

# INSIDE THE PRISON WALLS



*The effects of living conditions  
on the Right to Health for Prisoners  
and Circumstantial Children  
in Zambia*



*"This report was produced with the financial support of the European Union".*



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2017

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# List of Acronyms

<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>CTOCIDTP</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>DAPP</b>	Development Aids from People to People
<b>EU</b>	European Union
<b>HRCCJF</b>	Human Rights Commission and Child Justice Forum
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICPS</b>	International Centre for Prison Studies
<b>NGOs</b>	Non-Governmental Organisations
<b>NHSP</b>	National Health Strategic Plan
<b>PRISCCA</b>	Prisons Care and Counseling Association
<b>PSAf</b>	Panos Institute Southern Africa
<b>SALC</b>	Southern African Litigation Centre
<b>UNSMR</b>	United Nations Standard Minimum Rules for the Treatment of Prisoners,
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>WHO</b>	World Health Organization
<b>ZPS</b>	Zambia Prison Service

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# Foreword

Human Rights are inherent entitlements that come to every person as a consequence of being human and are founded on respect for dignity and worth of each person. Persons in detention or those who are imprisoned do not cease to be human beings. A prison sentence deprives a prisoner of his or her right to liberty. It should not deprive a prisoner of other rights. A basic human rights principle is that all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the person.

There are international human rights instruments which protect the rights of prisoners and ensure their dignity. These are:

1. The **Universal Declaration of Human Rights** - In relation to the rights of prisoners, it includes Protection from torture, The right to a fair trial, The right to presumption of innocence until proven guilty and Prohibition of retroactive penal measures.
2. The **International Covenant on Civil and Political Rights** – In its Article 6-15 prohibits torture and slavery and provides for the rights of all persons deprived of their liberty and the right to a fair trial.
3. The **Standard Minimum Rules for the Treatment of Prisoners**, also known as the **Nelson Mandela Rules**, prescribe the minimum standards to be adhered to in the care of prisoners or persons in detention.
4. The **UN Convention on the Rights of the Child** provides the basic standard relevant to administration of juvenile justice, recognising the special status of vulnerability of juveniles who come into conflict with the law and the principle of the best interest of the child.
5. The **UN Rules for Protection of Juveniles Deprived of their Liberty** is intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, with a view to counteracting the detrimental effects of all types of detention and to fostering integration into society.

In addition to these international human rights instruments, there are Principles or Minimum Rules and Declarations that provide for the rights of prisoners. Though not exhaustive, they include:

- i. Body of Principles for Protection of All Persons Under Any Form of Detention
- ii. Basic Principles for Treatment of Persons
- iii. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

In recognition of international, regional and national minimum human rights standards relating to the treatment of prisoners, the Standard Minimum Rules for the Treatment of Prisoners

prescribe the minimum standards which include the protection of the right to personal dignity and freedom from torture and other forms of cruel, inhuman and degrading treatment or punishment,<sup>1</sup> freedom from discrimination,<sup>2</sup> right to education and vocational training,<sup>3</sup> right to proper and adequate accommodation,<sup>4</sup> right to adequate sanitation,<sup>5</sup> right to appropriate clothing and bedding,<sup>6</sup> and the right to access to health<sup>7</sup>.

At the national level, the Constitution of Zambia (Amendment) No. 2 of 2016 is aspiring for improvement in the human rights standards for prisoners through the change of name from Prison Service to Correctional Facility. This change reflects the desire to:

- Comply with Human Rights Standards as articulated in the international and regional human rights instruments;
- Focus on rehabilitation of the prisoners as opposed to punishment, to allow better reintegration into society;
- Engage in processes that improve the vocational skills for prisoners to have the capacity to build their livelihoods once released and reintegrated into society; and
- Direct efforts to decreasing recidivism rates.

Most of the standards highlighted above are provided for under the domestic law particularly the Prisons Act Chapter 97 of the Laws of Zambia. Premised on the fundamental principle of non-discrimination which underpins all human rights instruments, the Human Rights Commission has the mandate of visiting prisons (now referred to as correctional facilities) and other places of detention with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems.

We appeal to institutions concerned with the administration of justice to ensure respect of the rights of prisoners or persons in detention, from the point of apprehension or arrest to the point of discharge, acquittal or exiting a correctional or reformatory facility. It is our hope therefore that the findings in this report will be helpful in bringing out the issues to ensure improved living conditions for the prisoners and circumstantial children.

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<sup>1</sup> Rule 1

<sup>2</sup> Rule 2

<sup>3</sup> Rule 4

<sup>4</sup> Rule 12

<sup>5</sup> Rule 15

<sup>6</sup> Rule 19-21

<sup>7</sup> Rule 24

# Chapter 1:

## Introduction

### 1.1 Background

Zambia has a total of 88 prison establishments made up of 54 standard prisons, 34 smaller open-air satellite prisons and one juvenile reformatory institution. The open-air satellite is an informal description applied to any penal establishment in which the prisoners are trusted to serve their sentences with minimal supervision and perimeter security and are not locked up in prison cells. Although the Prisons Act 1966 requires separation of different categories of prisoners, only female prisoners are held separately; juveniles and pretrial detainees are often held together. The Katombora Reformatory School in Livingstone is dedicated exclusively to juveniles, even though there are cases where juveniles are incarcerated with adult prisoners at other facilities throughout the country. Women also live in separate sections of additional facilities throughout the country; however, the Kabwe Female Medium Prison is exclusively dedicated to women.

Type of Prisons	Number	Occupants
Standard	54	Convicted and unconvicted with sections for Women and Juveniles
Open-air	34	Convicted and unconvicted with sections for Women and Juveniles
Juvenile	1	Exclusively Juveniles
Female	1	Exclusively Women

The prisons in Zambia have poor living conditions despite the country having signed and/or ratified numerous international and regional human rights treaties undertaking to respect, promote and protect the rights of prisoners and circumstantial children. For instance, the State of Human Rights in Zambia Report (2014) published by the Zambia Human Rights Commission indicated that prison conditions were harsh and life threatening due to outbreaks of disease, shortages of food and potable water, gross overcrowding and poor sanitation standards and medical care.

Several international instruments seek to protect prisoners' rights such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), the United Nations Standard Minimum Rules (SMR) for the Treatment of Prisoners, the United Nations Convention on the Rights of the Child (UNCRC), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or



Punishment (CTOCIDTP). These international instruments clearly spell out the rights of prisoners, and prohibit subjecting prisoners to torture and inhumane, demeaning or degrading treatment.

At the regional level, The African Charter on Human and Peoples' Rights (ACHPRs) as well as the African Charter on the Rights and Welfare of the Child (ACRWC) guarantee all human beings, including children, a right to enjoy all rights and freedoms contained in the Charters. The ACHPR does not discriminate against prisoners. The ACHPR states that one's status as a criminal or incarcerated person is not an express ground upon which such a person may be discriminated against. The Charter also guarantees the right to dignity inherent in a human being and proscribes all forms of inhuman and degrading treatment or punishment. The ACRWC does not discriminate against children and emphasizes the need to take the best interest of the child into account when taking any action or decision concerning the child. Like its international counterpart, the UNCRC, the ACRWC does not discriminate against children who come in conflict with the law, nor does it discriminate against circumstantial children. It guarantees all the above provision to all children to the same extent.

In addition, the national laws such as the Prisons' Act also have provisions that seek to enshrine the dignity of prisoners. For example, Section 56 of the Prisons Act makes special provisions for female prisoners with infants to be received into prison with the infants, and places an obligation on the state to supply the infant with clothing and other necessities. However, lack of sufficient resources prevents its implementation. Incarcerated women who have no alternative for child care choose to have their infants and children under the age of four with them in prison. Prisons provide no food or medical services to these children. In fact, mothers had to share their meager rations with their children in an environment lacking appropriate medical care, which often exposed children to disease.

## **1.2 The Assessment of the Impact of the Living Conditions on the Right to health for Prisoners and Circumstantial Children Study**

Prisoners have the right to health as enshrined in the international, regional and national human rights instruments. The situation of the living conditions in Zambian prisons has an impact on the right to health for prisoners and circumstantial children. PSAf, therefore, commissioned the study to get a deeper understanding of the living conditions and their impact on the right to health for prisoners and circumstantial children.

The study was aimed at generating evidence for the advocacy around improvement of the living conditions for prisoners and circumstantial children in the prisons in Luapula, Muchinga and Central Provinces.

The specific objectives were:

- i. To assess the impact of poor living conditions on access to health for prisoners and circumstantial children;
- ii. To identify and discuss the existing laws and policies that guide promotion of the right to health for prisoners and circumstantial children; and
- iii. To identify advocacy issues to champion the right to health for prisoners and circumstantial children.

### **1.3 Methodology**

The assessment explored the prisons living conditions in the Luapula, Central and Muchinga provinces. The assessment provided an increase in the knowledge on how the living conditions affect the access to health for prisoners and circumstantial children.

The data collection tool used was:

- i. Review of existing documents on the international and regional human rights instruments, the national laws that seek to enshrine the dignity of prisoners and circumstantial children in Zambia, the reports on state of prisons and living conditions for prisoners in Zambia as well as the findings on observational visits conducted by Development Assistance from People to People (DAPP) to the prisons in Central, Luapula and Muchinga Provinces.

# Chapter 2:

## Impact of The Living Conditions on The Right To Health for Prisoners and Circumstantial Children in Zambia

Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The Universal Declaration of Human Rights (UDHR) provides that every person has the right to the highest attainable standard of health. The right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment.

The realization of the right to health may be pursued through the formulation and implementation of health policies and programmes developed by the World Health Organization (WHO) and the adoption of legal instruments at the national level. Zambia like other states that have ratified the international human rights instruments on the right to health, is obliged to respect the right by ensuring equal access for all persons, including prisoners or detainees and ensuring non-discriminatory practices relating to health status and needs. For example, women prisoners have health needs such as reproductive healthcare and pre- and post-natal healthcare. There should, therefore, be legal instruments that guarantee access to the relevant services when need arises.

At the national level, Zambia's National Health Strategic Plan (NHSP) for 2016 to 2021 highlights the vision of the Ministry of Health as **"a nation of healthy and productive people"**. The goal of the NHSP is to improve the health status of Zambian people to contribute to socio-economic development. This vision shows that there is commitment at the policy level to uphold the right to health for citizens. Under its **Cross-cutting Interventions**, the prisoners' issues are covered under one of the key strategies which is aimed at **"targeting prisoners and other high-risk groups with TB prevention and treatment"**. However, the living conditions in many Zambian prisons as identified by the findings in this Report lead to the heightened risk of the contraction and break out of infectious diseases including TB. These living conditions undermine the right to health for prisoners and circumstantial children.

Between November 2010 and April 2011, a TB and HIV screening program was implemented in six Zambian prisons to assess the prevalence of TB and HIV amongst inmates entering, residing, and exiting prison, as well as in the surrounding community. TB symptoms were found in 1430 (62%). TB was diagnosed in 176 (7.6%) individuals and 52 people were already on TB treatment at time of screening. In 2011, HIV prevalence among inmates in Lusaka Central Prison was 27.4%. This meant that the rates of TB and HIV were substantially

higher than the Zambian average. Fazel S. Baillargeon (2011:65) indicates that “the higher prevalence of disease among prisoners is due to living conditions in the prison, including high risk of transmission of infectious diseases (overcrowding, sharing of needles), less access to effective health care, and intake of prisoners who already suffer health problems.”

While there is the situation of the high disease prevalence, there are challenges with protection to public health due to the poor living conditions. For the right to health to be upheld, there is need for a favourable environment that protects and respects every individual’s human dignity.

## 2.1 Effects of prisons’ living conditions on the right to health for prisoners and circumstantial children

The poor living conditions in prisons have a negative impact on the right to health for prisoners and circumstantial children. Below is the discussion of these effects of the poor living conditions:

### 2.1.1 Overcrowding

Overcrowding is a major problem in most Zambian prisons. Most prisons were built prior to independence to accommodate a total population of about 5,500 prisoners across the country. However, the situation has changed. For instance, the Human Rights Watch Report on **“Unjust and unhealthy report in Zambian Prisons”** indicated that as at October 2009, prisons housed a total of about 15,300 prisoners which was nearly three times its official capacity; 35% of these prisoners were remand prisoners awaiting trial. This therefore indicates that overcrowding is a consequence of criminal justice policy not necessarily the rising crime rates. This is supported by another report entitled **“Challenging Disadvantage in Zambia”** prepared by the Paralegal Alliance Network (PAN) and Prison Reform Trust (2015) which mentions that one of the causes for overcrowding was “the inadequacies in the Zambian criminal justice system, which holds people on remand or awaiting trial for a long period”.



Inmates at Mumbwa Prison in Central Province in 2016. Picture courtesy of PRISCCA, accessed through [https://ec.europa.eu/europeaid/case-studies/promotion-human-rights-and-access-justice-prisoners-zambia\\_en](https://ec.europa.eu/europeaid/case-studies/promotion-human-rights-and-access-justice-prisoners-zambia_en).

The national prisons data collated by the International Centre for Prison Studies (ICPS) World Prison Brief 2014 indicated that the total prison population in Zambia was 17, 038, including those who are being held on remand which showed an occupancy level of 279%. According to data supplied by both Prisons Care and Counseling Association (PRISCCA) and the Commissioner General of Prisons, the number increased in 2015 to an average of 19,000 prisoners. In Central and Luapula provinces, the total occupancy level is at almost 249% as shown below.

**Table 1: Congestion in Prison in 2014 (Human Rights Commission and Child Justice Forum Report)**

Facility	Province	Official capacity	Occupancy Level	Status
Serenje District Prison	Central	35	160	457%
Mukobeko Female	Central	20	101	505%
Mkushi State Prison	Central	40	147	368%
Kabwe Maximum Security	Central	400	916	229%
Samfya District Prison	Luapula	40	140	350%
Nchelenge State Prison	Luapula	15	125	833%
Kawambwa District Prison	Luapula	101	130	77%
Mwense District Prison	Luapula	60	81	135%
Mansa State Prison	Luapula	80	297	371%
<b>Total</b>		<b>820</b>	<b>2, 068</b>	<b>249%</b>

As one of the key contributing factors to poor prison conditions in Zambia, overcrowding undermines the ability of Zambian prison systems to meet basic human needs, such as food and accommodation. It compromises the provision and effectiveness of rehabilitation programmes, educational and vocational training as well as recreational activities. However, periodic amnesties and pardons are the only strategies used to relieve overcrowding. These provide only short-term relief and do not offer a sustainable solution. The strategies, though helpful, lead to the decreased public confidence in the criminal justice system. The current situation of overcrowding causes poor hygiene, poor ventilation which lead to easier transmission of diseases, increased prevalence of diseases as well as psychiatric disorders as discussed below.

### **1. Exposure to Infectious Diseases**

Infectious disease such as TB and drug-resistant TB, is a serious prison health and public health danger because of overcrowding in Zambian prisons. The poor state of ventilation coupled with overcrowding in prisons raises the significant risk of the TB prevalence in addition to the prompt lack of prevention practice, identification and treatment of people

with active TB. Certain levels of ventilation is needed to meet the requirements of health and these require that windows be large enough to allow the entrance and circulation of fresh air. However, ventilation requirements are not met adequately in most Zambian prisons. Several of the prisons lack adequate ventilation, and had only air vents instead of windows. Coupled with poor nutrition, tuberculosis rates – and rates of multi drug-resistant TB – in many prisons are 10 to 100 times higher than in the community. TB in prisons is also commonly associated with HIV co-infection. This, therefore, affects the right to health for the prisoners and circumstantial children.

HIV prevalence rates are high, last measured at 27 percent in 2011. While HIV testing and treatment have improved at some prisons, serious gaps still remain, particularly in smaller, rural prisons. A ban on condoms due to the social, cultural, religious and legal factors towards homosexuality makes HIV prevention impossible. There are also several cases of sexually transmitted infections (STIs) that were recorded. The DAPP Report further stated that at Miloso Open Air Prison in Serenje, 53 prisoners were housed in tents, and, whilst no TB cases were recorded, there were many recorded cases of malaria due to the exposure. Due to living in close proximity, there are reported cases of most common health problems such as diarrhea, skin conditions and rashes.

## **2. Violence and prisoners' safety**

Overcrowding leads to increased prisoners misconduct which negatively affects the safety and security of other prisoners and circumstantial children. Overcrowding increases stress and when individuals have limited coping skills, such as in prisons, violence becomes the option to vent out the stress. With high levels of stress and the frustrating living conditions, prisoners become erratic and violent. The violent behavior and language that is used have an effect even on the circumstantial children. The use of bad language by prisoners and officers in the presence of children due to frustration has a negative effect on circumstantial children.



*Example of violence in prison due to overcrowding in a Sierra Leone Prison. Image courtesy of Fernando Molerés (2017), accessed through <http://www.fernandomolerés.com/waiting-for-justice>.*

The children learn the bad language spoken within the prison facility by the adults they interacted with and believe that is the normal way of communication.

### 3. Increased psychological disorders and mental depression

Overcrowding has a direct, negative effect on the psychological state of inmates and causes more stressful situations. In most Zambian prison systems, prisoners do not have the minimum space requirements recommended by international standards. Overcrowding is so severe that in some prisons, prisoners sleep in shifts. Rest is an important aspect of health and productivity. A person being robbed of sleep suffers high levels of fatigue and a weakened immune system especially in the case of prisoners who already have other limitations such as good quality nutrition. Because of the congestion, not all sleep at once. Some sleep while some sit; they take turns to make sure that others get a chance. The Human Rights Watch Report 2009 on “Unjust and unhealthy Report in Zambian Prisons” indicates that overcrowding is so severe that some inmates cannot lie down at night. The officer in charge at Lusaka central confirmed that prisoners in the facility regularly sleep in shifts. Overcrowding, therefore, intensifies stressful conditions and induces stress reactions.

#### 2.1.2 Poor Nutrition

The Prisons Act stipulates the nutritional and dietary needs for prisoners and children in detention. The prisoners are entitled to receive three balanced diet meals per day comprising breakfast, lunch and dinner. However, this is not the situation in most facilities in Zambia. Most prison facilities provide two meals with lunch and dinner combined as one meal. Even when the food can provide the required nutritional content, the method of cooking compromises the quality. In most facilities, it was found that the *kapenta* would have content of small stones making it unfit or dangerous, especially for children. The beans are also sometimes barely cooked due to lack of sufficient cooking utensils and firewood.



Example of a kitchen in a Zambian correctional facility. Picture courtesy of CELIM <https://www.celim.it/en/progetto/women-and-children-behind-bars/>.

The quantity of the food provided to the inmates is not sufficient. This is supported by the Zambia Human Rights Commission 2010 Report which indicated that “food is not adequate for all the groups of inmates. This is because food is often allocated to inmates in groups, with no extra rations for children”. They often share the food rations allocated to their mothers or their dining groups. There was no dietary scale prepared or provided by the Prison authorities

for circumstantial children, therefore these children shared in food ratios of their mothers. There is also no special diet is given to pregnant women or nursing women.

Deprivation of quality food constitutes inhuman conditions of detention and is in violation of the ICCPR. International standards require that prisoners be supplied with “food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.” However, this is not the situation in the Zambian prisons as indicated in the table below, which shows that the means of preparing the food cannot produce good quality of foods.

Poor nutrition leads to numerous health problems for prisoners. Lack of nutritional diversity in a prisoner’s diet creates serious life-threatening health conditions. To this effect, the PAN Report (2015:20) states to this effect that “Malnutrition was said to be a particular problem, with prisoners typically receiving only one serving of cornmeal and beans per day, called a combined meal because it represented breakfast, lunch and dinner.” The meals usually are without vegetables which are a source of vitamins. Due to the insufficient quality in the form of vegetables, prisoners are faced with vitamin deficiencies which lead to frequent diseases such as diarrhea and weight loss. This also affects the different groups such as the HIV positive inmates as the meals are also not timed well in relation to their medication intake.

The inadequacy of food brings about other issues such as physical and sexual abuse as food becomes a commodity that is traded for sex and labour amongst prisoners. Therefore, transmission of HIV and STIs is perpetuated.

### 2.1.3 Sanitation and hygiene

The Human Rights Watch 2010 report has indicated that the availability of water in prisons is subject to shortages and erratic supply of the precious commodity. Bathing and toilet facilities were often inadequate for all prisoners including minority groups such as the disabled. Most prisons had no standard drainage system or had no drainage system at all.



*A prison warder photographed inside the Chimbokaila female prison yard in Lusaka in 2009. Picture adopted from LusakaTimes.com.*



**Table 3: The summary report prepared by DAPP reviews access to water and sanitation.**

Prison	Source of water	Toilet	Shower	Limitations
Mkushi Prison	Lukanga Water and Sewerage			Limited access to water in the dry season, Septic tank reaches its maximum quicker in the rainy season
Mkushi Open Air Prison	Borehole			Limited access to water due to the broken manual pump.
Serenje State Prison	LWSC and Hand pump	2 toilets (male and female)	2 showers (female and male)	Pump does not work effectively as the rubber gets stuck.
Miloso Open Air prison	Water is pumped from a nearby stream	Temporary pit latrines		The pump is rusty giving unclean water.

Water supply is erratic in some prisons, and leads to poor hygiene. Lack of hygiene contributes to the health problems. The lack of sufficient access to water, sanitation and good hygiene leads to easier transmission of infectious diseases. The lack of potable water resulted in serious outbreaks of water- and food-borne diseases, including dysentery and cholera especially during the rainy seasons. Further, the level of hygiene in prisons is very low with unclean bathing facilities and lack of drainage system. Soap, detergents and disinfectants are a rare commodity. The prisons do not provide for basic hygiene necessities to prisoners such as soap, razors, toothpaste, sanitary pads and items for proper hygiene that take a toll on occupants' health. This leads to easier breeding of illnesses and skin diseases. The bathing facilities at most prisons are extremely dirty, unpleasant and filthy with constant sharing of buckets and use of containers to shower without any access to disinfectants which increases the risk of skin infections such as scabies.

The living conditions in Zambian prisons are a breach of the standards that Zambia is obligated to abide by through the signing of the international and regional instruments. Even the national legal instruments and policies have not been effectively implemented and the conditions continue to be detrimental to the right to health as they pose a major risk to the health of prisoners and circumstantial children.

#### 2.1.4. Challenges to access to health care

Prisoners come from, and mostly return, to the community carrying infectious diseases from the prison and can expose their families and community at large to these diseases. Therefore, it must be noted that “good prison health is good public health”. The 2014 Auditor General Report on the rehabilitation and reintegration of prisoners expresses that the view that the aim of the Zambia’s prisons and correctional service is for reformation and rehabilitation of prisoners.

There are several challenges to access to health in Zambian prisons. The 2016 Global Health Article on *Mapping the Zambian Prison Health System* identified key structural determinants as a combination of lack of human resources for health, weak integration of health and security protocols and almost no oversight contributed to sub-standard implementation of these important services. All these bring challenges to access to health for prisoners and circumstantial children.

##### **1. Insufficient health facilities**

Zambian law establishes a minimum standard for medical care and requires that the office in charge of prisons should maintain a properly secured hospital, clinic or a sick bay with a clinic. However, there is a serious gap that exists between these requirements and practice, with little or no medical care available in most of Zambia’s 88 prisons. This situation is even worse for circumstantial children. The report by Human Rights Commission and Child Justice Forum 2014 states that access to adequate and comprehensive health care for children in detention facilities was limited and highly compromised. Most facilities monitored had no health facilities while the few with such facilities in place were poorly stocked with medical supplies to be able to take care of the medical care needs of prisoners and circumstantial children.

##### **2. Lack of basic equipment, infrastructure and drugs**

Medical care to prisoners is often inadequate with the lack of basic equipment and infrastructure and insufficient medicines and drugs being the order of the day. There is no medical personnel attached to the prisons but prisoners have to go to the district hospitals for treatment and medical care. The DAPP monitoring report reveals that prisoners at Mkushi State and Open-Air Prisons access medical services at Mkushi District Hospital. With regards to treatment of HIV, the Report states that the District Hospital visits the prisoners periodically to conduct HIV testing and assessing the CD4 count for prisoners on ART. At the time of the report, 21 inmates were on Antiretroviral Therapy. The impact of inadequate basic equipment, infrastructure and insufficient storage of drugs is that the quality of health-related services becomes compromised. Poor or inadequate storage of medicines guarantees wastage of drugs.

### **3. Insufficient medical personnel**

In cases where the medical personnel at a prison were provided, the ratio to prisoners was overly high. This left the personnel overwhelmed and often overworked. Overworked health personnel also imply that prisoners are not getting quality health services. The DAPP prisons monitoring report also reveals that there are two (2) HIV peer educators amongst the inmates and one (1) officer in charge of HIV activities in the Prison. There is less access to medical care for the remandees, who are usually restricted because of the fear and suspicion that they might escape while being taken to hospital for treatment. Other reports have shown that 5 to 10 prisoners die per month without being allowed to seek proper medical and health care.

### **4. Limited counselling services**

Due to less activity in prisons, coupled with disrespectful attitudes and degrading treatment from some staff, and the minimal contact with the outside world, prisoners sometimes show signs of depression. The high levels of depression can lead to mental disability. There are, however, limited mental health facilities as well as psychiatric services. Also, there is a lack of personnel such as social workers and psychologists to provide counselling or psychosocial support services to accommodate the prison experience and at the same time reform and rehabilitate the prisoners.

### **5. Lack of services for nursing mothers**

For pregnant female prisoners, there is a provision in the Prison Act that stipulates provision of ante-natal and post-natal care, as well as baby clothes and other necessities at government expense. The pregnant mothers do get the antenatal care as prescribed. Further, female prisoners with infants are afforded the right to keep their infants with them in prison until they are four years old. However, the provision of some of the necessities is from Non-Governmental Organisations (NGOs) and people of goodwill. The government does not provide clothing or even food for the children.

### **6. Limited access to HIV Prevention services.**

The Human Rights Report 2015 indicates that 90 percent of inmates reportedly received HIV Testing and counselling services. Sixty-five percent of those diagnosed with HIV had access to ART. HIV prevalence in prisons, however, was 27 percent, compared to 13 percent in the general population. The HIV rate is worsened by prisoners' inability to maintain the strict diet needed for effective treatment, overcrowding, and a lack of adequate prevention and treatment services. This is further hindered by their denied access to condoms due to the legal framework such as the Sodomy Laws that criminalizes homosexuality, thereby minimizing access to prevention of HIV in prisons.

### 2.1.5 Situation of Circumstantial Children

Circumstantial children describe the female prisoners' children who come with their mothers into prison. They are not in conflict with the law, but their mothers' circumstances place them in prison. So, to distinguish them from the children who come in conflict with the law the term "circumstantial child" is used to describe these children.

Margolis Hillary (2002) "Innocent Prisoners" indicates that circumstantial children are made to suffer the terrible prison conditions that prisoners are subjected to in Zambian prisons. The law, however, requires that they are protected from these conditions. The category of protection rights includes protection from discrimination, abuse and neglect. It also encompasses the protection of children in especially difficult circumstances, a label that could easily apply to children raised in correctional facilities. With regards to the protection of children living in prisons, the primary concern is that of preserving their right to enjoy a life free of abuse, neglect or maltreatment.

The Prisons Act of 1966 permits an infant child under the age of four (4) years of a woman prisoner to live with the mother. Once the child reaches four years of age, the Zambia Prison Service is required to place the child with relatives or friends who are able and willing to provide support. In the absence of this option, the Prison Service is required to hand the child over to the welfare authority for foster care. While in prison as a circumstantial child, the state is supposed to provide the relevant accommodation, feeding as well as personal necessities. This is not the situation on the ground. Zambia Human Rights Commission report of 2013 indicated that no special accommodation was made for young children who accompanied their mothers to prison. The report specifically stated that "[t]he Prison Service did not have special diets for children who go in prison with their mothers at the time of the visits. Inmate mothers shared their food rations with their children, and clothing, bathing or washing soaps were not provided for these children

A Needs Assessment for Circumstantial Children in Zambia conducted by the Southern African Litigation Centre (SALC) reveals that there are large numbers of circumstantial children in Zambia. The Report states that approximately 412 circumstantial children are incarcerated with their mothers because of lack of alternative childcare. These children are also at risk of disease and other forms of harm from the mere fact that Zambian prisons are overcrowded. The circumstantial children are subjected to tough prison life conditions of overcrowding, unhygienic environment, poor sanitation, and generally poor living conditions. It is an extreme struggle for the mothers and children to be physically and mentally healthy.

## 2.1.6 Challenges faced by circumstantial children

The following have been recorded as challenges the children face while in prison:

1. **Accommodation:** There are no special facilities for circumstantial children to live in while in prison. They are lodged in the same cells or dormitories with their mothers which are sometimes congested. The sleeping arrangement in prisons is not always conducive as some parents would have to sleep near the toilet and this poses health risks to the children due to close proximity to infections.
2. **Nutrition:** The Prisons Act does not provide for the dietary scale for the circumstantial children, they only depend on the discretion of the Officer-in-charge and other well-wishers for nutritional supplements. Children feed on what their mothers eat, which is not a balanced diet for adults or children. This exposes them to malnutrition and effects of diseases due to poor nutrition.
3. **Exposure to the infections and easier transmission from other inmates.** Some prisoners are admitted into prison with TB and this puts the circumstantial children in danger of contracting TB given the low immune system children have before the age of five years. In some cases, children easily get infected within themselves due to their close interaction;
4. **Denial of the right to play:** Because of their mothers' situation, children have less physical activities due to the enclosed places of prisons. This leaves them with less social stimulation due to limited interaction with other children.

The environment in which the children grow must enable them to attain the highest standard of mental health as well. If children are growing up in an environment where bad language is used, where they witness violence, where they are exposed to noxious smells and other unsanitary circumstances, it is certain that the children do not enjoy the highest attainable standard of healthcare

With the living conditions in prisons that are dire and hopeless, often aggravating the prisoners suffering, and the challenges towards access to health, the aim of rehabilitation and good integration of prisoners back into society cannot be achieved, unless serious and sustainable measures are taken and the appropriate changes are effected.



*Children at a Correctional Facility. Source: Online*

# Chapter 3:

## Opportunities for Advocacy to The Right to Health for Prisoners and Circumstantial Children

All human beings including prisoners, have certain inalienable rights, which are acknowledged by internationally recognized instruments. Zambia is a signatory to some of these international and regional human rights instruments which are essential to protecting the rights of prisoners and the right to health.

The poor living conditions in prisons have a negative impact on the right to health for prisoners and circumstantial children. The US State Department Report on Human Rights in Zambia compiled in 2012 describes Zambian prisons as “...harsh and life threatening due to outbreak of disease, food and potable water shortages, gross overcrowding, and poor sanitation and medical care.” The Zambia’s penal system still faces many challenges, particularly in terms of congestion and lack of resources, understaffing, poor working conditions for staff, and the high number of persons in remand. These challenges lead to severe overcrowding and poor physical conditions, such as extremely poor hygiene and inadequate food, and the poor health conditions of inmates.

Zambia is faced with the difficult prisons conditions that undermine the rights to health for prisoners and circumstantial children. However, we have opportunities to advocate for better conditions which are presented in the international and regional instruments as well as national laws, regulations and policies that promote the right to health for the prisoners and circumstantial children as listed below.

### **3.1 The International Covenant on Economic, Social and Cultural rights (ICESCR)**

The social and economic rights that prisoners and circumstantial children are entitled to that directly impact on their living conditions and access to justice are: the right to work and just working conditions, the right to adequate standard of living, the right to the highest attainable standard of health and the right to education. The ICESCR states that prisoners have a “right to the highest attainable standard of physical and mental health”. The right to the highest attainable standard of health should also apply to prison health conditions and health care. This right to health care and a healthy environment is clearly linked, particularly in the case of HIV, to other “first generation” rights, such as non-discrimination, privacy and confidentiality.

ICESCR emphasizes the importance of the right to equality and freedom from discrimination in realizing economic, social and cultural rights. When a prisoner is incarcerated, they are

subjected to a punishment commensurate with the crime that they have committed. The State has an obligation to promote and protect their rights on an equal basis as those who are not incarcerated. The social status of a prisoner must not deter the extent to which they enjoy such rights. For example, if a prisoner suffers abuse in prison, she or he must be able to seek recourse in the courts of law. If a prisoner falls ill, they must be able to access medical care. Both these rights must be provided at state expense.

## **Advocacy Opportunities**

### **1. Article 11 on standard of living**

The requirement for an adequate standard of living is one which supports a person's quality of life. However, the overcrowding in the Zambian prisons violate the right to adequate housing. Article 11 of the ICESCR guarantees the right to adequate standard of living which includes, but is not limited to access to adequate food, clothing and housing. This article can be used to advocate for improvement of the living conditions of prisoners since it provides that every person has the right to continuous improvement of living conditions. Prisoners and circumstantial children must have balanced diets and food appropriate to their age and health status. They must also have decent clothing that is appropriate, for example, by season, sex and age.

### **2. Article 12 on living conditions**

Improving access for prisoners to clean water, sanitation and the right to a clean-living environment as they impact on one's health are cardinal in ensuring the enjoyment of the highest attainable standard of health. The living conditions in prisons deny the prisoners and circumstantial children the needed standard of health. Article 12 of the ICESCR guarantees the right to highest attainable standard of physical and mental health including the healthy development of the child, improvement of all aspects of environmental and industrial hygiene, prevention, treatment and control of epidemic, endemic, occupational and other diseases, and creation of conditions which would assure to all medical services and medical attention in the event of sickness. This article can therefore be used to challenge any conditions that fail to ensure quality standard of health in prisons.

## **3.2 UN Convention on the Rights of the Child (UNCRC)**

The United Nations Convention on the Rights of the Child (UNCRC) is the first legally binding international instrument to address specifically children's rights comprehensively. Article 15 indicates that "children should not be separated from their parents unless it is for their own good". Article 6 of the instrument guarantees the right to life to all children. It provides that "every child has the right to inherent life." It further imposes on state parties, the obligation to ensure the survival and development of the child to the maximum extent possible.

Article 9(4) states that:

“where such separation results from any action initiated by a State Party , such as detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents, or the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless provision of the information would be detrimental to the well-being of the child...”

The UNCRC sets standards for the quality of life for children for their physical, mental, spiritual, moral and social development. Article 27(3) imposes a duty on states to “take appropriate measures to assist parents or others responsible for the child to implement this right and shall, in case of need, provide material assistance and support programmes, particularly regarding nutrition, clothing and housing.”

## Advocacy Opportunities

### 1. Article 27 on standard of living

Article 27 mentions that “children have the right to a standard of living that is good enough to meet their physical and mental needs’. The government should then be able to provide the circumstantial children with all the necessary materials to be able to ensure better nutrition, enjoyment of their right to health, their right to play and should ensure that children have improved living conditions necessary for full development.

### 2. Article 33 on protection from harm

Article 33 further emphasizes that ‘children should be protected from any activities that could harm their development”, which could be through the poor living conditions that are found in prisons. These articles can be used to advocate for more financial support to ensure improved conditions for circumstantial children.

## 3.3 United Nations Standard Minimum Rules

The United Nations Standard Minimum Rules (SMR) for the Treatment of Prisoners adopted in 1957 have given countries and administrators of penal institutions a framework and a standard to follow and to uphold in the treatment of prisoners who are also human beings. In 2015 they were revised and became to be known as the ‘Nelson Mandela Rules’ to honour the legacy of the late President of South Africa, Mr. Nelson Rolihlahla Mandela, who spent many years of his life in prison. These rules have given countries and administrators of penal institutions not only a framework but a standard to follow and to uphold in the treatment of prisoners.



These rules seek to lay out a basis for the consensus and essential elements, recommending adequate systems and setting out a good principle of practice in the treatment of prisoners by management of penal institutions to address issues ranging from food, accommodation, separation, medical services, personal hygiene, clothing and beddings, amongst others.

The UN Nelson Mandela Rules also have laid out the standard for the treatment of prisoners. These rules consider that not all countries are at the same level in terms of development. Even though not all the rules are capable of application in all places and always, this does not justify a country to take 'laissez-faire' approach toward the rights of prisoners. They should, however, constantly endeavor to overcome practical difficulties in the way of their application, in the knowledge that they represent the minimum conditions which are accepted as suitable by the United Nations.

## **Advocacy opportunities**

### **1. Rule 8 on separation of prisoners**

Rule 8 covers the standard of living for prisoners in penal institutions and discusses the issue of keeping prisoners in different categories, stating that they shall be kept in separate institutions or parts of institutions considering their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. The same rule can, therefore, be used to advocate for separation of prisoners by gender - female vs male; age - juveniles from adult prisoners and status of being in prison; and whether on remand or convicted. Looking at the status of overcrowding which has led to separation being a challenge, it is important to advocate for more buildings which would allow for the separation and cater for the needs of prisoners based on age and gender.

### **2. Rules 10 and 11 on accommodation situation in prisons:**

Several rules can be used to advocate for improved accommodation for prisoners and circumstantial children. Rule 10 of the Mandela Rules indicates that "all accommodation provided for the use of prisoners and, all sleeping accommodation shall meet all requirements of health. The requirements should take into consideration the climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation". This rule can be used to ensure that the sleeping accommodation should meet all requirements of health regarding climatic conditions, minimum floor space, lighting and ventilation. This includes provision of mosquito nets in open-air prisons. Rule 11 addresses standards of the environment and all places where prisoners are required to live or work, including sufficient ventilation and availability of natural light. Rule 19 further indicates that "every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to

ensure its cleanliness”. This rule can be used to ensure that prisoners are provided with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness. The prisons should also provide soap to wash the blankets as part of ensuring cleanliness.

### **3. Rules 12 to 17 on personal hygiene**

The State should provide prisoners with water and toiletries that are necessary for health and cleanliness. As part of improving hygiene, parts of the prisons should also be cleaned regularly and even sprayed with disinfectants and to minimize multiplication of germs that could lead to outbreaks of skin diseases. Rules 12 to 17 should be used to achieve the needed cleanliness and personal hygiene needed for good health. as a basis for addresses the area of personal and general hygiene. The Rule 12 sets the standards for sanitary installations to comply with the needs of nature in a clean and decent manner. The Rule 13 states that the insurance of adequate bathing and shower installations that are to be provided so that every prisoner may be enabled and required to have a bath or shower as frequently as necessary. Rule 15 requires that prisoners are clean, and to this end the State is mandated to provide them with water and with such toiletries as are necessary for health and cleanliness. Furthermore, Rule 14 states that all parts of an institution regularly used by prisoners shall be properly maintained and kept clean at all times. Rule 17 lays down meticulous standards on artefacts such as clothing; it states that clothing shall be suitable for the climate and shall be adequate to keep the prisoner in good health. Such clothing shall in no manner be degrading or humiliating. In addition to this, sub rule 2 states clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

### **4. Rule 20 on food and nutrition**

Rule 20(1) lays down the rules for food. It states that “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.”Sub rule 2 goes on to address the availability of drinking water whenever they need it. These rules can be used to advocate for good quality and quantity of food for prisoners with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

The UN Nelson Mandela Rules also have laid out the standard for the treatment of prisoners. It is important to take note of rule 42 that gives the general living conditions and addresses issues including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.

### 3.4 The UN Rules for Protection of Juveniles Deprived of their Liberty

The UN Rules for the Protection of Juveniles Deprived of their Liberty operates to ensure that juvenile detainees and offenders are given fair treatment and receive consideration for their age. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, with a view to counteracting the detrimental effects of all types of detention and to fostering integration into society. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society. Article 31 indicates that “Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity”.

#### Advocacy Opportunity

##### 1. Articles 31, 38, and 47 on appropriate treatment of juveniles

The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort. This should be in relation to Physical environment and accommodation, Education, vocational training and work and Recreation. Article 31 guarantees that “juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity”, Article 38 states that “every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society” and Article 47 indicates that “every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided’. Appropriate treatment also includes separation from adults to ensure their physical and psychological well-being.

##### 2. Article 33 on separation of juveniles from adults

The Prisons Act 1966 requires separation of different categories of prisoners. However, on the ground, only female prisoners were held separately; juveniles and pre-trial detainees were often held together. The Katombora Reformatory School in Livingstone is dedicated exclusively to juveniles, even though there are cases where juveniles are incarcerated with the adult population at other facilities throughout the country. Article 33 can be used to advocate for improved treatment of juveniles. The article mentions that “in all detention facilities juveniles should be separated from adults, unless under controlled conditions where juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned”.

Separation of juveniles from adults also ensures that they are less likely to be exposed to any form of abuse by the adult offenders. The separation would make

### **3.5 The African Charter on Human and Peoples' Rights (ACHPRs)**

The Charter guarantees all human beings the right to enjoy all rights and freedoms contained in the Charter without discrimination against prisoners or any other group of people in the human race. The status of being incarcerated falls under any other ground of discrimination not expressly listed in the text. Prisoners must, therefore, not be discriminated against, save only so far as is necessary and directly related to the punishment of the offense that such a prisoner has committed. Anything over and above such sentence would amount to cruel, inhuman or degrading treatment and punishment and would thus violate Article 5 of the Charter. Article 5 guarantees the right to dignity inherent in a human being and proscribes all forms of inhuman and degrading treatment or punishment.

To those who are arrested or in detention, the Charter contains protections on an equal basis as other and in such a manner as to ensure the enjoyment of their inherent dignity. To this effect, Article 4 guarantees the right to life of prisoners. It does so by recognizing the inviolability of all human life and protecting the right to life. It thus states that “human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.” Article 16 guarantees the right to the highest attainable standard of physical and mental health.

#### **Advocacy Opportunity**

##### **1. Articles 2 and 3 on humane living conditions**

Articles 2 and 3 read together require that the standard of living of prisoners must not be different from that of free persons and should be necessary to serve their sentence imposed by law. Anything over and above such sentence would amount to cruel, inhuman or degrading treatment and punishment. The inhumane living conditions would thus violate Article 5 of the Charter which proscribes all forms of inhuman and degrading treatment or punishment and guarantees the right to dignity inherent in a human being. The living conditions in prisons are inhuman and degrading, therefore, through the African Charter, the administration can advocate for the improved living conditions that inhibit the right to dignity and thereby affecting the right to health.

### 3.6 African Charter on the Rights and Welfare of the Child (ACRWC)

The other regional treaty relevant to this discussion is the ACRWC. The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted in 1990. It is designed to retain the spirit as well as substance of the letter of the CRC while at the same time having special provisions guided by the situations in Africa. It defines a child as a person under the age of 18 years. Article 3 proscribes discrimination in similar fashion as the UNCRC and emphasises the need to take the best interest of the child into account when taking any action or decision concerning the child. These provisions require that a child be entitled to be registered and named at birth, to acquire a nationality, enjoy family relations, be cared for by its parents and/or protected by the State. Thus, these provisions are not just referring to the right to be alive but the quality of life that is expected of all children including those in prisons. If children in prisons are living an undignified life because their standard of living is different from that of children outside prison, then they are being discriminated against. Their living conditions must be such that they live a life of dignity and they can enjoy life to at least the same standard as those outside prisons.

#### Advocacy Opportunity

##### 1. Articles 19 and 30 on protection of circumstantial children

Under the ACRWC, Article 19 indicates that “children should, whenever possible, have the right to live with their parents. No child should be separated from his or her parents against his or her will, except when authorities believe it would be in the child’s best interest”. However, Prisons are not a safe place for babies and young children. The government, therefore, should provide all the necessities to make the place safer for the children to ensure that their stay does not hinder their growth process.

Article 30 further indicates that “States should provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of breaking the law”. This will improve their chances to provide better care for the children also.

### 3.7 The Constitution

The Constitution is the highest law in Zambia. Thus, all laws must conform to its standards. Part III guarantees respect for human dignity and protection from inhuman treatment to all, including accused persons. Prisoners and circumstantial children are entitled to a full spectrum of civil and political rights, such as the right to life guaranteed under Article 12.

The Constitution also provides for the protection of persons deprived of their personal liberty and circumstances under which personal liberty may be suspended. The constitution further guarantees fundamental rights and freedoms to persons in Zambia.

The management and regulation of prisons and correctional centers is established under Article 193(1) (C) of the Constitution of Zambia under the Zambia Correctional Services. According to the Constitution of Zambia, prisons are an exclusive national function, at the same time regarding facilities such as health service and environmental management; they are a concurrent national and provincial function. This means prison services are regarded as a national function whereas health and environmental management services are both national and provincial. Although prisons are also found in provinces, they are administratively controlled from a national perspective.

## **Advocacy Opportunity**

### **1. Article 15 on freedom from degrading treatment**

Article 15 guarantees freedom from inhuman and degrading treatment which prohibits torture and all forms of degrading treatment. This right is aimed at safeguarding human dignity and ensuring that no human beings are subjected to any treatment or punishment that violates their humanity. This right is particularly relevant to prisoners and circumstantial children as they are often susceptible to various forms of inhuman and degrading treatment and punishment.

## **3.8 The Prisons Act 1996**

The Zambia Prison Service was established by the Constitution Article 106, with the aim of providing custody for prisoners, providing correctional services to inmates and managing prisons generally, as detailed largely in Article 107 of the Constitution, the Prisons Act and subsidiary Prisons Rules (1966), and the Prison Service Principal Guidelines. This is an important piece of legislation on penal institutions in Zambia. It contains several provisions that safeguard the rights of prisoners.

Section 56 of the Act empowers a convicted mother of a child under the age of 4 years to be admitted to prison with her child. The Act further provides that such a child admitted to prison must be released to family members who are willing and able to provide for the children when the child attains 4 years old. This provision empowers the mother to keep her child whilst in prison. Section 60 of the Act also defines a special category of prisoners who will be kept separately from all other prisoners and ensure comprehensive protection to the children that are admitted into prison with their mothers.

## Advocacy Opportunities

### **1. Section 60 on separation among prisoners**

Although the Act imposes an obligation on the State to provide necessities for circumstantial children, these necessities are not provided, leaving them susceptible to human rights abuses. Further, it is not in the best interest of a child to be admitted to prison, and often does not have a conducive environment for raising children. It may seem a good alternative for mothers who do not have alternative care for their young children, but there are a lot of negative consequences of keeping circumstantial children in prison under the same conditions as all other prisoners. If the State cannot provide alternative care through adoptions, foster care or similar programmes, it should use the provisions in Section 60 of the Act to provide for separation amongst different classes of prisoners.

### **2. Section 71 and 72 on removal of sick prisoners from the general prison cells**

They require that any prisoner who has a serious illness should be taken to hospital. There is, therefore, need to ensure that the Act defines what a serious illness is as well as provide for the continued provision of medication by the Government for a prisoner who continues to serve his sentence in custody while sick, i.e., if discharged from the hospital but advised to continue with medication.

### **3. Section 87 on the maintenance and upkeep of prisoners**

The permission for non-convicted prisoners to purchase or receive extra supplies from private sources, to wear their own clothing, and to be allowed to see a registered medical practitioner of his/her own choice at any reasonable time are all provided for under the Act. However, Section 87 should be extended to all prisoners with an effective system that will regulate its implementation. It can be extended to prisoners with poor health who may require special diets and other necessities or those with disabilities and allow for them to be maintained from private sources; including provision of medication, food and clothing. This would ensure better right to health for the prisoners and alleviate the high demand of some goods and services on the government.

## 3.9 The Public Health Act 1995

This is Chapter 295 of the Laws of Zambia enacted to prevent and suppress diseases and generally to regulate all matters connected with public health in Zambia. It regulates the notification of infectious diseases and the prevention and suppression of infectious diseases. It further makes special provisions for formidable epidemic diseases and provides a list of such

diseases. The Public Health Act proscribes creation of nuisances; a criminal offence created under the Penal Code often to address offensive smells, unsightly objects and obstructions to or in public places.

Section 15 of the Act empowers a Medical Officer of Health to enter and inspect any premises and examine any person suspected to be suffering from an infectious disease. Section 16 of the Act further imposes a duty on the local authority to cause premises to be cleaned and disinfected. Per section 17, the local authority is empowered to direct the destruction of any building, beddings, clothing or other articles which have been exposed to infection from any infectious disease.

### **Advocacy opportunity**

#### **1. Provisions of the Public Health Act**

The provisions of the Public Health Act state that anything that poses a danger to public health falls within the ambit of the Act. The Public Health Act can, therefore, be invoked to redress some of the health challenges experienced in prison settings if used effectively.



# Chapter 4:

## Conclusion and Advocacy Issues on the Right to Health for Prisoners and Circumstantial Children

Health was defined by the World Health Organization (WHO) to be the state of complete physical, mental and social well-being and not merely the absence of disease and infirmity. The right to health in Zambian prisons needs some improvement. With the combined impact of overcrowding, minimal ventilation and a significant immune-compromised population which is ripe for the quick spread of TB as well as other diseases is of great concern. It is a ticking time bomb for an outbreak of an epidemic. A disease that poses a major problem in prisons is that of TB; it seems to be escalating because of the significant delay that exists between diagnosis and testing of the illness. Zambian policy dictates that the best practice for TB management is isolation that is supervised by treatment. However, there is little or no isolation capability in these extremely overcrowded prisons.

The link between access to justice and health care is quite evident. The Article entitled “Justice and access to health care” stated that there is a direct connotation between public health and personal medical care services and access to justice. Access to health is a requirement for social justice and not just a matter of policy. Similarly, access to justice is a requirement for enjoyment of the right to health. It is however important to be clear on what constitutes appropriate access to medical care, considering the present barriers to access, and if it is a matter of justice, what accounts of social justice should take place.

Prisoners experience harsh living conditions in the Zambian correctional facilities. The Report reveals that prisoners have inadequate housing as most of the correctional facilities are overcrowded. The Report further shows that because prison facilities are inadequate, the separation of prisoners is a challenge. It also reveals that infectious diseases are rampant in Zambia. Prisoners and circumstantial children often do not have access to adequate health care. The Report also finds that many prisoners experience various forms of human rights abuses, yet they have limited, and, in some cases, no access to justice.

Strategies to improve health in prisons have been disease specific. However, there is need to follow the national health policies and the Public Health Act to ensure better health to the prisoners and circumstantial children. As part of improving public health in the prison setting, it is important to also take into consideration the environmental conditions that lead to, or expose prisoners to transmission of diseases.

The Report, therefore, identified issues for advocacy with the different levels of prison management and policy making processes and procedures.

### Advocacy Issues Identified

ISSUE	EXPLANATION	EXPLANATION
Poor Implementation of the Prisons Act	The Prisons Act has good provisions that protect the right to health for prisoners and circumstantial children. However, there is poor implementation of the Act leading to human rights violation for prisoners and circumstantial children.	Advocate for enforcement of the Prisons Act with policy strategies that adequately protect the human rights of prisoners and circumstantial children.
Overcrowding in prisons	Currently, Zambian Prisons are overcrowded which leads to easy transmission and increase of diseases. This is sometimes due to delays in court proceedings caused by an inefficient judiciary which leads to the holding of large numbers of pretrial detainees for extended periods.	To raise awareness about overcrowding in prisons; to advocate for decongestion through i. Advocating for fast tracking of court procedures to reduce the number of remandees; and ii. Advocating for building more prisons or cells to accommodate more prisoners.
Infectious Diseases	There is a high incidence of infectious diseases such as TB and HIV and AIDS which are public health concerns due to the living conditions and overcrowding, coupled with poor access to health services which affects the right to health for prisoners and circumstantial children.	To advocate for improved hygiene and provision of quality and affordable medical services. To advocate for improved public health strategies that will ensure prevention and treatment of infectious diseases.
Poor Nutrition	There is low quality and quantity of food for prisoners and circumstantial children. Most prisons generally provide two meals per day, usually without vegetables which are a source of vitamins leading to malnutrition and frequent disease outbreaks such as diarrhea and weight loss.	Advocate for improved food supply through provision of a wide range of agricultural products which are homegrown and provision of food supply from private sources even for convicted prisoners where and when possible.
Sanitation and Hygiene	Zambian prisons are characterized by poor water and sanitation facilities which pose health risks to prisoners and circumstantial children. There is limited access to basic hygiene services even for bathing and washing to ensure cleanliness.	Advocate for improved sanitation and hygiene in the prisons. Advocate for adequate supply of disinfectants to keep the surroundings clean as well as bathing products.
Circumstantial Children	Circumstantial children are exposed to bad living conditions in prisons such as overcrowding, health risks, violence and a wide range of violations to their civil and political rights as well as economic, social and cultural rights.	Advocate for better services for pregnant and nursing mothers. Advocate for the effective policy implementation that support the protection of circumstantial children.

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