CRIMINAL JUSTICE SYSTEM IN ZAMBIA
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A CASE FOR THE ZAMBIA PRISON

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ZAMBIA
1. INTRODUCTION

The Zambia Prison Service has a long standing history spanning from the colonial era up to the year of Zambia’s independence in 1964. It is established under Art. 106 of the constitution of Zambia.¹
In the context of the current debate on the contents of the new draft constitution, the government has proposed to re-establish the Zambia Prison Service under Art.261 and that the members of the Service would be recruited from Zambian Nationals who do not hold dual citizenship.\(^2\)
The Zambia Prison Service is one of the arms of criminal justice in Zambia with the mandate of managing and controlling of prisons with inmates lodged therein. An ACT of parliament in the form of chapter 97 of the laws of Zambia sets out the main functions of the Prison Service namely:

- To provide custody for prisoners
- To provide correctional services to inmate
- To manage and administer prisons generally
These statutory functions are supported by the Prison Service goal statement of;

“Effectively and efficiently provide and maintain humane custodial and correctional services to inmates and to increase industrial and agricultural production in order to contribute to the well being and reform of inmates and maintenance of internal security.”
A Close examination of the above goal statement brings out two fundamental functions of the Prison Service, thus custodial and correctional of inmates. The core functions are supported by nine (9) core values of the service which state:

• Effective and efficient contribution to the attainment of a just, peaceful and safe society.
• Placement and motivation of staff as essential elements for the achievement of the goal statement.
• Commitment to integrity, accountability and transparency.
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• In the interest of public safety, decisions about offenders must be based on informed risk assessment and risk management.

• Commitment to protection of vulnerable prisoners.

• Freedom of thought, conscience and religion are inherent rights of every offender.
• Provision of opportunities to prisoners to change and develop as law abiding citizens.
• Commitment to the provision of adequate health care services.
• Effective and efficient rehabilitation of offenders through alternatives to imprisonment and post-sentencing alternatives.
While the constitutional functions and the core values of the Prison Service are elaborate and clear, there are special problems which undermine the full attainment of justice in operationalizing the mission statement and the core values.
The problems range from overcrowding, lack of adequate food and uniforms, medical care and violations of prisoners rights. The operational and administrative budget has never been adequate for the many problems facing the prison service.

On 28th April 2010, the Human Rights Watch, Prisons care and Rights Alliance for Southern Africa released a report which indicated that Zambian Prison conditions were extremely rough. In his remarks to the launch of the report, Kenneth Roth said that:
Some prisoners were starved
Packed in cells unfit for human habitation
Some are beaten by fellow inmates and prison officers

This point has been acknowledged by PRISCCA EXECUTIVE DIRECTOR Godfrey Malembeka who confirmed that:

“Some prison officers routinely beat prisoners and forced them naked into small dark cells where they were given minimal food.”

In his study of the prison conditions at Mazabuka State prison, Kakoho Michael, (2010) made the following findings:
• That the prison accommodates 250 prisoners instead of 62.
• That the judiciary and the police contributed to overcrowding in the prison.
• That adjournment by lawyers and police failure to bring witness to court coupled with lack of enough court rooms increased the levels of overcrowding in the prison cells.
• That the major effects of overcrowding was prisoners contracting diseases such as T.B, Scabies, Skin rush, Bilhazia, Sneezing and HIV/AIDS.
• That the food supplied to the inmates was inadequate and often not fit for human consumption
The Mazabuka Prison conditions are similar to conditions found in many Zambian prisons scattered in 53 prisons establishments in Zambia.

Although there is an outcry over the problem of overcrowding in Zambian prisons, the problem may not be peculiar to Zambia alone. Studies in Canada and U.S.A. have shown that overcrowding in prison is a major source of administrative problems affecting the health of inmates including their morale. Long term overcrowding causes stress leading to physical and psychological impairment.
A further argument is that where overcrowding is chronic, it limits the personal space available to a prisoner and a source of disciplinary violations and depending on the prison setting; prison could be painful, harmful and dangerous.

The prison officials could also re-act to overcrowding by attempting to slow the rate of receiving new admissions.
Children are by far more vulnerable than adults to the negative effects of imprisonment and for this reason, detention of children or custodian sentence for a child should be avoided wherever possible. In an event of a lawful detention, international standards should apply that;
• A detained child is entitled to legal representation until released from prison or detention.
• Has a right to be separated from adults during detention.
• To have contact with family members

The question that ought to be answered well is this;

“Are children still being kept in custody together with adults.”?
Although there is emerging evidence that 93.5% of children are being separated from adults during detention about 6.5% of the children are still been kept with adults in detention.\(^7\)

Recent research conducted in Namwala, Mazabuka, Monze, Kasama, Mungwi, Luapula, Solwezi and Sianzongwe have shown that there are no separate cells for the detention of children in conflict with the law.\(^8\)
“Best interest” requirement has become a flagship in children’s welfare whether in or out of detention. The “best interest” requirement has been acknowledged by the UN convention on the Rights of the child and the AU charter on the Rights and Welfare of Children.

Zambia is a signatory to both instruments. The leading and most important provision of the convention on the Rights of the Child is Art 3 which stipulates that: 9
“In all actions concerning children whether undertaken by public or private social welfare institutions courts of law administrative or legislative bodies, the best interest of the child shall be a primary consideration”\textsuperscript{10}

In the South African case of BANNATYNE vs BANNATYNE; \textsuperscript{11} the constitutional court observed that the best interest requirement obliges a state to create the necessary legal and administrative infrastructure to protect children. A judge in FLETCHER’S case decided; \textsuperscript{12}
“That the best interests test directs the court to exercise the discretion it possesses in its capacity as the upper guardian of children to promote the interests of the child."
4. THE PROBLEM OF FOOD AND UNIFORMS.

The problems of food and uniforms in some prisons establishments are still persisting.

During a jail delivery in Chipata, Eastern Province, Deputy Commanding Officer Frank Simushombo informed visiting Justice Charles Kajimanga that: "Some prisoners in Eastern Province have resorted to wearing ordinary clothes due to a shortage of uniforms."
The Officer further reported that inadequate funding from the government has made the prison service incur huge debts from ZESCO, Water Company and ZAMTEL”\(^{14}\). The officer appealed to the judge to help resolve the problems.
Poor case flow management has been cited as one of the problems affecting the delivery of criminal justice in the prison service. This problem is linked to the delayed judgments and remandees kept on expired warrants.

The case of **VENSA NTAMBU** explains the kind of delays in the case management for inmates in the prison service. The story of NTAMBU has been told to the nation in the following manner.
“A convicted murderer who has been on death row for the last 19 years without his appeal being heard following the disappearance of his case record has asked Kitwe High Court Judge Catherine Makungu to help him get constitutional bail.¹⁵

Judge Makungu had visited Solwezi state prison to check on the conditions under which inmates live.
6. PRISONERS NOT APPEARING IN COURT FOR APPEALS.

A persistent problem in the prison service is one where prisoners on appeal fail to have their cases heard because case records are either missing or stolen. For example –

- Since 3rd October 2001, David Mpundu of Mansa Prison has not had his case of defilement heard by a judge of the High Court and has been in detention since then. Why are Higher Courts not concerned with this problem, and yet these courts are superior courts of record?
The right to have a trial begin and concluded without unreasonable delay gives practical meaning to the concept of fair trial. This makes it peremptory for a court to investigate what would appear to be unreasonable delay in the completion of criminal appeals which could cause substantial prejudice to the

- Prosecution
- Accused and his lawyers
- To the State and the witnesses
In determining whether or not there is unreasonable delay, the court should examine the following factors, namely:

- The duration and reasons for the delay
- Whether anybody can be blamed for the delay
- The effect of the delay on the person circumstances of the accused and the witnesses
- The effect of the administration of Justice
In delayed criminal matters whether at the court of first instance or appeal, there is the question of potential prejudice to the state or defense as a result of the following:

- The possible health, disappearance or non-availability of witnesses
- The loss of the evidence and costs arising to the parties
- Public interests concerns
The point this paper makes is that while judicial impartiality and the application without fear, favour or prejudice by the courts are inherent in an accused’s rights to a fair trial under Art.18 of the constitution, the institutional and judicial independence should be employed to safeguard the right to a fair trial of the accused or detainees.

The courts are reminded that systematic delays of trial or appeal should not be allowed to render the right of a fair trial of the accused nugatory.¹⁷
There has been reported of cruel and inhuman treatment of prisoners by warders and in the majority of cases, prison authorities do not take action. For example -

• A prison warder from chondwe Air Prison in Ndola assaulted a prisoner (name withheld) and caused grievous bodily harm to the prisoner.

• At Milima Prison a prisoner was tortured by a prison warder who whipped the prisoner with siambok and a prisoner sustained a fractured knee.
In the Ireland vs. United Kingdom case court held that inhuman treatment is treatment that deliberately causes severe mental or physical suffering, while degrading treatment arouses in its victims a feeling of fear, anguish and humiliation which debase the victim.

- It is therefore not an over indulgence when Sishekano Lubinda confirms that the attitude of some officers towards prisoners is oppressive. He suggests that the officers be trained in human rights so they can look at inmates as their fellow human beings. Sishekano is serving a sentence of imprisonment for aggravated robbery.
8. PRISON SERVICE

BUDGET

Many institutional problems in the prison service are as a result of limited or inadequate budgetary allocation. Although there has been some improvement in the budgetary allocations from the Treasury, the budget is still not enough to help resolve the many challenges the service faces.
Zambia is among the many countries in Africa and the world who have ratified international human rights instruments. Among the instruments ratified by Zambia are the following:

- United Nations Convention on the Rights of the child. The emphasis is on the welfare of the child where the best interest of the child should be paramount. Among the special rights of the child is that children should be separated from adults while in detention.
- Convention on civil and political rights
- Convention on economic social and cultural rights.
- International convention Against Torture and other forms of cruel, inhuman and degrading treatment or punishment.
- International convention on the elimination of all forms of discrimination against women.
- First optional protocol to the convenant on civil and Political Rights (1984).
There are other international instruments relevant to the protection and observance of fundamental human rights for prisoners.

- Standard minimum rules for the treatment of prisoners.
- United Nations rules for the protection of JUVENILES deprived of liberty. There is emphasis that children or juveniles in custody should be separated from adults.
- Body of principles for the protection of ALL PERSONS under any form of detention or imprisonment.
- Basic principles for the treatment of prisoners.
At the Regional Level Zambia has ratified the;

- Charter on the Rights and Welfare of the child.

These instruments remind the government of the duty to enforce international and regional standards for prisoners to receive justice. The need to domesticate most of these instruments is a cry for yesterday and today.
While many factors have been discussed which affect the effective delivery of justice to the prisoners in Zambia, there has been programmes in the prison service which alienate the plight of prisoners.

OFFENDER MANAGEMENT PROGRAMME aims at re-integrating prisoners into society when they are released from prison. The pillars of the programme are;
- Inmate care programmes
- Development programme
- Special needs offender programme
- Behavior modification
- Prisoner re-integration which involves family life - up activities, conditional release after care services
FARMS AND INDUSTRIES

The service has large farms and ranches where maize and other agricultural produce are grown including ranching for beef. These farms are expected to provide enough food for prisoners and staff and eliminate hunger in prisons. This programme enhances the prisoner’s right to food.
EDUCATION UNIT

Offers basic education to inmates from grades 1 – 9 and others study for GCE Classes.

These programmes improve life in prison.
The problems of the prison service are many and are inherent in its position as a department in the Ministry of Home Affairs. In order to improve the delivery of justice in the service for prisoners, the following are recommended:

- A comprehensive masterplan strategy be instituted to ensure that problems facing the service are dealt with in a comprehensive manner. In this regard, it is recommended that a stand alone Ministry of CORRECTIONAL SERVICES be created.
The government be encouraged to consider setting up the office of the Prisons Ombudsman to deal with wider issues of human rights violations in the prison service. The Prison Ombudsman would ensure that justice and respect for human rights in respect of prisoners is secured.
The need for building extra new prison buildings to cater for women and children has arisen. The DAILY UNLOCK figure currently stands at about 16,000. And of this figure about 1,600 are female inmates and 14,400 are males. Juveniles range from 200 – 300 or even more (figure for August 2010). This will help reduce on overcrowding and stress among the inmates.
The judiciary be encourage to apply non-custodian sentencing policy for petty and manor offences to help decongest prisons.

The President be encouraged to continue using his powers to render constitutional pardon to deserving inmates especially the terminally ill prisoners. This would in the main be a strong measure for decongesting the prisons. The President’s powers would enhance the role of the National Parole Board.
Training in human rights and access to justice be stepped up for officers in the Prison Service.
The problems affecting the Prison Service are many and complex. They require a strong political will from the government to unbundle the challenges, and only then can inmates receive justice as human beings.
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