

**REPORT ON**  
**HUMAN SECURITY INITIATIVE (AHS1) 2**  
**CRIME AND CRIMINAL JUSTICE**  
**ZAMBIA PRISONS SERVICE**

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God bless.

Thank you

**R. Mungola**

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# TABLE OF CONTENTS

<b>ACRONYMS</b>	-	<b>Page (5)</b>
1. EXECUTIVE SUMMARY	-	5
2. INTRODUCTION	-	7
3. CHAPTER ONE HISTORY OF PRISON SERVICE	-	11
4. CHAPTER TWO PROBLEMS AFFECTING PRISON ADMINISTRATION	-	17

5. CHAPTER THREE		40
RECOMMENDATIONS	-	
6. CONCLUSION	-	44
7. END NOTES	-	46
REFERENCES		
8. ANNEXTURE	-	51

# ACRONYMS

AHS (1)	-	African Human Security Initiative.
AHS (2)	-	African Human Security Initiative (2).
NEPAD	-	New Economic Partnership for African Development.
APRM	-	African Peer Review Mechanism
AIDS	-	Acquired Immune Deficiency Syndrome
HIV	-	Human Immune Deficiency Virus

## **EXECUTIVE SUMMARY**

The Zambia Prison Service forms a sector of the broader Criminal Justice System, which strives to provide safe custody and efficient correctional services to inmates in order to contribute to Internal Peace and Security.

This review was found that the Zambia Prisons Service has operated under difficult conditions since its establishment in 1965, thus;

(a) Firstly, the infrastructure is old and dilapidated and this has led to overcrowding in prisons.

(b) Secondly the HIV and AIDS has added new dimension to challenges facing the Prisons Service. There are also cases of tuberculosis and other diseases in prisons, which affect some inmates. Although there are fifteen (15) medical clinics at prisons countrywide thirty-eight (38) prisons have no clinics and depend on local government hospitals for treatment

This has created a situation where health care services are inadequate and the HIV prevalence rate has risen to about 27% HIV/AIDS infections, and 15% sexually transmitted diseases. Although recent statistics were not made available to the researcher, the Prisons Needs Assessment Report for 2004 indicated that 2,397 prisoners and 263 prison staff had died of HIV/AIDS between 1995 – 2000. The infection rate for tuberculosis was over 5,285/100,000 as this figure is higher than the infection rate outside prisons.

Although the Prison Services as a well articulated HIV and AIDS Workplace Policy, lack of drugs in its clinics undermine its effectiveness.

The transport system in the prison service has been and continues to be a big problem. Although the government has begun to address the problems by providing vehicles to selected prisons, many Rural Prisons are still without transport.

Lack of training among the staff has created another problem of lack of capacity in discharging prison duties. There is inadequate human rights training at the Bothwell Imakando Prisons Training School, and this has put human rights observance in prisons into jeopardy.

The manpower levels in the Prison Service has not increased much since its inception. The staff strength of 1,856 is inadequate for efficient running of the service.

The Prison Service has a small budget of K34.1 billion for year 2007 and this has to support a workforce of 2,063, which includes support staff.

The salaries and other Conditions of Service are poor and do not compare well to the conditions obtaining in the other Defence and Security wings of the government. The morale of the officers is generally low and the majority feel marginalized.

Inmates are allowed to consult and speak to their lawyers and can write letters to family members. They also receive spiritual counseling. The conditions of female prisoners and juveniles need improvement.

The prisoners have received two blankets each and at the least eat two meals a day. The only issue is in the manner the food is prepared and the long time it takes to cook as a result of poor facilities.

This review has also highlighted some of the local prison compliments ranging from a diverse prisoner population, inadequate physical facilities and overcrowding. And Prison overcrowding violates the right to good life and security and further violates the right to health care because of an overburdened Health Care Service.

The Prison Service by its nature is inward looking and this makes prisons bleak and dangerous. And closed from outside influence prisoners can be abused and brutalized as human rights language is a new phenomenon.

A change of attitude by prison officers in favour of respect for human rights for prisoners will not be an easy task

The recommendations made out of this review hopes to give the Zambia Prison Service a real window of opportunity to make a difference towards development of a better understanding of the needs of prisoners with regard to access to Justice.

# INTRODUCTION

African Human Security Initiative (AHSI)<sup>2</sup> is a follow up project to the (AHSI)<sup>1</sup> which provided for a core network of African Non-Governmental Organizations that benchmarked the performance of eight States in Africa with regard to broad human security issues. The process served as complimentary to the commitments made by Heads of State During New Economic Partnership for Africa's Development.

The project purpose of AHSI (2) is to use the opportunity created by the peer review concept to complement the formal NEPAD/APRM process by focusing on the Criminal Justice System in selected countries identified for APRM review. And through this process AHS 1 (2) hopes to build capacity to undertake research that could facilitate work orientated towards the Peace and Security Council of the African Union.

## **2. The aims of AHS 1(2) project are :**

- (a) To complement the work of the African Peer Review Mechanism in areas not covered by it and to mimic the formal APRM process.
- (b) To provide government with evidence on the States of Criminal Justice and its impact on political processes in the country.

- (c) To identify structural and other inherent weaknesses in Criminal Justice System with a view to encourage dialogue and consolidation of democracy.
- (d) To support the development and build capacity among Core Criminal Justice partners handling crime and Justice matters.

The Zambia Prison Service is one of the Criminal Justice Sectors identified for review.

### **3. ZAMBIA PRISONS SERVICE**

It would be correct to state that the Zambia Prison Service is as old as Zambia itself and that there have been many negative reports pertaining to life in prison. While the democratic dispensation is being advanced through the propagation of rule of law, prison conditions are still being perceived as life-threatening and degrading. The preamble to the Zambian constitution is anchored on the fundamental principles of justice, democracy and the rule of Law, prison conditions are still being perceived as life-threatening and degrading<sup>1</sup>.

The preamble to the Zambian constitution is anchored on the fundamental principles of justice, democracy and the rule of Law<sup>2</sup>. The constitution also contain the National Bill of Rights which should be enjoyed by all citizens including prisoners<sup>3</sup>. To this effect, Article 18 of the constitution is devoted to Criminal Justice concepts which are to be observed by the authorities when handling persons who transgress the law. A standing position is that prisoners are entitled to special rights while in custody and among these are;

(i) To enjoy conditions of detention that are consistent with human dignity. And where the imprisonment is unlawful the prisoner should be released.

To be accorded good food and good health

- (i) And generally to be accorded conditions of imprisonment consistent with the United Nations minimum standards in the treatment of prisoners or detained persons.
  
- (ii) And further, prisoners should not be subjected to inhuman or degrading treatment<sup>4</sup>.

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## 4. **PROBLEM RESEARCH**

The problem that arises from the above scenario is one of reflecting how prisoners should be treated at all times applying a specific code. The specific challenge is whether or not prisoners are treated in accordance with Universal human rights standards. If not, what could be the cause of such lapses? The answer to the above problem was the subject of this research.

## 5. RATIONALE

To research into and identify capacity problem areas in the management of prisons in Zambia and recommend possible solutions where necessary. The understanding was that even where abundant resources both financial and human were not available, there were minimum and universally agreed standards in the treatment of prisoners, which should be adhered to. The factors, which prohibit prisoners from being treated humanely, would be explored and reforms proposed.

## 6. MANDATE OF THE RESEARCH

The research was aimed at answering three thematic questions :

- (a) Does the actual situation in the conditions of prisons in Zambia and treatment of prisoners reflect respect for human rights and dignity?
- (b) Are international principles for the protection of all persons under detention or imprisonment complied with? and

(c) What are the needs of vulnerable prisoners, females and juveniles?

## 7. **METHODOLOGY**

A combination of approaches were used to collect the data for this study.

### (i) **Desk Research**

- Review documents with regard to legal framework and policy postulates.

- Request and examine institutional reports and other documents from relevant and appropriate stakeholders (Catholic Commission for Justice and Peace, Young Women Christian Association, Human Rights Commission).
- Draw out international and regional instruments relevant to prison service .
- Examine statistics from Central Statistics Office and other media reports.

(i) **Interviews**

Open-ended interviews were conducted with appropriate respondents who supplied relevant data.

(ii) **Focus Group discussions**

A questionnaire was used for the focus groups and the qualitative method was used for the face to face interviews.

## 8. SCOPE OF THE RESEARCH

a) The research was confined to matters affecting the Zambia Prison Service with emphasis on the treatment and general welfare of prisoners. And of great interest was the treatment of special and vulnerable groups such as Women and Children (Juveniles).

The sample areas were Lusaka, Mukobeko prison, Kitwe Kanfinsa and Livingstone Prisons.

(c) Public opinion on prison conditions was also solicited.

## 9. KEY INFORMANTS/ RESPONDENTS

The following institutions were ear-marked for data collection;

- Human Rights Commission
- Catholic Commission for Justice and Peace.
- Law Association of Zambia (Human Rights Committee).
- Young Women Christian Association.
- Legal Resources Foundation.
- Prisons Head Quarters

- Ministry of Justice
- Ministry of Home Affairs
- Zambia Prison Fellowship
- The Public
- International Organization for Migration
- Prison Care and Counseling Association

## 10. CHALLENGES

Authority to obtain desired data from targeted prisons was not granted until the 17<sup>th</sup> September 2007, five days before the official date for the submission of the final report came to a close

## 11. LAYOUT OF THE REPORT

The report is descriptive and yet in formative as it is a situation findings report.

The main features are;

- (i) An Executive Summary, introduction and Chapter One on the history and constitutional framework of the Prison Service.

- (i) Chapter Two is a discussion of research findings on problems affecting prisons.
- (ii) Chapter Three is a discussion of specific recommendations.
- (iii) And a conclusion.

# CHAPTER ONE

## HISTORY OF ZAMBIA

12. The Zambia Prison Service has a rich colonial history dating back to early 1879 when Robert Corydon a colonial Resident Officer at **Lealui** created the Barotse Native Police.<sup>1</sup> Under the Barotse Native Police, the officers were empowered to;

“Adopt such measures as may be necessary for the safe custody and conveyance of all prisoners”.<sup>2</sup>

In May 1990, the North-Eastern Rhodesia Order-in-Council was promulgated and defined areas providing for the formation of the Police Force which was known as North-Eastern Rhodesia constabulary.<sup>3</sup> This constabulary was formally established in 1904 under Part III, 20, of Northern Eastern Rhodesia Order-in-Council and among its duties were;<sup>4</sup>

On 16<sup>th</sup> July 1912 in Cape Town South Africa, the Northern Rhodesia Prisons Proclamation 1912 was formulated and assented.<sup>7</sup> This proclamation came into force in Northern Rhodesia on 9<sup>th</sup> November, 1912 and published in Government Gazette No.11 Vol. 2<sup>8</sup> The purpose of the proclamation was for the establishment of prisons in Northern Rhodesia and for the control, superintendence and maintenance of discipline in prisons

And Section 3 of the proclamation empowered the Administrator to appoint a Superintendent or Keeper of the prison and under Section 3 (d) every Prison Officer while acting as such will have all the power, authority protection and privilege of a Police Officer.<sup>9</sup>

This power was strengthened on 30<sup>th</sup> December, 1912 through Government Notice No.14 Vol. 2 which provided for the governance and maintenance of Prisons in Northern Rhodesia.<sup>10</sup> The proclamation also contained determinants of what would be called Central and Local Prisons. The determinations of prisons were as follows;

(i) (i) Any prisons situated at the Chief Station or Boma of any District was to be a Central Prison.

- (i) Any prison situated at the Chief Station or Boma of any Sub-District or Division of any District was to be a Local Prison. In this regard, Central Prisons were intended for the imprisonment of:
  - (a) European Prisoner convicted within the District irrespective of the length of sentence imposed.

- (b) Prisoner other than European convicted within the District and sentenced to more than six months imprisonment.
  
- (c) Prisoner other than European convicted by a court having jurisdiction but at the place where such Central Prison was situated and sentenced to imprisonment for six months or less. The Local Prisons were intended for the imprisonment of;

“Prisoner other than Europeans convicted in the Sub-District where such prison was situated and sentenced to imprisonment for six months or less”.<sup>11</sup>

The Prison Rules and Regulations, which were later, formulated provided for;

(i) Returns

(ii) Visiting Justices

(iii) Offences and punishments

(iv) Remission for good conduct, which would be earned by every criminal under a first sentence of imprisonment for more than six months through conduct and industry.

The administration of a unified Northern Rhodesia continued to vest authority in the hands of the British South African Company whose policy then was to leave prison administration and management in the hands of the police.<sup>12</sup>

In April, 1925 under Minute No. 50/414/1925 of 6<sup>th</sup> April, 1925, the Secretary of the Prisons Board proposed the creation of a separate Prison Department and that the Northern Rhodesia Police should take over the Management of Prisons. It was in 1931 that Captain P.R. Wardroper became the first officer to hold the title of Commissioner of Prisons.

## **13. FEDERATION OF RHODESIA AND NYASALAND, 1953**

In the year 1953, the Federation of Rhodesia and Nyasaland was formed with headquarters in Salisbury, Southern Rhodesia.<sup>13</sup> This led to the Federal Prisons Service with its headquarters at CAUSEWAY, Salisbury, in Southern Rhodesia.<sup>14</sup>

The Northern Rhodesia Prisons Services was dissolved on the 30<sup>th</sup> of June 1954 when it ceased to be a service. The control of the Northern Rhodesia Prison Service under dissolution returned to the territorial administration on 1<sup>st</sup> December 1963 with Headquarters at Coronation Flats in Broken Hill (Kabwe).<sup>15</sup> At the very establishment of the Northern Rhodesia Prisons Service, the prison service had begun to experience teething problems and most prominent of these was overcrowding and lack of prison accommodation.

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Thus there was a real danger of a serious breakdown of discipline caused by the shortage of experienced staff, overcrowding, poor conditions and the lack of suitable occupation of prisoners.<sup>17</sup>

The Prisons Annual Report for 1964 highlighted problems facing the Prison Service as <sup>18</sup>;

- No Headquarters organization
- The subordinate staff were inadequate and many were untrained
- Prison accommodation was seriously overcrowded due to the large number of persons in custody.

- Basic necessities such as blankets, clothing and other equipment practically non-existent.
- Discipline of staff and prisoners was not good in general, the prison system presented problems, which, seldom if ever were met or solved.

In 1965 the Prison Service was Zambianized and the command of commissioners O.V. Garrant, W.J.W Burton and R.N. Bowers were terminated and replaced by B. Imakando on 18<sup>th</sup> August 1966 and J.M. Mwanza on 1<sup>st</sup> March 1971.<sup>20</sup>

## **14. THE CONSTITUTIONAL AND LEGAL FRAMEWORK OF THE ZAMBIA PRISONS SERVICE.**

The Zambia Prison Service is established under Article 106 of the Constitution of Zambia Chapter 1 of the Laws of Zambia.<sup>21</sup> Its main constitutional functions are elaborated under Article 107 of the Constitution supported by Chapter 97 of the Laws of Zambia.<sup>22</sup> The Prisons Act is supported by the Prisons Rules that were set out in 1966 and the Prison Standing Orders of 1968.<sup>23</sup> There are Prison Service Principle Guidelines which articulate in some detail the services goal statement and the overall mission for the Ministry of Home Affairs

<sup>24</sup>And within the Ministry of Home Affairs, the Prison Service works closely with the Drug Enforcement Commission, National Registration, Passport Office and Citizenship, Registrar of Societies and Commissioner for Refugees. The Zambia Police Force and Zambia Prison Service are twin departments because they have a common origin.<sup>25</sup> Former Commissioner Jethro Mumbwa pointed out in his historical profile of the Prisons Service and stated,<sup>28</sup>

“ The embryonic stage of the Prison Service is characterized by the common source of origin with the Police Force and therefore sharing the same common historical background. It is a fact that the Prisons Service in Zambia originates from the Zambia Police Force”<sup>27</sup>

There are 53 prisons scattered in 53 districts of Zambia supported by 33 Open Air Prisons in the country.<sup>28</sup>

In 1964 when Zambia achieved political independence, the prison population stood at 4000.<sup>29</sup> By 2000, the prison population was standing at 13814.<sup>30</sup> And as at 21<sup>st</sup> September, 2007, the DAILY UNLOCK REPORT gave a figure of 13,401.<sup>31</sup> It is important to note that even with the command of Prisons Service Zambianized, the road traveled by the Prisons Service in its administration has never been smooth because of problems left over by the colonial Prisons Command. And one of such problems is the Prison Staff Establishment, which has remained unchanged despite the many challenges the service was facing.<sup>32</sup>

The staff establishment has not increased much since inception when it stood at 1800 personnel and currently it stands at 1856 personnel.<sup>33</sup> The Commissioner expressed serious concern that many problems facing the service result from lack of financial resources to fully support the operations of the service.<sup>34</sup> According to the Commissioner, the Prison Service budget has for many years been small.<sup>35</sup> The implication has been that the service could not recruit adequate manpower and the ratio of staff to that of prisoners remains at 1-4, thus one prison warder policing four prisoners.<sup>36</sup>

<b>REGION</b>	<b>CONVICTED</b>	<b>UN- CONVICTED</b>	<b>PROHIBITED IMIGRANTS</b>	<b>CONDE-MED</b>	<b>M/J/REMANDEE</b>	<b>M/JCONVICT</b>	<b>H/E/P</b>	<b>TOTAL</b>
<b>CENTRAL</b>	<b>1873</b>	<b>356</b>	<b>1</b>	<b>191</b>	<b>5</b>	<b>1</b>		<b>2427</b>
<b>COPPERBELT</b>	<b>2177</b>	<b>892</b>	<b>60</b>	<b>10</b>	<b>35</b>	<b>4</b>	<b>7</b>	<b>1854</b>
<b>LUSAKA</b>	<b>641</b>	<b>1060</b>	<b>95</b>	<b>6</b>	<b>41</b>	<b>4</b>	<b>19</b>	<b>1375</b>
<b>SOUTHERN</b>	<b>866</b>	<b>353</b>			<b>21</b>	<b>116</b>	<b>19</b>	<b>1375</b>
<b>N/WESTERN</b>	<b>433</b>	<b>232</b>	<b>2</b>		<b>7</b>			<b>674</b>
<b>NORTHERN</b>	<b>658</b>	<b>454</b>	<b>9</b>		<b>15</b>	<b>16</b>		<b>1152</b>
<b>LUAPULA</b>	<b>331</b>	<b>219</b>	<b>10</b>		<b>11</b>	<b>1</b>		<b>572</b>
<b>EASTERN</b>	<b>734</b>	<b>296</b>	<b>11</b>		<b>8</b>		<b>1</b>	<b>1050</b>
<b>WESTERN</b>	<b>647</b>	<b>441</b>	<b>16</b>		<b>5</b>	<b>8</b>	<b>1</b>	<b>1118</b>

## CHAPTER II

### 15. PROBLEMS AFFECTING PRISONS ADMINISTRATION

The birth of the Zambia Prisons Service in 1964 brought with it some of the problems the Prison Service is facing today. These problems include<sup>37</sup>

- (i) Shortage of manpower
- (ii) Lack of training facilities
- (iii) Lack of prison buildings and walls.
- (iv) Lack of secure devices and equipment .
- (v) Few Prisoners rehabilitation programme.

The current problems affecting the Prisons Administration are discussed here under;

## **OVERCROWDING IN PRISONS.**

The majority of Prisons in the country are overcrowded and this is a problem inherited from the Colonial Prisons Administration.<sup>38</sup> From the Prisons Needs Assessment report of April 2004, prisons overcrowding is one of the most serious and critical challenges facing the Prison Service.<sup>39</sup> As at 21<sup>st</sup> September, 2007, the Daily UNLOCK figure for all prisons in Zambia stood at 1,3401<sup>40</sup>.

as also shown on table 1. In its REPORT ON PRISON VISITS TO CENTRAL PROVINCE, the HUMAN RIGHTS COMMISSION observed that the prison population has increased from 3, 000 prisoners in 1964 to 14, 427 as at 29<sup>th</sup> August 2005.<sup>41</sup> The break down was as follows;<sup>42</sup>

- 8,568 convicted prisoners  
4,938 remand prisoners
- 273 condemned prisoners
- 25 prohibited immigrants
- 79 convicted juveniles.
- 230 remand juveniles.

Although the population of prisoners had increased almost five-fold, there was no physical extensions to the many prison buildings and this has caused endemic overcrowding in prisons

## EXAMPLES OF OVERCROWDING IN PRISONS

A) **TABLE 2:** Kabwe Medium Prison as at 21<sup>st</sup> Sept 07

535	UNLOCK
458	Male Convicts
01	Male Remandees
01	Male Juvenile Convict
20	Male Remandees
12	Foreign National Convicts
40	Open Air Rural Bond
	Open Air (Ranch Farm)

**B) TABLE 3: Mukobeko Female Prison as at 21<sup>st</sup> Sept 07**

53	UNLOCK
42	Convicted Female
01	Female Juvenile Remand
05	Female Remand
04	Lifers

**C) TABLE 4: Mukobeko Maximum Prison Daily  
Unlock was 1142 as at 21<sup>st</sup> Sept 07**

1498	UNLOCK
1004	Male Convicts
422	Male Remandees
11	Female Convicts
20	Female Remands
01	Female Juvenile Remands
01	Female Presidents pleasure Remandees
02	Male Juvenile convicts due for transfer

**E) TABLE 6: Livingstone Prison as at 21st Sept 2007**

446	UNLOCK
318	Male convicts
81	Male Remandees
8	Male Juvenile Remands
5	Female Convicts
1	Female Juvenile Convict
19	Male Presidents Pleasure

**F) TABLE 7: Lusaka Central Prison as at 19<sup>th</sup> Sept 07**

995	Unlock on 17 <sup>th</sup> September 2007
994	UNLOCK on 19 <sup>th</sup> September 2007
213	Convicted Males Prisoners
74	Female Remandees
22	Convicted Females
26	Juvenile Remandees 2 Females, 24 Males
888	Male inmates
73	Female inmates

**G) TABLE 8: Kamwala Remand Prison 19<sup>th</sup> Sept 2007**

551	Male inmates
0	No Female
21	Juvenile

Although there are signs of reduction in numbers of prisoners in prisons studied in this research, the prison population countrywide is still very high and the prisons are still overcrowded.<sup>43</sup> The prison population of 994 at Lusaka Central Prison<sup>44</sup> and 551 at Kamwala Remand Prison was unacceptably high and these prisons are still congested.<sup>45</sup>

# **14. CAUSES OF OVERCROWDING IN PRISONS**

## **1. INADEQUATE INFRASTRUCTURE**

Human Rights Reports dating 2002 to 2005 on selected prisons have brought out evidence that inadequate accommodation space resulting from old and unexpanded infrastructure has caused congestion in prisons.<sup>46</sup>

The Director at the Human Rights Commission has also stressed this point with the researcher during interviews in June 2007.

Zambia Prisons Needs Assessment Report for 2004 also highlighted lack of adequate accommodation as a critical factor accounting for congestion in prisons.<sup>48</sup> In his research on causes of congestion in Zambia Prisons, May 2007 CHRISANTOS KATEULE CHANDI made a finding that inadequate prison infrastructure greatly contributed to overcrowding in prisons.<sup>49</sup>

This view has also been stated by Professor Alfred Chanda in his research on Prison Conditions in Zambia 2007. Many respondents in the current research have emphasized that overcrowding is caused by among other factors inadequate infrastructure.

The Government of Zambia has itself acknowledged the fact that the Zambia prisons are overcrowded and the situation is potentially a health risk. The Permanent Secretary Ministry of Home Affairs has attributed prison congestion to the delay by the Criminal Justice System in disposing off cases at court.<sup>50</sup>

He argues that the Judicial Systems should be improved so as to speed up the conclusion of cases on remand so that prisons can be decongested.<sup>51</sup> He disclosed that Zambia had a prison population of about 15,000 inmates who occupy space for 4,000 inmates.<sup>52</sup>

## **2. CASE FLOW AND ADJOURNEMENTS**

Poor case flow management has also been cited as causing overcrowding in prisons. For example

- (i) Edith Munjita was facing a murder charge. She has disability in speech and for one (1) year she had not been to court for lack of a sign language interpreter to help her during trial.<sup>53</sup>

ii) Jeremiah Lupula Mukoshi had complained to the Human Rights Commission who visited the prison that he had been waiting for his appeal to the Supreme Court for 14 years but the appeal has not been heard. He has given up hope that he would ever get Justice from Court.<sup>54</sup>

(i) The President has also indicated that unnecessary case adjournments cause overcrowding and result in unfair trial of the accused.<sup>55</sup>

The President further alluded to the problem of Sodomy and HIV/AIDS in prisons resulting from overcrowding.<sup>56</sup>

Some remandees were kept in prison without warrants and this has added to the problem of overcrowding in prisons. In its report for Central Province in 2005 the Human Rights Commission indicated that 78 remandees were kept on expired warrants at Mpima Prison and were illegally detained.<sup>57</sup> And Christantos K. Chandi has made an additional finding that out of seven hundred (700) remandees at Kamwala Remand Prison about half (300) of them do not attend court.<sup>58</sup>

He disclosed further in an interview with this Mission that some remandees go to court but their cases are not called and heard. In some cases these remandees do not go to court and remain in prison.<sup>59</sup> Although shortage of Magistrates in some local districts increase opportunities for congesting prisons the general management of cases was often slow and this has an effect on the welfare of prisoners.

(i) The researcher has discovered an incident where remandees were revolting against Prison and Police authorities in Kabwe for detaining them on expired warranties.

(i) Corruption among some of the access to Justice personnel or institutions cause delays in the management of cases and create congestion in prison. The Legal Resource Foundation Lusaka Office, have reported the case of JOSEPH ZIMBA Vs THE PEOPLE whose facts were as follows;

The accused was arrested on the 7<sup>th</sup> October 2006 by the Drug Enforcement Commission for illegal possession of fake United States dollars amounting to 4,000. He was remanded at Kamwala Remand Prison as he failed to raise K2m for his bail. From the day of his detention, he had not gone to court for trial. He complained that officers from the Drug Enforcement Commission have demanded or solicited for K2m from him in order to close the case. He has failed to raise the K2m demanded by the officers and has remained in prison.<sup>60</sup>

## 16. LACK OF SLEEP, UNIFORMS AND FOOD

Overcrowding in Zambian prisons has brought about other problems that impact negatively on the welfare of prisoners.

- (a) Lack of sleep as result of overcrowding has emerged as one of the biggest problems facing prisoners. AT both Mulobeko and Lusaka Remand Prisons, prisoners sleep on the floor and other sleep while standing.<sup>61</sup>

Beddings such as mattresses and blankets are still in short supply in most prisons. Food is still inadequate both in quality and quantity.<sup>62</sup> The pattern had been that inmates take meals once a day at 15:00 hours and on occasions they would have meals twice in a day and it would be without breakfast in the morning. The diet is normally nshima with Kapenta or beans.<sup>63</sup>

There is no balanced diet. The point being made is that until recently inmates have had no blankets and lacked good sleeping facilities.

However, the research has discovered that the government has begun to take measures to redress the problem of both food and blankets, On the 21<sup>st</sup> August 2007, the Zambian government procured 30,000 blankets for inmates countrywide at a cost of K1.1 billion.

- In handing over these blankets to the Commissioner of Prisons Permanent Secretary for Home Affairs described the conditions in prison as pathetic when prisoners slept on the floor and in most cases without blankets. According to the Permanent Secretary, the blankets would be distributed to 13,000 inmates, meaning that each inmate would have two blankets. The blankets were supplied by Kariba Textile Industry. The inmates have been promised 30,000 tablets of soap and toiletries.

On a visit to Lusaka Central Prison, on the 22<sup>nd</sup> August, 2007 the researcher found prisoners being issued with blankets and the prison superintendent confirmed in follow-up interviews that prisoners have been issued with two blankets each. The situation was similar to Kamwala and the other prisons situated in the provinces.

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## 17. HIV AND AIDS IN PRISONS

- The HIV and AIDS pandemic and other sexually transmitted diseases including Tuberculosis are the most dangerous diseases faced by prisoners as a result of overcrowding in prisons.<sup>64</sup> The Director at the Human Rights Commission stated in an interview that Tuberculosis and scabies were common or prevalent in prisons because of overcrowding.<sup>65</sup> This was also confirmed by the Human Rights Commission Report for Central Province which indicated that HIV/AIDS and Tuberculosis were prevalent and posed a great danger to the lives of prisoners.<sup>66</sup>

- There are about 13401 inmates lodged in Zambian prisons on a daily average.<sup>67</sup> The National Prisons survey of HIV and AIDS risk behaviours and seroprevalence (1999) 27% of inmates living in prisons were found to be HIV positive while 15% had sexually transmitted infections.<sup>68</sup> In periods between 1995 and 2000, 2,397 inmates and 263 prison staff died of Aids related illnesses in the country's prisons.<sup>69</sup>

The major risk behaviour for HIV transmission identified in prisons include unprotected sex between men inmates (Sodomy) tattooing, injecting drug use and sharing of shaving instruments.<sup>70</sup>



- The President has also expressed concern that there was a lot of Sodomy in prisons resulting in other inmates contracting HIV/AIDS.<sup>71</sup>

At an HIV and Aids Sensitization Workshop for inmates at Namuseche Prisons in Chipata, a Senior Superintendent, of Prison who was a respondent in this research informed the participants that the HIV/AIDS prevalence rate among the inmates was high compared to people in communities.<sup>72</sup> The officer attributed the increase in the prevalence rate of HIV and AIDS in prisons to overcrowding.<sup>72</sup>

While the HIV and Aids pandemic has been acknowledged as a serious health problem in Zambian prisons, prison clinics lacked drugs and in some prisons, there were no clinics to offer appropriate medication to inmates infected with the virus.<sup>73</sup>



## For Example:

- On the 9<sup>th</sup> March 2007 superintendent Patrick Nawa reported to Justice Rhoda Kaoma that prisoners in some selected prisons in Southern Province who were on ART were not receiving food packs to supplement their daily meals.<sup>74</sup> Mr. Nawa further confirmed that there was shortage of food and drugs at Choma Prison because the supplier had not delivered the required food and drugs. A similar situation was reported at Kamfinsa in Kitwe as can be seen from Box One.

## **BOX ONE**

The Officer-in-Charge for Kamfinsa prison Mr. Wilson Mbewe stated that there were no drugs in the clinic at Kamfinsa. He confirmed to Judge Evans Hamaundu during the opening of criminal sessions for Kitwe on 13<sup>th</sup> August, 2007.

- However the Zambia Prisons Services do not exist in isolation and as such several people including staff and inmates move in and out of prison. The need to prevent and protect both inmates and staff working in prisons from catching the diseases is more pronounced than for those living outside prisons. The HIV and AIDS Policy postulates for the Zambia Prisons Services is therefore to address problems of HIV and AIDS including sexually transmitted diseases in prisons.

This research has discovered that the Zambia Prison Service has an elaborate HIV and AIDS/STI/TB Workplace Policy whose main objective is to prevent transmission of HIV and AIDS and other related infection diseases.<sup>91</sup> The Policy outlines the rights and responsibilities of prison officers and inmates in relation to HIV and AIDS, The vision of the Prison Service is to maintain;



## **“A prison Service free from the threat of HIV and AIDS”.<sup>92</sup>**

The Policy covers even members of staff and their families. The Director for International Relations and Corporate Affairs has confirmed that about 102 inmates have been put on Anti-Retroviral Therapy (ART) treatment countrywide.<sup>93</sup> The policy is rested on the observance of the right to Health for both inmates and officers.<sup>94</sup>

At the 77<sup>th</sup> Agriculture and Commercial Show which was held in Lusaka from 31<sup>st</sup> July to 4<sup>th</sup> August 2003, the Prison Service made a unique display which was exhibited at the show called the **“IN BUT FREE” PROJECT.**<sup>95</sup>

The Show attendants had an opportunity to listen to officers who are HIV Co-Coordinator and prisoners who are peer educators on the benefits of the project to inmates in combating HIV and AIDS in prisons.<sup>96</sup> A good number of NGO such as the Prison Fellowship are facilitating peer education and counseling to inmates to help them reform and learn more about HIV and AIDS.<sup>97</sup> Mr. Daniel Chiwela stressed that with prisoner population of 14,400 inmates as at 13<sup>th</sup> July 2007 the HIV/AIDS Policy was expected to be successful and lower down on the prevalence rate.<sup>98</sup>

The Prisons Act has been amended to legally introduce a Medical Health Care Programme which would cover inmates and staff . In particular, Section 16 of Act No. 16 of 2004 establishes a Prison Health Service whose purpose shall be to provide and administer health care within the service.<sup>99</sup> Under Section 16A (1) of Act No.16 of 2004, the Commissioner of Prisons is empowered to appoint a Director of Health on the advise of the Minister of Health.<sup>100</sup> The Director of Health shall be responsible for the efficient and effective day to day administration of the Prison Health Services.

- Under Section 17A (1) of Act 16 of 2004, the Commissioner of Prisons has been legally empowered to appoint Medical Officers for each prison to take care of the health of prisoners.<sup>101</sup> Arrangements are being made to employ a medical doctor and his staff.<sup>102</sup> In the meantime critical cases of illness involving prisoners are attended to at government clinics and hospitals. However lack of drugs in prisons clinics undermine the effectiveness of HIV and AIDS Policy and the right to medical care is infringed.



## 18. TREATMENT OF WOMEN IN PRISON

- In the Prison Service, all prisoners are classified at the time of admission in accordance with S. 60 (1) of the Zambia Prison Act CAP 97 of the Laws of Zambia. The main classification is that of male and female prisoners and that they should be lodged in separate prison accommodation.<sup>103</sup> This separation is important as a measure to protect female prisoners from indecent assault and abuse. Assistant Commissioner Percy Chato has indicated that the population of female prisoners in Zambia is about 2.8% of the total prisoner population. The treatment of female prisoners take into account a good number of considerations such as;

- (i) female prisoners are supervised by female
  - prison officers.
- (ii) Female prisoners should be kept separate
  - from male prisoners.
- (iii) Female prisoners should be allowed visitors or relations in addition to receiving letters from their children.<sup>104</sup>

In elaborating on the above good practices in the treatment of female prisoners. Assistant Commissioner confirmed that pregnant female prisoners are provided with pre-natal and post-natal care.<sup>105</sup> They are provided with baby clothes and other necessities at government expense.<sup>106</sup> In the case of female prisoners who are mothers and come into prison with their infants, these would be allowed to keep their infants with them in prison until they are four (4) years old.<sup>107</sup> The difficulty is that most prison structures were built for male prisoners and female prisoners structures are improvised ones.<sup>108</sup>

(vi) The custody of women prisoners in Zambia has presented a special problem for prison administrators even when they constitute a small number of the prison population. In 2004 female prisoners were totaled at 375 and this reflected 3% on the whole prison population.<sup>109</sup>

The problem starts with the facts that the majority of prisons in Zambia were built for males only and not females. As a result of this, most prison structures did not provide for female facilities.<sup>110</sup> In a REPORT ON THE PRISON AND POLICE CELLS VISIT by the Human Rights Commission for Lusaka Province dated June 24, 2004 the Commission reported that it found mothers with infants as young as two days old at Lusaka Central Prison sharing the same facilities with other inmates.<sup>111</sup>

A similar situation was reported by the Human Rights Commission in the 2005 Report on Central Prison where Seven (7) children were found with their mother inmates

- The inmates totaled (55) at the time of the Commission's visit to the female Section of Mukobeko Maximum Security Prison in June 2005.<sup>113</sup> However, the difficulties faced by female inmates are generally acknowledged, Deputy Director for Public Relations has indicated that female inmates who give birth while in prison often come into prison with pregnancy from outside.<sup>114</sup> These are provided with pre-natal and post-natal care, including baby clothes, although not enough.



[Researcher found two female inmates with babies each and said they were fine].



## **19. CHILDREN/JUVENILE IN CONFLICT WITH THE LAW**

The United Nations Guidelines for the Prevention of Juvenile Delinquency adopted by the United Nations in Riyadh, Saudi Arabia in 1988 and the Beijing Rules adopted in China, in 1985 all work to offer fair and humane treatment of children who come into conflict with the Law.<sup>115</sup> Although the Beijing Rules are not binding on States, the Zambia Prison rules reflect a great deal of the U.N Standard Minimum Rules for the Treatment of Prisoners especially children who should be separated from adults and receive the necessary care protection and assistance.<sup>116</sup>

- Zambia has ratified the United Nations Convention on the Rights of the Child, although she has not domesticated its provisions. The convention on the Rights of the Child is an umbrella for the Beijing, the Riyadh Guidelines and the U.N Rules for the Protection of Children deprived of their liberty. In all this, the principle that the best interest of the child be observed runs through the understanding found in Art.17 of the African Charter on the Rights and Welfare of the child which states that;

- “A child accused or found guilty of having committed a crime must have a right to special treatment in a manner consistent with the child dignity and worth”.<sup>117</sup>
- 
- It would therefore be a valid argument to state that detention before and after trial of a child in conflict with the law should be avoided unless exceptional circumstances exist.<sup>118</sup>

- In Zambia fundamental human rights provisions are contained in Part III of the Constitution. It is acknowledged that children are expected and are in fact entitled to enjoy the full range of rights elaborated in the National Bill of Rights.<sup>119</sup> IN particular children have a right not to be tortured or not to be subjected to degrading or inhumane treatment.<sup>120</sup>

- However in many of its visits to some prisons in Zambia, the Permanent Human Rights Commission have reported incidents of Juvenile prisoners who have been put in one cell with adults.<sup>121</sup> The point was made clear when Minister for Central Province Mr. Sydney Chisanga visited Mukobeko Maximum Prison in Kabwe in April 2006 and found ten (10) Juvenile convicts sharing cells with hardcore convicted prisoners.<sup>122</sup> During the Minister's tour of the prison, inmate by the name of Chimbala complained to the Minister that;

- (i) the diet was poor because they were fed on beans for months.
- (ii) that they have had no break fast for about Seven (7) months.
- (iii) And have only one meal per day.
- (iv) that there were rampant cases of Tuberculosis and HIV/AIDS.
- (v) that the prison staff asked them to pay K4,000 when they needed x-ray services.<sup>122</sup>



The Juvenile prisoners are ill-treated and are often indecently assaulted, and thus violating their right to human dignity.



- The position is that there are no adequate facilities in prison for children who find themselves in conflict with the law or those who come into prison with their mothers.

The children endure the same conditions as their mothers including children who were born while mothers were in prison. When the parents go to court, these children languish with hunger and lack of care. This situation is worsened by the lack of Day-Nursery schools in prisons, which could reduce the level of suffering by these children.

## **20. CRUEL AND INHUMAN TREATMENT OF INMATES**

An exp-prisoner who spent four years at Mukobeko prison has indicated that cases of beatings and cruel treatment of prisoners do occur but these are normally not reported to Higher Prison Authority.<sup>124</sup> In a situation where an incident has been reported to authorities, no action would be taken. For example;

(i) Paul Kaputu was sentenced to 18 months in prison at Milima Prison Kasama. On the day he was tortured by a Prison Officer, Paul Kaputu was accused of attempting to escape and was whipped with sjambok. The prisoner sustained a fractured knee and had to be transferred from Kasama to Lusaka to enable him attend specialist treatment at the University Teaching Hospital.<sup>125</sup>

(i)The Catholic Centre for Justice Development and People Report on Para-Legal Best Practices Study reported the following incident and quote.<sup>126</sup>

“In 2004, prisoner Mbita in company of other inmates were taken to Mungulube Open Air Prison. He reminded the warder that he needed to attend treatment at Mansa hospital. The warder refused to grant Mbita permission to attend treatment and they quarreled. The warder then beat Mbita with a steel hoe handle and sustained a fractured back bone. The warder has since paid Mbita compensation of K1million to be paid in installments.

(iii) On 12<sup>th</sup> June 2007 CHAIRPERSON of the Human Rights Commission reported that prisoners were being tortured at Mufulira Prison on the Copperbelt.<sup>127</sup> The Commission highlighted a case of a prisoner who had been beaten using a hoe-handle and poured dirty water on him.<sup>128</sup> The Commission had found many cases of ill-treatment of persons deprived of their liberty at Mufulira. The prisons authorities denied that the incident ever occurred and accused the Human Rights Commission of misrepresentation.

<sup>129</sup> Former Commissioner of Prisons was unhappy with the allegations of torture at Mfulira prisons and he instituted a high level team to investigate the matter. He personally led the team and the findings are being discussed.<sup>130</sup> There is evidence that incidents of ill-treatment of inmates do occur except that prisons authorities often deny them. Prisoners are often intimidated

## **BOX TWO: CASE OF CRUEL AND INHUMAN TREATMENT**

A prison warder named Moffat Chifwele from Chondwe Open Air Prison in Ndola appeared in Ndola Magistrate with grievous bodily harm for beating Davies Nyirenda a convict. He used a stone to pummel Nyirenda and he is now on wheel chair. He is one of the prisoners released from prison through the Presidential Pardon. He was accused of attempting to escape from custody. The warder has appeared in court before Magistrate Chilombo Phiri of

### **BOX 3: A COURT DECISION**

In the Ireland Vs. United Kingdom case the Court held inhuman treatment to be that treatment which deliberately causes severe mental or physical suffering. And further that degrading treatment is that which arouses in its victims feeling of fear anguish and inferiority capable of humiliating or debasing them.

## **BOX 4: RESPONSE FROM INMATES**

“Sishekano Lubinda who is serving imprisonment for aggravated robbery said, the attitude of certain officers towards prisoners is oppressive”. He suggests prison officers be educated on human rights so they can look at inmates as their fellow human beings while the case is on.

## 21. ABUSE OF PRISONERS

There has been general reports of abuse of prisoners especially in North-Western Province where prisoners are made to dance in public to entertain people.<sup>131</sup> On the 26<sup>th</sup> May 2007 the Permanent Secretary for North-Western Province directed the Prison Service in Kabompo to stop using Prisoners to entertain members of the public by dancing in Makishi Costumes. Some of the prisoners who were dancing in Makishi costumes have never been to Mukanda Ceremony and this was a serious cultural offence against the Luvale people of North-Western Province.<sup>138</sup>

The President had also directed the Prisons Service not to abuse prisoners by engaging them to grow vegetables, maize or any other manual work at officers homes.<sup>133</sup> The President has received reports that officers abused prisoners by making them work on officers fields and gardens instead of government prison fields.<sup>134</sup>

Although Agriculture is part of a programme to impart skills to the prisoners so that they can use skills when they were released, this particular practice however amounted to abuse of the prisoners<sup>135</sup> and violated the rights of prisoners to adequate rest.

## **22. STRIKES BY COURT OFFICIALS**

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## 22. STRIKES BY COURT OFFICIALS

- Although not strongly spoken out by inmates and prison officials it is contended that strikes and work-stoppages at Court undermine speedy access to Justice for prisoners. For example, the week ending the 24<sup>th</sup> of June 2007, the Judiciary has been on strike demanding to be paid housing allowances amounting to K3.8 billion which government released before ending the strike action.<sup>136</sup> As a result of the strike action remand warrants were not signed and suspects remained in prison without going to court. It was a situation of Justice delayed and Justice denied.

The Minister of Home Affairs became worried of the strike and issued a statement; thus

“ The strike by the Judiciary workers is delaying the delivery of Justice to remandees. The strike delays the whole Justice System and keeps people locked up in the cells for longer than expected. The Minister observed that delayed Justice violated human rights of <sup>137</sup> the detainees.”

The strike action made a great contribution to the problem of overcrowding in prisons.

## **BOX 5: REMANDEES ON EXPIRED WARRANTS**

On 19<sup>th</sup> August, 2007 at Kabwe Central Police Station , Eleven (11) Police remandees accused and charged of murder and aggravated robbery refused to be remanded at Mukobeko Maximum Prison because their remand warrants had expired. The remandees had not been taken to court to have their cases mentioned and warrants extended. The remandees argued further that they would not accept to be detained on warrants signed in their absence because these could be illegal warrants. The remandees were addressed by their lawyer Mulilo Kabesha of Kabesha and Co. Mr. Kabesha calmed down the inmates and advised the Police and Prison Officers to provide transport for remandee to be taken to Court.

## 23. FUNDING AND TRANSPORT

The Prison Service has historically faced limited funding levels from Government<sup>138</sup>. The problem of under funding cuts across the mainstream prison administration and is the root cause of many problems that confront the prison service. The shortage of financial resources impacts adversely on the condition of prison facilities such as food, beddings uniforms and medical care facilities. The maintenance of prison buildings and sanitation could not be undertaken due to lack of financial resources.

In the 2006 financial year, the Prison Service was allocated K35.8 billion for all its activities. In 2007, the allocation was reduced to the level of K34.1 billion. This is a small budget when considering the many problems faced by the Prison Service.

Transport has often been unavailable for prison activities such as collecting, firewood used in the preparation of food. There has been occasions when remandees could not be taken to Court because of lack of transport.<sup>139</sup>

The Human Rights Commission observed in its report for Central Province in 2005 and said,

## Quote;

“Kabwe Medium Security Prison has no transport. It was last provided in 1989.”<sup>140</sup>

The Commission also observed that;

“the prison had no blankets and mattresses because of poor funding.<sup>142</sup> lack of adequate funding has affected training and recruitment of additional staff which is slow.<sup>143</sup>

However Government has began to provide transport to the Prison Service. For example,

(a) When the researcher visited Lusaka Central Prison on 13<sup>th</sup> June, 2007 two (2) TATA Trucks were parked outside the prison for conveying prisoners to court and other errands.

(b) A 20 sitter boat costing K92m had been bought and delivered to Kalabo Prison.



- The officers used to pay K20,000 to private boat owners to travel to Mongu to obtain food for prisoners from Mongu.



(c ) On 17<sup>th</sup> June, 2007 the Commissioner of Prisons distributed Six (6) ambulances to Regional Commanders including Katombora Reformatory.



● Some staff cars have been bought and distributed to Commanders and other Senior Officers.



(d) Farming equipment in form of irrigation pumps and tractors have been delivered to Mwembeshi and other prison farms.<sup>143</sup>

The transport system is still inadequate especially that big stations such as Lusaka Central Prison and Kamwala have no utility vehicles. The inmates have indicated that they face transport problems to go to the hospital for treatment. The budget has to support a workforce of about 2,063 including support staff



## **24. PROGRESSIVE DEVELOPMENT.**

It is important to state that while the Zambia Prison Service face many significant challenges that undermine efficiency in performance of duties, there are positive developments which reflect willingness to resolve some of the difficulties. The developments could be highlighted as follows;

- (i) **UNIFORMS**

The government has taken steps to procure uniforms for both prisoners and staff. In the 2006 budget for prisons, government allocated K8 billion to resolve some of the most urgent problems such as uniforms.<sup>144</sup> A total of K5.5 billion was allocated to the purchase of uniforms.<sup>145</sup> Two companies namely GENEX Company of South Africa and Bedi Investments Supplies of Kenya agreed to supply uniforms to the Zambia Prison Service.<sup>146</sup> The South African Department of Correctional Services donated K1.7 billion worth of prisoners uniforms and other gardening tools.<sup>147</sup>

On the five visits to the Lusaka Central and Kamwala, the last visit being the 20<sup>th</sup> September 2007, the researcher found prisoners wearing green uniforms and they appeared smart. A truckload had also arrived from Kenya to deliver officers special uniforms tailored to the measurement of each officer with name printed on it. According to the Commissioner, these uniforms were special and would be used during the Prisons Day Celebrations and a Pass-Out Parade for Graduating Officer Cadets. The morale of the officers was high.

(i) Agriculture is a major activity in the Prison Service and many inmates participate in this programme as a way to acquire skills for use when released . In the 2005/2006 marketing season, the Prison Service harvested about 44,000 x 50 kg bags of maize.<sup>148</sup> The following year 2006/2007, 1,600 hectares of maize was grown and a yield of 65,000kg by 50kg bags of maize was achieved.<sup>149</sup> The Prison Service harvested 42,000 x 50kg bags of maize and green baby corn for export at Mwembeshi Open Air Prison.<sup>15</sup>

<sup>150</sup> The Prison Service has established a ranch where 200 herds of cattle are kept. The agriculture and other farm produce could be used for prisoner's food and could improve on the nutritional value of the diet and afford prisoners three meals a day as opposed to one meal per day. It is in fact the vision of the Prison Service to be;

“self-sustaining in agriculture to eliminate hunger in prisons and reduce dependence on the National Treasury”.<sup>151</sup>

The Zambian government has shown interest in ensuring that prisoners do not go hungry. The Ministry of Home Affairs has as at 20<sup>th</sup> August, 2007 placed Bid No. MHA/ORD/008/07 as tender for the supply of fertilizer for prison farms for 2007/2008 farming season. The quantities required are:<sup>152</sup>

- (i) 6400 x 50kg bags for D. Compound and
- (ii) 6400 x 50kg bags for Urea.

It would be important that these farming ventures are managed well for the benefit of prisoners and ensure that they are afforded three meals per day.

## 25. **OFENDER MANAGEMENT [UNIT PROGRAMME]**

- Many prisons the world over, are shifting emphasis from retribution functions to correctional services. These services include among others not only rehabilitation and skills development, but through religious care education, vocational guidance, training and develop a strong moral character of the prisoner according to individual needs, Assistant Commissioner Percy Chato explains that a rehabilitated prisoner is not one who learns to survive while in prison but one who succeeds while he is outside prison on release.

The Offender Management Programme aims at reintegrating prisoners into society when released from prison. The programme has five fundamental pillars on which to base its activities as follows;

**(a) INMATE CARE PROGRAMME**

Under this component, the programme involves religious care, sports, recreation and HIV/AIDS awareness that will focus on the physical and spiritual development of prisoners.

## **(b)BAHAVIOUR MODIFICATION PROGRAMME**

This programme will offer counseling services to prisoners with social problems.

## **(c ) DEVELOPMENT PROGRAMME**

Under this programme the main activity is to involve prisoners in training, education and acquisition of vocational skills.

**(d) SPECIAL NEEDS OFFENDER PROGRAMME.**

This component targets terminally ill-prisoners, elderly, sex offender prisoners, and drug related prisoners including juveniles and female inmates with children.

- (e) **REINTEGRATION**

The success of this programme has been measured by the reduction in recidivism, and a special Unit known as Offender Management Unit headed by an Assistant Commissioner of Prisons based at Prisons Head Office has been established to manage and implement the five pillars of the programme.<sup>153</sup> According to the Commissioner the Offender Management Programme is helping to reduce on recidivism which ranges at the level of 35% from Mukobeko and 16% from Copperbelt.<sup>154</sup>

## **26. INTERNATIONAL CONVENTIONS AND PROTOCOLS**

- Zambia has ratified the following conventions;
- The International Convention on the Rights of the Child (1991).
- The Convention on Civil and Political Rights (1984).
- The Convention on Economic, Social and Cultural Rights (1984).

- The International Convention on the elimination of all forms of discrimination Against Women.
- The International Convention Against Torture and other forms of Cruel inhuman or degrading treatment or punishment (1998).
- The First Optional Protocol to the International Covenant on Civil and Political Rights (1984)

- The African Charter on Human and Peoples Rights (1984).
- The African Charter on the Rights and Welfare of the Children.

These instruments remind government of the duty to enforce international and regional human rights standards especially with regard to prisoners. These are also non-binding International Instruments which Zambia has to observe in order to give prisoners full access to Justice, namely;

- Standard Minimum Rules for the Treatment of Prisoners (U.N.)
  1. United Nations Rules for the Protection of Juvenile Deprived of Liberty.
- Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (U.N).
- Basic Principles for the Treatment of Prisoners (U.N)

- Zambia has not domesticated most of these instruments and cannot be used to give prisoners full access to Justice.

## **27. ACCESS TO JUSTICE AND REPRESENTATION**

The right to legal advice and representation was previously enshrined in the Judges Rules and has recently been acknowledged as a right at Common Law. The Constitution of Zambia ensures that the right to legal representation is seen as a fundamental human right.

The majority of the inmates responded that they had no problem speaking to their lawyers but that courts delayed their cases on appeal or even at the trial stage. Some inmates have expressed the view that inmates who have committed minor offences such as shoplifting should be sentenced to community service or non-custodial sentence and this would help decongest prisons.

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## **28. CONTACT WITH OUTSIDE WORLD**

The researcher has found that relatives, friends and well-wishers are normally allowed to visit inmates especially on week-ends. The inmates are allowed to receive food, or necessaries such as soap or plates from relatives or visitors. In the majority of cases, the inmates are allowed to write and receive letters from friends and relatives.

The letters and other items to be received by inmates from outside prison have to be monitored for security reasons. An inmate had also responded that those who do not receive or write letter are those who have no money or have no relatives or friends to visit them.

## 29. POLITICAL WILL

There has emerged over the last year or so, political will reflecting a shift in policy emphasis to resolve problems affecting the Prison Service. The government through the authority of the President released about K17 billion as at 21<sup>st</sup> September 2007 to purchase various items most required for prison administration as reflected on Table 8. These funds were secured from outside the normal prisons budget

The shift in policy in favour of the Prison Service is in line with the aspirations of the government Policy outlined in the fifth National Development Plan aiming at improving the working environment of the Prison Service by 2010. However despite the display of political will by the political leadership, the Prison Service still face a great deal of problems especially as indicated by the SWOT Analysis at Box 6.

## **TABLE 8: PRISON PROCUREMENT OUTSIDE NORMAL BUDGET, SEPTEMBER 2007**

**TABLE 8. PRISON PROCUREMENT OUTSIDE  
NORMAL BUDGET, SEPTEMBER 2007**

		QTY	VALUE	COMMENT
● 1.	CARGO TRUCKS	10	2,380,000,000	Negotiated by the H.E.with government of India
2.	CONVEYANCE	20	2,760,000,000	
3.	UTILITY VANS	17	1,699,100,000	
4.	SENIOR OFFICERS CARS	11	733,172,000	

6.	AMBULANCES	07	1,080,000,000
7.	COMMISIONERS' CAR	01	232,599,544
8.	TRACTORS & IMPLEMENTS	07	1,800,000,000
9.	STATION UTILITY VANS	18	1,250,000,000

10.	PHQ. COMMANDE	05	500,000,000
11.	SPEED BOAT	01	91,288,000
12.	MOTOR BIKES	20	136,000,000

## **OTHER ITEMS**

1.	BLANKETS	30,000	
2.	CUPS AND PLATES	20,000	130,000,000
3.	UNIFORMS	ALL OFFICERS	3,500,353,600
4.	FERTILIZER		1,200,000,000

5.	SEED		500,000,000
6.	IRRIGATION SYSTEM	01	147,515,786.25
7.	MATTRESSES	15,000	_____
<b>GRAND TOTAL</b>			<b><u>16,776508,930.25</u></b>

SCOURCE: QUATERMASTER  
RECORDS 21.09.2007

## **Box 6: THE ZAMBIA PRISONS SERVICE SWOT ANALYSIS**

<b>Strengths</b>	<b>Weakness</b>	<b>Opportunities</b>	<b>Threats</b>
<ol style="list-style-type: none"> <li>1. Safe custody of inmates</li> <li>2. Safe keeping of records</li> <li>3. Provision of rehabilitation and extension services</li> <li>4. Availability of Prisoners conveyor Trucks</li> </ol>	<ol style="list-style-type: none"> <li>1. Inadequate and dilapidated infrastructure</li> <li>2. Inadequate logistics; etc</li> <li>3. Inadequate staff levels;</li> <li>4. Lack of adequate funding;</li> </ol>	<ol style="list-style-type: none"> <li>1. Community support</li> <li>2. Collaboration with stakeholders in criminal justice system</li> <li>3. International regional cooperation;</li> <li>4. Political will</li> </ol>	<ol style="list-style-type: none"> <li>1. Increased crime rate introduction of new offences with long sentences e.g. defilement</li> <li>2. Stigma and discrimination of inmates;</li> <li>3. HIV/AIDS Pandemic</li> </ol>

	<p>Security identification equipment</p> <p>9. Lack of rehab- infrastructure and facilities</p> <p>10. Poor case management</p> <p>11. Inability of the service to retain skilled manpower due to poor conditions of service</p>		
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## **CHAPTER III**

### **30. RECOMMENDATIONS**

The following recommendations are presented;

#### **(i) (a) BUILD NEW PRISONS (3)**

It is recommended that three (3) prisons (one male, one female and one Juvenile) be built to help decongest prisons and there by help resolve the problem of overcrowding in prisons.

The prison overcrowding has resulted in a situation where it has become difficult to observe United Nations Standard Minimum Rules which require that prisoners be given reasonable comfort and humane treatment. The new prisons should take into account special needs of women and children.

- This recommendation is also supported by some members of Zambia bench, thus when opening High Court Sessions in North-Western Province on May 7 2007, Justice Lloyd Siame said that there was need to build new prisons or renovate the existing structures as a way of decongesting prisons.<sup>155</sup> The Judge further observed that cells which were meant to accommodate ten (10) inmates were actually accommodating sixty-five (65) prisoners.<sup>1</sup>

He summed up the situation as being;

“inhuman and unhealthy to have prisoners packed in one cell”.<sup>159</sup>

At a State House Ceremony for swearing in the newly appointed Commissioner of Prisons, the President observed that he was concerned with overcrowding in Prisons and stressed that such a situation amounted to a human rights abuse.<sup>158</sup>

The President further argued that it was not correct for a prison meant to accommodate 100 inmates to accommodate 1,000 prisoners. This amounted to violation of the rights of prisoners.<sup>159</sup>

**(b) CONSTITUTIONAL PARDON**

It is recommended that the President be encouraged to continue using his powers under Art. 59 of the Constitution to pardon deserving prisoners as a way of decongesting the prisons. For example;

“On the 3<sup>rd</sup> August, 2007, the President pardoned 823 prisoners and committed death sentences to life for 97 inmates on death row.<sup>160</sup>

The Executive Director of Prison Fellowship said that the pardon was a step in the right direction to decongest prisons.<sup>161</sup>

The point to note is that this pardon reflected well on the promise the President made when touring the Mwembeshi prison Farms that;

“he would take revolutionary measures to deal with the problem of overcrowding in prisons”.<sup>162</sup>

It is recommended that the Prisons Service be further encouraged and financially supported by government and donors to grow more maize, vegetables and other crops to ensure food security for the inmates. Over the years the Prisons Service has been known for its bigger yields in agricultural production. And such yields could be turned over for food by prisoners.

This would improve food levels to three meals a day with good nutritional value. This would improve the diet of HIV infected prisoners. The Prison ranches and fish pods could be utilized to improve the diet in prisons. The right of prisoners to good food and diet would be enhanced.

The Prisons Service has been described as a gold mine in agriculture and it is therefore the wish of the President that the service should feed itself<sup>164</sup> and save about K12 billion spent on purchasing prisoners rations.<sup>165</sup>

### (iii) **WOMEN AND CHILDREN JUVENILES**

- It is recommended that the Minister of Home Affairs uses powers vested in him under Section 3 (1) of the Prisons Act to declare a suitable building as a prison for female inmates or juvenile inmates. It is noticeable that the majority of prisons in Zambia were built without considering special needs of women and children. This is a category of prisoners, which are mostly vulnerable to human rights abuse and therefore need special care. The best interest of a child prisoner can best be served when separated from adult prisoners.

## (iv) **TRAINING**

It is recommended that training in human rights law be given priority attention. This will help mitigate on the abuse and harsh treatment of prisoners by warders. It is important to appreciate that skills and professional development training is critical to the development of a professional core of officers in the service who will interpret the prisons Act to the benefit of prisoners,

It would be necessary that Senior Officers participate and train in leadership and Management Courses to enable them appreciate how to manage human and financial resources for the benefit of inmates. The ultimate goal is to achieve a change in the mind set from casual to one of accountability. Leadership training should equally be given priority.

**(v) FINANCIAL AND HUMAN RESOURCE.**

It is recommended that government be encouraged to increase financial and budgetary allocations to the Prisons Service to enable the service purchase blankets, mattresses and other utensils to be used by inmates. And an increased funding would help the service recruit extra manpower and carry out promotion,

refresher and other skills development activities for purpose of building a professional Prisons Service which would have respect for the Rule of Law. This would mean adequate financial resources to enable officers train beyond prison recruit and security training programmes.

## (vi) **PRISONERS HEALTH**

It is recommended that the Commissioner of Prisons gives priority to the appointment of a Medical Doctor and other Medical Officers to take care of the health of inmates, and oversee the implementation of the Health Care Programme in the Prisons Service.

The Medical Doctor and his staff would ensure that there is adequate provision for (ARVs) for the infected inmates. The delivery of health care services would have to take into account special needs of women and children especially pre and post-natal care. Prisoners should be afforded an opportunity to enjoy the highest attainable standard of health in compliance with the right to health.

## (vii) **NATIONAL PAROLE BOARD**

It is recommended that a National Parole Board be set-up in accordance with Section 113 A of ACT No. 16 of 2004 which should speed-up recommendations for the release of deserving prisoners especially those with minor offences. The Parole System would help decongest prisons.

## **(viii) NON-CUSTODIAN SENTENCING POLICY**

It is recommended that the Judiciary be encouraged to apply non-custodian sentencing policy on petty and minor crimes to help decongest prisons. The poverty levels in Zambia increase opportunities for crime and prisons accommodate many of the petty crime offenders who could easily be admitted to Community Service in accordance with ACT 14 of 2000.<sup>166</sup>

The non-custodian sentencing policy would find support in the proposition that long custodian sentences do not help prisoners reform while a shorter sentence gives a prisoner an opportunity to rejoin society.<sup>167</sup> The Supreme Court in the case of Christopher Mukonde and Fridah Chilombo who were charged with murder contrary to Section 200 of the Penal Code CAP 87 of the Laws of Zambia,

a Judge observed that the twenty-five (25) years sentence slapped on the accused was excessive and reduced it to ten (10) years.<sup>168</sup> According to the Judge, the reduced sentence would give the prisoners an opportunity to rejoin society.<sup>169</sup>

## **(ix) ESTABLISHMENT OF A LEGAL DEPARTMENT.**

It is recommended that the Prisons High Command be encouraged to set up a Legal Department at its Prisons Head Office to monitor the observance of human rights and implementation of UN Minimum Standards and other Conventions related to the treatment of prisoners. It will also oversee the training in human rights by all the staff. The Legal Department would also monitor the movement of remandees to Court and ensure that no one is detained without or with an expired warrant.

**(x) PRISONS OMBUDSMAN**

It is recommended that government be encouraged to consider setting up an institution of the Prisons Ombudsman to deal with the wider issues of human rights abuses in prisons.

The improvement of standards of Justice within prisons is a core function for Prison Services the world over. It is important therefore that;

Prisoners should know why a decision, which materially adversely affects them, has been taken or is being taken. This is essential to achieve satisfactory relations within prisoner.

If a prisoners considers he has a genuine grievance he should be able to resort to a grievance procedure which has some degree of independence to offer relief.

The Prisons Ombudsman would receive hear, investigate and determine complaints by individual prisoners on the treatment and general welfare of the prisoners Ombudsman would add value to full respect for human rights in Prisons and make the Prisons Service Management more accountable for adverse actions on the prisoners. The Prison Ombudsman would ensure that Justice and respect for human rights in respect of prisoners is secured.

## **(xi) COMPREHENSIVE MASTER-PLAN STRATEGY**

It is recommended that a comprehensive master plan strategy be instituted for the Prisons Service to ensure that problems confronting the Service are dealt with in a comprehensive manner. The plan would operationalize the Mission Statement whose main goal is;

“To effectively and efficiently provide and maintain humane custodial and correctional services to inmates and to increase industrial production in order to contribute to the well-being and reform of inmates and maintenance of internal security.”

The strategy would hope to address issues identified in the SWOT Analysis for the Zambia Prison Service reflected at Box 6

## 31. CONCLUSIONS

The Zambia Prisons Service is governed by the Prisons ACT Chapter 97 of the Laws of Zambia. The Constitutional framework of the Prisons Service is Art. 106. which is framed in a brief manner, thus;

“There shall be the Zambia Prison Service.<sup>170</sup>

The fundamental functions of the Prison Service are mainly’

- (a) to provide custody for prisoners
- (b) to provide correctional services to inmates
- (c) and to manage prisons generally.

Where carefully examined the provisions of the Prisons ACT are coached in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1984 which Zambia subscribes to.

It would be important to observe further the Zambia Prisons Service play a fundamental role in the maintenance of peace and security in the country. The task of ensuring that prisoners are kept safely in custody and always working to rehabilitate and reform them, is a fundamental task which often remain unrecognized by the National Leadership.<sup>171</sup>

According to a former High Court Commissioner, the biggest problem facing the Prisons Service is public belief that prisons are for the custody of condemned public misfits who deserve no humane treatment.<sup>172</sup> This view is supported by another view that prisons through out the world over were historically considered to be places for punishing social misfits who did not deserve humane treatment.<sup>173</sup>

This research has discovered that the Prisons Service currently still face a good number of problems ranging from overcrowding in prison accommodation, shortage of manpower, lack of advanced training especially in Management development and human rights, lack of adequate food, health facilities, transport for prisoners and in some cases staff clothing and security of prison buildings.<sup>175</sup>

The Commissioner of Prisons and many other Senior Officers have alluded to these problems. In particular, Zambian Prisons were initially not meant for women and Juveniles and these become the most delicate group of prisoners to handle.<sup>176</sup> The Deputy Director of International Relations has also indicated that most women prisoners who have children both in prison normally come with pregnancies from outside into prison on admission.<sup>177</sup>

The women are often assisted in some of their feminine requirements at government expense especially when funds are made available to the service.<sup>178</sup> The Human Rights Commission Report on Mukobeko Maximum Prison for 2004 also reported that;

“ the female section was fairly clean and cooking facilities were good. There was a fridge to keep food fresh”<sup>179</sup>

The Zambian Prisons Command appreciates the magnitude of the problems the Prisons Service face.

The Command has therefore a vision to make the Service;

“the best provider of custodial and correctional practices and be self-sustaining in agricultural and industrial production.”<sup>180</sup>

And arising from the above vision, the Service has formulated Principle guidelines which reflect the services obligation to respect the rule of law. However the perennial problems inherited from the colonial past still undermine strict observance of human rights in prison,<sup>182</sup> although the political leaders have shown political will to resolve many of the problems which confront the Prisons Service. The master plan strategy for the Zambia Prisons Service within the context of the Fifth National Development Plan and Vision 2010 would add value to Prisons Development.

Women and children are the most affected. The challenges would be to increase human rights awareness for staff and inmates to enable prisoners claim their rights which would help them to access justice. It is the lack of awareness of human rights that create an environment of human rights violation in prison.

The Commissioner of Prisons admits that congestion in prisons create a conducive environment for the spread of HIV/AIDS and Tuberculosis.<sup>183</sup> He has assured the nation that human dignity would be observed by carrying sick inmates to the hospital for treatment.<sup>184</sup> According to the Commissioner, proper health care service to inmates is an asset that borders on human rights.<sup>185</sup>

He has made an assurance that the Prisons Services will be committed to the attainment of the United Nations Standard Minimum Rules for the Treatment of Prisoners (1984

The Commissioner made a further commitment that;

“the Service would stick to conventions that advocate for the humane treatment of prisoners”<sup>187</sup>

This is a welcome development, which would give support to a Master Plan Strategy, for a comprehensive approach in resolving the perennial problems facing the Prisons Service. It is only then would access to justice by prisoners be guaranteed.

*End:*