierarchy of courts: the Supreme Court (which is the Highest Court of the land), the High Court, the subordinate courts and the local courts (being the lowest court). The Constitution and the Industrial and Labour Relations Act also provide for the Industrial Relations Court, which has original jurisdiction in labour-related matters.¹⁴

26 The Supreme Court has an appellate jurisdiction, meaning that it only hears cases on appeal. The only case that may be commenced in the Supreme Court is a Presidential petition. The Supreme Court is the final court of appeal.¹⁵

The High Court has original and unlimited jurisdiction in all civil and criminal matters, except in cases exclusively reserved for the Industrial and

Labour Relations Court.¹⁶ For expediency purposes, the jurisdiction of the High Court is delegated to the subordinate court; hence the need for the subordinate court to refer and commit certain criminal matters to the High Court.¹⁷

The subordinate court is widely established in each district and its jurisdiction is limited to that district.¹⁸ The highest sentence that can be passed by a subordinate court is nine years imprisonment.¹⁹ However, depending on the class of the presiding judge, certain sentences have to be sent to the High Court for confirmation. For example, a senior resident magistrate is mandated to impose a sentence not exceeding nine years, but if a sentence is more than two years, it must be sent to the High Court for confirmation.²⁰

Apart from confirmation, a subordinate court has the power to commit a person for trial in the High Court.²¹ Section 231(1) of the Criminal Procedure Code Act (CPC) provides that:

*If the court considers the evidence sufficient to put the accused person on his trial, the court shall commit him for trial to the High Court and, except in the case of a corporation, shall, until the trial, either admit him to bail or send him to prison for safe-keeping.*²²

Section 223 of the CPC outlines when a subordinate court can hold a preliminary inquiry. It stipulates that if a person has been brought before the subordinate court and:

- is charged with an offence not triable by the subordinate court; or
- if the subordinate court is of the opinion that the case is not suitable to be disposed of upon summary trial; or
- if the court has been instructed under section 10 of the CPC to conduct a preliminary inquiry; then a preliminary inquiry shall be held.²³

The local courts are the lowest in hierarchy and mainly administer customary law.

4. The Police Service

4.1 The legal framework

The legal framework regulating the Police Service is established in the Constitution,²⁴ the Police Act²⁵, the Zambia Police (Amendment) Act,²⁶ the Juveniles Act,²⁷ the CPC²⁸ and the Penal Code Act.²⁹

Article 103 of the Constitution establishes the Zambia Police Service. The service is organised and administered in such a manner and has such functions as Parliament may by law prescribe.³⁰

The general powers and duties of police officers are provided for in the Police Act, Chapter 107 of the Laws of Zambia.³¹ Section 14 (3) of the Police Act states that it is the duty of every police officer to:

- Promptly obey and execute all orders and warrants lawfully issued to him/her by any competent authority;
- Collect and communicate intelligence affecting the public peace;
- Prevent the commission of offences and public nuisances;
- Detect and bring offenders to justice; and,
- Apprehend all persons whom he/she is legally authorised to apprehend and for whose apprehension sufficient grounds exist.

Therefore, in the interest of public order or morality, it is lawful for any police officer (even without a warrant) to enter any place at any time – provided he/she has reasonable grounds to suspect that activities such as illegal drinking, gambling or disorderly behaviour are taking place there.³²

In 1999, Parliament passed the Zambia Police (Amendment) Act, No. 14 of 1999, which contains progressive provisions that, if well implemented, could aid in effective CFM. For instance, section 18B creates the position of custody officer, who is responsible for ensuring that any person in police custody is:³³

- Treated in a decent and humane way;
- Able to access medical facilities, if he/she requires medical attention; and,
- Held in a clean and habitable environment.

In addition, section 18B requires that – before a person is placed in police custody – he/she

should be presented to the custody officer, who will record the person’s name, the offence for which the person was arrested, and the state or condition of the person. The custody officer has the power to make recommendations concerning that person’s well being, including requiring the person to be given medical attention.³⁴

Furthermore, section 48 of the Police (Amendment) Act establishes Community Crime Prevention methods, which are discussed in part 9 of this chapter, while section 53 creates the Victim Support Unit, whose functions include:

- Providing counselling services to offenders;³⁵ and,
- Co-ordinating with civil society and professional bodies in carrying out their duties.³⁶

This in effect empowers the police service to collaborate with NGOs, such as the Legal Resources Foundation, which provides paralegal services.

4.2 Structural and functional description of the Police Service

The police service is headed by the Inspector General, who is assisted by the Commissioner of Police and the Deputy Commissioners of Police – all of whom are appointed by the president.³⁷ The service falls under the Ministry of Home Affairs. As a civilian authority, it is subject to parliamentary oversight of its organs

and structures, recruitment of people from every district of Zambia, members’ terms and conditions of service, and general regulation.³⁸

The police service headquarters are situated in Lusaka with regional offices in every provincial capital. Article 104 of the Constitution stipulates that the functions of the Zambia Police Service are to:

- Protect life and property;
- Preserve law and order;
- Detect and prevent crime; and
- Co-operate with the civilian authority and other security organs established under the Constitution, and with the population generally.³⁹

4.3 Bottlenecks and problem areas in the Police Service

Logistical challenges of transport, printing and stationery

Section 14 (3) of the Police Act stipulates that it is the duty of the police to detect and bring offenders to justice. On average, it can take two or more days before a case is presented to the prosecution division.⁴⁰ This delay is attributed to the lack of indictment forms due to limited resources. Despite the fact that a number of police prosecutors are now typing their own indictments, this has not improved the case processing timelines – because officers still need

to print the indictments but they often have no printing facilities or stationery. In addition, a lack of updated anti-virus software has left most of their computers vulnerable to viruses, which in turn has led to some being infected and working slowly. This lack of capacity means that the police are sometimes unable to conclude their investigations and pass on the matter in a timely fashion.

Non-selective charging

Section 14(3) of the Police Act states that it is the duty of a police officer to apprehend all people who he/she is legally authorised to apprehend and for whose apprehension sufficient grounds exist. The police officer responsible for charging the suspect with an offence is the police prosecutor. Ideally, skilled prosecutors should screen cases and charge only those suspects for whom there is a reasonable prospect of a successful prosecution. However, practice suggests that cases are not carefully screened with the result that court rolls are clogged-up with cases where there is little prospect of a conviction. But the suspect may already be in custody and remain there for a considerable time before the weaknesses in the cases are eventually identified, the charges withdrawn and the case removed from the roll. The inability of prosecutors to effectively screen cases congests the courts and prisons, leading to the unnecessary and prolonged detention of PTDs. An effective screening process could consequently reduce court caseloads and positively contribute to the attainment of CFM goals.

Lack of fuel

The transportation of PTDs from police stations to courts for their first appearance and then from prisons to courts for subsequent appearances are the responsibilities of the police service. During the consultative workshop, it was alleged that funds for fuel are allocated to the police in a lump sum and not dedicated to particular police functions, such as transportation of PTDs. It also appears as if the total fuel allocation is inadequate, which poses a serious challenge and results in many prisoners staying in prison on expired warrants. Often the police service has to rely on donations from the private sector to help cover the fuel costs.⁴¹

Lack of forensic capacity

Section 14(3) of the Police Act states that it is the police's duty to detect crime and bring offenders to justice. While there has been an increase in police staff in the last fifteen years, there has not been a corresponding improvement in crime investigation techniques.⁴² For example, the police service has not invested in DNA-testing equipment and training, which is crucial in most felony prosecutions. In his budget speech of 2009, the Minister of Finance and National Planning, Dr. Situmbeko Musokotwane, said, "a forensic laboratory will be built in Lusaka, which is expected to improve criminal investigations."⁴³ But this has not yet been implemented.

Abuse of police powers to arrest and detain

Although the police can invite someone to the police station to answer questions, the person is not obliged to answer questions or to accompany the police to the station. The police may not detain such a person, unless he/she has been lawfully arrested. However, it is reported that the police abuse this authority by detaining people for extended periods of time to 'assist with their inquiries'.⁴⁴ This ultimately has a clogging effect on CFM.⁴⁵

The misuse of the police's discretionary power to detain people during investigations leads to an unnecessary increase in the number of PTDs in police custody. In practice, the police refer to this as 'apprehension', which they distinguish from 'arrest'.⁴⁶

Lack of computers or typewriters

One of the challenges discussed at length during the consultative workshop revolved around illegible, handwritten police dockets. In these instances, the docket has to be sent back to the police prosecutor who drafted it in order for it to be typed. The lack of a sufficient number of computers or typewriters, as well as the inadequate typing skills of prosecutors, increases the length of time it takes for the docket to be typed up and the case to proceed to trial.⁴⁷

Poor communication

As there is no formalised CFM system in Zambia, there are no written guidelines regarding communication among the various components of the criminal justice system. The quality and scope of communication between the prosecutors and the police raises a number of questions. For instance, who among the two is responsible for the docket? The DPP's office in Lusaka faces numerous challenges when tracking dockets. Additionally, the police often use the excuse that the DPP has failed or is in the process of tracking the dockets even when the instructions have already been sent by the DPP's office.⁴⁸

5. The Directorate of Public Prosecutions

5.1 The legal framework

The legal framework regulating the Directorate of Public Prosecutions (DPP) is established by the Constitution⁴⁹, the Criminal Procedure Code Act,⁵⁰ and the Penal Code Act.⁵¹ Article 56 of the Constitution makes provision for and establishes the office of the DPP.⁵² Currently the Directorate does not have a regulating Act of Parliament and neither is its composition outlined in any binding law. However, the National Prosecutions Authority Act, No. 34 of 2010, which was passed in August 2010, addresses these matters, but was not en-

forced at the time of writing. Pertinent provisions of that Act are laid out in Part 9 of this chapter.

5.2 Structural and functional description of the Directorate of Public Prosecutions

The head of the directorate is appointed by the President, subject to ratification by the National Assembly.⁵³ Article 56 of the Constitution provides that the DPP shall have the power to:

- Institute and undertake criminal proceedings against any person before any court;
- Take over and continue any such criminal proceedings instituted or undertaken by any other person or authority; and
- Discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself/herself or any other person or authority.⁵⁴

These powers may be exercised by him/her in person or by a public official who has been delegated by him/her, e.g. State Advocates.⁵⁵ In addition to the DPP, there are other institutions that are conferred with the power to prosecute cases on behalf of the DPP, including the Zambia Wildlife Authority,⁵⁶ the National Pension Scheme Authority,⁵⁷ the Workers Compensation Commission,⁵⁸ the Zambia Police Service,⁵⁹ and the Zambia Revenue Authority.⁶⁰ It is important to state that all these institutions are subject to the control and direction of the DPP in as far as prosecutions are concerned.

5.3 Bottlenecks and problem areas in the DPP's office

Delays in sending instructions to the police

Article 56(3)(a-c) of the Constitution gives the DPP the power to institute, undertake, take over, continue and discontinue criminal proceedings.⁶¹ It is from those provisions that the DPP derives the power to give instructions and opinions to police prosecutors. Data from the fieldwork in Mazabuka and Kabwe indicate that when cases fall within the DPP's jurisdiction, the DPP can take as long as four to five months before sending instructions to the police. This has had a negative impact on the case processing time standards of the police service. During the consultative workshop, representatives from the DPP's office reported that there is now an internal guideline requiring each officer to attend to cases on his/her desk within one week. However, the diligence with which this guideline is complied with could not be verified.

Under-staffing

Article 56(a) of the Constitution grants the responsibility for instituting and undertaking all criminal proceedings against accused people to the DPP. In a country with more than 6,000 PTDs, this is a significant caseload for an understaffed directorate. The problem of understaffing is closely related to the delays in sending

instructions – because when a state advocate is inundated with hundreds of dockets, the delivery of instructions and opinions to the police can be delayed. It is, reportedly, due to this workload and poor conditions of service that the DPP's office has suffered a high staff turnover rate, as advocates move to the private sector, which offers less stress and more rewarding opportunities. However, this has only increased the caseload per prosecutor and contributed negatively to the pace at which the prosecution handles cases and passes them on.⁶²

Autonomy of the DPP's office

Article 56(7) of the Constitution states that in the exercise of his/her duties, the DPP shall not be subject to the direction or control of any other person or authority.⁶³ However, the DPP's office is treated as a department under the Ministry of Justice⁶⁴ and, as such, it is perceived that the DPP's offices, human and financial resources are controlled by the ministry. The effect of this is that the DPP is seen as a member of staff of the Ministry of Justice, which could compromise the autonomy of the DPP.⁶⁵ This raises concerns because the DPP is constitutionally expected to be an autonomous body, unlike the Ministry of Justice, which forms part of the executive arm of the State.

Location of police prosecutors

As noted above, the law allows the DPP to delegate prosecutorial powers to any public

official.⁶⁶ This power has, among others, been delegated to state advocates and police prosecutors.⁶⁷ Approximately 90 percent of current prosecutors are police service employees,⁶⁸ which makes it difficult for the DPP to supervise them.⁶⁹

Leadership and case tracking

During the consultative workshop, participants noted that interest and leadership by police officers in following up their cases helps to expedite their conclusion. In cases where police prosecutors follow up and track the progress of their cases at the DPP's office, the period for delivery of the docket from the DPP back to the police is shorter.⁷⁰ Therefore, in the absence of an established CFM system, the effectiveness of the police's CFM largely depends on individual officials. It was also noted during the consultative workshop that the DPP does not have a structure to supervise, monitor and sanction police prosecutors who fail to follow instructions or perform their duties inappropriately.⁷¹

Securing attendance of witnesses and the accused at court

There is no legislation that provides for witness protection in Zambia. What exists is an informal protection mechanism, which is driven by the courts and is difficult to monitor after the completion of a trial.⁷² In most cases, witness management is extremely difficult as there are

no incentives for witnesses to give evidence in criminal matters. Rather, witnesses perceive giving evidence against an accused person as posing a risk to their life, which is usually correct in the absence of legal protection.

Many of the cases that make up the backlog in Zambia's courts involve the prosecution struggling to secure witnesses for trial. During the fieldwork, the research team reviewed twelve cases at the subordinate court located in the new Magistrates' Complex in Lusaka. Eight of the cases were withdrawn or discontinued because either the accused was never present during the proceedings or the prosecution had no witnesses to prosecute the matter. In two of those cases, the matter was withdrawn from court because the witnesses were not present.

A further complication is that witnesses are generally not reimbursed for travel expenses they incur to appear in court.⁷³ Consequently, many witnesses do not appear and the accused person's access to justice is compromised. Without witnesses, matters are adjourned and the time it takes to process and conclude the case is increased, adding to the overall backlog.

Lack of transport

The DPP does not have an office in every province. As a result, in remote parts of the country that are far from the regional DPP offices, a lack of transport to transfer dockets

from police prosecutors to the DPP's office and back adds to the delays. The police stated during the consultative workshop that sometimes the prosecution division in a distant police district does not have the finances to courier the docket to the regional office so they have to rely on other government vehicles that are going in that direction to deliver the docket. Sometimes the person assigned this task may not appreciate the importance of the file and may not deliver it upon arrival. Overall, it can take from a week to a month for a docket to reach the office of the DPP.⁷⁴

6. The Legal Aid Board

6.1 The legal framework

The legal framework regulating the Legal Aid Board (LAB) is established by the Constitution,⁷⁵ the Legal Aid Act,⁷⁶ the Legal Aid (Amendment) Act, No. 17 of 2000, and the Legal Aid (Amendment) Act, No. 19 of 2005.

Article 18(d) of the Constitution states that if a person is charged with a criminal offence, he/she should be permitted to defend himself/herself before the court through a legal representative of his/her own choice or through legal aid granted to him/her in accordance with the law.⁷⁷

In 1967, the Directorate of Legal Aid was created

under the Legal Aid Act. Its mandate is to provide legal aid to the poor. Section 3 of the Legal Aid Act, provides that legal aid shall consist of the assistance of a practitioner (be it full or partial) and representation in any court.⁷⁸ Amendments to the Legal Aid Act in 2000 transformed it into a semi-autonomous entity with its own LAB.⁷⁹

Section 3(B)(i) of the same Act provides for the composition of the LAB – namely the chairperson (who must be a person qualified to be a judge of the High Court), the permanent secretary in the Ministry of Justice, representatives from the Law Association of Zambia (LAZ), the Ministry of Home Affairs, the Ministry of Finance and National Planning, the Ministry of Community Development and Social Welfare, the Ministry of Labour, the Ministry of Sport, Youth and Child Development, an NGO active in the promotion of human rights, and one other person with expertise in the administration of justice or law.⁸⁰

If it is proven that an accused person has insufficient means to engage a legal practitioner and it is in the interests of justice that he/she should be represented, then the court may grant a legal aid certificate in the prescribed form.⁸¹

6.2 Structural and functional description of the LAB

The core function of the LAB is to provide legal services to people who lack the financial means

to engage a private legal practitioner to represent them in court. The LAB is mandated to represent accused people in both criminal and civil matters in the subordinate courts, High Court and Supreme Court. No legal representation is allowed in the local court because it is prohibited by the Local Courts Act.⁸²

The Legal Aid (Amendment) Act, 17 of 2000, stipulates that the functions of the Board are to:

- Administer and manage the Legal Aid Fund;
- Facilitate the representation of people granted legal aid under this Act;
- Assign practitioners to people granted legal aid under this Act;
- Advise the Minister on policies relating to the provision of legal aid and implement government policies relating to the same; and,
- Undertake other activities relating to the provision of legal aid and which are conducive or incidental to the performance of its functions under this Act.⁸³

The headquarters of the LAB are located in Lusaka. The LAB also has regional offices in every provincial capital.

6.3 Bottlenecks and problem areas for the LAB

Staffing levels in LAB

In December 2009, the LAB had at least one

resident lawyer in each provincial centre, although the ideal number of lawyers per province – excluding Lusaka, Kitwe and Ndola – should be three. For effective representation in Lusaka, the LAB requires at least eight lawyers, while five are needed in Ndola and Kitwe.⁸⁴ Even though the law provides for free legal counsel to indigent defendants facing serious charges, public defenders have not been able to represent many of the defendants because they are overwhelmed by the demand for their services.⁸⁵ The institution only has seven lawyers – just five of whom appear in court. Private lawyers, under an initiative of the LAZ, have now been brought in to help address the high caseload.⁸⁶

Accessibility of the LAB

Communities visited by the research team that conducted the ‘Situation Analysis for Access to Justice for the Poor and Marginalised Citizens of Zambia’ expressed different views about the LAB. Some acknowledged the presence of the LAB, while others living in the same towns, were not aware of it. Respondents from Mkushi, Solwezi, Mwinilunga, Samfya and Lufwanyama stated that no legal aid service providers operated in their areas, which forced those in need of their services to visit provincial centres to seek legal assistance – in some cases travelling very long distances to access legal representation. When clients have to travel long distances to access the services of the LAB, this is likely to further increase the time it takes for their cases to be resolved.

Fees charged by the LAB

Respondents in the study ‘Situation Analysis for Access to Justice for the Poor and Marginalised Citizens of Zambia’ did not feel that legal aid services were free.⁸⁷ Some claimed that they were made to pay K20,000 (US\$4) as a ‘consultation fee’ and then K160,000 (US\$34) as a ‘legal aid contribution fee’.⁸⁸ In addition to these payments, indigents were made to pay filing fees at court.⁸⁹ It was submitted that at the end of the case, one would pay over K2 million (\$425).⁹⁰ Research shows that the majority of Zambians live on less than US\$1 a day so asking them to spend US\$4 – let alone US\$425 – on legal aid services is far too much. Consequently, indigent PTDs are unable to access the LAB’s services and have to represent themselves instead. They are also unable to challenge their detention or question the evidence on which the charges against them are based. The effect of this on CFM is that matters move very slowly from one stage to the next, as most PTDs do not know the legal and technical procedures to be followed.

7. The Judiciary

7.1 The legal framework

The legal framework regulating the Judiciary (particularly the High Court and the subordinate

courts) is established by the Constitution,⁹¹ the High Court Act,⁹² the Subordinate Courts Act,⁹³ the High Court Rules, and the Subordinate Courts Rules.

Article 91(1) of the Constitution states that the judiciary in Zambia shall consist of the Supreme Court, the High Court, the Industrial Relations Court, the subordinate courts, the local courts, and such lower courts as may be prescribed by an Act of Parliament. The jurisdiction and composition of each of these courts is specifically provided for by an Act of Parliament.⁹⁴ The challenges regarding CFM in the judiciary are mainly found within the subordinate courts and the High Court – so this section will focus on these two courts.

7.2 Structural and functional description of the judiciary

With the exception of proceedings in the Industrial Relations Court, the High Court has exclusive, unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law. As of 31 December 2010, there were 31 High Court Judges out of an establishment of 50 Judges.⁹⁵ Judges are appointed by the President on the advice of the Judicial Service Commission and the National Assembly ratifies the appointments.⁹⁶ The High Court has a seat in four of the nine provinces of Zambia. The caseload of the High Court originates from three sources: cases

falling within the jurisdiction of the court for determination; appeals from subordinate courts; and, cases from the subordinate courts requiring confirmation of sentences.

Subordinate courts, i.e. Magistrates’ Courts,⁹⁷ ‘may try any offence under the Penal Code or any other written law, and may pass any sentence or make any other order authorised by the Penal Code or any other written law’ provided they do not exceed the sentencing limits laid down for them in law.⁹⁸ Therefore, they have original jurisdiction to hear all civil and criminal matters that fall within their sentencing restrictions.

Each subordinate court’s jurisdiction is limited to the district for which the court is constituted.⁹⁹ In each district, there ought to be a:

- Subordinate court of the first class to be presided over by a principal resident magistrate, a senior resident magistrate, resident magistrate or a magistrate of the first class;
- Subordinate Court of the second class to be presided over by a magistrate of the second class; and
- Subordinate Court of the third class to be presided over by a magistrate of the third class.¹⁰⁰

The Judicial Service Commission, acting in the name of and on behalf of the President, appoints people to hold the office of principal resident magistrate, senior resident magistrate, resident magistrate or magistrate of any class.¹⁰¹ Some magistrates are professional (i.e. law graduates

who are admitted to the bar) and others are lay people (i.e. not law graduates but they have undergone a two-year training course and been awarded a Diploma).¹⁰² There are 242 magistrates’ posts but only 134 are currently filled.¹⁰³ 63 of the magistrates must be professional but only 12 are.¹⁰⁴

In Zambia, ‘most of the criminal trials are conducted by magistrates’.¹⁰⁵ Therefore, it can be concluded that the overwhelming proportion of criminal cases are handled by lay magistrates.

A subordinate court sits at different places simultaneously when it is expedient that there be two or more divisions of that court presided over by different magistrates.¹⁰⁶ Cases in which the subordinate court does not have jurisdiction are committed to the High Court. There are subordinate courts in 54 of the 74 districts of Zambia.¹⁰⁷

Part IV of the CPC makes provisions relating to all criminal investigations and states that:

*Every court has authority to cause to be brought before it, any person who is within the local limits of its jurisdiction, and is charged with an offence committed within Zambia, or which, according to law, may be dealt with as if it has been committed within Zambia, and to deal with the accused person according to its jurisdiction.*¹⁰⁸

One may institute criminal proceedings before a court either by lodging a complaint or by bringing a person who has been arrested without a warrant

before a magistrate.¹⁰⁹ If the court considers it necessary or advisable to adjourn an inquiry (e.g. because witnesses are absent), it may remand the accused to a prison or other place of safety for a period not exceeding fifteen days at any one time.¹¹⁰

7.3 Bottlenecks and problem areas in the Judiciary

Independence of the Judiciary

There are two problems relating to the independence of the judiciary. The first is that although the Constitution provides for an independent judiciary, some government officials do not always respect judicial independence. Research shows that they use their positions in government to circumvent standard police and judicial procedures.¹¹¹ The second problem is that some judges and magistrates interpret the concept of judicial independence so broadly as to mean that no one can question them about why a matter that they are adjudicating on is taking much longer than normal. When this is done, it is perceived to be an infringement on their independence.¹¹²

Delays in the procedure of committals

In 2010, the New York Times reported that in cases where a Magistrate’s Court did not have jurisdiction, at least six months elapsed before a magistrate committed the defendant to the

High Court for trial.¹¹³ It also noted that committal follow-ups and preparation of the Magistrate's Court record for the transmission of a case often took months and at times even a year.¹¹⁴ Our field visits to Kabwe and Mazabuka in February 2011 confirmed this report.

Confirmation of sentences by the High Court

Section 18 of the High Court Act details the places where the High Court can sit. Usually, High Court sittings are held in buildings that the Chief Justice assigns as courthouses – namely in Livingstone, Lusaka, Kabwe, Ndola and Kitwe.¹¹⁵ However, Section 18 of the High Court Act allows for the Court to sit in places other than where the physical structures meant to house it are located. This is normally the case for criminal proceedings¹¹⁶ and the High Court becomes a Circuit Court, which happens about once every month.

There contributes to the serious bottleneck in terms of confirming sentences. It is reported that on average, the confirmation of sentences by the High Court takes six months.¹¹⁷ This contributes to the backlog of cases in the High Court, which immediately leads to an increase in the prison population, which in turn has a direct impact on CFM.

Ineffective court roll management

Scheduling conflicts are one of the leading reasons for seeking adjournments.¹¹⁸ Some courts do not

grant adjournments that easily, and this forces the LAB, prosecutors and the DPP to appear in court in the absence of one or more necessary parties. It was argued during the consultative workshop that state advocates are more likely to seek unnecessary adjournments in a court that does not follow a strict policy on adjournments – and to use flimsy reasons.¹¹⁹ Therefore, the lack of judicial leadership with regard to adjournments also hinders effective CFM.

Under-staffing

Judges take so long to respond to warrants because they are swamped with a high caseload and are unable, through no fault of their own, to respond to warrants in a timely manner. This also partly explains the delay between conviction and sentencing.¹²⁰

Lack of computers or typewriters

When cases are sent for sentencing at the High Court, the record must be typed. Occasionally, cases are returned because the judge is unable to read some of the statements or parts of the docket because either the handwriting is illegible or the typing was very poor. This contributes negatively to the flow of cases.¹²¹

Corruption

During the consultative workshop, it was alleged that some prosecutors alter documents and this

causes complications in the cases of the affected detainees. For instance, a prosecutor may forge warrants and this may cause a PTD to be detained for a longer period without appearing before a magistrate or judge.¹²²

Lack of proper child-friendly courts

Currently, there are no judicial rules on the procedures and practices that regulate the administration of justice in child-friendly courts – so the sitting magistrate uses his or her discretion in disposing of such cases. The findings of one nationwide study showed that the lack of specialisation in this field by judicial officers, and the transfer of trained officers to other departments within the judiciary, hampers the operations of child-friendly courts.¹²³ Due to these inadequacies, it takes a long time to finalise cases. Furthermore, the lack of assessment reports from the Department of Social Welfare on children who have been found guilty leads to delays in dispensing justice.¹²⁴

8. The Prison Service

8.1 The legal framework

The legal framework regulating the Zambia Prison Service was established by the Constitution,¹²⁵ the Prisons Act,¹²⁶ the Prisons (Amendment) Act, No.

16 of 2004, the Prison Standing Orders, the Prison Rules, and the Prison Service Principle Guidelines.

The Prisons Act provides for the:¹²⁷

- Establishment of prisons;
- Establishment of a prison service;
- Discipline of prison officers; and
- Management and control of prisons and prisoners.

The Prisons Act is supported by the Prisons Rules (1966) and the Prison Standing Orders (1968). Meanwhile, the Prison Service Principle Guidelines set out in detail the service's goal and the overall mission of the Ministry of Home Affairs, under which the prison service falls.¹²⁸ In 2004, Parliament passed the Prisons (Amendment) Act, No. 16 of 2004. Section 7(1) of this Amendment Act states that:

In every prison in which women prisoners are imprisoned there shall be women prison officers who shall have care and the superintendence of the women prisoners, and who shall be responsible for their discipline.

Section 16 of the Amendment Act establishes a Prison Health Service, whose purpose is to provide and administer health care within the service.

8.2 Structural and functional description of the prison service

The prison service is headed by the Prisons Commissioner, who is appointed by the President.¹²⁹ Section 4A of the Prisons Amendment Act allows the Commissioner to appoint regional commanding officers below the rank of Deputy Commissioner on the advice of the Police and Prisons Service Commission.

Zambia has a total of 86 prisons: 33 are open-air or farm-prisons and 53 are standard prisons.¹³⁰ Among the 53 standard prisons, there are 10 medium security prisons, 3 remand prisons and 1 reformatory school.¹³¹

8.3 Bottlenecks and problem areas in the prison service

Under-funding

For many years, the prison service has been contending with low funding levels. For example, the 2010 national budget of about K16 trillion (US\$3.4 billion) only allocated K52 billion (US\$11 million) to the prison service.¹³² This is a small budget considering the size of the prison service and the number of prisoners in the country.¹³³ Indeed, this chronic underfunding is the root cause of many problems in the prison service since the lack of funds adversely affects the condition of prison facilities, including the medical care facilities and the provision of basic necessities, such as food, bedding and uniforms. The maintenance of prison buildings and the

sanitation system also cannot be undertaken due to a lack of financial resources.

Based on current figures and exchange rates, Zambia spends an estimated US\$1.93 per prisoner per day. Comparatively, South Africa spends (excluding capital expenditure) US\$34.00 per prisoner per day. Source: Department of Correctional Services Budget Vote 2011/12, South Africa.

The lack of funding has had a particularly severe impact on transport, affecting such basic activities as transporting remandees to court and collecting firewood. In its report for Central Province for 2005, the Human Rights Commission noted that Kabwe Medium Security Prison had been without transport since 1989.¹³⁴ The report also noted that the prison had no blankets and mattresses because of limited funding.¹³⁵ The Institute for Security Studies reports that the lack of adequate funding has also affected the training and recruitment of staff.¹³⁶

Many untimely deaths caused by HIV and AIDS

Between 1995 and 2000, at least 263 prison staff members were reported to have died from AIDS-related illnesses.¹³⁷ These deaths lowered the institutional capacity, which has caused delays in the management of cases and has contributed

greatly to overcrowding in prisons.¹³⁸ It goes without saying that, with the already overcrowded and under-staffed prisons, this places even greater strain on CFM.

9. Initiatives undertaken by the government and its partners

9.1 Co-ordinated communication and co-operation initiative

The Co-ordinated Communication and Co-operation Initiative (CCCI) is a pilot project created under the auspices of the Zambia Access to Justice Programme, which is supported by the Danish Government and the European Community. It is currently running in Ndola, Kitwe, Kabwe and Lusaka districts. Through the CCCI, there is good cooperation among all five justice sector institutions because they purposefully co-ordinate communication and cooperation on various activities, resulting in improved service delivery. One notable example is the clearance of more than 100 cases that had formed part of the lengthy backlog at the High Court.

The cooperation between the five justice sector institutions in urban areas can – at best – be described as cordial.¹³⁹ But with the help of the CCCI, linkages between the criminal justice institutions in the four pilot districts have

increased and stakeholders are committed to improving the situation further in the future. Officials who were interviewed during the field research for the ‘Situation Analysis of Access to Justice,’ (i.e. social welfare officers, legal practitioners, state prosecutors, police and prison officials) in Kitwe, Ndola and Lufwanyama described their relationships as ‘warm’ and ‘sincere’.¹⁴⁰

9.2 Community crime prevention methods under the Police (Amendment) Act

Section 48 of the Police (Amendment) Act establishes Community Crime Prevention Methods, while Section 48(2) of the Act authorises any community (in a residential, commercial or industrial area) to establish a crime prevention and control association to complement the police in the maintenance of law and order. This initiative acts as a preventative measure against any unnecessary increase in the number of cases being handled by the police service. As such, it intends to reduce the number of cases that the service has to handle in terms of its CFM. However, further information on this provision and its use was not readily available.

9.3 Increase in the High Court establishment

The High Court establishment was increased from 20 to 50 judges in 2010.¹⁴¹ By having more

judges, the High Court should be able to hear more sentence confirmation cases, among others, during the limited times when it sits. There are also plans afoot to expand the presence of the High Court in the provinces. This will minimise the number of PTDs, particularly those held in provinces where the court has no seat so they have to travel to the High Court in another province to have their sentences confirmed. The increase in the number of judges will also require a concomitant increase in the number of support staff such as clerks and other administrative staff.

9.4 The National Prosecutions Authority Act

On 14 August 2010, Parliament passed the National Prosecutions Authority Act, No. 34 of 2010 – an Act with progressive provisions that addresses several bottlenecks and problems faced by the police service and the DPP’s office with regard to CFM. Section 1 provides that the Act shall come into operation on a date that the minister may, by statutory instrument, appoint. Unfortunately, this is yet to be done. Nonetheless, it is commendable that Parliament has finally passed the Act, after nine years of deliberations and negotiations.¹⁴²

The Act outlines the functions of the National Prosecution Authority, which will include the:

- Appointment of state advocates and prosecutors, and the promotion of appropriate

- standards of practice by state advocates and prosecutors in criminal prosecution;
- Development, promotion and enforcement of internationally comparable practice standards for prosecutors;
- Promotion of the integrity and enhancement of the status of state advocates and prosecutors so as to promote honourable and good practice, and increase the confidence of the public in state advocates and prosecutors;
- Promotion of an understanding of professional ethics among prosecutors, and ensuring that the rules and guidelines for professional ethics are responsive to the effective administration of criminal justice;
- Implementation of an effective prosecution mechanism so as to maintain the rule of law, contribute to fair and equitable criminal justice, and ensure effective protection of citizens against crime;
- Initiation of research into various disciplines of law so as to study the role that the prosecution mechanism should play in establishing effective rule of law and human rights, and bringing the law in line with the developments and best practices in other countries; and
- Co-operation with the police, the courts, the legal profession and other Government agencies or institutions so as to ensure the fairness and effectiveness of prosecutions.¹⁴³

In order to address the challenge of securing witnesses, the National Prosecution Act has provided for the establishment of a Fund in

Section 15, which will be used for transporting witnesses to and from court, counselling witnesses before testifying in any matter before court, and any other matter relating to witness management.¹⁴⁴ However, it is not yet clear how the National Prosecution Authority as a whole or this particular Fund will be funded.

9.5 Increase in LAB capacity through engagement of private practitioners

In 2009, Parliament passed legislation that provides for private practitioners through the LAZ to handle criminal matters for a fee of K4 million each (approximately US\$820). This has helped reduce the LAB’s backlog significantly.

LAZ and the Paralegal Alliance Network (PAN) run the only mobile legal aid clinic serving all indigent people. PAN is an initiative of four NGOs – the Catholic Commission for Justice Development and Peace, the Legal Resource Foundation, the Young Women’s Christian Association and the Zambia Civic Education Association – and its goal is to increase and improve the effectiveness of paralegal service delivery in Zambia.¹⁴⁵ The mobile clinic is set up in different communities at different times. It operates once every three to four months for one week in a particular area. During that week, many lawyers avail themselves and render community service by giving legal advice (and sometime representation) for free. The Legal Aid Week

certainly helps alleviate the caseload burden on the LAB.

9.6 Creation of paralegal posts across the country

In 2008, legislation was tabled to create sixty paralegal posts across the country.¹⁴⁶ To date, neither the legislation nor the creation of the posts has come into effect.

9.7 Creation of the Child Justice Forum

A 2005 report found that:

*The Child Justice Forum (CJF) was initiated by UNICEF and established in 2001 in Lusaka. It operates as an open-ended group of role players and stakeholders. Its aim is to provide guidance on the transformation of the child justice system by ensuring adherence to the standards set out in the Convention on the Rights of the Child and other international instruments such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (commonly referred to as the Beijing Rules); the UN Guidelines for the Prevention of Juvenile Delinquency (commonly referred to as the Riyadh Guidelines); and the UN Rules for the Protection of Juveniles Deprived of Liberty.*¹⁴⁷

While the CJF may not have a direct impact on CFM, it does have the potential – through some of

the key initiatives proposed under it (e.g. through diversion, the number of juvenile PTDs can be reduced and unnecessary litigation avoided) – to contribute positively to CFM in Zambia. Unfortunately, research shows that at the moment, due to under-staffing in the police service, prison service and the Department for Social Welfare, Zambia does not have enough officers to effectively administer the diversion programme.¹⁴⁸

10. Conclusion

Almost one third of the prison population in Zambia,¹⁴⁹ which currently stands at 16,666,¹⁵⁰ are PTDs. The government and its partners have initiated a number of measures to try and address some of the problems but substantial challenges remain.¹⁵¹

To begin with, there is a dire need for improved communication and co-ordination among the five criminal justice sector agencies. In a project implemented in Malawi, Kenya, Uganda and Tanzania, there are CFM Committees at the local, regional/provincial and national levels.¹⁵¹ Their task is to identify problems in the CFM system and come up with local solutions. They meet monthly at the local level, quarterly at the regional/provincial level and annually at the national level.¹⁵² They have proved to be effective in improving communication, co-ordination and co-operation among the criminal justice agencies.¹⁵³ In Zambia, criminal justice agencies do not have a co-ordinated approach to deal with CFM issues at district level. The courts do not

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if any person alleges that any of the provisions of Articles 11-26 have been or are likely to have been contravened in relation to him, then that person may apply for redress to the High Court.⁶ Article 18(8) states that before a person can be convicted of a criminal offence, that offence must be defined and its penalty prescribed in a written law.⁷ This means that a person cannot be found guilty of a criminal offence if at the time it took place it was not an offence in any law. This article is vital as it offers protection against the arbitrary incarceration of individuals.

In addition to the constitutional provisions outlined above, the interests of PTDs are protected by the:

- Criminal Procedure Code Act (CPC);⁸
- Supreme Court Act;⁹
- Prisons Act;¹⁰
- Juveniles Act;¹¹
- Local Courts Act;¹²
- Mutual Legal Assistance in Criminal Matters Act;¹³
- Anti-Corruption Commission Act;¹⁴ and
- Narcotic Drugs and Psychotropic Substances Act.¹⁵

3. Zambia and international treaty law protecting PTDs

Zambia has ratified a number of international

treaties that regulate PTDs' rights, including the:

- International Covenant on Civil and Political Rights (ICCPR);¹⁶
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);¹⁷
- International Covenant on Economic Social and Cultural Rights (ICESCR);¹⁸
- Convention on the Rights of the Child (CRC);¹⁹
- African Charter on Human and Peoples' Rights (African Charter);²⁰ and
- African Charter on the Rights and Welfare of the Child (ACRWC).²¹

Ratification of these and other treaties implies that the Zambian Government has committed itself and assumed obligations to ensure that the rights contained therein are respected and protected.²² Put differently, 'ratification' means 'acceptance', 'approval' or 'consent' to be bound by a treaty.²³ However, in Zambia, international treaty law is only directly applicable and enforceable by the courts once Parliament has passed an enabling Act incorporating that particular treaty. For example, the first paragraph in the 1997 List of Replies that Zambia submitted to the Human Rights Committee reads:²⁴

Zambia wishes to inform the committee that it has a dual legal system and that international treaties are not directly applicable in its domestic law. The covenant does not, therefore, take precedence over domestic law.

Nonetheless, the Vienna Convention on the Law of Treaties (Vienna Convention) stipulates that human rights treaties are legally binding on the government that ratifies them, regardless of whether or not they have been incorporated into domestic law.²⁵ This is due to the principle of *pacta sunt servanda*, which is enshrined in the Convention.²⁶ Therefore, Zambia is obligated to facilitate and fulfil the realisation of PTDs' rights, which are guaranteed in treaties mentioned above through its national laws, governmental programmes and policies.

4. Rights of PTDs with regard to bail

It is vital to distinguish bail from police bond. Bail bond is granted at the police station, when a person has been arrested without a warrant for an offence other than one punishable with death, and the officer-in-charge of that police station is of the view that it is not likely or reasonably practical for the officer to bring the accused to court within 24 hours.

The above position was explained in *Mutemwa v Attorney General*,²⁷ vis-à-vis the provisions of Section 33(1) of the CPC.²⁸

An important element of bail bond is that it must be executed by the accused and if he fails to do so, he will forfeit the amount on the bond. The police officer giving bond may also demand that the person requiring bond must have surety. In addition, if the officer-in-charge believes that the person is charged

with a 'serious offence', then he cannot grant bail bond even if it is clear that the accused cannot be taken to court within 24 hours.

Unlike bail bond, bail is granted by the courts of law. Bail can be granted at the subordinate court or High Court (bail pending trial can be granted by either of the two courts), at the High Court or Supreme Court (bail pending appeal can be granted by either of the two courts); and at the High Court (only it can grant constitutional bail).

Generally, when a person has been denied police bond, he can apply to court for bail. The application is either by summons or *viva voce*, pursuant to Section 123 of the CPC Act.²⁹ The court has the discretion to vary bail conditions in line with Section 124 of the CPC.³⁰ For instance, it may demand 'cash bail' i.e. the payment of cash up front. If the accused person is unable to pay then he may not be released on bail, or if released on bail, he may forfeit the amount if he absconds.

Section 123 of the CPC Act sets out offences that are not bailable.³¹ They include murder, treason, and any offence carrying a mandatory death penalty. Other offences are aggravated robbery and theft of motor vehicles if the accused has previously been convicted of the offence of theft of a motor vehicle. The State Security Act states that espionage is not a bailable offence.³² Lastly, people charged with offences related to drug trafficking or manufacturing of drugs under the

Narcotic Drugs and Psychotropic Substances Act cannot be granted bail.³³

In the case of *Oliver John Irwin v The People*, the appellant was charged with murder and appeared before a magistrate.³⁴ The magistrate refused to grant him bail and ruled that Section 123 of the CPC excluded the accused from being granted bail hence the matter was referred to the High Court for determination. The High Court also rejected the application for renewal of bail so the accused made an application to the Supreme Court. One of the principles explained by the Court in that case was that where the accused is still standing trial before a subordinate court, the Supreme Court has no power to consider an application for bail pending trial where there is no conviction yet – as well as where there is no appeal before it from the convicting court.

The above discussion was upheld in *Lanton, Edwards and Thewo v The People*³⁵ in which the appellants were charged with importing narcotic drugs under the Narcotic Drugs and Psychotropic Substances Act.³⁶ They applied for bail in the subordinate court but the application was denied on the ground that the importation of drugs was a cognisable offence. An appeal to the High Court was unsuccessful; hence the appellants made a further appeal on the matter to the Supreme Court. It was held *inter alia* that 'the Supreme Court has no power to admit to bail where there is no appeal from a conviction from a lower court as it is a court of appeal.'³⁷

4.1 The right to bail pending trial

A detainee whose trial has begun but has not yet concluded is entitled to bail pending trial. The right to bail emanates from the presumption of innocence, which is one of the principles underpinning the criminal justice system and is enshrined in the Constitution. Therefore, an accused person is presumed by the law to be innocent until his or her guilt has been proven in a court of law, and bail should not ordinarily be withheld from him as a form of punishment. Once an accused person has been charged, he is still presumed innocent. The court should grant bail to an accused unless this is likely to prejudice the interests of justice.

4.2 Factors considered by the court when granting bail

To be admitted to bail, the offence must be bailable. In *Oliver John Irwin v the People*, the High Court ruled that the following matters must be considered when determining whether or not an offence is bailable:

- The severity of the punishment as well as whether the accused is capable of providing credible sureties of having a fixed abode and being in gainful employment;
- Whether the detainee is of fixed abode and whether there is any prejudice to an accused

person so that if he is not admitted to bail he may lose employment;

- Whether the state may suffer prejudice as a result of the accused interfering with witnesses; and,
- Whether the detainee is likely to abscond.³⁸

Further, in *The People v Sikwiti Chitungu*, the Court held that when it is called upon to decide on granting bail, it must remember that:

- The requirements of bail are merely to secure the attendance of the accused at his trial and the test is whether it is probable that the accused will appear at his or her trial;
- The determination of this issue will involve a consideration of the other related issues such as whether the accused is aware of the identity of the witnesses and the nature of their evidence, whether the witnesses have already made their statements to the police or whether the case is still under investigation, and also whether it is probable that they may be influenced or intimidated by him or her; and,
- The court must consider whether there is reasonable likelihood that if released on bail, the accused will commit further offences.³⁹

In sum, all that the prosecution needs to prove is that a belief exists that the accused is not likely to turn up to court on the date appointed for hearing his case. There is no need to prove beyond reasonable doubt. As for the accused, the procedure is that when a subordinate court

has denied bail, he can apply to the High Court. This is not an appeal as was explained in the case of *The People v Sikwiti Chitungu*.⁴⁰

4.3 Right to bail pending appeal against conviction

A detainee who has been convicted of an offence and wishes to appeal from the subordinate court is entitled to bail pending appeal against that conviction.⁴¹ The bail application is only from the subordinate court to the High Court and not the Supreme Court. This is due to the fact that the Supreme Court can only entertain a bail application if there is a case pending before it as per Section 123(3).⁴² Also, there is a condition that before a person can lodge an application for bail pending appeal; he must lodge a notice of intention to appeal. This was explained in the case of *Busaka Peru Sekele v The People* in which it was stated that:

*No jurisdiction can be assumed by the Supreme Court to grant bail in any criminal matter unless an appeal against conviction or sentence in a first appeal has been properly lodged in the Supreme Court in accordance with either Section 12 or 14 of the Supreme Court Act.*⁴³

Thus, in relation to an application for bail pending appeal, the first court is the convicting court. Where the accused has been refused bail by the High Court while pending the determination of his appeal, the Supreme Court may admit

him to bail. Alternatively, it may direct him to be treated as an unconvicted prisoner pending the determination of his appeal.⁴⁴ The considerations for bail pending appeal are such that the court will look at, among other things, the likelihood of the appeal succeeding.

4.4 The right to constitutional bail

Constitutional bail can only be granted where there is an 'inordinate delay', which is not a fault of the accused person.⁴⁵ Under this type of bail, there is no distinction as to whether the offence is bailable or non-bailable. The only requirement is that the accused needs to show that there has been an undue delay not due to his conduct, but due to the conduct of either the court or the prosecution. For example, when after appearing once for mention, the court misplaces the accused person's file and the accused cannot be brought before court again without it or when the prosecution does not appear before court on various dates appointed for the accused person's case resulting in numerous adjournments. In these instances, the accused would be released on what is termed "constitutional bail." This was the position taken by the Supreme Court in *Chetankumar Shantkal Parekh v The People*.⁴⁶

Article 28(2) provides for the application for constitutional bail on condition that the accused can prove that his rights under the Constitution have been violated.⁴⁷ Neither the subordinate courts nor the Supreme Court has the jurisdiction to admit an

accused person to constitutional bail – only the High Court has such jurisdiction.

A person charged with an offence before a local court may be released on bail at any stage of the proceedings upon providing a surety or sureties sufficient to secure his appearance and on his/her own recognisance if the court thinks fit.⁴⁸

However, before any person is granted bail or released on his own recognisance, he must pay a bond of as much as the court thinks sufficient.

This bond must be paid by the accused on condition that he shall attend at the time and place mentioned in the bond, and at every time and place to which, during the course of the proceedings, the hearing may from time to time be adjourned.⁴⁹ The application for bail in terms of a person appearing in a local court, whether or not he has been committed for trial, may be made before the subordinate court, and bail bond in any such case may, if the order so directs, be executed before any magistrate or any president or indeed any other member of a local court.⁵⁰ Therefore, it follows that the principles and considerations taken into account by magistrates in subordinate courts when exercising their discretion over granting bail shall be taken into account by local courts too. In addition to the condition mentioned in sub-section (2) of Section 21, the local court before which a bail bond is executed may impose further conditions upon the bond as may seem reasonable and necessary in any particular case.⁵¹

5. Rights of PTDs with regard to trial

Zambia is obliged to respect the rights of PTDs and these are discussed below.

5.1 The right to due process concerning arrest and detention

Due process rights require that whenever a person is arrested, he has the right to be taken through a thorough procedure applicable according to the law, while taking note of the circumstances of each case. That is to say, every individual has the right to dignity inherent in a human being and to the recognition of this legal status. The right to due process demands that human rights should be protected by the rule of law.⁵²

The rights to due process of the law concerning arrest and detention include a wider range of guarantees such as the right to have adequate time and facilities for the preparation of one's defence, and to communicate with counsel of one's own choice⁵³ - as well as the right to be tried in one's presence and to defend oneself in person or through legal assistance of one's own choice. If he does not have legal assistance, he has the right to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for the legal assistance.

A detainee has the right to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. He is entitled to have the free assistance of an interpreter if he cannot understand or speak the language used in court and the expenses of the interpreter are to be born by the court itself and not the detainee. He has the right not to be compelled to testify against him or to confess his guilt. A detainee also has the right to his conviction and sentence being reviewed by a higher tribunal according to law. He also possesses the right not to be convicted twice (the right against double jeopardy).

5.2 The right to be informed of the reasons for arrest and to compensation for unlawful arrest

Immediately at the time of his arrest, the person effecting that arrest is by law obliged to inform an accused person of the full particulars of the offence, which the arresting officer believes has been or is about to be committed.⁵⁴ There must be a reasonable cause for such an arrest and in the absence of that, the arrested person may file a claim for unlawful arrest thereby entitling him to compensation from the one who arrested or detained him.⁵⁵

5.3 The right not to be charged unless the offence is prescribed by law

A person cannot be found guilty of a criminal offence if at the time the act took place it was not defined as an offence in any law. Article 18(8) of the Constitution provides that before a person can be convicted of a criminal offence, that offence must be defined and its penalty must be prescribed in a written law.⁵⁶ In *Sikota Wina and Princess Nakatindi Wina v the People*, the accused was arrested and taken to court for being in possession of drugs in Ethiopia.⁵⁷ At that time, there was no law in Zambia that stipulated that being in possession of drugs was a criminal offence. As such, when he was brought before the court in Zambia, Wina was acquitted.⁵⁸

5.4 The right to be brought to court within 24 hours

The right to be brought to court within 24 hours offers the court an early opportunity to assess the evidence against a suspect and whether there is any justification whatsoever for continued detention. When the state fails to bring a suspect to court within 24 hours, his continued detention is unconstitutional and the court should order his immediate release.

In the case of *Daniel Chizoka Mbandangoma v The Attorney-General*, it was stated that:

*Under Section 33 of the Criminal Procedure Code Act, the release on bond of a person arrested without a warrant is mandatory if it does not appear feasible to bring the person concerned before an appropriate competent court within 24 hours of his being taken into custody, unless the offence is one of a serious nature. Where a person is retained in custody, he must be brought before such court as soon as practicable.*⁵⁹

5.5 The right to be tried within a reasonable time

The Human Rights Committee has stated, in General Comment 31, regarding the nature of obligations imposed on state parties under the ICCPR, that the requirement to give effect to covenant rights (which include the right to be tried within a reasonable time) is unqualified and of immediate effect.⁶⁰ A failure to comply with the obligations cannot be justified by reference to political, social, cultural or economic considerations within the State.⁶¹ The Committee emphasised this point in *Lubuto v Zambia*.⁶² All PTDs have a right to be tried within a reasonable time.

This right is also enshrined in the *Zambian Constitution*.⁶³ The Human Rights Committee has said that the right to be tried within a reasonable time:

*Relates not only to the time a trial should commence, but also the time by which it should end and judgement be entered, all stages must take place without undue delay.*⁶⁴

The Constitution of Zambia provides for the right of any person arrested or detained to be brought before the court 'without undue delay'.⁶⁵ If such a person is not tried within a reasonable time, he must be released either unconditionally or upon reasonable conditions.⁶⁶ However, what amounts to a 'reasonable time' varies and essentially depends on the peculiar circumstances of each particular case. Some of the factors to be considered include the complexity of the case,⁶⁷ the conduct of the parties especially the prosecution, and the interest of the accused, which is at stake, and whether the suspect is in custody pending trial.⁶⁸

5.6 The right to a fair trial before a competent, independent and impartial tribunal

The right to a fair trial entails the right of a detainee to a just and uncompromised court proceeding.⁶⁹ By law court proceedings should be held in public, unless all the parties involved agree otherwise.⁷⁰ The court can only derogate from this requirement if publicity would prejudice the interests of justice, the proceedings, public safety, public order or the welfare of people concerned in the proceedings.⁷¹ However, in terms of court appearances, should the detainee fail to appear for the resumption of his trial after adjournment, then proceedings may continue in his absence provided the court deems it just and reasonable to do so.⁷² For a person still

standing trial, the law obliges that he may not be compelled to give evidence during trial.⁷³ The body that will adjudicate or conduct the trial must be established by the law and should be independent and impartial.⁷⁴

5.7 The right to legal representation

The right to legal representation simply means that a PTD is entitled to have a legal representative of his choice to advise him on all the legal issues in his case and to represent him when the matter comes before court. However, it is worth noting that the right to legal representation is not applicable in the local courts since legal representation by legal practitioners is prohibited.⁷⁵ Therefore, the only time a PTD can enjoy this right is when he is appearing either in the subordinate court or the High Court.

The local courts do not have the jurisdiction to try any case in which a person is charged with an offence that involved a death or which is punishable by death⁷⁶ – and they can only impose sentences of up to nine months.⁷⁷

5.8 The right to be presumed innocent

The right of a suspect to be presumed innocent is at the heart of a fair criminal justice system. It is one of those principles that influence the treatment an accused person is subjected to

from criminal investigations through the trial proceedings up to the end of the final appeal.⁷⁸ The right is solidly provided for in international instruments.⁷⁹ Commenting on the right to be presumed innocent under the ICCPR,⁸⁰ the Human Rights Committee in General Comment No. 13 stated:

*The principle of presumption of innocence means that the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.*⁸¹

5.9 The right to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him

Articles 13(2) and 18(2)(b) of the Constitution provides that a person who is arrested or detained must, in a language he understands, be informed of the reasons for his detention and the nature of the offence he has been charged with.⁸²

Article 18(3) of the Constitution also makes provisions for other rights, including the fact that whenever a person is tried for a criminal offence, he should be provided with a copy of

the proceedings within a reasonable time after the court has delivered its judgment. However, in most cases one has to pay to acquire such a copy, especially in the subordinate court due to limited resources. For instance, many courts do not have the stationery needed to print court proceedings. But some detainees simply cannot afford to pay for a copy. It is important to note that the provisions discussed above cannot be abrogated as this is expressly prohibited under the ICCPR.⁸³

5.10 The right to liberty and security of person

The right to liberty means the right to free movement or mobility of the person. The right to liberty may also mean protection of the individual over himself, his own body and mind as well as the individual's sovereignty against the tyranny of the political rulers. That is to say, no PTD should be subjected to arbitrary arrest or detention or deprived of his free movements except on such grounds and procedures as are established by law.⁸⁴ Article 10 of the ICCPR⁸⁵ augments the provisions of Article 7 in relation to people in detention as it requires that all people deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.⁸⁶ A few exceptions in which this right can be abrogated include instances when a court order is being executed so as to secure the fulfilment of any obligation imposed on a PTD by the law. The right to free movement or mobility of a PTD may also be abrogated where a PTD is charged with an offence for which bail or police bond is by law not

available.⁸⁷ Such instances include cases of murder, treason, aggravated robbery, espionage, and theft of motor vehicle for someone who has previously been charged with the offence of motor vehicle theft.⁸⁸

6. Rights of PTDs with regard to conditions of detention

6.1 Separation of different categories of PTDs

The need to separate different categories of people in custody is emphasised under international law as well as domestic law. The Human Rights Committee has stated that it is necessary to separate awaiting trial detainees from convicted people to underline their right to be presumed innocent.⁸⁹ In this regard, the segregation of PTDs from convicted prisoners is acceptable and they are entitled to much more favourable conditions as they are presumed innocent until proven guilty.⁹⁰ Internationally, the UN Standard Minimum Rules for the Treatment of Prisoners note that:

*The different categories of prisoners shall be kept in separate institutions or parts of institutions taking into account their sex, criminal record, the legal reason for their detention and the necessities of their treatment.*⁹¹

Realising the vulnerability of children, the ICCPR

also provides that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which takes into account the needs of children of his or her age. Furthermore, the African Charter on the Rights and Welfare of the Child says that:

*Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.*⁹²

Additionally, article 17(2)(b) of the Charter notes that state parties:

Shall ensure that children are separated from adults in their place of detention or imprisonment.

The CRC also emphasises the need to separate children from adults by stating that:

*In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.*⁹³

Zambian laws also require the separation of different types of detainees. The Prison Rules of Zambia states that:

*No civil or unconvicted prisoner shall be confined in association with convicted prisoners.*⁹⁴

Furthermore, the Prisons Act urges prison authorities not to keep young prisoners with adults and other categories of prisoners.⁹⁵

6.2 Right to food

While in detention centres, PTDs are entitled to the right to food at the expense of the state. The ICESCR recognises certain economic, social and cultural rights, and places considerable emphasis on the right to health, the right to food,⁹⁶ and the right to education.⁹⁷ In *Social and Economic Rights Action Centre (SERAC) v Nigeria* the African Commission on Human and Peoples' Rights stated that:

*The Convention is also understood to include a right to housing and the right to food. The right to food is interdependent on the right to life in the sense that without food the individual cannot fully enjoy his/her right to life.*⁹⁸

These are fundamental rights that every person is entitled to.

6.3 Right to health

PTDs must continue to enjoy the right to health. This entails the right to receive medical care as and when necessary.⁹⁹ Article 12 of the ICESCR provides that state parties must recognise the right of everyone to enjoy the highest attainable standard of physical and mental health; the

prevention, treatment and control of epidemic, endemic, occupational and other diseases; and, the creation of conditions which would ensure that everyone receives medical service and attention in the event of sickness.¹⁰⁰

6.4 Right to education

Every individual has the right to education as provided for in the ICESCR, especially in the case of juvenile – regardless of the fact that they might have committed the offence for which they are detained.¹⁰¹ Under Article 13, it is stated that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.¹⁰²

6.5 Freedom from torture

The absolute prohibition of torture and cruel, inhuman and degrading treatment or punishment is provided for in many international instruments.¹⁰³ In fact, it has been described as one of the fundamental values of democratic societies¹⁰⁴ and it is now universally accepted as a peremptory norm (*jus cogens*) of general international law.¹⁰⁵ UNCAT defines torture as

Any act by a public official through which severe pain or suffering is intentionally inflicted on a person for purposes such as to obtain information

*or a confession from him; intimidate or punishing him/her for an act he has committed or is suspected of having committed. It does not include pain or suffering arising only from incidental or lawful sanctions.*¹⁰⁶

Article 5 of the Universal Declaration of Human Rights¹⁰⁷ and Article 7 of the ICCPR state that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment¹⁰⁸ and that each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. In order to make this right a reality, no exceptional circumstances whatsoever may be invoked as a justification of torture.¹⁰⁹ Therefore, international instruments oblige state parties to ensure that all acts of torture are considered offences under national criminal law and Zambia is not excluded from this obligation.

The judiciary is also under an obligation to ensure that individuals are fully protected from torture and when there is a violation of these rights, it must ensure that the victims are fully compensated. The Zambian Constitution protects anyone from inhuman treatment and this protection is not subject to any derogation, restriction or limitation.¹¹⁰ Nonetheless, Zambia has not yet taken steps to criminalise torture and uses Penal Code offences such as assault for purposes of prosecuting those accused of torture. An obvious limitation is that it is restricted to severe physical suffering and excludes mental suffering, an

integral part of the definition of torture in Article 1 of UNCAT.

7. Other rights of special categories of PTDs

7.1 Juveniles

Out of a total of 86 prisons, there is only one dedicated juvenile prison in Zambia.¹¹¹ Most juvenile PTDs are detained in the same centres as adults. Research shows that Zambian prisons are currently very overcrowded since they were built to accommodate 5,500 prisoners but currently house more than 16,000 prisoners.¹¹² Therefore, it is not surprising that juveniles are often detained in the same cells as adults.

In terms of the custody of the juveniles in remand prisons, where it is impracticable to separate juveniles from adults in custody, a superintendent of prisons may detain any juvenile awaiting trial, or placed on remand by a court, in a suitable dwelling, other than a prison or detention camp, and while the juvenile is so detained, he shall be deemed to be in legal custody.¹¹³ This is done to avoid having him associate with adult criminals. It may happen at times that the court cannot decide whether to make an order or what order ought to be made regarding a juvenile accused. In such a case, the court can make an interim

order for the juvenile to be detained in a place of safety.¹¹⁴ When a juvenile is detained in a police station, it is the duty of the Commissioner of Police to prevent that juvenile from associating with any adult who is charged with an offence, unless that adult is jointly charged with the juvenile.¹¹⁵ In cases of a female juvenile, the Commissioner must ensure that she is under the care of a woman during her detention, conveyance to court and while waiting to attend court proceedings. In practice, however, children are not

international instruments with provisions regulating conditions of detention, which are binding on Zambia, are the:

- International Covenant on Civil and Political Rights (ICCPR);¹
- International Covenant on Economic Social and Cultural Rights (ICESCR);²
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);³
- Convention on the Rights of the Child (CRC);⁴
- African Charter on Human and Peoples' Rights (African Charter);⁵ and,
- African Charter on the Rights and Welfare of the Child (ACRWC).⁶

In addition, there are standards and principles found in international law, which although not binding per se are recognised and highly respected in international law. Some of these have become part of customary international law. Therefore, these instruments apply to Zambia too:

- The Standard Minimum Rules for the Treatment of Prisoners (UNSMR);⁷
- The Basic Principles for the Treatment of Prisoners;⁸ and,
- The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁹

Lastly, Zambia also has national laws and rules that protect detainees, including the:

- Constitution of the Republic of Zambia;¹⁰
- Penal Code;¹¹
- Criminal Procedure Code Act (CPC);¹²
- Prisons Act;¹³
- Juveniles Act;¹⁴ and,
- Prison Rules.¹⁵

Before delving into the relevant provisions in these national and international laws, the report will outline the institutional framework of Zambia's Prison Service.

3. Institutional framework of Prison Services

3.1 Establishment of the prison services

The prison service in Zambia is established under Article 106 of the Constitution,¹⁶ which empowers Parliament to make laws regulating the service.¹⁷ The Prisons Act contains a set of principles that governs the prison service,¹⁸ including:

- The organisational structure of the Zambia Prison Service;
- The rules governing the establishment and control of prisons;
- The recruitment of prison service personnel;
- The terms and conditions of prison service members; and,
- The powers, duties and privileges of prison officers.¹⁹

The Prisons Act is further supported by the Prison Rules, which are a form of secondary legislation designed to guide prison officers on the application of the law set out in the Act.²⁰ The Prison Rules also contain provisions explaining what action prison officers can take when a particular prison or the entire system becomes overcrowded, or an epidemic threatens the prison population. Additionally, the Prison Standing Orders of 1968 and Prison Service Principle Guidelines are part of the framework that governs the establishment and operations of prisons in Zambia.

3.2 Structure of the prison services

The Commissioner of Prisons is appointed by the President and sits at the helm of the Zambia Prison Service. Subject to the direction of the Minister of Home Affairs, the administration and supervision of all prisoners is vested in the Commissioner.²¹ Section 12 of the Prisons Act grants him the power to make standing orders and administrative directives that guide operations.²² The Commissioner is assisted by the Deputy Commissioner. Subject to orders, the Deputy Commissioner is empowered to perform any of the functions performed by the Commissioner.²³ The Commissioner can also delegate his functions to the Assistant Commissioner.²⁴

Zambia has a total of 86 prisons: 53 of them are standard prisons and 33 are open air or farm

prisons.²⁵ Each of these prisons is administered by an officer-in-charge (OIC) who is appointed by the Commissioner.²⁶ The prison OIC is assisted by prison officers, who are required by law to perform all lawful directions, which they may receive from officers who are senior in rank.²⁷

In certain instances, for example when the prison service is understaffed and not able to guarantee the proper management of a prison, the OIC, with the consent of the Police Commissioner, can hire police officers to temporarily fill this void.²⁸ Although not provided for in the Prisons Act, prison officers are informally deputised by a selected number of prisoners, who go by titles ranging from 'honoured prisoner' to 'jail lieutenant', depending on the prison they are in.²⁹ These prisoners help mitigate the impact of the unfavourable warden-to-prisoner ratio. With prison occupation at 300 percent,³⁰ warders are inundated with tasks and responsibilities stipulated under the Act. As such, 'honoured prisoners' and 'jail lieutenants' are the eyes and ears of prison officers, providing additional human resources to help with implementation of rules and regulations at the cell level.³¹

The Prisons Act provides guidelines on the duties and powers of prison officers,³² and any deviations from the conditions set out in the Act attract serious sanctions. External and internal appeal processes are available for officers, who feel they have been inappropriately punished. Furthermore, the Prison Advisory Board was established under

the Prisons Act³³ to advise the President on all appeal matters brought before it by officers, who have been reprimanded for offences laid down in the Act. The board is made of a chairman and four members appointed by the President.³⁴

4. Conditions in detention centres

4.1 Overcrowding

The major problem in most Zambian prisons is overcrowding. Overcrowding means an excessive inmate population at a particular correctional centre (prison), which has with limited accommodation.³⁵ In Zambia, it is common to find that cells hold two or even three times their specified capacity.

In a survey conducted by Todrys et al in 2010, it was established that the Zambian prison population stood at 16,666 with an occupancy rate at 300 percent.³⁶ The findings of the United Nations Eighth Survey on Crime Trends and -2(h l)-1(i)-10(2(g))-18(.)-5(O)-22(vei)-10(n)-p(n)16()) 2)-13(n80 Tw -9.329 -1.333 Td[(U)-14(n)-5(i)

4.2 Sleeping quarters and ventilation

Rule 10 of the UNSMR provides guidelines on the ventilation and illumination of sleeping quarters and holding facilities. According to this Rule, all accommodation, particularly sleeping quarters, shall meet all requirements of health, with due regard being paid to climatic conditions and to cubic content of air, minimum floor space, lighting, heating and ventilation. In particular, Rule 9 stipulates that:

(1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself ... It is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions.

In 2002, the ZHRC found that the general state of prison cells and dormitories at Kamwala, Lusaka Central and Mwembeshi Prisons fell below the requirements of national and international acceptable norms for keeping prisoners.⁴⁵ The cells and dormitories were filthy, congested and unfit for human

habitation.⁴⁶ At these three prisons, inmates did not have enough floor space to enable them spend their nights comfortably. For instance, at Lusaka Central Prison, 1,435 inmates occupied

a space meant for 200.⁴⁷ This effectively meant that inmates had to spend nights in a sitting position. Most of the dormitories visited had no blankets and mattresses. Prisoners 'slept' directly on the cold floor throughout the night. It came to the attention of the ZHRC that the few available blankets and mattresses were reserved for use by the cell captains or jail lieutenants.⁴⁸

In 2010, a remandee at Lusaka Central Police narrated the following ordeal to PRISCCA, ARASA and HRW:⁴⁹

We are not able to lie down. We have to spend the entire night sitting up. We sit with our backs against the wall and with others in front of us. Some manage to sleep, but the arrangement is very difficult. We are arranged like firewood.

In February 2011, one of the detainees in Kabwe prison told the research team for this study:

*In here, it is extremely congested. We sleep like bugs. Insane people, juveniles, people with scabies – we all sleep in the same cell, imagine!*⁵⁰

4.3 Health services

Zambia is obligated by both national and international law to provide health care services to prisoners. The ICESCR guarantees the right to health for all people, regardless of status.⁵¹ Rule 22(1) of the UNSMR states that⁵²

At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

Section 18 of the Prisons Act also provides for the examination of every prisoner on admission to and before discharge from a prison for purposes of ascertaining the detainee's health.⁵³ Rule 24 of the Prison Rules provides for every prison to have a properly secured prison clinic, while Section 16 of the Prisons Act gives the minister the power to appoint any medical practitioner as a medical officer to attend to prisoners. If no such appointment is made, the Director of Medical Services can nominate any medical officer working for a government health facility as the medical officer for a prison. The medical officer is required, where practicable, to visit the prison daily or at the request of the prison OIC. The medical officer is primarily responsible for the general health care of the prisoners.⁵⁴ However, meeting the health care needs of the inmate population remains a constant challenge for the prison service. Out of the 86 prisons in Zambia, only 15 have health clinics or sick bays.⁵⁵ The service employs 14 healthcare workers⁵⁶ to serve the needs of more than 16,600 inmates. Inmates are frequently prevented from accessing health facilities outside the prison based on the

sole judgment of non-medical officers and other inmates, or because of a lack of transport or security fears on the part of prison officers.⁵⁷

A study on multi-drug resistant tuberculosis (TB) in Zambia's prisons found that 15–20 percent of the prison population was infected with TB.⁵⁸ It is estimated that 27 percent of inmates are HIV positive, while 15 percent of the prison population has sexually transmitted infections (STIs).⁵⁹ As correctly noted by the Zambia Ministry of Health and the National AIDS Council:

*[p]rison confinement can increase vulnerability to HIV due to frequent unprotected sex in the form of rape, non-availability and non-use of condoms, as well as a high prevalence of STIs.*⁶⁰

What exacerbates the situation is that Zambian law and policy do not permit the distribution of condoms in prison due to the criminalisation of sodomy.⁶¹ Yet when asked how many had taken part in male-on-male sex, inmates interviewed in one focus group discussion answered, '[a]ll of us'.⁶² Doctor Simooya who heads the NGO called 'In But Free' said:

*You can't legislate against sex. It's better to be practical and ask how we can prevent the transmission of HIV/AIDS. We must consider putting condoms in prisons.*⁶³

This view is also shared by the Medical Director of the prison service, Dr Chisela Chileshe, and by the

UN Secretary General's Special Envoy on AIDS in Africa, Elizabeth Mataka who said:

*The solution is straightforward...Do away with the law against homosexuality. By stopping condoms getting into prison, we are actually allowing transmission of HIV to go on unabated and losing control of the epidemic.*⁶⁴

In addition to these problems, the HRW, PRISCCA and ARASA research also identified the following challenges:

- Correctional facilities in Zambia do conduct screening processes, but these merely look for medical conditions and do not screen for psycho-social problems such as high risk of drug use, aggressive sexual behaviour, mental illness and violence; and
- Inmates on Anti-Retroviral Therapy do not receive additional food packs to supplement their inadequate daily meals.⁶⁵

4.4 Toilets and bathing facilities

The UNSMR requires that prisoners keep themselves clean and that the prison authorities should provide them with water and toilet articles that are necessary for health and cleanliness.⁶⁶ Yet research shows that in Zambian prisons, '[w]ater is unclean or unavailable' and that 'soap and razors are not provided by the government'.⁶⁷

Also, the UNSMR stipulates that the sanitary installations that prisoners use must be adequate to enable every prisoner to comply with the needs of nature when necessary, and in a clean and decent manner.⁶⁸ The Zambian Prison Rules state that:

*Every prisoner shall take or be made to take a bath on admission to a prison and at such times subsequently as may be ordered.*⁶⁹

Unfortunately, most prisons in Zambia do not have adequate toilet and bathroom facilities to cater for the rapidly growing prison population and so sanitation is a nightmare for prisoners.⁷⁰ In addition, there is no privacy as inmates answer the 'call of nature' in full view of others.⁷¹ According to the HRW, PRISCCA and ARASA report, there are no toilet facilities at all in cells and in some cells – e.g. Mwembeshi Prison – a bucket is used overnight.⁷² The Mukobeko Prison has ten outdoor toilets, which are shared by more than 1,000 inmates.⁷³ One prisoner is quoted as having said: "You can wait for hours before using the toilet and this leads to fights among inmates."⁷⁴

4.5 Recreational facilities

Rule 21 of the UNSMR stipulates that every prisoner, who is not employed in outdoor work, shall have at least one hour of suitable exercise in the open air – daily if the weather permits. Rule 228 of the Zambian Prisons Rules states that at least one hour a day shall be devoted to physical

training or to organised games for inmates and such periods shall be deemed to form part of the normal working hours. In most prisons, inmates live by strictly applied open-air hours usually running from 8:00 a.m. to 4:00 p.m., during which they are mostly allowed to engage in outdoor activities, such as football, and other recreational activities, like reading and watching television.⁷⁵ Unfortunately, there is an inadequate supply of recreational materials, such as board games, sporting equipment, reading materials and computers, to meet the demand of the prison population.⁷⁶ At Kabwe prison, inmates complained that the structure and layout of the prison means that they do not have free space to use for sports and other leisure activities.⁷⁷ One of the juveniles (a grade 12 pupil) who wanted to continue with his studies while in custody complained of a lack of library facilities at the Mumbwa Prison. "There are no books here for reading. All we do is sit in the cells without any activities, not even walking around to stretch our legs."⁷⁸

5.1 Treatment with humanity and dignity

International instruments that safeguard the rights of detainees require that detainees be treated with humanity and with the respect due to the inherent dignity of every human being.⁷⁹ Article 5 of the African Charter reads:

*Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his/her legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.*⁸⁰

The provisions about treatment with humanity and dignity are closely tied to issues of overcrowding, sleeping quarters and ventilation, toilets and bathing facilities, health services, and torture and ill treatment.

5.2 Torture and ill-treatment

Article 7 of the ICCPR prohibits torture. It reads:

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*⁸¹

Article 14 of CAT further provides that:

Each state party shall ensure in its legal system that the victim of an act of torture obtains redress

and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his/her dependants shall be entitled to compensation.

In addition to UNCAT and the ICCPR, other international instruments that seek to safeguard the interests of detainees against torture include the Universal Declaration of Human Rights 1948⁸² and the African Charter 1981.⁸³ Under these instruments, each State party's judiciary is obligated to ensure that detainees are fully protected from torture, and where there is a violation of these rights, the State must ensure that the victims are fully compensated. In this regard, prison authorities have to put in place administrative and other measures to prevent acts of torture and other ill treatment. Mechanisms to detect and report any violations to the relevant authorities must also be implemented, as provided for under Article 2 of CAT, which clearly instructs that:

*Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*⁸⁴

In 2000, Zambia outlawed corporal punishment following the repeal of Sections 99 and 108 of the Prisons Act⁸⁵ and the amendment of the Criminal Procedure Code Act.⁸⁶ Unless otherwise stated, prison officers are prohibited from using force or firearms when dealing with detainees.

The Prisons Act only permits an officer to use a weapon against a prisoner, who is violent, fails to heed warnings or who is trying to escape.⁸⁷ If reasonable grounds exist to believe, for instance, that the officer is in danger, then the officer is permitted to use force.

Article 15 of the Constitution of Zambia protects prisoners from torture, ill treatment and degrading punishment.⁸⁸ However, no law in Zambia defines the term torture or stipulates that torture is a crime, as required by article 4 of CAT. Even more, as noted in the Shadow Report submitted to the Human Rights Committee:

*Derivative evidence is admissible in the [Zambian] courts of law. This basically means that if a suspect is tortured during the interrogation process and as a result of the torture, that suspect reveals the whereabouts of the stolen property and based on that information the officers recover the stolen property, the courts will accept the exhibits as evidence regardless of the means that the officers used in obtaining that evidence.*⁸⁹

During its investigations in 2008, the ZHRC found that the police still widely use torture as a means of extracting confessions from suspects in prisons, police stations and police posts. It is of great concern that police officers continue to rely on torture as an interrogation technique. At Matero Police Station, for instance, one suspect was tortured and brutally beaten by the police using a wooden plank with nails.⁹⁰ In

2009, at Mporokoso District Prison, the ZHRC found eleven inmates, who had been subjected to torture by identified police officers serving at Mporokoso Police Station.⁹¹ The ZHRC also received an allegation against a high-ranking officer at the prison, who used to victimise inmates when drunk.⁹²

5.3 Separation of different categories of persons in detention

The separation of different categories of people in custody is emphasised in international and domestic law. The Convention on the Rights of the Child (CRC) emphasises the need to separate children from adults, while the African Charter on the Rights and Welfare of the Child (ACRWC) also states that children should be kept apart from adults in their place of detention or imprisonment.⁹³ Noting the vulnerability of children, the ACRWC requires that every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth, and which reinforces the child's respect for human rights and fundamental freedoms of others.⁹⁴

The UNSMR provides that different categories of prisoners shall be kept in separate institutions or parts of institutions taking into account their sex, criminal record, the legal reason for their detention and the necessities of their treatment⁹⁵

– so men and women are to be held in separate quarters in detention institutions that cater for both men and women.

Apart from separating men from women and adults from children, national and international law also makes it clear that those awaiting trial should be separated from those who have already been convicted. Under Zambian law, the rationale for the need to separate awaiting trial detainees from convicted people is premised on the right of every person to be presumed innocent until proven guilty, which is specifically provided for under Article 18(2) (a) of the Constitution.⁹⁶ Therefore, discrimination between detainees and convicted prisoners is justifiable and acceptable, as the former are entitled to more favourable conditions because they are presumed to be innocent.⁹⁷

Section 60(2) of the Prisons Act states that convicted and unconvicted prisoners of each sex shall be divided into the following classes:

- Young prisoners;⁹⁸
- Adults;⁹⁹
- First offenders;¹⁰⁰
- Prisoners with previous convictions;¹⁰¹
- Prisoners suspected of being of unsound mind;¹⁰² and,
- Other classes as commenced by the Commissioner and, as far as the prison accommodation renders it practicable, each such class shall be kept apart from the other classes.¹⁰³

According to Section 58 of the Juvenile Act,¹⁰⁴ it is incumbent upon the Commissioner of Police to make arrangements for preventing a juvenile, where practicable, from associating with adult detainees who are not his/her relatives. Nonetheless, the child is allowed to maintain contact with his/her family, and the child should be treated in a manner consistent with the promotion of the child's dignity.¹⁰⁵

Despite these provisions, it has been observed that the Zambia Prison Service has failed to adhere to the strict requirement of separating detainees in line with the standards set out in both international law and the Prisons Act. For instance, the ZHRC stated in its 2008 annual report that the prison service had failed to separate prisoners on remand, convicted prisoners and juveniles.¹⁰⁶ Also, during its 2011 visit to the Mumbwa prison, the ZHRC found that 16 juveniles, who were detained during the 'Barotse Riots' on 14 January 2011, were being held in the same cell with 12 adult detainees.¹⁰⁷

5.4 Quality and quantity of food

According to the UNSMR, prisoners are to be provided with nutritious food, which is adequate for health and strength, of wholesome quality, well prepared and well served.¹⁰⁸ Zambia's Prison Rules also state that prisoners' food must include meat, fish, sugar, salt, fresh fruits and fresh vegetables.¹⁰⁹

Section 87 of the Prisons Act permits unconvicted prisoners to receive food from family and friends at times that have been set by the prison authorities.¹¹⁰ Section 88 of the Act forbids prisoners who have obtained food or clothing from private sources from selling them in prison. Prisoners who contravene this provision risk of losing their privileges.¹¹¹ Section 89 of the Prisons Act requires the prison service to give food and clothing to unconvicted prisoners who are not able to provide for themselves.¹¹²

In 2008, the ZHRC found that inmates are given two meals per day, prepared by inmates assigned to work in the kitchen.¹¹³ But in 2010, the HRW, PRISCCA and ARASA study found that prisoners have been subjected to one meal in a day.¹¹⁴ This meal is served to prisoners around 15:00 hours every day and comprises nshima (maize meal) beans, and kapenta (small fish).¹¹⁵ They established that sometimes the prison service does provide two meals a day, but very rarely are prisoners treated to breakfast.¹¹⁶

The shortage of food in prisons is so severe that on some days, height is what determines a person's access to it.¹¹⁷ In addition, some prisoners face serious hunger during the rainy season because their prisons do not have cookers and rely on firewood. When there is a shortage of firewood on a particular day, prisoners eat nothing or one meal very late in the day.¹¹⁸

Prisoners interviewed by HRW stated that food served in the prisons was not fit for human

consumption but only for pigs and was food in name only.¹¹⁹ Poor nutrition in Zambia's prisons has resulted in various health problems, one of which is malnutrition.¹²⁰ A medical officer, who has worked at Mukobeko Prison for nine years, said that about 7 out of every 20 prisoners undergoing medical screening showed symptoms of malnutrition.¹²¹

When the ZHRC conducted a prison audit in North-Western Province, it found that:¹²²

- There were no cups and plates for use by inmates when taking their meals. Inmates often had to bring their own utensils; and
- The cooking facilities were seriously filthy and the prison had inadequate food preparation and poor sanitation facilities. Some inmates had resorted to making their own cooking and eating arrangements.

With regards to police cells, the ZHRC found that no food was provided by the State for suspects in police cells.¹²³ Instead, they relied on food provided by their relatives or friends. The ZHRC also found that a number of inmates in police cells had been detained without the knowledge of relatives, and as a result, no food was brought to those detainees.¹²⁴

5.5 Visitation rights and communication and with lawyers, friends and family

Prisoners have the right to communicate with their legal representatives, friends and

families. Rule 37 of the UNSMR provides that prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.¹²⁵ Similarly, Rule 128(1) of the Zambian Prison Rules provides that:

*All prisoners shall be entitled to send and receive letters and to receive visits as provided in these Rules, subject to such restrictions as may be necessary for the maintenance of discipline and order in prisons and the prevention of crime.*¹²⁶

Section 79(1) of the Zambian Prisons Act deals comprehensively with unauthorised communication.¹²⁷ According to this section, every letter or document written in prison must go through the OIC for endorsement before it may be allowed to leave the prison.¹²⁸

Rule 138 of the Prison Rules entitles prisoners to receive visits from relatives and friends but no prisoner can receive more than three visitors at any one time.¹²⁹ Rule 139 entitles critically sick prisoners to receive visits from close relatives and friends after being granted permission by the OIC. In practice, lawyers and paralegals do not have to make bookings to visit their clients in prison. But concerns have been raised about visiting arrangements and procedures, which vary from prison to prison.¹³⁰ When the research team for this study visited a prison in Kabwe in February 2011, they found that prisoners enjoyed visits

from, and maintained contact with, relatives and friends.¹³¹ Nonetheless, the prisoners reported a number of irregularities in the way the authorities regulate the enjoyment of this right because:

- Some visits are arbitrarily denied;
- In some cases, fees are demanded from visitors and prisoners alike;
- The meeting time is short and hurried, and not enough time is allowed to communicate with one's visitors; and
- Prisoners are not given the latitude to freely express themselves and report abuse because the warders are always stationed nearby when family and friends come to visit.¹³²

During the same study, prisoners and officials alike reported that visits by NGOs, religious entities and civil society organisations are encouraged and radios are generally allowed in prison.

Detainees held in police cells reported that contact with the outside world is better there than in prison. Telephone and email facilities are not available to the inmates, but an informal arrangement appears to be closing the technology gap between the families and detainees. Some officers allow inmates to send text messages using the officers' mobile phones. However, it is suspected that this facility is not open to all detainees – and perhaps only to those that have a good relationship with their warders.¹³³

5.6 Complaints mechanism

Rule 35(1) of the UNSMR provides that:

Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his/her category, the disciplinary requirements of the institution, the authorised methods of seeking information and making complaints, and all such other matters as are necessary to enable him/her to understand both his/her rights and his/her obligations and to adapt himself/herself to the life of the institution.

The penal management system in Zambia provides various channels for complaints for anyone who is dissatisfied with the prison staff, inmates or if there has been any violation of an inmate's rights. The channels can be divided into internal and external.¹³⁴ Within the internal channel, prisoners can address their complaints to prison officers or the OIC of the correctional institution or detention centre where they are being held. This is provided for in Rule 15 of the Zambian Prisons Rules, which stipulates that the OIC shall ensure that prisoners who have complaints or applications to make are allowed to make them to him personally.

The external channels involve reporting the matter to an officer or officer not directly connected to the prison service, including:

“The European Union has pledged to continue supporting Zambia’s efforts to improve the worrying overcrowding in prisons.”

- Officials from the ZHRC during their prison visits;
- A judge, magistrate or legal aid board lawyer during their monthly prison visits; and,
- A private legal aid service provider that works closely with prison authorities, e.g. the Legal Resources Foundation.¹³⁵

However, research shows that even if detainees can make formal complaints to the prison service, most of them prefer not to complain for fear of victimisation. The ZHRC and private legal aid service providers are allowed to visit prisons and interview detainees, and it is during this time that detainees use external channels to voice their complaints.¹³⁶

5.7 Inspection and monitoring of detention centres

International standards require an independent and effective prison inspectorate, which regularly inspects places of detention. The UN Special Rapporteur on Torture regards the regular inspection of places of detention, especially when carried out as part of a system of periodic visits, as one of the most effective preventive measures against torture and ill treatment.¹³⁷ These inspections should be conducted at all penal institutions by independent experts who have full and private access to all detainees and make their findings

public.¹³⁸ The Committee against Torture has on many occasions stressed that independent governmental bodies should be formed and tasked with inspecting and monitoring conditions of detention.¹³⁹

The ZHRC has the power under its enabling legislation to exercise unhindered authority to visit prisons or any place of detention, including police cells, with or without notice.¹⁴⁰ In this regard, the ZHRC has previously organised extensive prison visits and included its findings in its annual report.¹⁴¹ The ZHRC has been successful in raising concerns about poor prison conditions. However, its reports on prison conditions have not received their due attention from the government.

Time and time again, the ZHRC has voiced concerns over general police brutality in handling suspects, especially related to beatings and the deaths of suspects in police custody.¹⁴² International agencies such as UNDP, UNICEF and civil society organisations have been instrumental in offering technical and financial help to the ZHRC to enable it to further its work in trying to monitor, foster and lobby for better prison conditions. The European Union has pledged to continue supporting Zambia’s efforts to improve the worrying overcrowding in prisons, the large number of people on remand for a long time, the low testing levels for TB, the high HIV prevalence rate and the lack of prison-based health services.

6. Conclusions and recommendations

It goes without saying that prison conditions in Zambia need significant improvement. This has been highlighted in several ZHRC reports, as well in reports by local and international civil society organisations. To address the problems surrounding prison conditions, it is imperative that the management of prisons be based on both a security and rights-based approach – with authorities not only bearing in mind but also striving to ensure that the rights of people in detention are respected.

The following recommendations are made with a view to meeting the minimum standards of humane detention as required under international and domestic law:

- Legislative reforms should be undertaken in line with internationally accepted standards (e.g. regarding the definition and criminalisation of torture) to bring prison legislation up to date;
- The government should set up structures and procedures to detect and investigate instances of torture (e.g. the Independent Complaints Commission) as required by articles 12 and 13 of UNCAT;

- The prison service should be strengthened and its operations supported through the adequate provisioning of resources;
- The justice and security sector in government need to cooperate to reduce overcrowding in prisons by using alternative sentencing and other measures, such as expanding parole eligibility and the use of bail;
- An effective HIV/AIDS prevention campaign (including education on harm, reduction and condom distribution) must be undertaken to curb the spread of the epidemic in prisons;
- The HIV/AIDS policy of the Zambia Prison Services should be implemented, and the medical and nutritional needs of detainees who are HIV positive and prisoners on ART must be met; and,
- A clinical officer should be employed in each prison in the short term, while in the long term, a clinic needs to be established in each prison and furnished with personnel, equipment and medication.

SURVEY RESULTS ON CONDITIONS OF DETENTION IN POLICE CELLS

By Lukas Muntingh

“International norms and standards in respect of prison conditions are much more developed than standards for conditions in police detention cells.”

7.1 Introduction

Conditions of detention are important in respect of a range of rights and the UN Working Group on Arbitrary Detention stated the following on the right to a fair trial:

Where conditions of detention are so inadequate as to seriously weaken the pre-trial detainee and thereby impair equality, a fair trial is no longer ensured, even if procedural fair-trial guarantees are otherwise scrupulously observed.¹

Conditions of detention refer to the infrastructural and physical attributes of a detention facility that impact on the human experience of incarceration. Their establishment, utilisation and management should be aimed at contributing to the safe, secure and humane treatment of all detainees. These attributes include the:

- physical characteristics of the detention facility, including sleeping, eating, working, training, visiting and recreation space;
- provision of beds, bedding and other furnishings;

- nature and conditions of the ablution facilities; cleanliness of the living space and maintenance of buildings and infrastructure; and,
- level of occupation of the facility, individual cells and common areas with reference to two and three dimensional space measurements and ventilation.

Whilst an emphasis is placed on the physical attributes, it should be borne in mind that these are strongly influenced by other factors such as staff capacity and the willingness of management to resolve problems or at least ameliorate their negative effects.

International norms and standards in respect of prison conditions are much more developed than standards for conditions in police detention cells. This is despite the fact that many detainees across the world and in Zambia spend extended periods in police detention cells.

In this regard, the assessment is guided by the international

norms applicable to all people deprived of their liberty. Zambia has ratified a number of the key human rights treaties and its domestic law also provides reasonable, albeit sometimes dated, guidance in respect of conditions of detention. The 1996 Constitution, in section 15, guarantees the right to be free from torture and ill treatment, which are regarded as a severe attack upon human dignity.² Former South African Chief Justice, Arthur Chaskalson, concluded that in a broad and general sense, respect for human dignity implies respect for the autonomy of each person, and the right of everyone not to be devalued as a human being or treated in a degrading or humiliating manner.³ Therefore, it is with this purpose (to prevent a person from being devalued as human) that one needs to view conditions of detention.

In 2004, the Zambian Human Rights Commission (ZHRC) visited all prisons and police cells in Lusaka province and made the following findings in respect of conditions of detention in the police cells:

Most of the police cells were very dirty. The cells had no water and in some cases sanitary facilities were non-existent. They also generally had poor lighting and ventilation. This problem, coupled with heavy congestion in the cells, resulted in inmates contracting various communicable diseases. The cells at Ngwerere, Westwood and Mutendere Police Stations were the worst and urgent action to redress the situation is needed.

At Westwood Police Station, there was no toilet in the cell. A heap of sand was placed where there had been a toilet and this acted as a makeshift toilet. At the time the Commission visited, there were human excreta on the sand and other waste such as toilet paper and old newspapers. The inmates took their meals in this same cell.

At Ngwerere, the cell also had no toilet. Instead, the inmates used a bucket to relieve themselves. The bucket was only taken out when full. When the Commission visited Ngwerere, the bucket was half full and the inmates were found eating meals in this same environment. A similar situation obtained at Mutendere Police Post where there was a pit latrine within the cell. The conditions at this station were inhuman. A similar situation existed at Zambia Compound Police Post in Kafue.⁴

In 2005, the ZHRC visited police stations and prisons in Central Province and also found that conditions of detention in police cells were well below what could be termed acceptable.⁵ In the report, the Commission also noted the ageing infrastructure of the police service and recorded, where available, the date of construction of particular police stations and police posts (see Table 1). The age of police building is an important contextual factor when discussing condition of detention in Zambia. From this sample, it was concluded that many, if not the majority of, police station buildings in Zambia are in excess of 30 – or even 40 – years old.

Police station/post	Date of construction
Bwacha	1964
Prospect	1970
Kabwe	Unknown; built by Northern Rhodesian Railways
Kasande	1957
Chowa	1964
Serenje	1965 (shares building with town administration)
Mkushi	Pre-1964
Kapiri Mposhe	1975
Chibombo	'Recently'
Liteta Police Post	2000
Mumbwa	Pre-1964

TABLE 1

“There are separate cells for females, males and juveniles. The only problem faced is an erratic water supply.”

The Commission also noted with concern cases of torture and arbitrary arrest by the police in its 2007 Report on the State of Human Rights in Zambia and in other reports.⁶ The 2008 Report on the State of Human Rights in Zambia also provided some more information on the police and brief comments were made in respect of two stations included in this survey:

Mongu Central Police Station: The cells at Mongu Central Police Station are small and often overcrowded. The toilet is situated right in the middle of the cell with no walls around it for privacy, and it has no flush unit. In addition, the cell has no running water. Further, the Station does not have separate juvenile and female cells. Juveniles and females are detained at the enquiries office.

Ndola Central Police Station: Ndola Central Police Station holding cells have recently been refurbished by the local community. There are separate cells for females, males and juveniles. The only problem faced is an erratic water supply.⁷

The Commission concluded its observations by stating that:

Further, observations on conditions of police cells from selected police stations show that despite the provisions of the law, most police custodial places subject individuals to inhuman and degrading conditions. The absence of toilets and running water presents a serious health risk.⁸

The Commission has also expressed deep concern about the state of the relationship between the police and the public and, while this does not directly relate to conditions of detention, the human dimension cannot be removed from the equation. The Commission commented that:

7.2 Police Stations

The survey collected data from eight police stations across Zambia – namely Kabwe, Livingstone, Lusaka, Mansa, Mongu, Nakonde, Ndola and Chipata. Each police station has a custody officer who is responsible for the detainees. Table 2 summarises the information that was collected during the fieldwork on the particular date of the visit to each police station.

Station	Nr of detainees	Nr of women	Nr of children	Longest in custody	Description
Kabwe	20	1	0	3 days	
Livingstone	13	2	1	Not recorded	There are reportedly no children, only 'juveniles'
Lusaka	65	3	0	2 weeks	
Mansa	16	3	1	7 days	There are reportedly no children, only 'juveniles'
Mongu	10	0	0	2 days	
Nakonde	82	1	9	2 years	There are reportedly no children, only 'juveniles'
Ndola	10	0	0	0	
Solwezi	2	0	0	2 days	
Chipata	24	3	1	Not recorded	There are reportedly no children, only 'juveniles'

TABLE 2

7.3 Right to physical and moral integrity

Key international instruments:

- Art. 5 of the Universal Declaration of Human Rights (UDHR);
- Art. 7 of the International Covenant on Civil

- and Political Rights (ICCPR);
- Arts. 2 and 10 of the UN Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment (UNCAT);
- Arts. 2 and 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Rule 31 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR);
- Principle 1 of the Basic Principles for the Treatment of Prisoners;
- Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Rule 87(a) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)
- Principle 1 of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Training on the prohibition of torture: Article 10 of the UNCAT requires that officials working with people deprived of their liberty be informed and educated regarding the absolute prohibition of torture. At five stations, it was reported that this is done as part of general training. In Chipata, Mansa and Nakonde, no such training had been conducted. Zambia's second report to the UN Committee against Torture (CAT) in 2006

reflected that no further legal and judicial steps had been taken to give effect to the obligations under Article 10 of UNCAT. However, reference was made to training colleges for police officers and that the plan was to incorporate human rights training into the curriculum.¹⁰ However, the extent to which this has been achieved is uncertain.

Investigation of deaths: If a detainee dies in police custody then the Criminal Investigations Officer would be tasked with investigating the death. Article 12 of UNCAT requires that:

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Principle 34 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also requires that:

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The

findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

It has also been noted that:

Impartiality is therefore central to effective investigations and the term 'impartiality' means free from undue bias and is conceptually different from 'independence', which suggests that the investigation is not in the hands of bodies or persons who have close personal or professional links with the alleged perpetrators. The two notions are, however, closely interlinked, as a lack of independence is commonly seen as an indicator of partiality.¹¹ The ECtHR (European Court of Human Rights) has stated that 'independence' not only means a lack of hierarchical or institutional connection, but also practical independence.¹² The ECtHR has also stressed the need for the investigation to be open to public scrutiny to ensure its legitimacy and to secure accountability in practice as well as in theory, to maintain public confidence in the adherence to the rule of law by authorities, and to prevent any appearance of collusion in or tolerance of unlawful acts.^{13,14}

Therefore, the fact that the police investigate deaths in police custody is cause for concern since these deaths should be investigated by an impartial and independent authority. The second periodic report by Zambia to CAT did mention the establishment of the Police Public Complaints Authority (PPCA), but this authority does not seem to deal with the investigation of deaths in

custody – nor was it mentioned by officers at the police stations surveyed.¹⁵

Record of detainees: The International Convention for the Protection of All Persons from Enforced Disappearance, which Zambia ratified on 4 April 2011, gives normative and operational force to the provisions of the Declaration on the Protection of all Persons from Enforced Disappearance and requires, amongst others, that state parties to the Convention:

Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty.¹⁶

Article 17 provides valuable practical guidelines to States on the prohibition of enforced disappearances, the required legal safeguards regarding the deprivation of liberty, and the administrative safeguards applicable to the deprivation of liberty.

At the eight police stations surveyed, it was found that records are maintained of the people being detained there, reflecting the reasons for the detention, the date and hour of admissions, and the date and hour of release. This is in line with Principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

The information is recorded in the Arrested Person's Property Book (APPB). However, it was

observed that not all police stations have the correct copy of the APPB (e.g. Livingstone) and they have to use another register as the APPB, which may affect the quality of the records being kept. In the 2008 State of Human Rights in Zambia Report, a number of complaints referred to citizens being told – when they went to lay a charge or complaint – that the Occurrence Book was full and so they could not be helped.¹⁷ The provision of basic stationery to police stations may be a common problem and requires further investigation.

Information given to detained people: Despite the deprivation of liberty, detained people must be treated with dignity¹⁸ and fairness.¹⁹ In this regard, it is an important preventive measure in respect of rights violations to inform detained people in writing upon admission of the rules of the institution, the disciplinary code and procedures, and any other matters that are necessary to help the detained person understand his rights and responsibilities.²⁰ If the detained person is illiterate, this information must be conveyed to him verbally.²¹

This is done at seven of the eight stations – with the only exception being Kabwe. The reason for this was not established.

Detainees are also informed of the reasons for their arrest and detention, and of their right to challenge their detention. However, it was not within the scope of this research to verify precisely what is communicated to detainees – for

example, did the information cover the conditions under which the police may grant bond, or when bail can be applied for only at a court.

The 24-hour rule: The Criminal Procedure Code requires that a suspect be brought before a court within 24 hours.²² If the detainee was not granted bail by the police, then bail can be applied for at the court. If the person is denied bail, then he is remanded to a prison. The overall aim is to prevent suspects from spending lengthy periods (i.e. longer than 24 hours) in police custody.

At six of the police stations, there were detainees who had already been in police custody for 48 hours or longer. In Lusaka, there were 26 such detainees. In Nakonde, the police station also serves as a remand facility since there is no prison in the district and so all remandees are detained there. Consequently, some detainees have been there 'for months', while one detainee had been there for two years.

Therefore, the overall impression is that many detainees are spending more than 24 hours in police custody, contrary to the requirement in the Criminal Procedure Code. This is worrying since police stations are not built to manage the long-term detention of people, nor are police officers trained to manage a prison.

Vulnerable groups: All stations reported that they are able to hold male and female detainees separately. However, infrastructure constraints

prevent many police stations from separating other categories. In Kabwe, Chipata and Nakonde, there are no measures in place to protect vulnerable groups and 'they are treated like any other suspects'. Mongu police station reported that the Child Protection Unit is brought in to assist with children although it was not explained what this entails.

7.4 Property belonging to a prisoner

Key international instruments:

- Rule 43 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rule 35 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDRL)

There appears to be a well-established system for recording the property (cash and valuables) of detainees and this is recorded in the APPB. Lusaka police station noted that cash in excess of K5 million is kept by the officer-in-charge, while the custody officer keeps any amount less than this. Detainees sign for the property when it is handed in and when it is returned.

Detainees who are arrested with medication on them (ARVs were specifically mentioned) are not

permitted to take the medication into the cells, but it is then the custody officer's duty to see that they take their medication as prescribed

7.5 Right to adequate standard of living

Key international instruments:

- Art. 11 of the

Mongu at 140 percent, Nakonde at 273 percent and Chipata at 80 percent. In some stations the specified capacities of the cells were not known and therefore it was not possible to calculate the occupancy level. In general, the police station infrastructure is poor and has been used for several decades without any upgrade or expansion to provide for an increasing population.

The available floor space per detainee is well below the generally accepted minimum standard of 3.5m² – ranging from 0.4m² per detainee in Ndola to 1.75m² per detainee in Mansa.

Amount of time per day outside of the cells: The UNSMR requires a minimum of one hour of outside exercise per day per prisoner.²⁵ While prison architecture may enable detainees to spend time outside of their cells, police station infrastructure presents significant challenges in this regard. In Kabwe and Nakonde (the latter also functions as a remand facility), detainees are not permitted outside of their cells. Lusaka and Mongu police stations reported that detainees are permitted to go into the corridor, which is secure. At both these stations, it appears that detainees spend anything from two to eight hours in the corridor area. Chipata police station noted that male detainees are not allowed out when female detainees are out of their cell, but the amount of time that the detainees are allowed outside their cells each day was not recorded. Where detainees are permitted to move out of their cells, the 'outside' areas are reportedly clean, dry and free of rubbish.

General cleanliness, hygiene and vectors for disease: Mosquitoes were noted as a general problem as well as lice. Fumigation is done at a number of police stations (Kabwe and Mansa) but it was not clear how regularly this is done. Ndola and Lusaka police stations reported that fumigation is carried out once or twice a year by the Town Council or Ministry of Health. Meanwhile, in Mongu and Nakonde no measures are being taken to control vectors due to a 'lack of funds'. It is evident that if vectors are not controlled then they will pose a serious risk to detainee health and consequently result in financial implications for the state.

In its 2008 Report on the State of Human Rights in Zambia, the ZHRC collected the following two comments from interviewees:

The suspects are kept for many days without trial in the police cells. One of the suspects got very sick while in the police cells. No proper attention was given. – 37 year-old female lecturer.

I had been locked in the cells when a thief was beaten by a mob and he had broken into my house...Due to the bad conditions in cells and the remand cells I contracted TB - 41 year-old male store assistant.²⁶

Quality of infrastructure and buildings: It was noted that the police station buildings and specifically the cells at Kabwe, Livingstone, Mongu and Nakonde were in poor condition and in need of renovation. The cells at Chipata were clean and had

been repainted a week prior to the fieldwork. Overcrowding places a serious strain on infrastructure, especially when buildings are decades old.

Lighting and ventilation: Given the high occupancy levels, it was unlikely that any of the surveyed cells would be well ventilated – and this was the case, specifically in Mansa, Mongu, Nakonde and Ndola. Four police stations (Lusaka, Mansa, Mongu and Ndola) have no artificial lights in the cells so detainees are left in the dark when the sun sets. Even during the day, there was insufficient natural light in all the cells (except in Kabwe and Livingstone) to read by. The overall impression is that cells are dark (day and night) and poorly ventilated.

Supervision of detainees: With the exception of Mansa, which did not have a custody officer, all stations reported that the detainees are supervised 24 hours a day. However, given the poor lighting in the cells, questions may be asked about how thorough such supervision is, especially if police officers have other duties to fulfil.

Access to ablution facilities and drinking water: Detainees' access to a toilet facility appears to be a problem in Kabwe, Lusaka, Nakonde and Mongu. The lack of running water in the cells compounded the problem in Livingstone, Mansa, Mongu, Nakonde and Chipata. The ratio of detainees per toilet facility is extremely high, bearing in mind the required norm of one toilet for 20 people.²⁷ For example, in Lusaka there is one

toilet for 65 detainees, while in Nakonde there is one toilet for 82 detainees. The result is that even where there was a toilet facility, it was frequently neither clean nor in good working order. This situation creates obvious health risks.

Only in Kabwe and Lusaka have water taps in the cells. In the other stations where there are no taps in the cells, access to water becomes problematic and detainees must either keep water in containers in the cells (Livingstone, Mansa, Nakonde, Ndola and Chipata), or rely on relatives to bring them water (Mongu). Storing water in containers, especially when cells are severely overcrowded and detainees lack the means to keep the containers clean, places their health as well as the health of officials at great risk.

7.6 Adequate food

The right to adequate nutrition and water is fundamental to the right to life and the UNSMR, in Rule 20, requires that:

(1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

Provisioning of food: Neither the police nor any other government agency provides food to detainees at police stations. The detainees are entirely reliant on friends and relatives for their meals. This must place a terrible burden on the families, especially when it is the breadwinner that is detained. For detainees without families, the situation is even more dire as they are dependent on fellow detainees for food. This presents a particular challenge in the case of Nakonde, which effectively functions as a remand prison, so the police service buys maize meal and vegetables, and the detainees cook their own food on wood fires.

It is the duty on the State is to provide at least basic nutrition to detainees in order to meet the duty to treat detainees in a humane manner and respect their inherent dignity. The current situation is a clear violation of Principle 1 of the Body of Principles and of UNSMR Rule 20(1)

Clothing and bedding

Key international instruments:

- Rules 17-19 and 88 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rule 38 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

uniform and are permitted to wear their own clothing, as is the practice internationally. However, if the detainee's clothing is no longer suitable, or if it has been taken in as evidence, the police service does not supply alternative clothing and so these detainees will be dependent on their relatives to supply them with additional clothing.

Detainees are also not provided with the means to wash their clothes and most police stations lack the necessary facilities in this regard. Detainees are dependent on their relatives to provide them with soap to wash their clothes. But for people detained in stations that lack running water, it is not possible to wash their clothes in any case.

Bedding: No bedding is provided and detainees sleep on the bare floor – except in Livingstone where there are two blankets in each cell. Given the lack of bedding, soap and water, as well as the high occupancy levels, the situation in the cells, especially after lock-up, must be regarded as an attack on human dignity.

7.8 Health care

Key international instruments:

- Art. 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

- Rules 22-26 and 91 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Principle 9 of the Basic Principles for the Treatment of Prisoners
- Art. 6 Code of Conduct for Law Enforcement Officials
- Rules 41-55 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)
- Principles 1-6 of the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The UNSMR, in Rule 22, states that

(1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and

pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner."

The role of health sector personnel is of particular importance in places of detention and these staff must receive training to perform their duties in compliance with the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Special Rapporteur on Torture recommended that:

Health sector personnel should be instructed on the Principles of Medical Ethics for protection of detainees and prisoners. Governments and professional medical associations should take strict measures against medical personnel that play a role, direct or indirect, in torture. Such prohibition should extend to such practices as examining a detainee to determine his "fitness for interrogation", procedures involving ill-treatment or torture, as well as providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse.²⁸

Screening and access to services: From the available information, it appears that if a detainee

shows visible signs of illness and/or injury then he is taken to a clinic or hospital. However, in Mongu it was noted that there may be delays due to the lack of transport. Nakonde police station reported that an NGO, Corridors of Hope, also assists in the health care of detainees. While it is not realistic to expect each police station to have a health care professional in place, efforts should be made to ensure that health care professionals at hospitals and clinics are able to detect the signs of torture and ill treatment, and are mandated to report such cases to the appropriate authorities.

Deaths: None of the police stations reported any deaths (natural or unnatural) during 2010. However, there was no record to verify this against.

7.9 Safety and security

Key international instruments:

- Arts. 4-6 of the African Charter on Human and Peoples' Rights
- Rules 27-34 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Principle 7 of the Basic Principles for the Treatment of Prisoners
- Art. 3 Code of Conduct for Law Enforcement Officials
- Principles 1-11 and 15-17 of the Basic Principles

- on the Use of Force and Firearms by Law Enforcement Officials
- Rules 63-71 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, in principle 5 reads:

Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

The use of mechanical restraints and use of force should be seen within the context of this requirement.

Use of mechanical restraints: Handcuffs appear to be used in two instances – when detainees are transported (e.g. to court), and when a detainee is considered to be dangerous criminal and a threat to other detainees. In the latter case, the detainee will be placed in handcuffs in the cell.

7.10 Contact with the outside world

Key international instruments:

- Rules 37-38, 90 and 92-93 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Principles 15-20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Art. 37(c&d) of the Convention on the Rights of the Child

supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

Rules 37 and 92 of the UNSMR provide for family contact, while Rule 38 provides for foreign nationals to have the right to contact their consular or diplomatic representation. Rule 39 lays down the right to be kept informed of important news.

Notification of relatives, legal representative and visits: An important protective measure is that detainees must be able, without delay, to contact their family and/or legal representative to inform them of their arrest. The general impression is that many police stations do not have landlines and so do not have the official capacity to assist detainees to contact their relatives or legal representatives. What generally seems to happen in practice is that officials allow detainees to use cell phones – either their own phones or the police officials’ phones. These calls are clearly not at the State’s expense and must be paid for by the detainee or the police official. This may place destitute detainees in a particularly vulnerable situation since they will have to depend on the willingness of a fellow detainee or police official to assist them. Without this, they may not be able to inform their families or legal representative of their arrest – and their detention, in effect, becomes incommunicado detention, even if only for a few days.

Given the central importance of the right to liberty²⁹, special care must be taken when this right is curtailed. Therefore, it is with particular concern that the Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism notes the use of secret detention by some states.³⁰ Secrecy in this regard is understood to mean that the place of detention is unknown and/or the fact that the person is detained in such a place or in a known place of detention is unknown.³¹ Therefore secret detention does not require that the person be detained in a secret place.³² Whether a person is detained in secret or not is determined by the *incommunicado* nature of the detention.³³ If a detainee cannot inform anybody that he is detained because he lacks the means (e.g. a cell phone and/or airtime), his detention effectively becomes secret because it is *incommunicado*.

Visits by relatives are allowed, but in several police stations there is no visitors’ room or formal visitors’ area. In these situations, it must be concluded that visitors’ needs are by and large not catered for. The ability of relatives to access detainees also depends on current occupancy levels and whether there are available officials to oversee the visits.

Only four stations permit detainees to use the official telephone in the event of an emergency. In Nakonde and Mongu, there is no official phone or it is out of order.

Appeal and legal representation: The right to contact a lawyer is a safeguard of great importance from the moment of arrest. Ongoing contact with a lawyer is of central importance for any judicial review of the legality of continued detention. Besides being a safeguard, allowing contact with the outside world is also an integral part of the obligation to ensure humane treatment.³⁴

At all the police stations, detainees are informed upon admission that they can challenge their detention (i.e. apply for bail) and they are able to consult their lawyers for a sufficient period of time. However, the privacy of these consultations appears to be a problem at a number of police stations due to limited space. In Mansa, Nakonde, Ndola and Chipata, the officer-in-charge makes his office available, at his discretion, for these consultations. But this might not always be possible and the right to private consultation is therefore compromised.

7.11 Complaints and inspection procedure

Key international instruments:

- Art. 8 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Art. 13 of the UN Convention against

Torture, Cruel Inhuman and Degrading Treatment or Punishment (UNCAT)

- Rules 35-36 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rules 72-78 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

After years of monitoring places of detention, it is well established that a lack of transparency and accountability pose a fundamental risk to detainees’ rights, particularly the right to be free from torture and other ill treatment. The Special Rapporteur on Torture is clear on this issue:

*The most important method of preventing torture is to replace the paradigm of opacity by the paradigm of transparency by subjecting all places of detention to independent outside monitoring and scrutiny. A system of regular visits to places of detention by independent monitoring bodies constitutes the most innovative and effective means to prevent torture and to generate timely and adequate responses to allegations of abuse and ill-treatment by law enforcement officials.*³⁵

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, in Principle 29, recognises the importance of visits by independent parties and requires that:

*Places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.*³⁶

Moreover, detained people shall, subject to reasonable conditions to ensure security and good order in places of detention:

*...have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment.*³⁷

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in Principle 33(1) states that:

A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

Complaints mechanism: There appears to be some variety in relation to the functioning of the internal complaints mechanism. In some stations, complaints are taken by the custody officer (Lusaka), while in others they are taken by the officer-in-charge (Livingstone and Nakonde) or by senior officers (Mansa) or by the shift officer

Principle 15 of the Body of Principles stresses this contact shall not be denied longer than a few days upon arrest. Rule 92 on the UNSMR requires that:

An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and

(Mongu). In Livingstone, the officer-in-charge visits the cells once per week but it is not clear if this is the only time that detainees have access to a complaints mechanism. If so, it may mean that this mechanism is not accessible to many detainees since many are there for one day. Only Kabwe, Lusaka and Ndola have a register for complaints. At the other stations, complaints are taken verbally. Not recording complaints and requests in a register may result in the matters not being dealt with.

The extent to which detainees have access to an external complaints mechanism (e.g. the ZHRC) appears to be limited as they are not permitted to have their mobile phones in the cells. Therefore, they have no means of contacting an external authority. Nonetheless, it was reported that relatives do facilitate the lodging of complaints, either with the police directly or with an external agency.

Inspections: A number of stations reported that they are inspected on a regular basis but did not specify by whom. Mongu police station reported that the ZHRC have inspected the cells, while the permanent resident magistrate visits the cells in Nakonde when he is there. In both these instances, it appears that this is not done regularly. In Mansa, the Child Justice Forum visits the police station but the regularity was not indicated.

In most police stations, detainees can speak freely and confidentially with inspectors although in Nakonde both the custody officer and the

officer-in-charge are present, which obviously has implications for the effectiveness of the complaints procedure.

7.12 Women in police detention

Key international instruments:

- Principle 5(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Rule 8(a), 23 and 53 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)

Segregation: All police stations are able to detain men separately from women at all times. In Livingstone, there is no designated cell for women but when women are taken into custody all the men are moved into one of the two cells in order to accommodate the female detainee(s) separately.

However, female detainees are not supervised by female officers at all times. In Mongu, women are 'usually' supervised by female officers, while in Mansa, a male officer is allowed to enter the female cell if he is accompanied by another male officer. In Nakonde and Chipata, only male officers are on duty at night and since the toilet facility is

outside, detainees must be escorted there if they want to use it.

Sanitary towels: The police service does not provide sanitary towels to female detainees so relatives have to bring them.

7.13 Children (juveniles) in police detention

Key international instruments:

- Art. 10(2) of the International Covenant on Civil and Political Rights (ICCPR)
- Art. 37 of the Convention on the Rights of the Child
- Rule 8(d) and 85(2) of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rules 17 and 18 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNJDLS) set out detailed provisions for the detention of children. In addition to the general provisions, the UNJDLS state the following in respect of pre-trial detainees:

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be

treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention; (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

Segregation: Children present a particularly vulnerable group in custodial settings. Therefore, it is required that authorities with responsibility for the welfare of children should be informed of their imprisonment as soon as they are taken into custody. All the stations reported that they inform the parents or the Department of Social Welfare, or both when a child has been arrested. Further research may establish how long children spend in custody before their parents are informed. Practical difficulties may result in significant delays. The extent to which the necessary separation between adults and children is maintained also presents some challenges, especially in relation to transportation when children and adults are in the same vehicle without any separation.

7.14 Management

Key international instruments:

- Art. 5 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Art. 10 of the UN Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment (UNCAT)
- Principles 18-20 of the Basic Principles on

the Use of Force and Firearms by Law Enforcement Officials

- Rules 81-87 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

Rule 47 of the UNSMR requires that:

(1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

Staff training: All police officers received basic training in detainee management. However, further investigations are required to assess the scope of the curriculum and whether the curriculum deals with the relevant international instruments pertaining to people deprived of their liberty. It was only in Livingstone that officers have received refresher training on detainee management.

Recommendations

Most detainees stay in the custody of the police for a relatively short period of time, although some do exceed the legal requirement. The ageing state of many Zambian police stations and the insufficient capacity and nature of cell accommodation are the cause of many of the major concerns. Sufficient funds will remain a challenge for the foreseeable future, but this should not prevent an incremental process of reform and improvement. While infrastructure improvement may have significant financial implications, there are other issues that can be addressed at minimal – or indeed no – extra cost. Broadly, efforts to reform and improve conditions must, fundamentally, be based on and reflect a human rights-based approach to police station custody.

Right to physical and moral integrity

1. The management of the Zambian Police Service must provide assertive and demonstrable leadership in relation to the human dignity of detainees and their right to physical and moral integrity – as well in relation to transparency and accountability, which are the cornerstones of a human rights-

based detention system.

2. Training on the absolute prohibition of torture and other ill treatment must not only be part of general training, but also feature prominently in refresher training – and this must be conducted on an annual basis.

3. In 2006, Zambia reported to CAT that plans were underway to review the current human rights syllabus in order to make its content more responsive to the needs of the trainees such as interrogation methods, rights of suspects, treatment of people in custody and guidelines on the use of force (including firearms). The following resources from the Office on Drugs and Crime (UNODC) may be of assistance:

- Model strategies and practical measures on the elimination of violence against women in the field of crime prevention and criminal justice;
- Compendium of UN standards and norms in crime prevention and criminal justice;
- UN criminal justice standards for UN police;
- Practical approaches to urban crime

prevention;

- Handbook on the UN crime prevention guidelines - making them work;
- Handbook on improving access to legal aid in Africa;
- Handbook on effective police responses to violence against women; and,
- Training curriculum on effective police responses to violence against women.

4. All deaths in police custody must be investigated by an independent and impartial authority. Given resource constraints, this may not always be possible and under these circumstances, investigations should be monitored by the ZHRC and the findings published.

5. Upon admission, detainees must be informed in a comprehensive and comprehensible manner about their rights and responsibilities, as well as the rules of the detention facility. This information should be displayed on a board inside the holding area where detainees would be able to read it, or it could be read to them.

6. All detainees must be brought before a court within 24 hours or as soon as possible thereafter (weekends and public holidays permitting). The custody officer must report each case that has exceeded this limit to the officer-in-charge and the local magistrate.

7. To protect vulnerable people:

- Custody officers should undergo training in how to deal with vulnerable people, with particular reference to avoiding custody (e.g. bail) and detecting vulnerable individuals;
- Each police station should have sufficient cell accommodation to separate detainees in respect of age and gender; and,
- Children should not have contact with adults during custody.

Right to adequate standard of living

8. The Zambian Government, in cooperation with its partners, should investigate the medium term feasibility of a police station infrastructure improvement plan to develop accommodation that meets the minimum

standards of humane detention, with specific reference to adequate capacity, ablution facilities, visitors' facilities, eating and cooking areas.

9. Since many of the problems in relation to conditions of detention will not be resolved overnight, it is therefore recommended that the police service develops a time bound plan of action that can be monitored to incrementally improve conditions of detention, including providing:

- Access to clean drinking water in cells;
- Flush toilets in cells;
- Basic bedding (e.g. sleeping mats and blankets);
- At least one nutritious meal per day, including fresh fruit on a regular basis;
- Regular fumigation of cells to control mosquitoes, lice and other disease vectors; and,
- Electric lighting in cells.

Health care

10. All new admissions must be screened for communicable diseases and injuries upon

admission. Since there is a shortage of health care professionals, custody officers must undergo basic paramedic training so they can screen new admissions, deal with medical emergencies, and conduct health inspections of facilities.

11. Health care professionals at public hospitals and clinics should undergo basic training to be able to detect, record and report signs of torture and ill treatment when treating police detainees.

Contact with the outside world

12. Infrastructural improvements should ensure adequate facilities for visitors.

13. New admissions must be permitted to make at least one phone call or send one SMS at the State's expense to inform relatives or their legal representative of their detention.

Complaints and requests

14. The complaints and requests procedure for

detainees needs to be standardised to ensure that detainees have a daily opportunity to lodge complaints and requests, and that complaints and requests are recorded in a dedicated register that is reviewed by the officer-in-charge on weekly basis.

15. A lay visitor's scheme should be established for every police station to inspect and report on the conditions of detention and the treatment of prisoners, since the ZHRC, which has a mandate to visit and inspect police stations, cannot be in all places all the time.

16. A standardised assessment toolkit should also be developed for use by both the ZHRC and the lay visitors' committees.

Women

17. Female detainees should only be supervised by female officers in all police holding facilities. An urgent solution needs to be found to the situation in Nakonde and Chipata, where male officers escort female detainees to the toilet at night.

18. All female prisoners in need of sanitary towels must be supplied with them by the State at no cost to them.

Children

19. Infrastructural improvements should also ensure that children can be segregated from adults at all detention facilities.

20. Necessary communication procedures and channels need to be established to ensure that the Department of Social Welfare is informed as quickly as possible once a child has been arrested.

21. In urban areas where more children are arrested, it may be necessary to establish a system of 'family finders', whose task it will be to assist both the police and the Department of Social Welfare to locate the families of arrested children.

8.

SURVEY RESULTS ON CONDITIONS OF DETENTION IN PRISONS

By Lukas Muntingh

8.1 Introduction

A review of the extant literature is adequately provided by Matakala in the chapter on prison law and conditions of detention in this report. It should also be noted that the main concerns outlined in this study relating to prison conditions have been identified in several earlier reports and studies by the ZHRC, NGOs and academics, and include:

- The prisons are overcrowded since there has been no expansion in the infrastructure to cope with the growing demand for prison space;
- The existing infrastructure is rapidly ageing and, in many regards, the existing architecture negates any chance of complying with domestic and international standards pertaining to conditions of detention.
- The combination of inadequate cells and furnishings, poor and monotonous diet, poor ventilation, sickness and disease, lack of ablution facilities and prisoner idleness stand out as key problems amounting in many regards to ill treatment of detainees in violation of Article 16 of

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The victimisation of prisoners by officials, bribery and arbitrary treatment.

Even though the Zambian Prisons Act (56 of 1965) is more than 45 years old it still – when read together with the Constitution and the international instruments that Zambia has ratified – provides an adequate legal standard to regulate the prison system. However, this is not to say that legal reform will not assist in improving the prison system.

Table 1 details the date of construction (specific or estimated) of prisons in Central and Lusaka Provinces. The overall impression is that, with the exception of the newer open-air prisons, most prisons were constructed prior to Zambia's independence from Britain. Built in 1924, Lusaka Central Prison is fast approaching its centenary.

TABLE 1

Province	Prison	Date of construction
Central	Mpima Remand	1958
	Lusaka	Pre-1964
	Mukobeko Maximum	1961
	Kabwe Medium	Pre-1964
	Mkushi State	1959
	Munsakamba Open Air	1994
	Mumbwa	1949
	Chitumba Open Air	1983
	Serenje State	Pre-1964
Lusaka	Serenje Open Air	1986
	Kamwala remand	1958
	Lusaka Central	1924
	Mwembeshi Open Air	1974

It was not part of the scope of this survey to interview prisoners regarding conditions of detention and treatment, but rather to assess the systems and basic infrastructure in place as they relate to conditions of detention. Prisoners' experience of imprisonment has been well documented in other studies cited in the chapter by Matakala.

8.2 The Prisons

The survey collected data from eight prisons across Zambia – namely Kabwe, Livingstone, Lusaka Central Prison, Lusaka (Kamwala Remand), Mansa, Mongu, Ndola and Solwezi. Due to the fact that sentenced prisoners and pre-trial detainees are not separated as a rule, it is not possible to make rigid distinctions between these two categories of prisoners and the same

conditions apply essentially to both. Table 2 summarises the information that was collected during the fieldwork on the particular date of the visit to each prison.

8.3 Right to physical and moral integrity

Key international instruments:

- Art. 5 of the Universal Declaration of Human Rights (UDHR);
- Art. 7 of the International Covenant on Civil and Political Rights (ICCPR);
- Arts. 2 and 10 of the UN Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment (UNCAT);
- Arts. 2 and 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- Rule 31 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Principle 1 of the Basic Principles for the Treatment of Prisoners
- Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Rule 87(a) of the United Nations Rules for the Protection of Juveniles Deprived of their

Prison	Number of detainees	Number of women	Number of children	Longest in custody	Description
Kabwe	179	0	0	3 years	
Livingstone	Not recorded	22	9	2 years and 4 months	
Lusaka (Kamwala Remand)	462	0	9	5 years	
Mansa	131	50	13	Not recorded	There are reportedly no children, only 'juveniles'.
Mongu	170	14	7	5 years	
Ndola	319	0	14	6 years and 4 months	
Solwezi	13	0	3	3 years	
Lusaka Central Prison	771	45	34	11 years	Defilement case - not appearing in court

TABLE 2

Liberty (JDLR)

- Principle 1 of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Prohibition of torture and ill treatment: Zambia acceded to UNCAT in October 1998 and has since submitted two reports to the Committee against

Torture (CAT). However, torture has not been criminalised in domestic law as required by Article 4 of UNCAT and legislation prohibiting the use of evidence obtained under torture (as required by Article 15) has not been enacted.¹

It should be noted that the duty of the State to provide safe custody is not limited to ensuring that officials do not torture or ill treat prisoners. The State is also responsible for preventing inter-prisoner violence and ill treatment. Moreover,

the State's obligations extend beyond that of its own officials since it has a duty towards non-State actors – in this case, all prisoners.² The CAT has been clear in this regard:

The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investi-

gate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.³

Training: Article 10 of the UNCAT requires that officials working with people deprived of their liberty be informed and educated regarding the absolute prohibition of torture. Zambia's second report to the CAT in 2006 reflected that no further legal and judicial steps had been taken to give effect to this obligation. However, reference was made to the training colleges for prison and police officers and that the plan was to incorporate human rights training into the curriculum⁴ - although the extent to which this has been achieved is uncertain.

The fieldwork data indicates that this is reportedly done as part of general training and regular lectures provided to officials but the exact content and regularity of these lectures were not established.

Deaths: The investigation of deaths in custody is initiated when the death is reported by the cell leader to the duty officer, who in turn calls the police and the clinical (medical) officer. Deaths in custody are reportedly rare as 'they normally die in hospital' (Mansa). The police are responsible for the investigation of any death in custody.

Expiration of warrants: The detention of a person may only be carried out in strict accordance with the provisions of the law and by competent officials or persons authorised for that purpose.⁵ Section 55 of the Prisons Act stipulates the requirements in respect of remand warrants.

While it was reported at seven of the eight prisons that all pre-trial prisoners are being held on unexpired warrants, Mansa prison could not confirm this due to a sudden influx of prisoners, presumably arrested during a riot. Indeed, expired warrants may be a more common problem since in 2005 the ZHRC found 78 prisoners at Mpima Remand prison being held on expired warrants.⁶

Record keeping: The International Convention for the Protection of All Persons from Enforced Disappearance, which Zambia ratified on 4 April 2011, gives normative and operational force to the provisions of the Declaration on the Protection of all Persons from Enforced Disappearance and requires, amongst others, that State parties to the Convention:

Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty.⁷

Article 17 provides valuable practical guidelines for States on the prohibition of enforced disappearances, the required legal safeguards regarding the deprivation of liberty, and the administrative safeguards applicable to the deprivation of liberty. Many of the administrative safeguards in the International Convention, in the form of registers and records, are also found in Rule 7 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMR) (1955) and must be accepted as a reasonable and achievable requirement.⁸

In all eight prisons, it was established that such registers are maintained and form part of the admissions procedure. However, while the date of admission is recorded, the time of admission is not always recorded.

Information given: Despite the deprivation of liberty, detained people must be treated with dignity⁹ and fairness.¹⁰ It is an important preventive measure that detained people are informed in writing upon admission about the rules of the institution, the disciplinary code and procedures, and any other matters necessary for a detained person to understand his rights and responsibilities.¹¹ If the detained person is illiterate, this information must be conveyed to him verbally.¹²

At Kabwe prison, this is not being done. At the other prisons, it was reportedly being done but the extent and scope of the information that is provided could not be established. Moreover, it appears that when information is provided about rights and responsibilities, this is given verbally and not in writing as required by UNSMR Rule 35(1). In order to facilitate compliance with Rule 35(1), it is good practice to display the rules of the prison at a place where they are accessible and visible to prisoners. This was only done at Livingstone prison.

Children: Children present a particularly vulnerable group in custodial settings. Therefore it is required that the authorities responsible for the welfare of children should be informed of their imprisonment as soon as children are taken into custody. All the prisons, except Ndola, do inform the Department of Social Welfare when a child is taken into custody.

The age of a child in Zambia: The legal definition of who is a child is somewhat uncertain. The Juvenile Act CAP 53 section 2 (1) of the laws of Zambia defines a child as "a person who has not attained the age of 16". Article 24 (4) of the Constitution of Zambia (Protection of young persons from exploitation) defines "young person" as any person under the age of 15 years" and relates this definition specifically to the protection against exploitative and harmful practices. On the other hand, the UN Convention on the Rights of the Child (UNCRC), to which Zambia is a

signatory, states in Article 1 that a child is a person under the age of 18 years. It is also noted that according to Zambian law that a person between the ages of 16 and 18 years, cannot yet vote. Part II (3) of the Electoral Act states that "subject to the provision of section four, every person shall be qualified for registration as a voter in direct elections who- (a) is a citizen of Zambia; and (b) has attained the age of eighteen years". Moreover, a person under the age of 18 years cannot enter into a contract. There are thus three ages at play: 15 years according to the Constitution; 16 years according to the Juvenile Act, and 18 years according to the Electoral Act.

Work performed: PTDs may only be required to perform work that is necessary to keep themselves and their environment clean. All eight prisons complied with this requirement.

8.4

Property belonging to a prisoner

Key international instruments:

- Rule 43 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rule 35 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

The discharge of prisoners is reportedly recorded in the bail register but the fieldwork found that releases are not recorded in a consistent manner. Upon admission, a prisoner's valuables and cash are handed over to officials and recorded either in the prisoner register or in the Prisoner Property Book; there appears to be some variation between different prisons in this regard. The prisoner signs at this point and also when receiving his valuables and cash again upon release.

Prisoners who are carrying medication when admitted need to see a health care practitioner, who must decide if the prisoner can keep it on him. In some prisons (e.g. Kamwala Remand), the clinical officer deals with the situation and decides whether the prisoner should keep the medication. At other prisons (e.g. Solwezi), no intervention is made.

8.5

Right to an adequate standard of living

Key international instruments:

- Art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Rule 9-16, 21 and 41 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rules 31-34, 47 and 48 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

States are under the obligation to ensure that people deprived of their liberty shall be treated with humanity and with due respect for the inherent dignity of the human person.

Available cell capacity and occupation: All the prisons reflected occupancy levels well above their specified capacity – ranging from 148 percent up to 398 percent. These levels resulted in available floor space per prisoner of only 1.5 m² down to less than 1 m². This is well below what can be regarded as the absolute minimum space per prisoner (3.5–4.5 m²). Cubic space was equally limited. Even if prisoners are outside of their cells for most of the day, a few hours locked up under such cramped conditions must place a terrible burden on them.

Amount time per day outside of cells per day: The UNSMR requires a minimum of one hour of outside exercise per day per prisoner.¹³ With the exception of Ndola where it is reportedly ‘not allowed’, all the other prisons permitted the prisoners to leave their cells for between six to ten hours per day.

General cleanliness, hygiene and vectors for disease: At most prisons, the area that prisoners use for outside exercise is generally clean, dry and free of rubbish. However, problems were noted at Kabwe (‘not very clean’) and Solwezi (‘a bit clean’). At Kabwe prison, stagnant water was noted. With the exception of Mansa, disease vectors were present in all prisons and included

mosquitoes, cockroaches, rodents, flies, fleas and lice. Solwezi may need particularly urgent attention as mosquitoes, lice, fleas and cockroaches were all spotted there. Efforts to control vectors appear, in general, to be sporadic. Livingstone prison uses mosquito nets donated by the Catholic Relief Services and the Department of Health. But not all prisoners have mosquito nets. Fumigation is done occasionally and appears to be dependent on funding that is not readily available.

Quality of infrastructure and building: The prison building at Livingstone was recently renovated and is reportedly in good condition. However, this is the exception. At all the other facilities a range of problems were noted, including buildings in poor condition with dirty, dilapidated, cracked walls, leaking roofs, and poor ventilation. This had also been noted in the 2004 and 2005 reports by the ZHRC on prisons in Lusaka and Central Provinces.

Lighting and ventilation: Cells visited at Lusaka Remand and Lusaka Central were described by the fieldworkers as being poorly ventilated, while all other facilities were described as well-ventilated. However, even if cells have large windows, this may not be sufficient when they are severely overcrowded. When cells are at 200 percent occupancy and prisoners are locked up from 16:00 to 06:00 the next morning, the ventilation may indeed be poor. Interviews conducted by Matakala attest to overcrowding and poor ventilation in cells. All inspected cells had electric

lighting but it was not possible to assess if this was sufficient as cells were visited during daylight hours. Natural light during the day was sufficient.

Supervision of prisoners: The shift system in place ensures that there are always officials on duty but it remains difficult to verify if this amounts to active supervision during the night, or only limited to perimeter security to prevent escapes. For example, at Mongu it was reported that prisoners are supervised 24 hours a day ‘but not close to the cells’. Active supervision of vulnerable prisoners is particularly necessary to prevent victimisation.

Access to ablution facilities and drinking water: None of the prisons are able to provide adequate access to toilets for prisoners. In some prisons (e.g. Livingstone) during the day, when prisoners are out of their cells, the cell toilets are supplemented by ablution blocks. However, at night when prisoners are locked up, the ratio ranges from one toilet for 40 prisoners to one toilet for 108 prisoners. The norm established by the ICRC is a maximum of 1:20.¹⁴ Only in Livingstone and Ndola were the toilets clean and in good working order. At the six other prisons, the toilet facilities were dirty and not functioning properly due to congestion. Access to shower facilities and soap so that prisoners can keep themselves clean was – with the exception of Livingstone – problematic. At Mansa, prison water is drawn from a well and it is uncertain whether it is of sufficient quantity – or indeed

sufficient quality. Prisoners are not supplied with razor blades or soap so it is difficult for them to maintain their appearance. A 2005 study found that 63 percent of Zambian prisoners share razor blades; the risk of HIV-infection is obvious.¹⁵ However, donations in this regard are accepted at some prisons (e.g. Kamwala Remand).

Access to recreation and religious services: In general, prisoners appear to have access to religious services and prisons are regularly visited by chaplains and pastors. However, Mongu prison in the remote western part of Zambia does not enjoy regular visits by religious worker and prisoners conduct their own prayers on a daily basis. While prisoners are usually outside of their cells for most of the day, recreational and sport activities are limited.

8.6 Adequate food and drinking water

Key international instruments:

- Art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Rule 20 and 87 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rule 37 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

The right to adequate nutrition and water is fundamental to the right to life and the UNSMR, in Rule 20, requires that:

(1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

Diet: It appears that some prisons serve two meals per day (e.g. Mansa) and some three meals per day (e.g. Kabwe). But there are doubts about whether a meal plan is actually followed since the meals consist of a basic number of foods – namely nshima (maize), samp, rice, kapenta (small fish) and beans. Fresh seasonal fruit is occasionally provided but appears to be more the exception than the rule. The provision of vegetables is very variable, while the provision of medically prescribed meals appears to be problematic at the majority of prisons (Livingstone, Mansa, Mongu, and Ndola). Religious dietary requirements appear to be fulfilled at all the prisons, and prisoners may also bring in their own and prepare it themselves. With the exception of Lusaka Central prison, the supply of food to the prisons is reportedly regular and on time. Unsentenced prisoners are also permitted to receive food from their families.

Preparation of food: Food is prepared in electric pots and on open fires. The use of fires is a necessity but the impact on the prison environment due to the continuous smoke and all the soot as well the contribution to deforestation should not be underestimated. Fetching firewood, often from far away, places an added financial strain on the prison service’s limited budget.

Eating utensils: At some prisons prisoners are supplied with utensils (e.g. Kabwe and Lusaka Central), but at Mansa these are not provided and prisoners share the few plates available, while in Mongu the prisoners supply their own eating utensils. It is generally the practice that prisoners keep some food to eat later, especially when the last meal is served in the early afternoon. Considering this, it is essential that they are supplied with proper containers as open food attracts flies and cockroaches.

Water: Access to water is through central taps and in some prisons (e.g. Livingstone and Mongu) there are also taps in the cells. However, at other prisons (Mansa, Ndola, Solwezi and Lusaka Central) there are no taps in the cells and prisoners store water in containers to drink after they have been locked up for the night. This increases the risk of waterborne diseases because the cleanliness of the containers cannot be assured due to the lack of soap and because of the difficulties involved in keeping the toilets clean.

8.7

Clothing and bedding



also bring them additional clothing. At Kamwala Remand, clothes were donated to the prisoners by a local church organisation. However, general observations at a number of prisons indicated that many prisoners are dressed in clothes that are in an extremely poor state and far from clean. If a pre-trial detainee's clothing is no longer suitable or has been taken away as evidence, the prison service does not supply clothing and the family will have to provide additional clothing or rely on a donation from another source. Soap to keep clothes and bedding clean appears to be in short and irregular supply in most prisons.

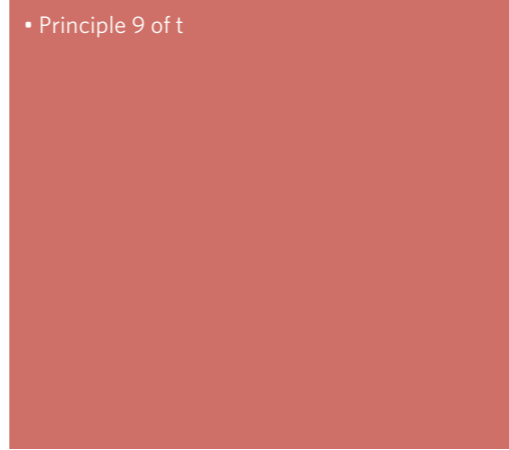
Bedding: Prisoners are not supplied with beds and the mattresses that are available are too few and much too worn out. Bedding is not supplied at the majority of prisons. Beds were reportedly removed to make more space for the high numbers of prisoners.

8.8

Health Care



• Principle 9 of t



the officer management team also assists. Mentally ill prisoners appear to present an equal challenge and at best they are kept in a hospital or transferred to Kasenshi.

8.9 Safety and security

Key international instruments:

- Art. 10(2)(a) of the International Covenant on Civil and Political Rights (ICCPR)
- Arts. 4-6 of the African Charter on Human and Peoples' Rights
- Principle 8 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Rules 27-34 and 85(1) of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Principle 7 of the Basic Principles for the Treatment of Prisoners
- Art. 3 Code of Conduct for Law Enforcement Officials
- Principles 1-11 and 15-17 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Rules 63-71 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

Separation of categories: With the exception of Kabwe and Solwezi prisons, sentenced and unsentenced prisoners are not segregated at any of the prisons. This is in violation of Rule 8(b) of the UNSMR and the Prisons Act.

Prevention of contraband entering prison: All prisoners are searched upon admission and an incident register is maintained, known as the Chief Officer's Journal.

Use of mechanical restraints: The use of mechanical restraints is not a common occurrence, as far as could be established, and is limited to violent prisoners and the prevention of escapes, presumably when prisoners are outside of the secure area of the prison.

Enforcement of discipline and punishment: Rule 28(1) of the UNSMR states that:

No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

While it was reported that this is not done, sentenced prisoners are used as guards to oversee pre-trial detainees. The role and responsibilities of the 'cell leader' is also not clear and both issues require further investigation. In chapter 6, Matakala describes the functions of the 'honoured prisoner' and 'jail lieutenant'. These are selected prisoners who are informally deputised by the prison service to assist in overseeing prisoners due to staff shortages. This requires closer

investigation to ensure that there are no violations of UNSMR 28(1).

The Prisons Act, in section 90 and 91, makes provision for minor and major disciplinary infringements and it is these provisions that are reportedly used by officials to enforce discipline among prisoners. The extent to which the prisoners are aware of the list of offences is uncertain since it depends on the information provided to prisoners upon admission, which appears to be done verbally and which is not supported by a public display of the rules of the prison. A register of disciplinary actions against prisoners is reportedly maintained at all the prisons.

Certain sanctions imposed on prisoners may amount to torture, cruel, inhuman or degrading treatment or punishment.¹⁶ Therefore, the following are expressly prohibited under international law: corporal punishment¹⁷; lengthy solitary confinement¹⁸; collective punishment¹⁹; punishment affecting diet (unless approved by a medical officer)²⁰; long term shackling of prisoners²¹ and forced labour.²² Due to the fact that solitary confinement threatens not only the individual's mental and physical health, but also endangers his due process rights, special care must be taken to limit its use to only exceptional circumstances. The Special Rapporteur on Torture regards the use of prolonged solitary confinement as falling within the range of psychological methods of torture, leaving lasting emotional scars on victims:

*The establishment of psychological torture methods is a particular challenge. Mock executions, sleep deprivation, the abuse of specific personal phobias, prolonged solitary confinement, etc. for the purpose of extracting information, are equally destructive as physical torture methods. In most cases, victims of mental abuse are left dependant on counselling and other psychological or psychiatric support for long periods of time. Moreover, their suffering is very often aggravated by the lack of acknowledgement, due to the lack of scars, which leads to their accounts very often being brushed away as mere allegations.*²³

The use of mechanical restraints, solitary confinement, reduction in diet and corporal punishment may no longer be used as punishments, even though the Prisons Act still provides for these punishments.²⁴ However, information collected at some prisons (Kabwe and Mansa) indicates that solitary confinement is still being used. Moreover, from Kabwe it was reported that a non-commissioned officer can impose a maximum of five days in solitary confinement, while an officer can give a prisoner a maximum of 25 days in solitary confinement.

Prisoners who are unhappy with a punishment imposed on them may appeal to the regional commander. However, no data were collected on how frequently this happens and what the results of such appeals might be.

Use of force: It was reported from Mansa prison that there is no established procedure for when

force is used and that it is the officer-in-charge who authorises the use of force – and who in turn reports it to the regional commander. If force is used against a prisoner, it does not appear as though it is mandatory in either practice or policy for the prisoner to undergo a medical examination. This will only happen if the prisoner complains. All incidents involving the use of force are recorded in the journal of the officer-in-charge.

8.10 Contact with the outside world

Key international instruments:

- Rules 37-38, 90 and 92-93 of the UN Standard/Minimum Rules for the Treatment of Prisoners (UNSMR)
- Principles 15-20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Rules 59-62 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)
- Art. 37(c&d) of the Convention on the Rights of the Child

Principle 19 of the Body of Principles states that:

A detained person shall have the right to be visited by and to correspond with, in particular, members

of family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 15 of the Body of Principles stresses this contact shall not be denied longer than a few days upon arrest. Rule 92 on the UNSMR requires that:

An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

Rules 37 and 92 of the UNSMR provide for family contact and Rule 38 provides for the right of foreign nationals to contact their consular or diplomatic representation. Rule 39 lays down the right to be kept informed of important news.

Notification of families and visits: The data reveals different practices at different prisons. In Livingstone, Mansa and Ndola and Solwezi, pre-trial detainees are immediately permitted to contact their families, whereas at Lusaka and Mongu restrictions were imposed. In some prisons, detainees are permitted to make a phone call at the State's expense to inform their relatives of their detention, but not at others. In the event of an emergency, most prisons permit prisoners to use State telephones to contact their families

but not at Ndola and Solwezi. Visits by families are permitted within the bounds of maintaining good order at the prison. In general, visits are not curtailed due to disciplinary infringements, although in Mansa the officer-in-charge ‘determines what happens based on the case’.

Contact with diplomatic representatives is reportedly facilitated through the Immigration Department.

Facilities for visitors at prisons appear to be generally inadequate, particularly in Kamwala Remand, Mansa, Mongu, Solwezi and Lusaka Central.

Appeal and legal representation: At all prisons, detainees are informed upon admission that they can challenge their detention (i.e. apply for bail). Detainees are also able to consult their lawyers in private and for a sufficient period of time. However, in Mongu, consultations with legal representatives are sometimes listened to for ‘security reasons’ – in clear violation of Rule 93 of the UNSMR.

Access to a legal representative may not be restricted as a disciplinary measure and this is the case at all prisons, except at Mansa. However, if the conditions of the consultation are breached then the consultation (and presumably future consultations) may be curtailed by the officer-in-charge. However, additional information about what might constitute a breach was not obtained.

Information from outside: In Livingstone, televisions were recently installed, enabling

prisoners to remain abreast of current events. Prisoners are also permitted to have radios and can subscribe to newspapers and magazines at their own expense. While prisoners are permitted to send letters, this is done at their own expense and no paper, envelopes or stamps are supplied. All letters are censored. In Mansa and Solwezi, correspondence between a pre-trial detainee and his legal representative is also censored. Illiterate inmates have to rely on fellow inmates to write letters.

8.11 Complaints and inspection procedure

Key international instruments:

- Art. 8 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Art. 13 of the UN Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment (UNCAT)
- Rules 35-36 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rules 72-78 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

After years of monitoring prison conditions and the rights of prisoners, it is well established and accepted that a lack of transparency and accountability pose a fundamental risk to prisoners’ rights, particularly the right to be free from torture and other ill treatment. The Special Rapporteur on Torture is clear on this issue:

“The most important method of preventing torture is to replace the paradigm of opacity by the paradigm of transparency by subjecting all places of detention to independent outside monitoring and scrutiny. A system of regular visits to places of detention by independent monitoring bodies constitutes the most innovative and effective means to prevent torture and to generate timely and adequate responses to allegations of abuse and ill-treatment by law enforcement officials.”²⁵

Complaints mechanism: Prisoners have the opportunity to lodge complaints on a daily basis and these are recorded in the Complaints Register. Prisoners are also entitled to lodge complaints on a prescribed form and without censorship with external authorities, including the central prison authorities, judicial authorities, national human rights institutions or any other body concerned with their rights and well being. While this was confirmed, such correspondence may be subjected to censorship (Mongu). However, the extent of such censorship could not be established. Generally, a detainee’s legal representative may also lodge a complaint on his client’s behalf.

Inspections: Most of the prisons are inspected regularly, with the exception of Ndola. The reason for this is not known. It was also not clear from the data who conducts the inspections, but it is known that the ZHRC visits prisons to hear complaints from prisoners.

8.12 Women in prison

Key international instruments:

- Principle 5(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Rule 8(a), 23 and 53 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)

Segregation: There are few women in Zambia’s prisons and they are always detained separately from male prisoners and always supervised by female officers. When male officers enter a female section, they must be accompanied by a female officer. Female sections are under the authority of a female officer.

Pre- and post-natal care: The prison service cannot afford to provide pre- and post-natal care services for female prisoners. Therefore, the service relies on church organisations for

assistance (Livingstone) or female prisoners attend the local clinic (Mongu). In some prisons, breastfeeding mothers are supplied with nutritional supplements but this is not consistently practiced. Infants are supplied with nutritional supplements. As far as possible, arrangements are made to ensure that prisoners’ babies are born outside the prison and in a public hospital.

Sanitary towels: The provision of sanitary towels to female prisoners is inconsistent. They are supplied at some prisons but not at all. The prison service also relies on NGOs to supply them.

8.13 Children (juveniles) in prison

Key international instruments:

- Art. 10(2)(b) of the International Covenant on Civil and Political Rights (ICCPR)
- Rule 8(d) of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rules 17 and 18 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNJDLS) set out detailed provision for the detention of children, including segregation from adults.

Segregation: Children are reportedly detained separately from adults at all times, even though this may only be in a separate cell (Mansa). In this case, it is not clear if they have contact with adults during the day. Earlier findings by the ZHRC in 2004 and 2005 found evidence to the contrary and that juveniles are mixed in with adults.

Officers do not carry weapons in the sections where children are detained. Access to a social worker is provided through the Department of Social Welfare, but it is unclear how regular such access is and how long it takes for a child to access a social worker.

8.14 Management

Key international instruments:

- Art. 5 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Art. 10 of the UN Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment (UNCAT)
- Principles 18-20 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Rules 81-87 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

Rule 47 of the UNSMR requires that:

(1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

Staff training: At four of the prisons, the officers have not received the necessary training to work with pre-trial detainees since financial constraints limit the extent to which training can be done. From the collected data, it is not known what type of training was provided at the other four prisons. Refresher training appears to have been neglected although NGOs have apparently assisted with training in Solwezi.

Staff to prisoner ratio: Since sentenced and unsentenced prisoners are not segregated the ratios reported reflect the total number of prisoner at a particular prison. In Livingstone, while the ratio should be 1:10 it was in fact 1:60. Elsewhere it was even higher – rising to 1:116. This is evidently inadequate to ensure proper management, delivery of services and active supervision. It also explains

why sentenced prisoners are being used to fulfil gate guard duties at some facilities. The vacancy rate at the prisons ranged from 0 percent in Solwezi to 50 percent in Mongu.

Deficiencies: Deficiencies in service delivery are identified by the officer-in-charge and reported to the regional commander. However, the general lack of financial resources place severe limitations on which problems can in fact be addressed – and to what extent.

Recommendations

While a broad range of challenges were identified during the fieldwork, many good practices were also highlighted – such as ample time out of the cells. Due to the fact that sentenced and unsentenced prisoners are not segregated, the recommendations apply across the board and are aimed at ensuring minimum standards of human detention. Other research indicates that the Zambian Government has in recent years increased the budget allocation for the prison service and this is reason for optimism. Nonetheless many challenges remain and these will take time to resolve. The recommendations are made in cognisance of current resource constraints and also acknowledge that one of the main causes of the challenges is the size of the prison population, something that the Zambian Prison Service has little control over. Together with its partners, the Zambian Prison Service

needs to seek and advocate for alternatives to excessive and prolonged pre-trial detention. It should similarly aspire to increase self-sufficiency and seek more environmentally-friendly, low-cost and low-tech solutions to some of the practical challenges relating to conditions of detention. The Zambian Prisons Act is also in need of an overhaul to reflect the Constitution as well as international standards and obligations.

Right to physical and moral integrity

1) The management of the Zambian Prison Service must provide assertive and demonstrable leadership in relation to the human dignity of detainees and their right to physical and moral integrity – as well in relation to transparency and accountability, which are the cornerstones of a human rights-based detention system.

2) The Prisons Act requires substantial revision to ensure that it creates a legal framework reflecting the values underpinning the Constitution as well as Zambia's obligations under international human rights law. Comprehensive prison law will provide strategic direction for the prison service in years to come.

3) The prison service training curriculum needs to be analysed and adjustments made to specifically reflect human rights standards as articulated in the international instruments. Refresher training is essential to ensure sustainability and continuity. The following resources produced by the UN

Office on Drugs and Crime can provide assistance:

- Handbook on prisoners with special needs;
- Handbook for prison managers and policymakers on women and imprisonment;
- Handbook on prisoner file management;
- Handbook for prison leaders; and,
- UN rules for the treatment of women prisoners and non-custodial measures for women offenders.²⁶

4) The investigation of deaths in custody should be conducted by an independent body. Given the limited resources available, it is recommended that all deaths should be reported to the ZHRC, which will also monitor the investigations, and that findings should be published.

5) The detention of pre-trial detainees on expired warrants must be avoided and the courts and the prison service must jointly ensure strict compliance. A system should also be devised and implemented to provide an early warning when a warrant is about to expire.

6) Upon admission, a detained person must be informed in writing of the rules of the institution, the disciplinary code and procedures, and any other matters that will help him to understand his rights and responsibilities. They should equally be informed of their fair trial rights, the fact that they may challenge their detention, and have access to legal representation. A signboard detailing this information should be placed inside the prison

yard where it is visible to all detainees.

7) When children are detained, the prison service should inform the Department of Social Welfare without delay of the child's presence – even if this is only to confirm that the department is aware of the child's detention. A record of this should be made in the remandee register.

8) While the long-term solution to overcrowding lies with other agencies in the criminal justice system, the Zambian Government, in cooperation with its partners, should investigate the medium term feasibility of a prison infrastructure improvement plan in order to establish accommodation that meets the minimum standards of humane detention. The situation in Nakonde where there is no prison for remand detainees requires urgent attention.

9) The prison service should ask for research to be conducted to identify low-cost and low-tech sustainable solutions that will assist in improving conditions of detention. Particular attention should be paid to finding alternatives for electricity and firewood (e.g. solar and bio-gas) as well as enhanced food production, dietary improvements and affordable disinfectants. Emphasis should also be placed on self-sustainability.

10) A number of problems related to the conditions of detention will not be resolved overnight, it is therefore recommended that the prison service

develops a time bound plan of action that can be monitored to incrementally improve conditions of detention, including providing:

- Access to clean drinking water in cells;
- Access to ablution facilities 24 hours a day;
- Basic bedding;
- A nutritious diet, including fresh fruit;
- Sufficient quantities of soap and other detergents; and,
- Regular fumigation of cells to control mosquitoes.

Health care

11) All new admissions must be screened for communicable diseases and injuries upon admission. Since there is a shortage of health care professionals, a select group of prison officers must undergo basic paramedic training so they can screen new admissions, deal with medical emergencies, conduct health inspections of facilities and provide training and education on the prevention of HIV and TB. The International Committee of the Red Cross may be able to assist in the provision of this training.

Safety and security

12) Future prison building programmes and the upgrading of existing facilities should ensure that sentenced and unsentenced prisoners can be segregated.

13) The rules of the prison and disciplinary offences, as well as the disciplinary process, should be displayed on a board where it is visible to all prisoners.

14) Prisoners should be actively supervised by officials, especially at night, while the role of cell leaders in daily prison management requires further investigation.

15) All incidents involving the use of force need to be recorded in a designated register at all prisons and these should also be reported to the ZHRC or other designated body.

16) All inmates subject to the use of force must immediately undergo a medical examination.

Contact with outside world

17) Infrastructural improvements should provide adequate facilities for visitors.

18) New admissions should be permitted to make at least one phone call or send one SMS at the State's expense to inform relatives or legal representative of their detention.

19) Paralegal services should be available to all pre-trial detainees on a regular basis.

Complaints, requests and inspections

20) All prisoners should have the opportunity on a daily basis to lodge complaints or make

requests. A register for this purpose should be maintained and reviewed by the officer-in-charge on a weekly basis.

21) Complaints to external bodies should not be subject to censorship.

22) A lay visitor's scheme should be established for every prison to inspect and report on the conditions of detention and the treatment of prisoners²⁷ since, although the ZHRC has a mandate to visit and inspect prisons, it cannot be in all places all of the time.

23) Whether inspections are conducted by internal or external inspectors, there needs to be a specific schedule to ensure consistency and continuity and to provide the officer-in-charge with appropriate feed-back – since the overall purpose of inspections is to provide a basis for dialogue aimed at resolving problems.

Women

24) All pregnant women, breastfeeding mothers and infants must receive nutritional supplements, especially if the diet is not sufficiently varied.

25) All female prisoners in need of sanitary towels must be supplied with them at no cost.²⁸

Management

26) A comprehensive cost analysis of improvements in the prison system should be undertaken in order to accurately inform the budget of the prison service. The analysis should make provision for recurring operational expenditures (i.e. daily care of prisoners), large infrastructure projects, and the costs of staff capacity development.

27) While it may be one solution to fill vacant positions, such a decision should be carefully considered in the light of efforts to reduce the size of the prison population and in particular the pre-trial detainee population.

28) The prison service and its partners in the criminal justice sector should consider the establishment of a police-court-prison liaison function supported by a clear set of performance monitoring indicators to be used on a continuous basis to measure the impact of the function. Monitoring should focus on the (a) number and profile (i.e. locality, age, charge, gender) of children in detention; (b) duration of pre-trial detention; (c) granting of bail; and, (d) expiration of warrants.

29) The prison service should consider the development of a legislative compliance toolkit to inform its efforts at reform and improvement.

9.

CASE FLOW MANAGEMENT RESEARCH

By Jean Redpath

9.1 Introduction

The estimation of time periods spent in custody by accused people in the criminal justice system in Zambia was the primary objective of the case flow management section of this report. In addition, it was hoped that analysis might reveal the characteristics of the remand population, as well as the characteristics of people being arrested and being brought before the courts.

9.2 Prisons

For the prison dataset, fieldworkers recorded observations from 9 prisons, with 40 observations as the target for each year over the time period 2006-2011. Although the target was 40 for each year, varying numbers of observations were ultimately recorded from each prison. Furthermore, the observations sometimes had missing variables because they were not recorded or were not available.

If these prisons are broadly representative of Zambia, and indeed they were targeted because they were thought to be so, then the results can be regarded as estimates applicable to Zambia as a whole.

Zambia prison sample, by prison

Prison	Frequency	Percent	Cumulative
Chipata	80	6.46	6.46
Kabwe	80	6.46	12.92
Kabwe Maximum	159	12.84	25.77
Kamwala	120	9.69	35.46
Livingstone	120	9.69	45.15
Lusaka Central	40	3.23	48.38
Mansa	160	12.92	61.31
Ndola	239	19.31	80.61
Solwezi	240	19.39	100
Total	1238	100	

Zambia prison sample, by year

Year of observation	Frequency	Percent	Cumulative
2006	160	12.98	12.98
2007	121	9.81	22.79
2008	200	16.22	39.01
2009	240	19.46	58.48
2010	239	19.38	77.86
2011	273	22.14	100
Total	1233	100	
Ndola	239	19.31	80.61
Solwezi	240	19.39	100
Total	1238	100	

Characteristics of prison remand admissions

Population figures for admissions are likely to present a picture different from that which shows the composition of the remand population at any particular time. Remand admission figures present a picture of the composition of the population passing through remand imprisonment. In this sense, remand prisoners who spend a short amount of time on remand are weighted equally to those who spend a long period of time. This must be borne in mind when considering this dataset. It may be the case that less serious offences, for example, assume more prominence when

considering admissions as opposed to 'snapshot' population figures, due to their relatively quicker processing.

Some 98 percent of people entering prison remand are male, while people in their 20s are over-represented in the remand admission population – indeed they comprise half of the total admissions.

It is notable that there were eight people in the sample of remand admissions who were aged seventy or more, including four who were over 80. A 96-year old was on remand for unlawful wounding, an 83-year old for murder and an 82 year-old for defilement. On the other end of the scale, the sample yielded a 10 year-old admitted for contempt of court and a 13 year-old for burglary.

Zambia prison remand admissions, by age

Most detainees (95%) were admitted for one offence only. Notable among the remand admission offences in comparison with the court remand profile, is the prominence of murder and drug offences. In other words, admissions data appears to highlight these offences more than court data (see the section on subordinate courts below). This may be due to the incorporation of a larger number of sites in the prison data that encompass urban environments, in particular Lusaka, than was the case with the subordinate court data. Furthermore, bail is not available for certain drug offences relating to trafficking and manufacturing, which would tend to raise the contribution of these offences in relation to remand admissions compared to the court offence profile.

Zambia remand admissions, by offence

According to the Central Statistical Office of Zambia, there are 72 ethnic groups in Zambia. The proportional contribution of each ethnic group (largest groups only) to remand admissions is compared to the relevant ethnic group's percentage of the total Zambian population. This table suggests that the Bemba and Tonga, two of the larger g

Time periods in prison remand

The remand register in Zambian prisons records the date of admission for each remand prisoner. However, the register does not routinely record the date of discharge of a remand prisoner.

Fortunately, the prisons do retain the warrants for remand prisoners that reflect the last court date on which the prisoner was to appear in court. Therefore, fieldworkers were required to record the date of admission for each person selected for the random sample from the remand register and then record from the warrant the last court date that the remand prisoner was to appear in court. This might not necessarily be the full time period spent on remand but it is the only measure available.

The following table indicates that there is a great deal of variation in the time periods spent on remand between locations and indeed within particular locations. The mean for all prisons was 51 days.

Zambia remand admissions, time from date admitted to last court date, by prison (days)

Prison	Minimum	1/4	Median	3/4	Maximum	Weighted mean
Kamwala	0	3	7	14	577	18
Chipata	0	5	13	20	186	25
Lusaka Central	2	12	26	44	169	40
Ndola	0	7	16	37	1476	51
Solwezi	0	5	11	22	1796	52
Mansa	0	5	25	102	402	66
Livingstone	0	5	24	106	672	89
Kabwe Maximum	0	44	112	297	1390	186
Kabwe	1	27	73	254	957	246

resents certain segments of the population, to restore balance, less weight is placed on the over-represented segments of the population and greater weight on the under-represented segments of the population.

The minimum time period ranged from zero days to two days in Lusaka Central, while the maximum ranged from 169 days at Lusaka Central to 1796 days in Solwezi (almost five years). The low value in Lusaka is due to its

sample including only recent years (thus tending to exclude the longest time periods on remand). These extremely long maximums suggest that there is a lack of a mechanism to prevent or detect and act upon the inordinately long time periods that some people spend on remand.

Indeed, since the sample only includes observations from admissions from 2006, the maximum possible time period in this

dataset is five and a half years. Therefore, the possibility exists that there may well be people admitted to remand prior to 2006 who have remained on remand in Zambia. The time period data provided throughout this report must be regarded as representative only of people entering the criminal justice system in Zambia from 2006 onwards. That there are observations in this sample close to the possible maximum suggests that people entering the system before 2006 may well have experienced longer time periods in the criminal justice system.

In this dataset of people admitted to remand from 2006, the lower quartile (the value which a quarter were less than) ranged from 3 to 44 days, the median (middle value) ranged from 7 to 112 days and the upper quartile (the value which three quarters of the sample were less than) ranged from 14 to 254 days.

The average (mean) time period spent by prisoners on remand in the sample is broadly of similar magnitude to the mean time periods measured in the courts (see the section on subordinate courts below).

9.3 Police

The police dataset contained 1601 observations from 9 sites over the period 2006-2011.

Zambia police sample observations, by year

Year	Frequency	Percent	Cumulative
2006	120	7.5	7.5
2007	241	15.05	22.55
2008	200	12.49	35.04
2009	320	19.99	55.03
2010	320	19.99	75.02
2011	360	22.49	97.5
Missing	40	2.5	100
Total	1601	100	

Zambia police sample observations, by police station

Police Station	Frequency	Percent	Cumulative
Chipata	281	17.55	17.55
Kabwe	160	9.99	27.55
Livingstone	120	7.5	35.04
Lusaka	120	7.5	42.54
Mansa	120	7.5	50.03
Mongu	200	12.49	62.52
Nakonde	200	12.49	75.02
Ndola	240	14.99	90.01
Solwezi	160	9.99	100
Total	1601	100	

Characteristics of people admitted to police detention

People detained at police stations were mostly men (89%). Women made up the remaining 11 percent, which was a higher proportion than in the prisons and courts. This may be because of the nature of offences for which women are detained, or may reflect their ability to pay fines. The age of people detained at police stations was not recorded.

Once again, theft is the most common offence among people held in police detention. The contribution of less serious offences such as 'conduct likely to cause a breach of the peace' (conduct), idleness and loitering, and failure to obey a police officer are more pronounced among police detainees than among court accused. This reflects their greater tendency to be resolved without recourse to court, while still resulting in police detention. These three offences result in 21 percent of the turnover in police detention, yet do not result in prosecutions.

The average time period spent by prisoners on remand in the sample ranged from 18 days in Kamwala to 246 days in Kabwe. However, these means were strongly influenced by some high maximum values.

The weighted mean is a mean where there is some variation in the relative contribution of individual data values to the mean. When a sample over or under rep-

Zambia police detention, by offence

Offence	Frequency	Percent
Theft	419	26
Conduct	171	11
Assault or bodily harm	169	11
Idle, loitering	125	8
Burglary	76	5
Drug offences	46	3
Malicious damage	38	2
Failure to obey	28	2
Sexual offences	22	1
Driving offences	21	1
Murder	17	1
Other	469	29
Total	1601	100

The continued appropriateness of the application of offences such as idleness and loitering should be considered by the Zambian legislature. The possibility also exists for the abuse of such highly discretionary offences for the purpose of soliciting bribes or other similar abuses.

Time periods in police detention

The register for detained people at police stations is variously termed the Prisoners' Property Occurrence Book or the Arrested Persons Property Book. While it records the property

or money of the detained person, various other details are recorded as well, including the date the person was admitted and the date of release, as well as the reason for release, such as court, hospital or bond. Bond refers to police bond granted by the police to permit the release of a detained person. Zambia has introduced legislation that requires a detained person to be brought before court within 24 hours. Furthermore, those arrested without warrant must be released on bond if not brought to court. In the case of Daniel Chizoka Mbandangoma v The Attorney-General, it was confirmed that:

Under Section 33 of the Criminal Procedure Code Act, the release on bond of a person arrested without a warrant is mandatory if it does not appear feasible to bring the person concerned before an appropriate competent court within 24 hours of his/her being taken into custody, unless the offence is one of a serious nature. Where a person is retained in custody, he/she must be brought before such court as soon as practicable.

The long time periods for release in the following table, especially for transferral, bond, withdrawal or release to court raises the question as to whether the registers do record the release date of each detained person. The table suggests that those granted bond spend 22 days on average in police detention, while those taken to court spend 17 days on average in police detention. The weighted mean for time spent in police detention for all stations is 16 days.

Time periods for release from police detention, by reason (weighted mean, days)

Reason	Observations	Weighted mean (days)
Transferred	153	23
Bond	316	22
Withdrawn	438	19
Court	211	17
Warned	136	16
Fined	189	3
Immigration	22	2
Missing	69	2
Other	67	1
All	1601	16

However, caution must be exercised with the use of average values, as these tend to overstate the contribution of maximum or high values. The table below presents the median and other values, which provide a more detailed picture of the situation. It is apparent that the medians for release from police detention are one, two or three days at each of the police stations, suggesting half of the people released from police detention are

released within such time frames – on the other hand it suggests half are not. The high average values are largely the result of the contribution of the values in the upper quartile, and those close to the maximum values.

The longer time periods for the observations greater than the median do reflect the experience of the Zambian Human Rights Commission, which has found that the police tend to make it difficult for a person to be released on bond by insisting on the person having two working sureties, preferably civil servants. In rural towns, where most people are not in formal employment, it is very difficult to find two working sureties. The ZHRC has also found that it is sometimes the case that police officers prefer keeping a person in detention until an investigation is finished. This would accord with the finding of an average of 19 days (weighted mean) in detention for those whose cases are ultimately withdrawn.

This raises the question as to whether there has been any change over time with respect to time periods spent in police detention. The table below shows the means and medians for time in police detention by year. The mean shows a decreasing trend over time, but still suggests an average of 8 days in police detention. The decreasing mean suggests exceptionally long time periods in police detention are becoming less common. The current median in 2011 of one suggests that half of the people held in police detention spend more than a day in police detention, while half spend less than a day.

Time periods for release from police detention, by station (detail, days)

Police Station	Minimum	1/4	Median	3/4	Maximum	Mean (Weighted)
Chipata	0	1	2	4	1948	31
Kabwe	0	1	1	4	731	9
Livingstone	0	0	1	2	10	2
Lusaka	0	1	2	3	368	15
Mansa	0	0	1	4	366	7
Mongu	0	1	2	30	1522	49
Nakonde	0	1	3	12	368	13
Ndola	0	0	1	3	120	4
Solwezi	0	0	1	2	274	5

Mean and median of time in police detention, by year

Measure	2006	2007	2008	2009	2010	2011
Mean	39	21	15	17	8	8
Median	1.0	1.0	1.0	1.0	1.5	1.0

9.4 Subordinate courts

For the subordinate court dataset, fieldworkers recorded 90 observations from 6 subordinate court sites over the total time period 2006-2011. However, data for every variable was not collected for all observations and the following tables report

percentages for variables for which information was available. Although nine sites were initially targeted, data from only six sites were available at the time of analysis.

Zambia subordinate court accused, by court

Court	Frequency	Percent	Cumulative
Chipata	90	17	17
Kabwe	90	17	33
Livingstone	90	17	50
Nakonde	90	17	67
Ndola	90	17	83
Solwezi	90	17	100
Total	540	100	

Characteristics of subordinate court accused

Some 96 percent of people before the subordinate courts in Zambia are male. Around 5 percent are under the age of 18, while a further 7 percent are aged 18 or 19. The 20-24 and 25-29 age groups are the most over-represented, while all other age-groups are under-represented. The age composition matches the age composition of remand closely, suggesting there is little bias by age in denying bail in the courts.

Some 94 percent of people before the subordinate courts were there in relation to one offence. The most common offence before the courts was theft, which combined with burglary accounted for 42 percent of offences. Assault and bodily harm comprised a fifth of the sample, while 1 in 9 were drug offences. Notably, there is a significant proportion of 'white collar' and 'middle-class' offences such as fraud, corruption and driving offences, which jointly comprise 8 percent of all offences and is indicative of Zambia's growing economy. However, the

Zambia subordinate court accused, by age

Age	Frequency	Percent	Cumulative	Zambia adult population over 20 (percent)	Zambia remand admissions (percent)
Under 18	21	5	5	-	5
18-19	30	7	12	-	7
20-24	115	27	39	23	25
25-29	91	22	61	19	25
30-34	70	17	77	14	14
35-39	44	10	88	11	10
40-44	23	5	93	8	5
45-49	17	4	97	6	3
Over 50	12	3	100	19	5
Total	423	100			100

absence of a similar percentage of these offences in the remand population suggests that people accused of 'white collar' crimes are not held on remand.

The custody status at the time the case was concluded (or current custody status if the case was continuing) indicated that 54 percent of accused people before the subordinate courts were held on remand (256 observations out of 471 for which this data was recorded).

Comparing the offence profile of remand accused against the total offence profile suggests that people on remand are slightly more likely to be accused of theft, burglary, drugs, escape, robbery or murder. In particular, 17 percent of people were held on remand for drug offences compared to only 11 percent of people who were before the courts for drug offences. This may be due to the fact that people charged with offences related to drug trafficking or manufacturing drugs under the Narcotic Drugs and Psychotropic Substances Act cannot be admitted to bail (see Chapter 5).

Zambia subordinate court accused and remand accused, by offence

Offence	Total	Percent	Remand Frequency	Remand Percent
Theft	157	29	76	30
Assault or bodily harm	112	21	45	18
Burglary	71	13	36	14
Drug offences	61	11	44	17
Fraud	28	5	9	4
Sexual offences	19	4	8	3
Malicious damage	14	2	3	1
Escape	10	2	7	3
Driving offences	9	2	1	0
Robbery	8	1	4	2
Murder	7	1	6	2
Corruption offences	6	1	3	1
Other	38	8		5
Total	540	100	256	100

The table below shows the sentences handed down in subordinate courts. The results suggest the subordinate courts prefer alternatives to imprisonment in one in five cases resulting in conviction.

Subordinate court sample, by sentence

Sentence category	Frequency	Percent	Cumulative
Suspended sentence	15	4	4
Community service	23	6	11
Fine	27	8	18
Imprisonment over 2 years	48	13	32
Imprisonment under 2 years	186	51	83
Missing	62	17	100
Total sentences	361	100	

Time periods in subordinate courts

The records available at subordinate courts provided the:

- Date entered or filed;
- Date of first appearance;
- Date of case status - this was the date on which

the case status changed most recently, e.g. date of conviction, acquittal, committal to the High Court, transferral, etc. (for convenience this is referred to as 'date of outcome'); and,

- Date of sentence – this was the date sentence was handed down, in cases where sentence was handed down.

Using these dates it was possible to calculate three time periods in the subordinate courts. These were the time between:

- The case being entered and first appearance;
- The first appearance and outcome; and,
- The conviction and sentence.

Time period between entry and first appearance

The following table indicates how many observations counted for each court were 'same day' observations i.e. entry and first appearance occur on the same day, and how many indicate a time period of more than one day. In all the subordinate courts, except Livingstone, the records indicate that in the majority of cases the date entered or filed is the same as the day of first appearance in court. Therefore, only in Livingstone is the median value for the time period between entry and first appearance greater than zero – at seven days.

The following table shows the detailed values for the same time period for each site. Due to the presence of a few large values in the dataset, the

mean time period from entry to first appearance ranges 0 to 124 days in the six courts. The weighted mean for all six courts i.e. the estimate for Zambia as a whole, was calculated at 11 days. However, for the vast majority of cases in most courts the time between entry and first appearance is zero days.

Time period between first appearance and outcome

The average time period between first appearance and outcome (e.g. date of acquittal, withdrawal etc.) ranged from 52 days in Solwezi to 206 days in Chipata. The weighted mean for all six courts

was 107 days. The minimum time period ranged from zero days in five of the courts to 1 day in Chipata, while the maximum ranged from 245 days in Ndola to 1387 days in Chipata (three years and nine months).

The lower quartile ranged from 63 to 205 days, the median from 16 to 166 days and the upper quartile from 63 days to 205 days.

However, the time periods by outcome for all the courts together are possibly more informative. These time periods illustrate that the longest mean time periods from first appearance to outcome are for cases that resulted in committal

Time from entry to first appearance, counts, median and mean, by court (days)

Court	Same day counts	More than one day counts	More than one day (% of total counts)	Median	Mean
Chipata	60	12	17	0	40
Kabwe	61	25	29	0	13
Livingstone	4	12	75	7	124
Nakonde	70	13	16	0	25
Ndola	87	2	2	0	86
Solwezi	85	0	0	0	0
Total	367	64	15	0	44

Time from entry to first appearance, by court (detail, days)

Court	Minimum	1/4	Median	3/4	Maximum	Mean
Chipata	0	0	0	0	1826	19
Kabwe	0	0	0	1	365	13
Livingstone	0	0.5	6.5	94	881	124
Nakonde	0	0	0	0	853	25
Ndola	0	0	0	0	0	0
Solwezi	0	0	0	0	0	0

to the High Court or transferral to another court. Ironically, cases that resulted in conviction reached that stage more quickly than any other large outcome category. Cases still continuing, which were enrolled over the time period 2006-2011, were averaging 117 days at the time of data collection.

Time from first appearance to outcome, by court (detail, days)

Court	Minimum	1/4	Median	3/4	Maximum	Mean
Chipata	1	55	166	299	1387	206
Kabwe	0	1	16	169	494	92
Livingstone	0	32	68	134	1105	185
Nakonde	0	28	58	135	662	106
Ndola	0	9	36	97	245	61
Solwezi	0	6	21	63	449	52

Time from first appearance to outcome, by outcome (weighted mean, days)

Reason	Weighted mean (days)
Committed	163
Transferred	161
Discharged	156
Acquitted	136
Dismissed	126
Withdrawn	109
Convicted	85
Continuing	117

Time period between conviction and sentence

The weighted mean for this time period for all six courts was 42 days. However, there was a great deal of variation among the courts.

Time from conviction to sentence, by court (weighted mean, days)

Court	Weighted mean (days)
Chipata	341
Kabwe	6
Livingstone	5
Nakonde	50
Ndola	9
Solwezi	0

Characteristics of High Court accused

Some 98 percent of the High Court sample were men. While age data was missing in 58 percent, every accused person whose age was known was 18 or older. The following table shows the offences

Zambia High Court sample, by offence

Offence	Frequency	Percent	Cumulative
Murder	32	40	40
Manslaughter	17	21	61
Aggravated robbery	12	15	76
Defilement	3	4	80
Drug trafficking	2	3	83
Assault occasioning bodily harm	1	1	84
Attempted murder	1	1	85
Breaking into a building	1	1	86
Burglary	1	1	88
Depriving beneficiaries	1	1	89
Disclosure of examination paper	1	1	90
Extortion	1	1	91
Incest	1	1	93
Obtaining money by false pretence	1	1	94
Theft	1	1	95
Theft by public servant	1	1	96
Theft by servant	1	1	98
Unnatural offence	1	1	99
Missing	1	1	100
Total	80	100	

in the High Court sample. Although murder and manslaughter comprised 61 percent of offences before the High Court, a range of other less serious offences were also heard. It is unclear what circumstances led to these offences being heard in the High Court.

Time periods in the High Court

The Mongu High Court data provides some indication of the total time period applicable to matters that are concluded in the High Court. The Lusaka High Court data was missing the necessary dates to make these calculations.

Time from arrest to sentence, Mongu High Court (days)

Court	Min	1/4	Median	3/4	Max	Mean
Mongu High Court	143	297	374	673	1221	504

The mean for the Mongu court was 504 days (one year and five months) from the date of arrest to the date of sentence. The minimum time period was 143 days, while the maximum was 1221 days (three years and three months). The median was 374 days.

Case burden in the High Courts

Summary data was available from four High Courts (Ndola, Chipata, Livingstone and Mongu). This data indicates that these courts register on average 123 matters each year – 73 of which are committals for trial. However, it is unclear from the High Court registers how many matters are completed each year.

High Court summary, by matter type

High Court	Total 2006-May 2011	Percent 2006-May 2011	Yearly average	Yearly average per court
Committals for Trial	1618	60	294	74
Confirmations	324	12	59	14
Appeals	402	15	73	18
Sentence	441	16	80	20
Total	2708	100	492	123

The Mongu High Court sample indicates 421 records from 2006-May 2011, suggesting that it was able to handle 77 trial matters per year – just more than the average of 74 registered for each court. If this trend is applicable across the High Courts it suggests the courts are able to handle their load.

The following table shows the sentences handed down in the High Court sample. The use of fines suggests a preference by the courts for fines for the white collar offences in the sample.

Zambia High Court sample, by sentence

Sentence	Frequency	Percent	Cumulative
20 years and death	1	1	1
25 years	1	1	3
15 years	2	3	5
8 years	1	1	6
5 years	2	3	9
4.5 years	2	3	11
3 years	4	5	16
2 years	3	4	20
18 months	1	1	21

Fine K3.6 million	1	1	23
Fine K2.5 million	1	1	24
Fine K2 million	2	3	26
Fine K1.2 million	1	1	28
Fine K1.5 million	4	5	33
Fine K700000	1	1	34
President Pleasure	1	1	35
Missing or not applicable	52	65	100
Total	80	100	

Data was available from Mongu High Court and Lusaka High Court at the time of analysis. This data comprised 80 observations enrolled in the High Court over the period 2006-2011, selected randomly as per the method outlined in the methodology.

Analysis and Conclusions

Zambia's achievement in steadily reducing the average time in police detention from 39 days in 2006 to 8 days in 2011 must be acknowledged.

Nevertheless, time periods in police detention remain a cause for concern. The legislative limit of 24 hours appears not to be achievable for the majority of detained people. There is a need to find means other than two working sureties to satisfy police bond, since those on bond spend almost as long in police detention as those transferred to other forms of detention.

Deprivation of liberty by the police for a range of minor offences also raises concerns. Admission to police detention could be reduced by a fifth simply by removing people arrested on offences such as loitering.

The impact of legislation restricting bail for some offences, particularly drug offences, is readily apparent from a comparison of the remand population offence profile with the profile of cases before the courts. Remand is highly likely for people before the courts, with more than half of people tried in the subordinate courts being held on remand.

Amongst the court data, the greatest source of concern is the longer time periods applicable to cases transferred to other courts or committed to the High Court. The data from the High Courts indicates that these courts are able to process the cases presented to them, which suggests that the delay arises in the committal process.

Of further concern is the longer time periods (compared to conviction) applicable to cases that are ultimately withdrawn. This suggests a failure to properly screen cases at an early stage to prevent long periods being spent in custody by people, who are ultimately never convicted of an offence.

Variations in time periods by location also suggest the influence of local factors. The delays experienced in Chipata are probably due in part to its isolation. While the mean for remand imprisonment appears reasonable at 56 days, the last quartile and the high maximums observed are cause for serious concern and suggest a lack of safety nets for the identification and prevention of inordinate delays in the criminal justice system.

Recommendations

Further research and/or reform is recommended to:

- Re-train police on the right to police bond as well as initiate changes to local practice on the requirements for police bond;
- Review bail legislation restricting bail by offence type;
- Review the penal code to decriminalise certain actions resulting in unnecessary police detention;
- Review the committal process and design an expedited process to enrol matters in the High Court;
- Implement an early screening process to be adopted by prosecutors to expedite withdrawals; and,
- Identify and implement mechanisms to identify instances of inordinate delay in relation to people on remand and trigger a review of these cases.

Endnotes

Chapter 1

1. Article 9 (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
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The High Court may, at any time, on the application of an accused person, order him, whether or not he has been committed for trial, to be admitted to bail or released on his own recognizance, and the bail bond in any such case may, if the order so directs, be executed before any magistrate.

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61. *The Human Rights Committee General Comment No. 31, Doc. CCPR/C/21/Rev.1/Add.13.*

62. (1995) Communication No. 390/1990, U.N.Doc. CCPR/C/55/D/390/1990/Rev.1.

63. Article 18(9) of the Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996, Chapter 1 of the Laws of Zambia; Article 9(3) of the International Covenant on Civil and Political Rights, 1966; Article 7(1)(d) of the African Charter on Human and Peoples Rights, 1981.

64. *Human Rights Committee, General Comment No. 13*

65. Article 13 of the Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996 Chapter 1 of the Laws of Zambia.

66. Article 13(3)(b) of the Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996 Chapter 1 of the Laws of Zambia.

67. *Wemhoff v Germany, 1968, 1 EHRR 55.*

68. *Bruce Robert Anderson v Attorney General Eastern Cape, Case CCT, 10/97.*

69. Article 7 and 25 of the International Covenant on Civil and Political Rights, 1966

70. Article 18(1) and Article 18(8), the Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996, Chapter 1 of the Laws of Zambia.

71. Article 18(11) (a)(b) and Article 18(8) of the Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996, Chapter 1 of the Laws of Zambia.

72. Article 18(12) (d)(i) of the Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996, Chapter 1 of the Laws of Zambia.

73. Article 18(7) of the Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996, Chapter 1 of the Laws of Zambia.

74. Article 14 of the International Covenant on Civil and Political Rights, 1966

75. Section 15(1) of the Local Courts Act No. 20 of 1966, as amended by Act No. 18 of 2003, Chapter 29 of the Laws of Zambia; Article 18 (12) (b) of the Constitution of Zambia Act No. 1, as amended by Act No. 18 of 1996 Chapter 1 of the Laws of Zambia.

76. Section 11 of the Local Courts Act No. 20 of 1966, as amended by Act No. 18 of 2003, Chapter 29 of the Laws of Zambia

77. Section 42(1) of the Local Courts Act No. 20 of 1966, as amended by Act No. 18 of 2003, Chapter 29 of the Laws of Zambia

78. United Nations, 'Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers,' 2003, 219.

79. <http://www.ohchr.org/Documents/Publications/training9chapter6en.pdf>

80. Article 14 of the International Covenant on Civil and Political Rights, 1966

81. General Comment No. 13 (Article 14), in *UN Compilation of General Comments*, p124, paragraph; 7

82. *The Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996 Chapter 1 of the Laws of Zambia.*

83. Articles 6, 7, 8, 11, 15, 16 and 18 of the International Covenant on Civil and Political Rights, 1966 expresses that 'no derogation' is permissible.

84. Article 13(1) and Article 18(8) of the Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996, Chapter 1 of the Laws of Zambia

85. Article 10(1) of the International Covenant on Civil and Political Rights, 1966

86. Article 9 of the International Covenant on Civil and Political Rights 1966; Article 13(1) of, the Constitution of Zambia Act No. 1, as amended by Act No. 18 of 1996 Chapter 1 of the Laws of Zambia.

87. Article 13(1)(a) to (c) and Article 18(8) of the Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996, Chapter 1 of the Laws of Zambia.

88. *The Criminal Procedure Code Act No. 35 of 1993, as amended by Act No. 9 of 2005, Chapter 88 of the Laws of Zambia.*

89. United Nations Compilation of General Comments, Human Rights Committee, General Comment No. 21, p142-143, paragraph 9.

90. See generally Article 10(2)(a) of the ICCPR, 1966.

91. Rule 8(a) of the Standard Minimum Rules for the Treatment of Prisoners, 1955.

92. *The African Charter on the Rights and Welfare of the Child, 1981*

93. Article 37(c) of the Convention on the Rights of Children, 1989.

94. Rule 167 of the Prison Rules, Section 146, Act No. 388 of 1966, as amended by Act No. 137 Of 1990, Chapter 97 of the Laws of Zambia.

95. Section 60 of the Prisons Act No. 56 of 1965, as amended by Act No. 14 of 2000, Chapter 97 of the Laws of Zambia

96. Article 16 of the International Covenant on Economic Social and Cultural Rights, 1966

97. Article 17 of the International Covenant on Economic Social and Cultural Rights, 1966

98. (2001) AHRLR, 60, ACHPR, (2001), Communication No.155/96

99. Article 14 of the International Covenant on Economic, Social and Cultural Rights, 1966

100. Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966

101. *The International Covenant on Economic, Social and Cultural Rights, 1966*

102. Article 13 of the International Covenant on Economic, Social and Cultural Rights, 1966

103. See for example, Article 5 of the Universal Declaration of Human Rights adopted in 1948; Article 2 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1975;

Articles 7 and 10 of the International Covenant on Civil and Political Rights, 1966.

104. *Soaring v United Kingdom, 11, EHRR, 439, p88, (1999).*

105. See the *A (FC) and Others (FC) v Secretary of State for the Home Department, House of Lords (2004)*; and also *R v Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No 3) (2000)*, 1 AC, 147.

106. Article 1 of the Convention against Torture and Other Cruel, In-

human or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987

107. *United Declaration on Human Rights, 1945*

108. *The International Covenant on Civil and Political Rights, 1966*

109. Article 2(2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

110. Article 15 of the Constitution of Zambia, Act No. 1 of the Laws of Zambia, as amended by Act No. 18 of 1996 Chapter 1 of the Laws of Zambia.

111. *Todrys KW et al (2011) 'Imprisoned and Imperilled Access to HIV and TB Prevention and Treatment, and Denial of Human Rights in Zambian Prisons'. Journal of the International AIDS Society 14: 8, p6.*

112. *Ibid*

113. Section 62(1) of the Juveniles Act No. 4 of 1956, as amended by 13 of 1994, Chapter 53 of the Laws of Zambia

114. Section 18 of the Juveniles Act No. 4 of 1956, as amended by 13 of 1994, Chapter 53 of the Laws of Zambia

115. Section 58 of the Juveniles Act No. 4 of 1956, as amended by 13 of 1994, Chapter 53 of the Laws of Zambia

116. *Zambia Human Rights Commission (2009) Annual Report 2008, Lusaka, p13*

117. Section 61(2) of the Juveniles Act No. 4 of 1956, as amended by Act No. 13 of 1994, Chapter 53 of the Laws of Zambia

118. (1973), 'ZR,' 132

119. *The Juveniles Act No. 4 of 1956, as amended by Act No. 13 of 1994, Chapter 53 of the Laws of Zambia*

120. Section 22(1) of the Anti Cte3 of tht-12(t)-213mmissios Act No 16-10(f)J

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Chapter 6

1. Zambia ratified the ICCPR on 10 April 1984.
2. Zambia ratified the ICESCR on 10 April 1984.
3. Zambia ratified the UNCAT on 3 November 1986.
4. Zambia ratified the CRC on 6 December 1991.
5. Zambia ratified the African Charter on 10 January 1984.
6. Zambia ratified the ACRWC on 2 December 2008.
7. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
8. Adopted and proclaimed by General Assembly Resolution 45/111 of 14 December 1990.
9. Adopted at the 76th Plenary Meeting of the United Nations General Assembly, A/RES/43/173, on 9 December 1988.
10. The Constitution, Act No. 1 of 1991, as amended by Act No. 18 of 1996, CAP 1 of the Laws of Zambia
11. The Penal Code Act, Act No. 42 of 1930, as amended by Act No. 15 of 2005, CAP 87 of the Laws of Zambia
12. The Criminal Procedure Code Act No 33 of 1933, as amended by Act No. 35 of 1993 and Act No. 9 of 2005, CAP 88 of the Laws of Zambia
13. The Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
14. The Juveniles Act No. 4 of 1956, as amended by Act No. 3 of 2011, CAP 53 of the Laws of Zambia
15. Part III of the Prisons Act is the Prison Rules.
16. The Constitution, Act No. 1 of 1991, as amended by Act No. 18 of 1996 CAP 1 of the Laws of Zambia.
17. Article 107, the Constitution, Act No. 1 of 1991, as amended by Act

No. 18 of 1996 CAP 1 of the Laws of Zambia.

18. See Section 3, the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia.
19. Article 107, the Constitution, Act No. 1 of 1991, as amended by Act No. 18 of 1996, CAP 1 of the Laws of Zambia
20. The Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
21. Section 10(2), the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
22. Section 11, the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
23. Section 12 (1), the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
24. Section 12(1), the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
25. K. W. Todrys, et al. (2011) 'Imprisoned and Imperilled Access to HIV and TB Prevention and Treatment, and Denial of Human Rights in Zambian Prisons' *Journal of the International AIDS Society* 14: 8, p 7.
26. Section 13(1), the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
27. Section 6(1), the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
28. Ibid
29. Zambia Human Rights Commission and Beyond Research Ltd, 'Preliminary Prison Audit of Mazabuka and Kabwe Prisons' (February 2011).
30. K. W. Todrys, et al. (2011) 'Imprisoned and Imperilled Access to HIV and TB Prevention and Treatment, and Denial of Human Rights in Zambian Prisons' *Journal of the International AIDS Society* 14: 8, p 6.
31. Zambia Human Rights Commission and Beyond Research Ltd, 'Preliminary Prison Audit of Mazabuka and Kabwe Prisons' (February 2011).
32. Part V, the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia.

33. Section 48, the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
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35. *Judicial Inspectorate of Prisons in South Africa 2008-2009 Annual Report p 17*
36. K. W. Todrys, et al. (2011) 'Imprisoned and Imperilled Access to HIV and TB Prevention and Treatment, and Denial of Human Rights in Zambian Prisons' *Journal of the International AIDS Society* 14: 8, p 6 and 7
37. *Zambian Crime Stats* <http://www.nationmaster.com/country/za-zambia/crime> (Accessed on 20 April 2011)
38. Bureau of Democracy, Human Rights, and Labour 2009 *Human Rights Report: Zambia* <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135983.htm> (Accessed on 06 January, 2011)
39. Human Rights Watch (HRW), *Prison Care and Counselling Association (PRISCCA), AIDS and Rights Alliance for Southern Africa (ARASA) (2010) Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons p 29*
40. *Application 47095/99, European Court of Human Rights, Strasbourg, 15 July 2002.*
41. Zambia Human Rights Commission 'Central Province Prison Report,' (2005) http://www.hrc.org.zm/media/central_province_prisons_report.pdf (Accessed on 06 January, 2011)
42. C. W. Dugger 'Report Calls Zambia's Prisons 'Death Traps'' (2010) <http://www.nytimes.com/2010/04/28/world/africa/28zambia.html> (Accessed on 27 April 2011)
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44. HRW, PRISCCA and ARASA (2010) *Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons p 31.*
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- http://www.hrc.org.zm/media/2002_final_report.pdf (Accessed on 17 March 2011)
46. Zambia Human Rights Commission Lusaka Prisons Report 2004 http://www.hrc.org.zm/media/lusaka_prisons_report.pdf (Accessed on 17 March 2011)
47. Ibid
48. Ibid
49. HRW, PRISCCA and ARASA (2010) *Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons p 31.*
50. Zambia Human Rights Commission and Beyond Research Ltd 'Preliminary Prison Audit of Mazabuka and Kabwe Prisons' (February 2011).
51. Article 16, the International Covenant on Economic Social and Cultural Rights, 1966
52. *The Standard Minimum Rules for the Treatment of Prisoners, 1955.*
53. Section 18 (1), the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
54. Section 16, The Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
55. HRW, PRISCCA and ARASA (2010) *Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons p 5.*
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59. O. Simooya et al. 'Behind Walls: A Study of HIV and AIDS Risk Behaviours and Sero-Prevalence in Prisons in Zambia,' *AIDS Journal* 15:13 (2001) p 1744.
60. Zambia Ministry of Health and National AIDS Council, *Zambia Country Report: Multi-Sectoral AIDS Response, Monitoring and Evaluation, Biennial Report, 2006 - 2007: Updated Version, Submitted to the United Nations General Assembly, Special Session on*

AIDS, January 31, 2008, p. 4.

61. HRW, PRISCCA and ARASA (2010) *Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons p 63.*
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66. Rule 15, the Standard Minimum Rules for the Treatment of Prisoners, 1955.
67. HRW, PRISCCA and ARASA (2010) *Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons p 5.*
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72. HRW, PRISCCA and ARASA (2010) *Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons p 39.*
73. HRW, PRISCCA and ARASA (2010) *Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons p, 39*
74. HRW, PRISCCA and ARASA (2010) *Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons p39-40*
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78. Zambia Human Rights Commission, Office of the Commissioner for Children, 'Investigations Conducted by Chitungu Wallace and Mwenda Mwiba at Mumbwa Prisons' (27 April 2011)
79. Article 10(1), the International Covenant on Civil and Political Rights, 1966; Principle No. 1, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1990; Principle No. 1, the Basic Principles for the Treatment of Prisoners, 1988.
80. The African Charter on Human and Peoples Rights, 1981
81. Article 7, the International Convention on Civil and Political Rights, 1966.
82. Article 5, the Universal Declaration of Human Rights adopted in 1948.
83. Article 5, the Africa Charter on Human and Peoples Rights, 1981
84. CAT, 1975.
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87. Section 29, the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia
88. The Constitution, Act No. 1 of 1991, as amended by Act No. 18 of 1996, CAP 1 of the Laws of Zambia.
89. Shadow Report to the Human Rights Committee: Zambia <http://www.unhrc.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=46af4d540&skip=0&query=pre-tri>

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90. Zambia Human Rights Commission (2004) Lusaka Prisons Report p.10.

91. Human Rights Commission Annual Report, 2009, p.15; Human Rights Commission: Prison and police cells inspection report, Northern Province, 2009, p.7.

92. Ibid

93. Article 17(2) (b), the African Charter on the Rights and Welfare of the Child, 1981; Article 10(2) (b) of the International Covenant on Civil and Political Rights, 1966.

94. Article 17(1), the African Charter on the Rights and Welfare of the Child, 1981

95. Rule 8 (a), the Standard Minimum Rules for the Treatment of Prisoners, 1955.

96. The Constitution, Act No. 1 of 1991, as amended by Act No. 18 of 1996 CAP 1 of the laws of Zambia.

97. Article 10(2) (a), the International Covenant on Civil and Political Rights, 1966

98. Section 60(2)(a), the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia.

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103. Section 60(2)(f), the Prisons Act, Act No. 56 of 1965, as amended by Act No. 14 of 2000, CAP 97 of the Laws of Zambia.

104. The Juveniles Act No. 4 of 1956, as amended by Act No. 13 of 1994, CAP 53 of the Laws of Zambia.

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107. Human Rights Commission, Office of the Commissioner for Children, 'Investigations conducted by Chitungu Wallace and Mwenda Mwiba at Mumbwa Prisons,' (27 April, 2011; Lusaka)

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117. Ibid

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137. E/CN.4/2003/68, 17 December 2002, para. 26 (f).

138. UN doc. E/CN.4/1995/34, 'Report of the Special Rapporteur on torture', paragraph, 926 (c).

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141. Ibid

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Chapter 7

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2. *Filartiga v. Pena-Irala* [1980] 630 F (2nd Series) 876 US Court of Appeals 2nd Circuit 1980. A (FC) and others v. Secretary of State for the Home Department, [2005] UKHL 71, para. 67.

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6. Zambia Human Rights Commission (2009) State of Human Rights in Zambia 2007, ZHRC & UNDP, Lusaka, pp. 26-27.

7. Zambia Human Rights Commission (undated) State of Human Rights in Zambia 2008, ZHRC & UNDP, Lusaka, pp. 47-48

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10. CAT/C/ZMB/2 Para 29. As earlier stated the Police and Prisons Service colleges have incorporated in their training, the teaching of human rights education for new recruits. Plans are underway to review the current human rights syllabus in order to make its content more responsive to the needs of the trainees such as interrogation methods, rights of suspects, treatment of persons in custody and guidelines on the use of force (including firearms). These Colleges also train officers from the Drug Enforcement Commission and the Anti-Corruption Commission.

11. Redress Trust Taking Complaints of Torture Seriously – Rights of Victims and Responsibilities of Authorities (2004) The Redress Trust, London, p. 17.

12. *Finucane v United Kingdom* (2003) 22 EHRR 29 para 68.

13. *Assenov and Others v Bulgaria* (n 125) para 140.

14. Muntingh L (2011) *A Guide to the UN Convention against Torture in South Africa*, CSPRI

15. CAT/C/ZMB/2 Para 8 "The Police Public Complaints Authority (PPCA), an institution established by the Zambia Police Act (Amendment) Act No. 14 of 1999 was launched on 7th May 2003. So far, the PPCA has received 825 complaints, made 45 rulings in which 13 officers were dismissed from the Police Service. The cases before the PPCA range from false imprisonment, unlawful detention to abuse of authority by individual police officers."

16. Art. 17 (2)(c)

17. Zambia Human Rights Commission (undated) State of Human Rights in Zambia 2008, ZHRC & UNDP, Lusaka, p. 38.

18. ICCPR, Art. 10(1)

19. ICCPR, Art. 14. The Basic Principles for the Treatment of Prisoners, in Principle 5, emphasise the residuum of other rights and fundamental freedoms despite the deprivation of liberty: "Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants."

20. UNSMR Rule 35 (1): "Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution." See also Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: Principle 13 Any person shall, at the moment of

arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

21. UNSMR Rule 35 (2): "If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally." See also Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: Principle 14 A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

22. Section 33(1) of the Criminal Procedure Code Act No. 35 of 1993, as amended by Act No. 9 of 2005, Chapter 88 of the Laws of Zambia

23. Art. 10 ICCPR: "1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. 2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status." See also Art. 5 ACHPR

24. See e.g. Principle 1 of the Body of Principles and Rule 60 (1) UNSMR. This Rule reads as follows: "The regime of the institution

should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.” See also the CoE Guidelines, Art. XI (1)

25. Rule 21(1)

26. Zambia Human Rights Commission (undated) *State of Human Rights in Zambia 2008*, ZHRC & UNDP, Lusaka p. 38 and p. 40.

27. ICRC (2004) *ICRC Health in Detention – Guide for the assessment and documentation of health-related issues when visiting prisoners*, p. 25

28. E/CN.4/1995/34 12 January 1995 para. 926(i) See also CAT, *Concluding Observations on Turkey*, UN Doc. CAT/C/CR/30/5, 2003, para 7(k) “Intensify training of medical personnel with regard to the obligations set out in the Convention, in particular in the detection of signs of torture or ill-treatment and the preparation of forensic reports in accordance with the Istanbul Protocol”

29. UDHR, Art. 3.

30. *Statement by the Special Rapporteur on HR & CT, Tenth Session of the Human Rights Council (2-27 March 2009)*, Geneva, 10 March 2009.

31. A person is kept in secret detention if State authorities acting in their official capacity, or persons acting under the orders thereof, with the authorization, consent, support or acquiescence of the State, or in any other situation where the action or omission of the detaining person is attributable to the State, deprive persons of their liberty; where the person is not permitted any contact with the outside world (“incommunicado detention”); and when the detaining or otherwise competent authority denies, refuses to confirm or deny or actively conceals the fact that the person is deprived of his/her liberty hidden from the outside world, including, for example family, independent lawyers or non-governmental organizations, or refuses to provide or actively conceals information about the fate or whereabouts of the detainee (A/HRC/13/42, para 8).

32. A/HRC/13/42, para 9

33. *Ibid*

34. See *Body of Principles: Principle 18 on communication with legal counsel, Principle 19 on contact with family and Principle 20 on placement reasonably near to place of residence. Principle 19, however, clearly states the right to be visited by and correspond with family is “subject to reasonable conditions and restrictions as specified by law or lawful regulations.” Rule 37 SMR includes the phrase “under necessary supervision” with regard communication with family members. Rule 38 stresses the right of foreign nationals to communicate with diplomatic or consular representations, while Rule 39 lays down the right to be kept informed regularly of the more important items of news.*

35. A/HRC/13/39/Add.5 para 157

36. *Body of Principles, Principle 29(1)*

37. *Body of Principles, Principle 29(2)*

Chapter 8

1. CAT/C/ZMB/2

2. Muntingh L and Satardien Z (2011 forthcoming) *Sexual violence in prisons – Part 1: The duty to provide safe custody and the nature of prison sex*, SA Journal of Criminal Justice.

3. *Committee Against Torture, General Comment 2*, CAT/C/GC/2/CRP.1/Rev. 4, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>, para 18.

4. CAT/C/ZMB/2 Para 29. As earlier stated the *Police and Prisons Service colleges have incorporated in their training, the teaching of human rights education for new recruits. Plans are underway to review the current human rights syllabus in order to make its content more responsive to the needs of the trainees such as interrogation methods, rights of suspects, treatment of persons in custody and guidelines on the use of force (including firearms). These Colleges also train officers from the Drug Enforcement Commission and the Anti-Corruption Commission.*

5. *Body of Principles, Principle 2.*

6. *Zambia Human Rights Commission (2005) Central Province Prisons Report*, Lusaka: ZHRC, p. 34.

7. Art. 17 (2)(c).

8. Rule 7 (1): “In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

(a) Information concerning his identity;

(b) The reasons for his commitment and the authority therefore;

(c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.”

9. ICCPR, Art. 10(1).

10. ICCPR, Art. 14. *The Basic Principles for the Treatment of Prisoners, in Principle 5, emphasise the residuum of other rights and fundamental freedoms despite the deprivation of liberty: “Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.”*

11. UNSMR Rule 35 (1): “Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.”

12. UNSMR Rule 35 (2): “If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.”

13. Rule 21(1)

14. ICRC (2004) *ICRC Health in Detention practical guide – a guide for the assessment and documentation of health-related issues when visiting prisons.*

15. Simooya O and Sanjoko N (2005) ‘Responding to the challenge of HIV/AIDS behind bars – the In but Free project in Zambia’ *Sexual Health Exchange 2005 Vol 1 p. 1*

16. Art. 7 ICCPR

17. Rule 31 See also E/CN.4/1997/7/Add.2 (Special Rapporteur on Torture - Visit to Pakistan 1996). The CCPR in General Comment 20 (para. 5) notes in respect of Art. 7 of the ICCPR that “The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee’s view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.

18. General Comment 20 on the ICCPR para. 6. *The Istanbul statement on the use and effects of solitary confinement defines solitary confinement as the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day. In many jurisdictions prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic. [Adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul.]*

19. *The provisions of the UNSMR (Rule 30) clearly require an individualised response by the authorities meeting the requirements of due process. Group punishments inflicted because one or a few prisoners violated a rule cannot meet this requirement.*

20. Rule 32(1). *Despite the requirement in the UNSMR that a medical officer must approve the restriction of diet as a punishment, it is increasingly the trend in regional instruments and national legisla-*

tion that the use of restricted diet as punishment is being prohibited. Rule 22(1) of the European Prison Rules (2006) allows only for a change in diet based on medical reasons. See also the Inter-American Commission on Human Rights (2002) Report on Terrorism and Human Rights, para. 161-162.

21. Rule 33

22. Art. 8 of the ICCPR. *This should be read together with Rule 71(1) of the UNSMR that work performed by prisoners must not be of an “afflictive nature”.*

23. A/HRC/13/39/Add.5 para 55

24. See section 97 - 98 and 100 to 102.

25. A/HRC/13/39/Add.5 para 157

26. See UNODC website at <http://www.unodc.org/unodc/en/justice-and-prison-reform/tools.html?ref=menu>

27. *This has been implemented successfully at South Africa’s 237 prisons in a cost effective manner.*

28. *A successful project in Sothorn Sudan (Juba Prison) was completed in 2010 where female prisoners were taught how to make reusable sanitary napkins. At <http://sites.google.com/site/padsforprison/>*

CLC

The Civil Society Prison Reform Initiative is a project of the Community Law Centre (CLC) at the University of the Western Cape and focuses on prisons and corrections, with the aim of improving the human rights situation in South African prisons through research-based lobbying and advocacy, and collaboration with civil society structures. By stimulating public debate and participation in government structures, the aim is to influence the development of appropriate human rights oriented prison reform.

ZHRC

The mission of the Human Rights Commission is to promote and protect human rights for all people in Zambia through investigations of human rights violations, rehabilitations of victims of human rights abuses, education of communities and advocacy for policy and legal changes influenced by evidence based research.



Pre-trial detention in Zambia:

Understanding caseload
management and
conditions of incarceration

On any given day around the world, about three million people are held in custody awaiting trial. During the course of an average year, 10 million people are held in pre-trial detention. Some of them are detained for a few days or weeks, but many will spend months or years in custody. It is common cause that conditions for pre-trial detainees are in most instances far worse than for their sentenced counterparts. Unsentenced inmates often have limited access to legal aid/legal defence, they receive little or no training or schooling and have little access to recreational activities. They also struggle to get access to medical treatment, reading material, bedding and exercise. The irony is that after spending lengthy periods of time in prison, a significant number of detainees are acquitted or, once convicted, given a noncustodial sentence. Compounding this situation in Southern Africa are broader problems of poverty, underdevelopment, the HIV/Aids epidemics, food shortages, social inequities, vast economic inequalities and, in some countries, political instability and conflicts, which place criminal justice and penal reform relatively low down on a list of pressing priorities for government, donors and civil society organisations.

Recognising these challenges, and in an effort to more fully understand the situation in respect of the use of pre-trial

detention in Southern Africa, the Open Society Initiative for Southern Africa (OSISA), in partnership with the Open Society Foundation for South Africa (OSF-SA) and the Open Society Foundations Global Criminal Justice Fund (GCJF) commissioned an audit of police station/court/prison precincts in Zambia to gather information on both the legal status of awaiting trial detainees and issues pertaining to conditions of incarceration in that country. A similar process was undertaken in Malawi and OSISA is exploring the possibility of conducting this research in both Zimbabwe and Mozambique.

The information contained in this report provides rigorously researched, empirical evidence which can be used to underpin future efforts by both government and civil society to influence legislation, policy and practice with a view to ensuring the appropriate use of pre-trial detention, promoting the speedy resolution of trials and improving prison conditions in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. OSISA also plans to explore how this information and the tools that were designed during the audit process might contribute to regional efforts in respect of criminal justice reform e.g. how might this research be used in the development of regional standards for the management of pre-trial detainees.