Pre-trial detention in Zambia:
Understanding caseflow management and conditions of incarceration
Executive summary Zambia

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

In order to better understand the use of pre-trial detention, the team undertook a follow-up review of the rule of law, access to justice and adherence to human rights standards, the Open Society Initiative for Southern Africa (OSI-SA) and the Open Society Foundations Global Criminal Justice Fund (GCJF) – commissioned an audit of a sample of police stations, prisons and courts in Zambia to gather information on both the legal status of awaiting trial detainees and issues pertaining to conditions of detention in prisons and police stations.

The research found that a number of issues relating to the Directorate of Public Prosecutions (DPP) hamper effective case flow management, such as inadequate funding and training of the DPP staff; lack of autonomy of the DPP vis a vis the Ministry of Justice; lack of clear procedures related to the DPP and the Prosecution Service; poor cooperation of the DPP with other parts of the criminal justice system; poor coordination between the prosecutors and investigators of cases.

In the past, the problem of excessive and extended pre-trial detention has been symptomatic of failings in the criminal justice system and their functions

The Constitution of Zambia and the other legislative framework for criminal justice institutions in a variety of ways. The Constitution provides for bail; due process guarantees; the presumption of innocence; the right to be informed of the reasons for arrests and material means for unlawful arrest; the right to be brought to court within 24 hours; the right to be tried within a reasonable time by a competent tribunal; the right to access to legal representation; and the right to freedom and security of the person.

Conditions of detention – police cells

While some good practices were identified, the overwhelming picture is that conditions of detention are poor, violate the rights of detainees and are symptomatic of failings in the criminal justice system; it permeates nearly all operational areas (cost per prisoner per day is estimated to be less than US$2) and high mortality rates among both old) and the insufficient capacity and nature of cell accommodation are the cause of many of the overwhelming picture is that conditions of detention, including under-funding that impacts on the management – confusion between judicial and executive functions; and, lack of child-friendly courts.

In respect of the prison service, the report states that one of the major concerns. Sufficient funds will remain a challenge for the foreseeable future, but this should not prevent an incremental process of reform and improvement. The police service should develop a time bound and monitored plan of action to incrementally improve conditions of detention, while police management should provide assurances that ventilated and demonstrable leadership in relation to the human dignity of detainees and their right to speedy trial, and to be free from torture and other ill treatment. It is especially the poor and powerless who bear the brunt of excessive and extended pre-trial detention, even for short periods, reaches well beyond the individual concerned, affecting families and communities.

As was the case with police detention conditions, some good practices were identified but the overwhelming picture is that conditions of pre-trial detention are poor and fall short of what is generally accepted as humane detention. However, the government of Zambia should be commended for its recent ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and the reports it has submitted to the UN Committee Against Torture.

Together with its partners, the prison service needs to seek and advocate for alternatives to excessive and prolonged pre-trial detention, while also aspiring to increase its self-sufficiency and seek more environmentally friendly, low-cost and low-tech solutions to some of the practical challenges entwined to conditions of detention. A comprehensive cost analysis of improvements in the prison system should be undertaken in order to accurately inform the budget of the prison service.

Case flow management data

Estimating the time periods spent in custody by accused people in the criminal justice system was the primary objective of the case flow management part of the research – and sufficient data of the requisite quality was collected in order to accurately inform the budget of the prison service.

There has been a steady reduction in the average time in police detention from 39 days in 2006 to 8 days in 2011. However, time periods in police detention do remain a cause for concern since the
legislative limit of 24 hours does not appear to be achievable for the majority of detained people. Deprivation of liberty by the police for a range of minor offences also raises concerns. Admission to police detention could be reduced by 20 percent simply by removing people arrested on offences such as loitering.

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

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

Further research and/or reform is recommended to:

• Re-train police on the right to police bond as well as initiate changes to local practice on the requirements for police bond;
• Review bail legislation restricting bail by offence type;
• Review the penal code to decriminalise certain actions resulting in unnecessary police detention;
• Review the committal process and design an expedited process to enrol matters in the High Court;
• Implement an early screening process to be adopted by prosecutors to expedite withdrawals; and,
• Identify and implement mechanisms to identify instances of inordinate delay in relation to people on remand and trigger a review of these cases.

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1. INTRODUCTION

By Lukas Muntingh and Louise Ehlers

A global problem

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

This deprivation of liberty exposes detainees to a range of human rights violations, particularly torture and ill treatment. This exposure to familial violence, initiation rituals and targeted cases of vulnerable groups; and, loss of their employment during excessive periods of detention and watching their families slip deeper into poverty, hunger and homelessness.2

The African context

African prison systems face a host of serious problems, including poor conditions of detention; torture and ill treatment; overcrowded and inadequately equipped; antiquated legislation; poorly trained staff; and, a lack of oversight. These problems are widely acknowledged and several declarations by African stakeholders have demonstrated their concerns about the

The African context

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occurring gesture of justice, the right to a fair trial.

Despite this there are an estimated three million people in pre-trial detention globally and more than nine million are detained each year – with many remaining in custody for weeks, months or even years before they go to trial, if at all.1 This deprivation of liberty exposes detainees to a range of human rights violations, particularly torture and ill treatment. According to the Global Campaign for Pre-trial Justice, people in pre-trial detention risk:

• Exposing them to institutional violence, initiation rituals and gang violence, which contribute to the significantly higher homicide and suicide rates among pre-trial detainees compared to sentenced prisoners;
• Contracting infectious diseases due to overcrowded and unsanitary conditions – diseases which the detainees carry back to their home communities when they are released;
• Social stigmatisation, including estrangement from family and community, and difficulty finding and retaining employment;
• Increased propensity for crime since those who experience prolonged pre-trial detention are more likely to commit a criminal offense after release and their children are also more likely to commit a criminal offense later in life; and,
• Losing their employment during excessive periods of detention and watching their families slip deeper into poverty, hunger and homelessness.2

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continent’s poor prison conditions? One of them is the Ouagadougou Declaration, adopted by the African Commission on Human and People’s Rights (ACHPR) in 2003 – pays particular attention to un-sentenced prisoners and recommends:

• Better co-operation between the police, the prison services and the courts to ensure trials are speedily processed and to reduce delays in the pre-trialdetention through regular meetings of caseload management committees, including all criminal justice agents at the district, regional and national levels; making costs orders against lawyers for unnecessary adjournments; and, targeting cases of vulnerable groups;

• Ensuring that people awaiting trial are only detained as a last resort and for the shortest possible time;

• Greater use of paralegals in the criminal process; the police bail powers and involving community representatives in the bail process, restricting time in police custody to 48 hours, and setting time limits for people on remand in prison;

• Good management of case files and regular reviews of the status of remand prisoners; and,

• Ensuring that people awaiting trial are only detained as a last resort and for the shortest possible time;

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• Ensuring that people awaiting trial are only detained as a last resort and for the shortest possible time;
Excessive pre-trial detention threatens people’s basic right to liberty and dignity.

As Ballard notes, “such figures indicate that the right to liberty is compromised in South Africa.”

“The right to a fair trial is also compromised since a lengthy detention may be an incentive to plead guilty. In addition, detained people encounter numerous difficulties in defending themselves because they are unable to contact witnesses who may assist their defence or seek legal advice. Lengthy detention also depletes the financial resources of the accused and their ability to employ the services of legal representatives.

But imprisoning people unnecessarily and for extended periods also incurs significant costs for the state. Funds are needed to cover extra meals, additional staff to supervise the prisoners, increased health care bills due to poor conditions and the cost of providing security. The ripple effect does not stop there: communities and States marked by poor public transport. The result may well be that the right to liberty is compromised.

Compromising the right to liberty and dignity

Excessive pre-trial detention threatens people’s basic right to liberty and dignity. Poor living conditions and long periods of confinement, especially when facilities are overcrowded, often lead to loss of dignity. Exposed to ongoing stress, the detained person is more likely to fail to comply with minimum standards of humane detention. While the longer the detention, the more right to liberty is compromised.

In Article 9(3), the ICCPR acknowledges that pre-trial detention may be a necessity in some instances. However, it is clear that detention before trial should be avoided whenever possible and alternatives sought to secure the attendance of the accused. Article 9(3) provides that a person shall be released pending trial if the judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

International jurisprudence recognises the right to liberty is not just for the accused once a conviction is secured but throughout the entire duration of detention. The European Court of Human Rights (ECHR) concluded in the Bakhmutskiy case (ECHR) that detaining a person for seven years without trial violated the “reasonable time”.

The African Charter on Human and Peoples’ Rights (the Charter) provides for the right to liberty in Article 6:

a) The right to an appeal to competent national organs against acts of violating his fundamental rights and freedoms.

b) The right to be tried within a reasonable time by an impartial court or tribunal.

c) The right to be heard. This comprises:

i. The right to a choice between either bringing an accused to trial within a reasonable time or to release.

ii. The right to liberty and the growing obligation on the state.

iii. The right to have his cause heard. This comprises:

- The right to liberty to freedom and the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

The African Human Rights Commission found that detaining a person for seven years without trial violated the “reasonable time” standards set in Article 7(1) of the Charter.

Each individual shall have the right to have his cause heard. This comprises:

a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

b) The right to be presumed innocent until proved guilty by a competent court or tribunal.

c) The right to the defence, including the right to be defended by counsel of his choice.

d) The right to be tried within a reasonable time by an impartial court or tribunal.

In Huri-Laws v. Nigeria, the ACHPR ruled that detaining two suspects for over five months and the other for little more than a month - before bringing them to court violated their right to appear before an impartial court or tribunal within a reasonable time.

In Alhasan Abubakar v. Ghana, the ACHPR found that detaining a person for seven years without trial violated the “reasonable time”.

The ACHPR has also been firm in interpreting the fair trial rights in Article 7(1) of the Charter.
Background to the research project

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

The information contained in this report provides rigorously researched, empirical evidence, which can be used to underpin future efforts by both government and civil society to influence legislation, policy and practice with a view to ensuring the appropriate use of pre-trial detention, promoting the speedy resolution of trials and improving prison conditions in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMR).

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

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

Methodology

By Lukas Muntingh

2.1 Partners and institutional arrangements

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

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

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

2.2 Goal and objectives

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

• Undertake an in-depth review of the current legislative and policy architecture, any pending legislation and all previous research on Zambia’s criminal justice system that had been conducted in the last five years;
• Use data collection tools that were appropriate to case flow management, the conditions in police cells and prisons, and prison management;
• Collect primary data through fieldwork at selected prisons and courts;
The project was divided into five broad phases: scoping of the project, research on case flow management, conditions of detention and prison management, and the consolidation and release of the findings.

### Structure

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

#### 2.3 Scoping of the project

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

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

#### 2.3.1 Scoping the project

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

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

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

### 2.3.4 Research on prison management

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

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

### 2.3.5 Consolidation and release of findings

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

- Prioritize reforms that will produce the maximum number received in respect of the case flow recorded.
- Address and existing records.
- Conduct the fieldwork and to provide training to other researchers to enhance the capacity of the team.

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

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

### Table 1

<table>
<thead>
<tr>
<th>Institution</th>
<th>Data collection tool</th>
<th>Source</th>
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<tbody>
<tr>
<td>Prison</td>
<td>Conditions of detention - Awaiting trial prisoners</td>
<td>Observation and existing records</td>
</tr>
<tr>
<td>Police</td>
<td>Data sheet - Remandee Prison Register</td>
<td>Remandee Prison Register</td>
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<tr>
<td></td>
<td>Bail book</td>
<td>Bail book</td>
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<td></td>
<td>Warrants</td>
<td>Warrants</td>
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<td></td>
<td>Minority returns</td>
<td>Minority returns</td>
</tr>
<tr>
<td></td>
<td>Data tool: Police Stations Arrested Person’s Property Book (APPB)</td>
<td>Arrested Person’s Property Book (APPB)</td>
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<td></td>
<td>Conditions of detention - Police Detention</td>
<td>Observation and existing records</td>
</tr>
<tr>
<td>Subordinate Court</td>
<td>Data tool: Subordinate Court Master Register and Case File</td>
<td>Master register (criminal)</td>
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<td></td>
</tr>
<tr>
<td>High Court</td>
<td>Data tool: High Court - Criminal Trial Register</td>
<td>Master Registry</td>
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### Table 2

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<tr>
<th>Subordinate Court</th>
<th>Observations received</th>
<th>Target</th>
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<tr>
<td>Chipata</td>
<td>90</td>
<td>90</td>
</tr>
<tr>
<td>Kabwe</td>
<td>90</td>
<td>90</td>
</tr>
<tr>
<td>Livingstone</td>
<td>50</td>
<td>90</td>
</tr>
<tr>
<td>Luanshya</td>
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<td>90</td>
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<tr>
<td>Mopani</td>
<td>0</td>
<td>90</td>
</tr>
<tr>
<td>Mongu</td>
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<td>90</td>
</tr>
<tr>
<td>Solwezi</td>
<td>90</td>
<td>90</td>
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<td>Total</td>
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### Table 3

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<th>Police Station</th>
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<tr>
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<td>240</td>
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<tr>
<td>Kabwe</td>
<td>160</td>
<td>240</td>
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<tr>
<td>Livingstone</td>
<td>120</td>
<td>240</td>
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<tr>
<td>Luanshya</td>
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<td>Mopani</td>
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<td>Mongu</td>
<td>200</td>
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<tr>
<td>Solwezi</td>
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<tr>
<td>Total</td>
<td>1238</td>
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### Table 4

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<th>Subordinate Court</th>
<th>Observations received</th>
<th>Target</th>
<th>Summary</th>
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<tbody>
<tr>
<td>Chipata</td>
<td>90</td>
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<tr>
<td>Kabwe</td>
<td>90</td>
<td>40</td>
<td>No</td>
</tr>
<tr>
<td>Livingstone</td>
<td>90</td>
<td>40</td>
<td>Yes</td>
</tr>
<tr>
<td>Luanshya</td>
<td>90</td>
<td>40</td>
<td>No</td>
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<tr>
<td>Mopani</td>
<td>90</td>
<td>40</td>
<td>Yes</td>
</tr>
<tr>
<td>Mongu</td>
<td>90</td>
<td>40</td>
<td>No</td>
</tr>
<tr>
<td>Solwezi</td>
<td>90</td>
<td>40</td>
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</tr>
<tr>
<td>Total</td>
<td>80</td>
<td>360</td>
<td>Yes</td>
</tr>
</tbody>
</table>
2.4 Methodology and limitations for case flow management

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

In general, a sample of 40 from each register was chosen for each year from 2006-2011. A smaller sample of 40 from each register was drawn in the High Courts, as these period was drawn in the High Courts, as these smaller sample of 40 for the entire five-year period was chosen for each year from 2006-2011. A random sample was chosen by establishing the sample covered the entire time period. The random samples were chosen by establishing how many entries there were in the relevant register in a year and then dividing by 40 to determine the selection interval. In the subordinate courts, the total number in the relevant register from 2006 to 2011 was divided by 90 to obtain the selection interval, while in the High Courts the total number was divided by 40 to obtain the selection interval.

Details from each randomly selected entry were recorded from the relevant register. In the police stations, ‘Numbering Register’ or ‘Incoming’ register in the courts, and the remand prison register in the prison) dating back to 2006 (except in the courts, where the sample covered the entire time period). The random samples were chosen by establishing how many entries there were in the relevant register in a year and then dividing by 40 to determine the selection interval. In the subordinate courts, the total number in the relevant register from 2006 to 2011 was divided by 90 to obtain the selection interval, while in the High Courts the total number was divided by 40 to obtain the selection interval.

Calculations for time periods are in days. Since the sample contains only observations from 2006 onwards, reported time periods registered in the prisons to determine the selection interval. In the High Courts the total number was divided by 40 to obtain the selection interval.

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

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

The aim of the project was to collect a large enough representative dataset covering enough sites to make a reliable estimate of average time periods in the various stages of the criminal justice process. Zambia, as well as an accurate description of the characteristics of the people before these institutions. Where relevant or markedly different from the average, detailed information on each site is presented.

Calculations for time periods are in days. Since the sample contains only observations from 2006 onwards, reported time periods registered in the prisons to determine the selection interval. In the High Courts the total number was divided by 40 to obtain the selection interval.

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

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

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

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

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

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

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

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

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

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

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<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>Percent</th>
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<tr>
<td>Total number of prisons</td>
<td>15,544</td>
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<tr>
<td>Total number of pre-trial prisoners</td>
<td>5,487</td>
<td>35.5%</td>
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<tr>
<td>Female prisoners</td>
<td>404</td>
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<tr>
<td>Children</td>
<td>342</td>
<td>2.2%</td>
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<tr>
<td>Disruption level</td>
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<td>13.1%</td>
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Prison population rate (per 100,000 of national population): 100

Basic facts on the criminal justice system
By Lukas Muntingh

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

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

Table 1: Zambia prison system basic facts 4

20
21
20
3

BASIC FACTS ON THE CRIMINAL JUSTICE SYSTEM

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

Table 1: Zambia prison system basic facts 4

Category Number Percent
Total number of prisoners 15,544 100%
Total number of pre-trial prisoners 5,487 35.5%
Female prisoners 404 2.6%
Children 342 2.2%
Disruption level 201 13.1%

Prison population rate (per 100,000 of national population) 100

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

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

Legal Aid Board
- 21 attorneys
- Offices in provincial capitals, with at least one lawyer per office.

Judiciary
- 31 High Court Judges
- 134 magistrates out of 242 positions
- 9 percent of magistrates possess a law degree

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

From the report, it can be seen that various factors contribute to overcrowding and extended pre-trial detention, essential to protecting the human rights and dignity of inmates.

In 2005, the ZHRC inspected Lusaka prison and police cells and concluded:

This report has highlighted the terrible situation under which inmates are kept and also the difficult living and working conditions of the police and prison officers. It is clear that detention and prison facilities in Lusaka Province still lag far behind the recommended international standards. The prevailing situation in both the prisons and police cells visited in the Central Province is depressing. There is a lot to be done if Zambia is to meet the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs), the Basic Principles for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

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

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

“25.3 percent of reported crimes resulted in prosecutions; 72.9 percent of prosecutions resulted in convictions; and, 24.4 percent of reported crimes resulted in convictions.”
by Lungowe Matakala

STRUCTURAL DESCRIPTION OF THE CRIMINAL JUSTICE SYSTEM

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

1. Introduction

Article 18(1) of the Zambian Constitution provides for the right to secure protection of the law. It demands, among other things, that every person facing criminal charges should be prosecuted on that charge within a reasonable time. Yet a remand by the name of Rodgers, at Lukosa Central Prison, had this to say: “Remandees are kept here a long time. I have been detained for four years now, and a totally uneducated, uncoordinated, or only to a limited extent. This contributes to prolonging pre-trial detention and increasing the violations of the legally guaranteed rights of the people.”

Case Flow Management (CFM) can be defined as the supervision or management of the time and events necessary to move a case from initiation to disposition. In the Zambian criminal justice system, a case may involve as many as five institutions – namely the police, the DPP, the Legal Aid Board, the judiciary and the prison service. Effective CFM requires that – within each one of these institutions – bottlenecks, challenges and gaps that could prevent a case from being disposed of in timely fashion should be addressed as early as possible. Therefore, the goal of effective CFM is to create a predictable process and a timetable for early disposition of the great majority of cases.

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

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

2.1 Literature review

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

2.2 Field Study

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

2.3 Consultative Workshop

An important source of information was the consultative workshop convened by the ZHRC on 24 March 2011 in Lusaka. The workshop brought together various stakeholders in the criminal justice system, including representatives of the ZHRC, Ministry of Community Development and Social Welfare, Zambia Police Service, Directorate of Public Prosecutions, Prisons Service, Judiciary, Legal Aid Board, PRISCCA and the Immigration Department.

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

3. Overview of the Zambian Criminal Justice System

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

Zambia is a State party to many international human rights treaties. By virtue of having ratified these treaties, Zambia is bound to ensure the realisation and fulfilment of rights protected therein. Yet in the Case of Zambia Sugar Plc v Felton Ndzoka,” the Supreme Court held that international instruments, though ratified by the State, could not be applied unless they are domestically. (In that case, the respondent had
in cases exclusively reserved for the Industrial and Labour Relations Court. For expediency purposes, the jurisdiction of the High Court is delegated to the subordinate court; hence the need for the subordinate court to refer and commit certain criminal matters to the High Court.21

The subordinate court is widely established in each district and its jurisdiction is limited to that district.11 The highest sentence that could be passed by a subordinate court is two years imprisonment.13 However, depending on the class of the presiding judge, certain sentences have to be sent to the High Court for confirmation. For example, a senior resident magistrate is mandated to impose a sentence not exceeding nine years, but if a sentence is more than two years, it must be sent to the High Court for confirmation.22

Apart fromconfirmation, a subordinate court has the power to commit a person for trial in the High Court. Section 230(1) of the Criminal Procedure Code (CPC) provides that:

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

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

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

In addition, section 18B requires that – before the subordinate court and:

• a person is placed in police custody – he/she

should be presented to the custody officer, who will record the person’s name, the offence for which the person was arrested, and the state or condition of the person. The custody officer has the power to make recommendations concerning that person’s well being, including requiring the person to be given medical attention.20

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

• providing counselling services to victims;

• co-operating with civil society organisations and other security organs established under the Constitution, and with the population generally.26

4. The Police Service

4.1 The legal framework

The legal framework regulating the Police Service is established in the Constitution, the Police Act,3 the Zambia Police (Amendment) Act, the CPC and the Penal Code Act.3

The police service headquarters are situated in every district of Zambia, members’ terms and structures, recruitment of people from other security organs established under the Constitution, and with the population generally.26

4.3 Bottlenecks and problem areas in the Police Service

Logistical challenges of transport, printing and stationary

Section 143(7) of the Police Act stipulates that it is the duty of the police to detect and bring offenders to justice. On average, it can take two or more days before a case is presented to the prosecution division.34 This delay is attributed to the lack of indictment forms due to limited resources. Despite the fact that a number of police prosecutors are now typing their own indictments, this has not improved the case processing timelines – because officers still need
to print the indictments but they often have no printing facilities or stationery. In addition, a lack of updated anti-virus software has left most of their computers vulnerable to viruses, which in turn has led to some being infected and working slowly. The misuse of the discretion of the local police service to detain people during investigations leads to an unnecessary increase in the number of PTDs in custody. In practice, the police refer to this as ‘arrest’, which they distinguish from ‘arrest’. Lack of computers or typewriters One of the challenges discussed at length during the consultative workshop revolved around the number of computers or typewriters, as well as the lack of written guidelines regarding the scope of communication between the prosecutors and the police. As there is no formalised CFM system in Zambia, there are no written guidelines regarding the quality and communication among the various components of the criminal justice system. The lack of a sufficient number of computers or typewriters, as well as the lack of written guidelines regarding the scope of communication between the prosecutors and the police, has led to some being infected and working slowly. This lack of capacity means that the police are sometimes unable to conclude their investigations and pass on the matter in a timely fashion. Lack of forensic capacity Section 14(3) of the Police Act states that it is the duty of a police officer to apprehend all people for whose apprehension sufficient grounds exist. The duty of a police officer to apprehend all people for whose apprehension sufficient grounds exist is the police’s duty to detect crime and bring offenders to justice. While there has been an increase in police staff in the last fifteen years, there has not been a corresponding improvement in crime investigation techniques. For example, the police service has not invested in DNA-testing equipment and training, which is crucial in most felony prosecutions. In his budget speech of 2009, the Minister of Finance and National Planning, Mr. Banda, stated that, ‘a forensic laboratory will be built in Lusaka, which is expected to improve criminal investigations.’ But this has not yet been implemented.

Abuse of police powers to arrest and detain Although the police can invite someone to the station to answer questions, the persons are not obliged to answer questions or to accompany the police to the station. The police may not detain such a person, unless he/she has been lawfully arrested. However, it is reported that the police abuse this authority by detaining people in police custody for long periods of time to assist with the inquiries. This ultimately has a clogging effect on CFM. Lack of computerised record-keeping The police operates a computerised record-keeping system. The disadvantage of this system is that bureaucratic delays of the police service have led to the CFM system becoming inefficient. As a result, it is often impossible for police officers to access and utilise the system. The lack of computerised record-keeping is a serious problem because it results in many prisoners staying in prison on expired warrants. Often the police service has to take as long as four to five months before sending instructions to the police. This has had a negative impact on the caseload. The police service can only decide on the basis of the instructions that they have been sent. In these instances, the docket has to be sent back to the police prosecutor who drafted it in order for it to be typed. The lack of a sufficient number of computers or typewriters, as well as the inadequate typing skills of prosecutors, therefore increases the length of time it takes for the docket to be typed up and the case to proceed to trial. Poor communication As there is no formalised CFM system in Zambia, there are no written guidelines regarding the communication among the various components of the criminal justice system. The quality and scope of communication between the prosecutors and the police results in a number of questions. For instance, who among the two is responsible for the instructions to the police? It is possible that the police service may decide to take as long as four to five months before sending instructions to the police. This has had a negative impact on the caseload. The police service can only decide on the basis of the instructions that they have been sent. In these instances, the docket has to be sent back to the police prosecutor who drafted it in order for it to be typed. The lack of a sufficient number of computers or typewriters, as well as the inadequate typing skills of prosecutors, therefore increases the length of time it takes for the docket to be typed up and the case to proceed to trial.
instructions—because when a state advocate is inundated with hundreds of dockets, the delivery of instructions and opinions to the police can be delayed. It is, reportedly, due to this workload that the DPP’s office has suffered a high staff turnover rate, as advocates move to the private sector, which offers less stress and more rewarding opportunities. However, this has only increased the caseload on the police, which is contributed negatively to the pace at which the prosecution handles cases and passes them on.

**Autonomy of the DPP’s office**

Article 56(7) of the Constitution states that in accordance with the law, the DPP is treated as a department under the Ministry of Justice, which could compromise the autonomy of the DPP’s office. It was also noted during the consultative workshop that the DPP does not have a structure to supervise, monitor and sanction police officials. It was also noted during the consultative workshop that sometimes the police prosecutors do not deliver the docket. Sometimes the accused person assigned this task may not appreciate the importance of the docket and delay its delivery. Overall, it can take from a week to a month for a docket to reach the office of the DPP.

**Lack of transport**

Without witnesses, matters are adjourned and the accused person’s access to justice is compromised. Many witnesses do not appear and the accused person’s case is withdrawn from court because the witnesses were not present.

A further complication is that witnesses are generally not reimbursed for travel expenses. The police prosecutors have said that many witnesses do not appear and the accused person’s access to justice is compromised. Without witnesses, matters are adjourned and the accused person’s case is withdrawn from court because the witnesses were not present.

Securing attendance of witnesses and the accused at court

There is no legislation that provides for witness protection in Zambia. What exists is an informal protection mechanism, which is driven by the courts and is difficult to monitor after the completion of a trial.

In most cases, witness management is extremely difficult as there are no incentives for witnesses to give evidence in criminal matters. Rather, witnesses perceive giving evidence against an accused person as putting their life at risk, which is usually covered by the law.

Many of the cases that make up the backlog in Zambia’s courts involve the prosecution struggling to secure witnesses for trials. During the consultative workshop, participants noted that interest and leadership by police officials is important for the DPP’s office to deliver the docket. Sometimes the police prosecutors do not deliver the docket. Sometimes the accused person assigned this task may not appreciate the importance of the docket and delay its delivery.

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residents lawyer in each provincial centre, although the ideal number of lawyers per province—excluding Lusaka, Kitwe and Ndola—should be three. For effective representation in Lusaka, the LAB has only five lawyers, while five are needed in Ndola and Kitwe. 

85 Even though the law provides for free legal counsel to indigent defendants facing serious charges, public defenders have not been able to represent many of the defendants because of the demand for their services. 86 The institution only has seven lawyers—just five of whom appear in court. Private lawyers, under an initiative of the LAZ, have now been brought in to help address the high caseload. 87

Accessibility of the LAB

Communities visited by the research team that conducted the ‘Situation Analysis for Access to Justice for the Poor and Marginalised Citizens of Zambia’ expressed concerns about the availability of the LAB. Some acknowledged the presence of the LAB, while others living in the same towns, were not aware of it. Respondents from Mkushi, Solwezi, Kitwe, Ndola, and Lusaka, stated that legal aid services were free. 88 Some claimed that they were made to pay K200 (US$0.44) as a ‘consultation fee’ and then K100 (US$0.22) as a ‘legal aid contribution fee’. 89 In addition to these payments, the respondents alleged they were paying filing fees that were excessive. It was submitted that at the end of the case, one would pay over K2.10 (US$0.45). 90 Research in 14 areas, revealed that the majority of Zambians live within 10 km of the LAB, which forces those in need of their services to travel long distances to access the services of the LAB. 91 In some areas, which forced those in need of their services to travel long distances to access the services of the LAB, this is likely to further increase the time it takes for their cases to be resolved.

Fees charged by the LAB

Respondents in the study ‘Situation Analysis for Access to Justice for the Poor and Marginalised Citizens of Zambia’ complained about the fees charged by the LAB. Some respondents acknowledged the presence of the LAB, while others who were in the same towns, were not aware of it. Respondents from Kitwe, Solwezi, Monze, Kitwe, and Lusaka stated that legal aid services were free. 88 Some claimed that they were made to pay KZ200 (US$0.44) as a ‘consultation fee’ and then KZ100 (US$0.22) as a ‘legal aid contribution fee’. 89 In addition to these payments, the respondents alleged they were paying filing fees that were excessive. It was submitted that at the end of the case, one would pay over KZ2.10 (US$0.45). 90 Research in 14 areas, revealed that the majority of Zambians live within 10 km of the LAB, which forces those in need of their services to travel long distances to access the services of the LAB. 91 In some areas, which forced those in need of their services to travel long distances to access the services of the LAB, this is likely to further increase the time it takes for their cases to be resolved.

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Court, which immediately leads to an increase contributes to the backlog of cases in the High normally the case for criminal proceedings116 and structures meant to house it are located. This is visits to Kabwe and Mazabuka in February 2011 for seeking adjournments.118 Some courts do not Lusaka, Kabwe, Ndola and Kitwe.115 However, Section 18 of the High Court Act details the places to the High Court becomes a Circuit Court, which the record must be typed. Occasionally, when cases are sent for sentencing at the High conviction and sentencing. 120

Lack of proper child-friendly courts Currently, there are no judicial rules on the practices and practices that regulate the administration of justice in child-friendly courts – so the sitting magistrate uses his or her discretion in disposing such cases. The findings of one nationwide study showed that the lack of specialisation in this field by judicial officers, and the transfer of trained officers to other departments within the judiciary, hampers the operations of child-friendly courts.122 Due to these reasons, the High Court turned into a Circuit Court, the rank of Deputy Commissioner on the advice of the Police and Prisons Service Commission. 8.3 Bottlenecks and problem areas in the prison service Under-funding

The Prisons Act provides for the: 120

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

The Prisons Act is supported by the Rules of the Prisons Act as enacted by the Prisons Standing Orders (1968). Meanwhile, the Prisons Service Principle Guidelines set out in detail the service’s goal and the overall mission of the Ministry of Home Affairs, under which the prison service falls.116 In 2004, Parliament passed the Prisons Act (Amendment) Act, No. 14 of 2004. Section 7(0) of this Amendment Act states that:

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

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

8.2 Structural and functional description of the prison service

The prison service is headed by the Prisons Commissioner, who is appointed by the President. 116 Section 4A of the Prisons

Amendments allow the Commissioner to appoint regional commanders below the rank of Deputy Commissioner on the advice of the Police and Prisons Service Commission. Zambia has a total of 86 prisons: 33 are open-air or farm-prisons and 53 are standard prisons. Among the 53 standard prisons, there are 10 medium security prisons, 3 remand prisons and 1 remand prison. 119 Therefore, the lack of judicial leadership with regard to adjournments also hinders effective CFM.

There are two contributing factors in terms of confirming sentences. It is reported that on average, the confirmation of sentences by the High Court takes six months. This contributes to the backlog of cases in the High Court, which immediately leads to an increase in the number of prisoners, which in turn has a direct impact on CFM.

Corruption

During the consultative workshop, it was alleged that some prosecutors altered documents and this causes complications in the cases of the affected detainees. For instance, a prosecutor may forge warrants and this may cause a PTD to be detained for a longer period without appearing before a magistrate or judge.122

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

Under-staffing

Judges take as long as possible to respond to warrants because they are swamped with a high caseload and are unable, through no fault of their own, to respond to warrants in a timely manner. This also partly explains the delay between conviction and sentencing.110

Lack of computers or typewriters

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

Ineffective court roll management

Scheduling conflicts are one of the leading reasons for seeking adjournments.114 Some courts do not
9. Initiatives undertaken by the government and its partners

9.1 Co-ordinated communication and co-operation initiative

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

The cooperation between the five justice sector institutions is described as cordial.139 But with the help of the institutions in urban areas can – at best – be increased and stakeholders are committed to improving the situation further in the future. Officials who were interviewed during the field research for the ‘Situation Analysis of Access to Justice,’ (i.e. social welfare officers, legal practitioners, state prosecutors, police and prison officials) in Kitwe, Ndola and Lufwanyama described their relationships as ‘warm’ and ‘sincere.’140

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

Section 48 of the Police (Amendment) Act was passed in 2010 – an Act that addresses several bottlenecks and problems with regard to CFM. It is intended, among other things, to act as an effective crime prevention and control association to complement the police in the maintenance of law and order. This initiative acts as a preventive measure against crime and provides necessary assistance in the number of cases being handled by the police service. As such, it intends to reduce the number of cases that the service has to handle in terms of its CFM. However, further information on this provision and its use was not readily available.

9.3 Increase in the High Court establishment

The High Court establishment was increased from 20 to 50 judges in 2010.141 By having more judges, the High Court should be able to hear more serious case confirmation cases, among others, during the limited times when it sits. There are also plans afoot to expand the presence of the High Court in other provinces. This will minimise the number of PTDs, particularly those held in provinces where the court has no wa so that they have to travel to the High Court in another province to have their sentences confirmed. The increase in the number of judges will also require a concomitant increase in the number of support staff such as clerks and other administrative staff.

9.4 The National Prosecutions Authority Act

On 14 August 2010, Parliament passed the National Prosecutions Authority Act, No. 34 of 2010 – an Act that addresses several bottlenecks and problems with regard to the DPP’s office with regard to CFM. It is intended, among other things, to act as an effective crime prevention and control association to complement the police service. As such, it intends to reduce the number of cases that the service has to handle in terms of its CFM. However, further information on this provision and its use was not readily available.

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

• Appointment of state advocates and prosecutors, and the promotion of appropriate standards of practice by state advocates and prosecutors in criminal prosecution;
• Development, promotion and enforcement of internationally comparable practice standards for prosecutors;
• Promotion of the integrity and enhancement of the status of state advocates and prosecutors so as to promote honourable and good practice and increase the confidence of the public in state advocates and prosecutors;
• Promotion of an understanding of professional ethics among prosecutors, and ensuring that the rules and guidelines for professional ethics are responsive to the effective administration of criminal justice;
• Implementation of an effective prosecution mechanism so as to maintain the rule of law, contribute to fair and equitable criminal justice, and advance the right to a fair trial and effective protection of citizens against crime;
• Initiation of research into various disciplines of law and crime prevention methods, while Section 48(2) of the Act provides for private practitioners through the LAZ to handle criminal matters for a fee of K4 million each (approximately US$820). This has helped reduce the LAB’s backlog significantly.
• Promotion of the integrity and enhancement of the status of state advocates and prosecutors in criminal prosecution;
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• Promotion of an understanding of professional ethics among prosecutors, and ensuring that the rules and guidelines for professional ethics are responsive to the effective administration of criminal justice;
• Improvement in the number of support staff such as clerks and other administrative staff.

9.5 Increase in LAB capacity through engagement of private practitioners

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

LAZ and the Paralegal Alliance Network (PAN) run the only mobile legal aid clinic serving all indigent people. PAN is an initiative of four NGOs – the Catholic Justice and Development Commission (CJDC), the United Nations Development Programme Zambia, the United Nations Children’s Fund, the Young Women’s Christian Association – and its goal is to increase and ensure effective protection of citizens against crime; prevention and control association to complement the police service. As such, it intends to reduce the number of cases that the service has to handle in terms of its CFM. However, further information on this provision and its use was not readily available.

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• Promotion of an understanding of professional ethics among prosecutors, and ensuring that the rules and guidelines for professional ethics are responsive to the effective administration of criminal justice;
• Improvement in the number of support staff such as clerks and other administrative staff.

9.6 Creation of paralegal posts across the country

In 2008, legislation was tabled to create sixty paralegal posts across the country.142 To date, neither the legislation nor the creation of the posts has come into effect.

9.7 Creation of the Child Justice Forum

A 2005 report found that: The Child Justice Forum (CJF) was initiated by Uganda and Zambia. It operates as an open-ended group of role players and stakeholders. Its aim is to provide guidance on the transformation of the child justice system, particularly the processes set out in the Convention on the Rights of the Child and other international instruments such as the UN Standards Minimum Rules for the Administration of Juvenile Justice (commonly referred to as the Beijing Rules), the UN Guidelines for the Prevention of Juvenile Depravity (commonly referred to as the Riyadh Guidelines) and the UN Rules for the Protection of Juveniles Deprived of Liberty.

While the CJF may not have a direct impact on CFM, it does have the potential – through some of its work – to influence the development of the country’s child justice system.
The key initiatives proposed under it (e.g. through diversion, the number of juvenile PTDs can be reduced and unnecessary litigation avoided) – to contribute positively to CFM in Zambia. Unfortunately, research shows that at the moment, due to under-staffing in the police service, prison service and the Department for Social Welfare, Zambia does not have enough officers to effectively administer the diversion programme.148

10. Conclusion

Almost one third of the prison population in Zambia,149 which currently stands at 16,666,150 are PTDs. The government and its partners have initiated a number of measures to try and address some of the problems but substantial challenges remain. To begin with, there is a dire need for improved communication and co-ordination among the five criminal justice sector agencies. In a project implemented in Malawi, Kenya, Uganda and Tanzania, there are CFM Committees at the local, regional/provincial and national levels.151 Their task is to identify problems in the CFM system and come up with local solutions. They meet monthly at the local level, quarterly at the regional/provincial level and annually at the national level.152 They have proved to be effective in improving communication, co-ordination and co-operation among the criminal justice agencies.153 In Zambia, criminal justice agencies do not have a co-ordinated approach to deal with CFM issues at district level. The courts do not meet with the police, the DPP’s office and prison officials at the local level on a regular basis to discuss CFM issues. If they did, CFM in Zambia would improve – just as it has in Malawi, Kenya, Uganda and Tanzania.

Secondly, funding to the criminal justice system as a whole must be increased and an adequate amount allocated towards the development of a CFM system. If the funds are used for their intended purpose, there should be a great improvement in the areas of transport, printing, stationery and other areas affected by lack of funding. The allocation of sufficient funds may in fact result in savings in the short, medium and long term.

Thirdly, there is a critical need to train all personnel, particularly those involved in the transfer of information from one institution to another, and to equip them with the necessary skills to improve the flow of information and thus CFM.

1. Introduction

‘Pre-trial detention’ means the act of holding a defendant before trial on criminal charges either because the established bail could not be posted or because release was denied.15 In this chapter, a pre-trial detainee (PTD) is an individual who is held in either a police cell or prison and:

• Has been formally charged and is awaiting trial;
or
• His/her trial has begun but has not yet concluded; or
• He/she has been convicted but has not yet sentenced.

The latest publication on Zambia’s prison population reveals that there are over 6,000 PTDs out of a prison population of more than 16,600.20 This chapter provides a description of the current Zambian laws that govern pre-trial detention. Firstly, it looks at the rights of PTDs as provided for in international treaties that Zambia has either signed or ratified. Secondly, the chapter draws attention to Zambia’s constitutional provisions, legislation and case law that safeguard the rights of PTDs. And the report concludes by making recommendations for the reform of some of Zambia’s laws and mechanisms relating to PTDs.

2. Overview of national laws protecting PTDs in Zambia

Zambia has a supreme Constitution that safeguards the rights of PTDs. In particular, Part IV offers protection for the fundamental rights and freedoms of the individual. For example, it protects the right to personal liberty,16 freedom from inhuman treatment,17 and secure protection before the law, i.e. if any person is charged with a criminal offence, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.18 The Constitution further enshrines provisions relating to detention, and provides a mechanism for the enforcement of protective provisions. For instance, Article 28 stipulates that

“there are over 6,000 PTDs out of a prison population of more than 16,600.”
Zambia has ratified a number of international treaties that regulate PTDs’ rights, including:

- International Covenant on Civil and Political Rights (ICCPR);
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Convention on the Rights of the Child (CRC);
- African Charter on Human and Peoples’ Rights (ACHPR);

Ratification of these and other treaties implies that the Zambian Government has committed itself and assumed obligations to ensure that the rights enshrined therein are respected and protected.26 Therefore, Zambia is obligated to facilitate and fulfil the realisation of PTDs’ rights with regard to bail.

4. Rights of PTDs with regard to bail

Bail is vital as it offers protection against the arbitrary incarceration of individuals. In addition to the constitutional provisions outlined above, the interests of PTDs are protected by the:

- Criminal Procedure Code Act (CPC);
- Prisons Act;
- Juveniles Act;
- Local Courts Act;13
- Supreme Court Act;
- Narcotic Drugs and Psychotropic Substances Act.18

The severity of the punishment as well as the presumption of innocence, which is one of the principles underpinning the criminal justice system and is enshrined in the Constitution. Therefore, an accused person is not and should not be considered guilty until he or her has been proven innocent in a court of law, and bail should not ordinarily be denied an accused person unless this is likely to prejudice the interests of justice.

4.2 Factors considered by the court when granting bail

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

1. The severity of the punishment as well as the presumption of innocence, which is one of the principles underpinning the criminal justice system and is enshrined in the Constitution. Therefore, an accused person is not and should not be considered guilty until he or her has been proven innocent in a court of law, and bail should not ordinarily be denied an accused person unless this is likely to prejudice the interests of justice.

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4.1 The right to bail pending trial

A detainee whose trial has begun but has not yet concluded is entitled to bail pending trial. The right to bail emanates from the presumption of innocence, which is one of the principles underpinning the criminal justice system and is enshrined in the Constitution. Therefore, an accused person is not and should not be considered guilty until he or her has been proven innocent in a court of law, and bail should not ordinarily be denied an accused person unless this is likely to prejudice the interests of justice.

IV. Viennese Convention on the Law of Treaties

The Vienna Convention on the Law of Treaties (Vienna Convention) stipulates that human rights treaties are legally binding on the government that has previously been party to such treaties.27 Thus, Zambia is bound by the provisions of the Vienna Convention.28 The above discussion was upheld in Lanton, Edgeworth County v The People36 in which the applicants were charged with importing narcotic drugs under the Narcotic Drugs and Psychotropic Substances Act. They applied for bail in the subordinate court but the application was denied on the ground that the importation of drugs was a cognizable offence. An appeal to the High Court was unsuccessful, hence the appellants made a further appeal on the matter to the Supreme Court. It was held by the Supreme Court that an appeal to the High Court has no power to admit an accused to bail unless there is no appeal from a lower court to it at a court of appeal.

Pacta sunt servanda

Pacta sunt servanda, which means that treaties must be respected and fulfilled. This is because treaties are legally binding on the government that has previously been party to such treaties. Thus, Zambia is bound by the provisions of the Vienna Convention. The above discussion was upheld in Lanton, Edgeworth County v The People36 in which the applicants were charged with importing narcotic drugs under the Narcotic Drugs and Psychotropic Substances Act. They applied for bail in the subordinate court but the application was denied on the ground that the importation of drugs was a cognizable offence. An appeal to the High Court was unsuccessful, hence the appellants made a further appeal on the matter to the Supreme Court. It was held by the Supreme Court that an appeal to the High Court has no power to admit an accused to bail unless there is no appeal from a lower court to it at a court of appeal.

Consequences of a court refusal to grant bail

When an application for bail is refused, the accused is entitled to appeal. The Supreme Court is the court of last resort on questions of law. In Edwards and Thewo v The People35 in which the applicant was charged with treason and any offence carrying a mandatory death penalty. Other offences are aggravated robbery and any offence carrying a mandatory death penalty. Other offences are aggravated robbery and any offence carrying a mandatory death penalty. Other offences are aggravated robbery and any offence carrying a mandatory death penalty. Other offences are aggravated robbery and any offence carrying a mandatory death penalty. Other offences are aggravated robbery and any offence carrying a mandatory death penalty. Other offences are aggravated robbery and any offence carrying a mandatory death penalty.
person so that if he is not admitted to bail he may lose employment; * Whether the state may suffer prejudice as a result of the accused interfering with witnesses; and, * Whether the defendant is likely to abscond. 36

Furthermore, in The People v Sikwiti Chitungu, the Court held that when it is called upon to decide on granting bail, it must remember that: * The requirements of bail are merely to secure the attendance of the accused in court and the test is whether it is probable that the accused will appear at his or her trial; * The determination of this will involve a consideration of the other related issues such as whether the accused is aware of the identity of the arresting officer and the evidence, whether the witnesses have already made their statements to the police or whether the case is still under investigation, and also whether it is probable that they may be influenced or intimidated by him or her; * The court must consider whether there is a reasonable likelihood that if released on bail, the accused will commit further offences. 39

The accused will commit further offences. 39

3.9

The test is whether it is probable that the accused will appear at his or her trial; 39

However, before an party is granted bail or released on his or her own recognition, he must pay a bond of as much as the court thinks sufficient. This bond must be paid by the accused on his or her own recognisance, he must pay a bond of as much as the court thinks sufficient. This bond must be paid by the accused on his or her own recognisance and at every time and place to which, during the course of the proceedings, the hearing may from time to time be adjourned. A person appearing in a local court, whether or not he has been committed for trial, may be made before the subordinate court, and bail bond in any case pending before it as per Section 12(3) of the constitution. This was explained in the case of Busaka Perse Sekile v The People in which it was stated that:

No jurisdiction can be assumed by the Supreme Court to grant bail in any criminal matter unless there is a proper appeal. The right to appeal in the Supreme Court has been explained in the case of Busaka Perse Sekile v The People in which it was stated that:

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The people and the state are entitled to the protection of human rights. The rights to bail pending appeal are such that the court will look at, among other things, the likelihood of the defendant appearing at his or her trial; 39

But there is no bond or time for the preparation of one’s defence, and to communicate with counsel of one’s own choice — as well as the right to be tried in one’s presence and to defend oneself in person or through legal assistance of one’s own choice. If the defendant does not have legal assistance, he has the right to have legal assistance assigned to him in any case. But there is no bond or time for the preparation of one’s defence, and to communicate with counsel of one’s own choice — as well as the right to be tried in one’s presence and to defend oneself in person or through legal assistance of one’s own choice. If the defendant does not have legal assistance, he has the right to have legal assistance assigned to him in any case. But there is no bond or time for the preparation of one’s defence, and to communicate with counsel of one’s own choice — as well as the right to be tried in one’s presence and to defend oneself in person or through legal assistance of one’s own choice. If the defendant does not have legal assistance, he has the right to have legal assistance assigned to him in any case.
In the case of Daniel Chizoka Mbandangoma v the People, the court should order his immediate release. Continued detention is unconstitutional and the right to bring a suspect to court within 24 hours, his
time, he must be brought before such court as soon as practicable.

The right to be tried within a reasonable time
The Human Rights Committee has stated, in General Comment 31, regarding the nature of obligations imposed on states parties under the ICCPR, that the requirement to give effect to constitutional rights (which include the right to be brought before the court ‘without undue delay’).
The right to a fair trial entails the right of a person who is arrested or detained to be informed promptly and in detail in a language which he understands of the nature and cause of the charge.

5.7 The right to legal representation

5.8 The right to be presumptively innocent

The right to be presumed innocent is the right to be considered innocent until the reverse on the part of the prosecutor bears the burden of proving that the accused is guilty. The right to be presumed innocent is absolute and it cannot be restricted by law.

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

Articles 18(2) and 18(2)(b) of the Constitution provides that a person who is arrested or detained, in a language he understands, be informed of his rights,

5.10 The right to liberty and security of person
The right to liberty means the right of an individual to be free from any interference with his person whether in respect of his freedom to move and to reside in any part of the country.

The right to liberty may also mean protection of the individual over himself, his own body and mind as well as the extension of this principle to include all the political rights.

It is, therefore, a duty for all public authorities to refrain from depriving anyone of his liberty.

A few exceptions in which the provisions discussed above cannot be abrogated include instances when a person is charged with an offence that involves a death as a result of punishment by death or when the charges are inquired of, there is no provision in the Constitution or its interpretation that such an exception exists.

No. 13 stated:

The right of a suspect to be presumed innocent is one of those principles that influence the treatment an accused person is subjected to from criminal investigations through the trial proceedings up to the end of the final appeal.

The right to be informed of the charges, to be presumed innocent, and to a fair trial are all interrelated and are considered as the minimum standards necessary for any fair criminal justice system.

The right to liberty and security of person

The Constitution of Zambia provides for the right of any person arrested or detained to be brought before the court ‘without undue delay’.

The right to be presumed innocent is the right to be considered innocent until the reverse on the part of the prosecutor bears the burden of proving that the accused is guilty.

The principle of presumption of innocence means that there must be no evidence of the charge in order to impose the burden of proof on the accused.

The principle of presumption of innocence implies a right to a fair trial before an independent and impartial tribunal, where a person can be convicted of a criminal offence, that offence must be prescribed in a written law. In Sikota Wina and Princess Nakatindi Wina v the People, the accused were arrested on a charge of being in possession of drugs in Ethiopia. At that time, there was no law in Zambia that stipulated that detention could be extended beyond the time by which it should end.

The right to be treated with the same respect in the same situation as he would be in similar circumstances in a non-detained situation.

The right to liberty and security of person

The right to liberty means the right of an individual to be free from any interference with his person. Any interference with the person cannot be justified on account of political, social, cultural or economic considerations.

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The right to liberty and security of person

The right to liberty means the right of an individual to be free from any interference with his person. Any interference with the person cannot be justified on account of political, social, cultural or economic considerations.
also provides that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of children or his or her age. Furthermore, the African Charter on the Rights and Welfare of the Child says that:

Every child accused or found guilty of having committed an offence, penal law shall have the right to appear in treatment in a manner consistent with the child’s sense of dignity and worth and which reinforces the child’s respect for human rights and fundamental freedoms of others.

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

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

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

In particular, every child deprived of liberty shall be separated from adults and other categories of prisoners. Furthermore, the Prisons Act urges prison authorities not to keep young prisoners with adults and other categories of prisoners.

6.2 Right to education

Every individual has the right to education as provided for in the ICESCR, especially in the case of juvenile - regardless of the fact that they might have been deprived of liberty. They are entitled to education while they are detained. Under Article 13, it is stated that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

6.5 Freedom from torture

The absolute prohibition of torture and cruel, inhuman and degrading treatment or punishment is provided for in many international instruments. In fact, it has been described as one of the fundamental values of democratic societies. It is subject to no derogation, revocation or limitation. Nonetheless, Zambia has not yet made any move in legislation or practice to criminalise torture and uses Penal Code offences such as assault for purposes of interrogating or intimidating a person suspected of having committed an offence. Therefore, international instruments oblige state parties to ensure that all acts of torture are considered offences under national criminal law and Zambia is not excluded from this obligation.

In particular, every child deprived of liberty shall be provided with food and health care. The CRC notes that:

Any act by a public official through which severe pain or suffering is intentionally inflicted on a person for purposes, such as to obtain information or a confession from him, intimidate or punish him/her for an act he or she has committed or is suspected of having committed. It does not include pain or suffering arising only from incidental or lawful sanctions.

6. Rights of PTDs with regard to conditions of detention

6.1 Separation of different categories of PTDs

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

The different categories of prisoners shall be kept in separate institutions or parts of institutions taking into account their sex, race, or any other characteristic. The Prison Rules of Zambia states that:

No civil or unconvicted prisoner shall be confined in a dedicated juvenile prison in Zambia. Most juvenile PTDs are detained in the same centres as adults. Research shows that Zambian prisons are currently very overcrowded since they were built to accommodate 5,500 prisoners but currently house more than 16,000 prisoners. Therefore, it is not surprising that juveniles are often detained in the same cells as adults.

In terms of the custody of the juveniles in remand prisons, where it is impracticable to separate juveniles from adults in custody, a superintendent of prisons may detain any juvenile awaiting trial, or placed on remand by a court, in a suitable dwelling, other than a prison or detention camp, and while the juvenile is so detained, he shall be considered as a prisoner of the state parties to ensure that all acts of torture are considered offences under national criminal law.

5. Other rights of special categories of PTDs

71. Juveniles

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

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order for the juvenile to be detained in a place of safety.115 When a juvenile is detained in a police station, it is the duty of the Commissioner of Police to prevent that juvenile from associating with any adult who is charged with an offence, unless that adult is jointly charged with the juvenile.116 In cases of a female juvenile, the Commissioner must ensure that she is under the care of a woman during her detention, conveyance to court and while waiting to attend court proceedings. In practice, however, children are not always separated from adults. 116

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always separated from adults. 116

Juvenile 'may be committed to prison'.117 This instance, due to the juvenile's unruly behaviour, can be varied or revoked, for where a court decides to remand a juvenile under Section 61 can be varied or revoked, for other way as explained in Siwale and others v The Police to prevent that juvenile from associating with any adult who is charged with an offence, unless that adult is jointly charged with the juvenile.116 In cases of a female juvenile, the Commissioner must ensure that she is under the care of a woman during her detention, conveyance to court and while waiting to attend court proceedings. In practice, however, children are not always separated from adults. 116

7.4 Other important provisions in law

Under the Anti-Corruption Commission Act, the Director-General, the Deputy Director-General or any officer of the commission authorised by the Director-General may arrest a person without a warrant if he reasonably suspects that such a person has committed or is about to commit an offence prescribed under the Anti-Corruption Commission Act.118 However, when a person has been arrested without warrant, to Section 22(1), he may, at any time appearing in court and while he is in custody be granted bail on providing surety or sureties sufficient in the opinion of the Director-General, Deputy Director-General or an officer authorised by the Director-General to secure his appearance before court or he may be released upon his own recognisance under conditions the officer thinks fit.112

The amount of funds required and technicalities involved are far less than the traumatic experience of prison, if at all possible. Clearly the legislature had in mind the importance of rehabilitating juveniles and avoiding them associating with criminals, and generally suffering the traumatic experience of prison, if at all possible.

6. Recommendations for reform

1. A police officer’s powers to determine which matter is serious enough to justify detention under Section 38(1) of Criminal Procedure Code Act is subjective and therefore needs to be defined in the code to enable the application of an objective test as defined by law.

2. The State needs to look into the possibility of passing legislation that permits magistrates to hold public hearings equivalent to a court session outside a court building or in a prison or police station. The conditions of detention in Zambian prisons have raised concerns both locally and internationally as they are far from acceptable. Zambia is a state party to a number of regional and international human rights treaties, which provide for safeguards and respect for the rights of detainees. Despite the efforts the country has taken to align itself with international norms regarding prisoners, enormous discrepancies continue to exist between what is provided in law and the conditions of detention in Zambian prisons and, where necessary, make recommendations for their improvement.

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The data in this report was collected in various ways. An extensive literature review was conducted on important bodies of work related to prison conditions published by governmental organisations (NGOs), the Department of Social Welfare and the Zambia Prison Service. The review also included an examination of the Zambia Prison Service's operations, policies, procedures and legal framework. We gain a detailed understanding of the factors that thwart the prison service's efforts to conform to local and international commitments regarding detainees, the research team visited three prisons in Kabwe and Mazabuka districts, where they interviewed officials and also conducted focus group discussions with remandees of all classes. This was supplemented by critical observations as the team was shown the kitchens, bathrooms, sleeping quarters, and medical and recreational facilities in each prison.

2. Outline of the legal framework regulating conditions of detention

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

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);
- The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; and

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

- Constitution of the Republic of Zambia; 30
- Penal Code; 30
- Criminal Procedure Code (CPC); 32
- Police Act; 32
- Juveniles Act; 32 and
- Prison Rules. 32

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

3. Institutional framework of Prison Services

3.1 Establishment of the prison services

The prison service in Zambia is established under Article 106 of the Constitution, 16 which empowers the President and the Parliament to make laws regulating the service. 17 The Prisons Act provides guidelines on the duties of prison officers, 32 and any deviations from these guidelines are reviewed by the Prison Advisory Board, which was established under the Act. The Prisons Act grants him the power to make standing orders and administrative directives that guide officers. 32 The Commissioner is assisted by the Deputy Commissioner, subject to orders, the Deputy Commissioner and the Assistant Commissioner. 33 Each of these prisons is administered by an officer-in-charge (OIC) who is appointed by the Prisons Act 33 to advise the President on all matters pertaining to the prison services, even though it was only designed to hold 200 prisoners. 34

4. Conditions in detention centres

4.1 Overcrowding

The major problem in most Zambian prisons is overcrowding. Overcrowding means an excessive inmate population at a particular correctional centre (prison), which has with limited accommodation. 35 In Zambia, it is common to find that cells hold two or even three times their specified capacity. In a survey conducted by Todrys et al in 2010, it was established that the Zambian prison system is overcrowded, with a national prison population of 187,700, while the Lusaka Central Prison housed 3,500 prisoners and detainees, even though it was only designed to hold 200 prisoners. 34

The manner in which detainees are ‘to be’ and ‘not to be’ treated is discussed in Section 5 below. Nonetheless, it is imperative to highlight here, as the European Court of Human Rights did in Kalashnikov v Russia, that severe overcrowding in prisons over a prolonged period of time may amount to other forms of ill-treatment. 36 For instance, the ZCHR reported in 2005 that 12 in 100 prisoners in Zambian prisons had left many in their cells ‘like logs in a pile’, or ‘like fish in a refrigerator’. 42 In that article, prisoners told reporters that their bodies were ‘packed like pigs’, ‘squeezed to. 42 In that article, prisoners told reporters that their bodies were ‘packed like pigs’, ‘squeezed like logs in a pile’. 43 In the 2010 article entitled ‘Prisons Turned into a Death Trap, the New York Times also expressed the severity of overcrowding and the dire health conditions that detainees in Zambian prisons were subjected to. 44 In that article, prisoners ‘told reporters that their bodies were ‘packed like pigs’, ‘squeezed like logs in a pile’. 43 In the 2010 article entitled ‘Prisons Turned into a Death Trap, the New York Times also expressed the severity of overcrowding and the dire health conditions that detainees in Zambian prisons were subjected to. 44 In that article, prisoners ‘told reporters that their bodies were ‘packed like pigs’, ‘squeezed like logs in a pile’. 43
4.2 Sleeping quarters and ventilation

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

(1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself … It is not desirable to have more than one cell or room occupied by prisoners carefully selected as being suitable to associate with one another in those conditions.

In 2002, the ZHRC found that the general state of health services in Lusaka Central and Mwembeshi Prisons fell below acceptable norms for keeping prisoners. In 2002, the ZHRC found that the general state of health services in Lusaka Central and Mwembeshi Prisons fell below acceptable norms for keeping prisoners. In 2002, the ZHRC found that the general state of health services in Lusaka Central and Mwembeshi Prisons fell below acceptable norms for keeping prisoners.

In February 2001, one of the detainees in Kabwe prison told the research team for this study: "In here, it is extremely congested. We sleep like bugs. Some people, juveniles, people with scabies – we all sleep in the same cell, imagine!"

At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close cooperation with the public health authorities of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of diseases of mental aberrancy. Section 18 of the Prisons Act also provides for the examination of every prisoner on admission to and before discharge from a prison for purposes of medical examination. A prisoner shall be so examined, and instructed by the Rules of the Prisons Rules provides for every prison to have a properly skilled prison doctor, while Section 16 of the Prisons Act provides the minister the power to appoint any medical practitioner as a medical officer to attend to prisoners. In the event of such appointment, the Director of Medical Services can nominate any medical officer working for a government health facility as a medical officer for a prison. In the event of such appointment, the Director of Medical Services can nominate any medical officer working for a government health facility as a medical officer for a prison. In the event of such appointment, the Director of Medical Services can nominate any medical officer working for a government health facility as a medical officer for a prison. In the event of such appointment, the Director of Medical Services can nominate any medical officer working for a government health facility as a medical officer for a prison.

4.3 Health services

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

At least one hour shall be available in a month for every prisoner to comply with the needs of health and medical care. Every prisoner shall take one bath per month. Every prisoner shall work for at least six hours per day. Every prisoner shall have at least one hour of suitable exercise in the open air – daily if the weather permits. Also, the UNSMR stipulates that the sanitary instalations that prisoners use must be adequate to enable every prisoner to comply with the needs of health when necessary, and in a clean and decent manner.

Inmates are frequently prevented from accessing health facilities outside the prison based on the sole judgment of non-medical officers and other inmates, or because of a lack of transport or security fears on the part of prison officers.

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

(a) prison confinement can increase vulnerability to HIV due to frequent unprotected sex in the form of rape, non-consensual and non-use of condoms, as well as high prevalence of STIs.

What exacerbates the situation is that Zambian law and policy do not permit the distribution of condoms in prisoners due to the criminalisation of sodomy. Inmates could have taken part in male-on-male sex, inmates interviewed in one focus group discussion answered, "all of us." Doctor Siemzgo who headed the NGOs said: "It's not true." You can’t legislate against sex. It’s better to be practical and ask how can we prevent the transmission of HIV/AIDS. We must consider putting condoms in prisons. This view is also shared by the Medical Director of the prison service, Dr Chiweshe Chisale, and the

Toilets and bathing facilities

The UNSMR requires that prisons keep their toilets clean and that the prison authorities should provide them with water and toilet articles that are necessary for health and cleanliness. In Zambia, prisoners are quoted as saying: ‘Water is unclean or dirty and so sanitation is a nightmare for prisoners.’ In addition, there is no privacy as inmates answer the “call of nature” in full view of others. According to the HRW, PRISCCA and ARASA report, there are no toilet facilities at all in some cells and in some cases prisoners have to use a bucket in the cell overnight. The Mukombo Prison has ten public toilets, which are shared by more than 1,000 inmates. One prisoner is quoted as having said: “You can wait for hours before using the toilet and this leads to fights among inmates.”

4.5 Recreational facilities

Rule 21 of the UNSMR stipulates that every prisoner, who is not employed in outdoor work, shall have at least one hour of suitable exercise in the open air – daily if the weather permits. Rule 22 of the Zambian Prisons Rules states that at least one hour a day shall be devoted to physical
Torture and ill-treatment

Article 7 of the ICCPR prohibits torture. It reads:

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

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

Each state party shall ensure that no one in custody is subjected to cruel, inhuman or degrading treatment or punishment.

The Prisons Act only permits an officer to use force or firearms when dealing with detainees. The police using a wooden plank with nails. In 2009, at Mporokoso District Prison, the ZHRC found eleven inmates, who had been subjected to torture by identified police officers serving at Mporokoso Police Station. The ZHRC also received an allegation against a high-ranking officer, the person was employed to force use.

Article 15 of the Constitution of Zambia prohibits prisoners from torture, if treatment and degrading punishment susceptible to cause the term torture or stipulates that torture is a crime, as required by article 4 of CAT. Even more, as noted in the Shadow Report submitted to the Human Rights Committee. Derivative evidence is admissible in the [Zambian] courts of law. This basically means that if a suspect is tortured during the interrogation process and as a result of the torture, that suspect reveals the whereabouts of the stolen property and based on that information the officers recover the stolen property, the court will consider the exhibit unsecured evidence in violation of these rights, the State must ensure that the victims are fully compensated. In this regard, prison authorities have to put in place administrative and other measures to prevent acts of torture and other ill-treatment. Mechanisms to protect the human rights and fundamental freedoms of others.94

The separation of different categories of people in custody is emphasised in international and national law. The ACRWC also states that children should be kept apart from adults in their place of detention or imprisonment.96 Noting the vulnerability of children, the ACRWC requires that every child accused or guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child’s sense of dignity and worth, and which reinforces the child’s respect for human rights and fundamental freedoms of others.95

In 2000, Zambia outlawed corporal punishment. The Prisons Act only permits an officer to use force or firearms when dealing with detainees. The police using a wooden plank with nails. In 2009, at Mporokoso District Prison, the ZHRC found eleven inmates, who had been subjected to torture by identified police officers serving at Mporokoso Police Station. The ZHRC also received an allegation against a high-ranking officer, the person was employed to force use.

The separation of different categories of people in custody is emphasised in international and domestic law. The Convention on the Rights of the Child (CRC) emphasises the need to separate children from adults, while the African Charter on the Rights and Welfare of the Child (ACRWC) also states that children should be kept apart from adults in their place of detention or imprisonment. Noting the vulnerability of children, the ACRWC requires that every child accused or guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child’s sense of dignity and worth, and which reinforces the child’s respect for human rights and fundamental freedoms of others.96

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3.5 Separation of different categories of persons in detention

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

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well served. Zambia's prison service has ensured that prisoners are to be provided with nutritious food, which is adequate for their health. According to the UNSMR, prisoners are to be given food and clothing to unconvicted prisoners on a particular day, prisoners eat nothing or one meal very late in the day. In 2008, the ZHRC found that inmates are given a meal of beans per day, prepared by inmates assigned to work in the kitchen. In 2010, the HRW, PRSCCA and ARASA study found that prisoners were to be given fresh vegetables. Inmates had to bring their own utensils; and inmates when taking their meals. Inmates often complained that the cooking facilities were seriously filthy and poor sanitation facilities. Some inmates had to make arrangements for preventing a juvenile, who is allowed to leave the prison. Rule 138 of the Zambian Prison Rules entitles prisoners to receive visits from relatives and friends but no prisoner can receive more than three visitors at any one time. Rule 197 entitles critically sick prisoners to receive visits from close relatives and friends after being granted permission by the OIC. In practice, lawyers and paralegals do not have necessary information and making complaints, and all such other matters are necessary to enable him/her to understand both his/her rights and his/her obligations and to adapt himself/herself to the life in prison. The ZHRC also found that some visits are arbitrarily denied; in some cases, fees are demanded from visitors and the meeting time is short and hurried, and not enough time is allowed to communicate with one’s visitors; and prisoners who are granted the liberty to freely express themselves and report abuse because the warders are always stationed nearby when family and friends come to visit. And the meeting time is short and hurried, and not enough time is allowed to communicate with one’s visitors; and prisoners who are granted the liberty to freely express themselves and report abuse because the warders are always stationed nearby when family and friends come to visit. Detainees held in police cells reported that the channels can be divided into internal and external. Within the internal channel, prisoners can address their complaints to prison officers or the OIC of the correctional institution or detention centre where they are being held. This is provided for in Rule 15 of the Zambian Prisons Rules, which stipulates that the OIC shall ensure that prisoners who have complaints or applications to make are allowed to make them to him personally. The external channels involve reporting the matter to an office or officer not directly connected to the prison service, including:
• Officials from the ZHRC during their prison visits;
• A judge, magistrate or legal aid board lawyer during their monthly prison visits; and,
• A private legal aid service provider that works closely with prison authorities, e.g. the Legal Resources Foundation. 135

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

6. Conclusions and recommendations

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

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

• Legislative reforms should be undertaken in line with internationally accepted standards (e.g. regarding the definition and criminalisation of torture) to bring prison legislation up to date;
• The government should set up structures and procedures to detect and investigate instances of torture (e.g. the Independent Complaints Commission) as required by articles 12 and 13 of UNCAT;
• The prison service should be strengthened and its operations supported through the adequate provisioning of resources;
• The justice and security sector in government need to cooperate to reduce overcrowding in prisons by using alternative sentencing and other measures, such as expanding parole eligibility and the use of bail;
• An effective HIV/AIDS prevention campaign (including education on harm reduction and condom distribution) must be undertaken to curb the spread of the epidemic in prisons;
• The HIV/AIDS policy of the Zambia Prison Services should be implemented, and the medical and nutritional needs of detainees who are HIV positive and prisoners on ART must be met; and,
• A clinical officer should be employed in each prison in the short term, while in the long term, a clinic needs to be established in each prison and furnished with personnel, equipment and medication.

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

5. Inspection and monitoring of detention centres

International standards require an independent and effective prison inspectorate, which regularly inspects places of detention. The UN Special Rapporteur on Torture regards the regular inspection of places of detention, especially when carried out as part of a system of periodic visits, as one of the most effective preventive measures against torture and ill-treatment. 137 These inspections should be conducted at all penal institutions by independent experts who have full and private access to all detainees and make their findings public. 138 The Committee against Torture has on many occasions stressed that independent governmental bodies should be formed and tasked with inspecting and monitoring conditions of detention.139

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

Time and time again, the ZHRC has voiced concerns over general police brutality in handling suspects, especially related to beatings and the deaths of suspects in police custody.141 International agencies such as UNDP, UNICEF and civil society organisations have been instrumental in offering technical and financial help to the ZHRC to enable it to further its work in trying to monitor, foster and lobby for better prison conditions. The European Union has pledged to continue supporting Zambia’s efforts to improve the worrying overcrowding in prisons, the large number of people on remand for a long time, the low testing levels for TB, the high HIV prevalence rate and the lack of prison-based health services.
7. SURVEY RESULTS ON CONDITIONS OF DETENTION IN POLICE CELLS

By Lukas Muntingh

7.1 Introduction

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

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

1 Former South African Chief Justice, Arthur Chaskalson, concluded that in a degrading or humiliating manner. 3 Therefore, it be devalued as a human being or treated in a dehumanising way.4

International norms and standards in respect of conditions of detention are much more developed than standards for conditions in police detention cells. This is despite the fact that prison conditions are much more developed than standards for prison conditions in police detention cells.5

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Most of the police cells were very dirty. The cells had no water and in some cases sanitary facilities were nonexistent. They also generally had poor lighting and ventilation. This problem, coupled with heavy congestion in the cells, resulted in inmates contracting various communicable diseases. The cells at Ngwerere, Westwood and Mutendere Police Posts were the worst and urgent action to redress the situation is needed.
“There are separate cells for females, males and juveniles. The only problem faced is an erratic water supply.”

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

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

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

The Commission concluded its observations by stating that:

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

1

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

Individuals interviewed show that public perceptions of the police are not favorable. This is mostly because of the manner in which the police interact with members of the public. Police conduct in their interaction with the public, mostly in violation of their own codes of conduct or discipline provisions.

The general perception of the police by individuals is that they are corrupt, abusive, brutal, and that rather than protecting rights, police officers violate the rights of individuals.

Further, although, registering complaints is the starting point for investigations into crimes and abuses, and the first step towards redress made by those seeking justice, this is seldom fulfilled. Individuals observed that filing complaints at police stations is a complicated and even dangerous exercise as one can end up being detained instead.

Ndola and Chipata: Each police station has a custody officer who is responsible for the detainees. Table 2 summarises the information that was collected during the fieldwork on the particular date of the visit to each police station.

7.2 Police Stations

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

7.3 Right to physical and moral integrity

Key international instruments:

• Art. 5 of the Universal Declaration of Human Rights (UDHR);
• Art. 7 of the International Covenant on Civil and Political Rights (ICCPR);
• Arts. 2 and 10 of the UN Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment (UNCAT);
• Arts. 2 and 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
• Principle 1 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR);
• Principle 1 of the Basic Principles for the Treatment of Persons Detained or Interrogated;
• Principles 4 and 11 of the UN Standard Minimum Rules for the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
• Rule 31(a) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNJOL);
• Principle 1 of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

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

<table>
<thead>
<tr>
<th>Station</th>
<th>Nr of detainees</th>
<th>Nr of women</th>
<th>Nr of children</th>
<th>Longest in custody</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kabwe</td>
<td>20</td>
<td>1</td>
<td>0</td>
<td>3 days</td>
<td></td>
</tr>
<tr>
<td>Livingstone</td>
<td>15</td>
<td>2</td>
<td>1</td>
<td>Not recorded</td>
<td>There are reportedly no children, only ‘juveniles’</td>
</tr>
<tr>
<td>Luansika</td>
<td>65</td>
<td>3</td>
<td>0</td>
<td>2 weeks</td>
<td></td>
</tr>
<tr>
<td>Mansa</td>
<td>16</td>
<td>3</td>
<td>1</td>
<td>7 days</td>
<td>There are reportedly no children, only ‘juveniles’</td>
</tr>
<tr>
<td>Mongu</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>2 days</td>
<td></td>
</tr>
<tr>
<td>Nakonde</td>
<td>82</td>
<td>1</td>
<td>9</td>
<td>2 years</td>
<td>There are reportedly no children, only ‘juveniles’</td>
</tr>
<tr>
<td>Ndola</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Solwezi</td>
<td>20</td>
<td>0</td>
<td>0</td>
<td>2 days</td>
<td></td>
</tr>
<tr>
<td>Chipata</td>
<td>24</td>
<td>3</td>
<td>1</td>
<td>Not recorded</td>
<td>There are reportedly no children, only ‘juveniles’</td>
</tr>
</tbody>
</table>

TABLE 2

3632
The findings of such an inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

It has also been noted that:

The impartiality is therefore central to effective inves-
tigation and the term 'impartiality' means free
from undue bias and is consequently different
from the notion of independence. The two notions are,
however, closely interrelated, as a lack of independence is commonly
seen as an indicator of partiality.13 The ECtHR (Euro-
pean Court of Human Rights) has stated that 'in-
dependence' not only means a lack of (institutional or
interpersonal) connection, but also practical independ-
ence. The ECtHR has also stressed the need for the
investigation to be open to public scrutiny to secure
its legitimacy and to secure accountability in practice
as well as in theory, to maintain public confidence
in adherence to the rule of law by authorities, and to prevent any appearance of collusion or in toler-
ance of unlawful acts.14

Therefore, the fact that the police investigate
the death of a person in police custody is of concern
due to the fact that such deaths should be investigated
by an impartial and independent authority. The second
principle of the UNMR requires that the investigation
be held on the same procedural basis whenever the
death or disappearance occurs shortly after the
termination of the detention or imprisonment. The

record of detainees: The International
Convention for the Protection of All Persons
from Enforced Disappearance, which Zambia ratified
on 4 April 2011, gives no formal or operational
force to the provisions of the Declaration on
the Protection of All Persons from Enforced
Disappearance but mandates States to enqu.

Guarantee that any person deprived of liberty
shall be held solely in officially recognized and supervised
places of deprivation of liberty.15

Article 17 provides valuable guidance
to States on the prohibition of enfor-
dced disappearance, and any other acts or
practices having the same effects or
any other matters that are necessary to that
determine the rights understood of the rights
and responsibilities.17 If the deceased person
is libelous, this information must be conveyed
to him verbally.20

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

Detainees are also informed of the reasons for their
arrest and detention, and of their right to challenge their
detention. However, it was not within in the scope of this research to verify
precisely what is communicated to detainees – for
example, did the information cover the conditions
under which the police may grant bond, or
when bail can be applied for only at a court.

The 24-hour rule: The Criminal Procedure
Code requires that a suspect be brought before a court
within 24 hours.18 If the detainee was not granted
bail by the police, then bail can be applied for at
the court. If the person is denied bail, then he
is remanded to a prison. The police are
prohibited from granting bail.19

Article 3 of the 1977 and 1984 Geneva
Conventions on the Protection of Civilian
Persons in a Time of War requires that:

There appears to be a well-established system for recording the property (cash and valuables) and this is recorded in the APPB. Lusaka police station noted that cash in excess of K5 million is kept by the officer-in-charge, while the

This report was based on research conducted between January and November 2014. There were a total of 35 police stations surveyed.

The Criminal Procedure Code
defines the scope of the investigation
that is held by police officers, and
this can be defined as a criminal
investigation. The investigation
is held by a judicial or other
authorities proceed to a promptand impartial
inquiry into the cause of death
or disappearance that occurred
shortly after the death or
disappearance occurs shortly after the
termination of the detention or imprisonment. The

termination of the detention or imprisonment. The

Death or Disappearance also requires that:

Protection of All Persons under Any Form
of Detention or Imprisonment also requires that:

When the death or disappearance of a detainee
in police custody is in question, the report
of a member of the family of such a person or any
person who has knowledge of the case. When
circumstances are unclear, then the report
should be held on the same procedural basis whenever the
death or disappearance occurs shortly after the
termination of the detention or imprisonment. The

Reflected that it is further legal and judicial
statutes had been taken to give effect
to the obligations set out in Article
10 of the 1984 Geneva Convention on
the Protection of Civilian Persons in a
Time of War. However, reference
was made to the varying experiences
of the provinces and the fact that
the provinces are incorporated in human
rights training into the curriculum.12 However, the extent to which this has been
achieved is uncertain.

Impartiality is therefore central to effective inves-
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from Enforced Disappearance, which Zambia ratified
on 4 April 2011, gives no formal or operational
force to the provisions of the Declaration on
the Protection of All Persons from Enforced
Disappearance but mandates States to enqu.
permitting to take the medication into the cells, but it is then the custody officer’s duty to see that they take their medication as prescribed.

7.5 Right to adequate standard of living

Key international instruments:

- Art. 11 of the International Covenant on Civil and Political Rights (ICCPR)
- Rule 9.6, 21, 41 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rules 31-34 of the United Nations Rules for the Protection of Persons Deprived of their Liberty (JOLDR)

States are under an obligation to ensure that people deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. This obligation is laid down in Article 10 of the ICCPR, as well as in the fundamental principles and rules on the deprivation of liberty.

Available cell capacity and occupation: The occupation levels for the stations which are accurately available were very average - with Lusitonge at 150 percent occupancy.

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

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

Amount of time per day outside of the cells: The UNSMR requires a minimum of one hour of outdoor exercise per day. Prison architecture may enable detainees to spend time outside of their cells, police station overcrowding and lack of cell space presents significant challenges in this regard. In Kabwe and Ndakwe (the latter also functions as a remand facility), detainees are not permitted outside of their cells. Livingstone and Mongu police stations reported that detainees are permitted to go into the corridor, which is secure. At these stations, it appears that detainees spend anything from two to eight hours in the corridor area. Only in Kabwe and Ndakwe do police stations report that detainees are not permitted to go into the corridor, which is insecure. At these stations, it appears that detainees spend anything from two to eight hours in the corridor area.

General cleanliness, hygiene and vectors for disease: Mosquitoes were noted as a general problem as well as a lice. Fumigation is done at a marketed cost of K8000 per station (Kabwe and Livingstone) but it was not seen how regular this is done.

Ndola and Lusitonge police stations reported that fumigation is carried out once or twice a year by the Town Council or Ministry of Health. Meanwhile, in Mongu and Ndakwe no measures are undertaken to fumigate the cells. There is not a lack of funds. It is evident that if vectors are not controlled then they will pose a serious risk for the health and wellbeing of the detainees. This frequently results in financial implications for the state.

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

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

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

Key international instruments:

- Rule 37 of the United Nations Rules for the Protection of Persons Deprived of their Liberty (JOLDR)

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

(1) Food shall be provided for detainees at police stations.

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

Provisioning of food: Neither the police nor any other government agency provides food to detainees at police stations. The detainees are entirely reliant on friends and relatives for their meals. This must place a terrible burden on the families and friends that are detained. For detainees without families, the situation is even more dire as they are dependent on the police officers.

This presents a particular challenge in the case of Nakonde, which effectively functions as a remand prison where police officers buy maize meal and vegetables, and the detainees cook their own food on wood fires.

It is the duty on the State to provide at least basic nutrition to detainees in order to meet the basic food requirements of a prisoner whenever he needs it. This is especially important in view of the high rates of tuberculosis in the prisons.

The situation is even more dire as they are dependent on the police officers.

7.6 Adequate food

Key international instruments:

- Art. 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Rule 20 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rule 67 of the United Nations Rules for the Protection of Persons Deprived of their Liberty (JOLDR)

Minimum rules for the treatment of prisoners, the protection of juveniles deprived of their liberty and the right to adequate nutrition and water is fundamental to the right to life and the UNSMR, in Rule 20, requires that:

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It is the duty on the State to provide at least basic nutrition to detainees in order to meet the basic food requirements of a prisoner whenever he needs it.
7.7 Clothing and bedding

Key international instruments:
- Rules 17-19 and 81 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rule 38 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UDLR)
- Principles 1-26 of the Basic Principles for the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Article 1 of the African Charter on Human and Peoples’ Rights

Rule 17 of the UNSMR requires that:

1. Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

2. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

3. In exceptional circumstances, whenever a prisoner is removed outside the institution for an attack on human dignity.

7.8 Health care

Key international instruments:
- Art. 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Rules 22-26 and 39 of the UN Standard Minimum Rules for the Treatment of Prisoners
- Principle 9 of the Basic Principles for the Treatment of Prisoners
- Art. 6 of Code of Conduct for Law Enforcement Officials
- Rules 41-55 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UDLR)
- Principles 1-6 of the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The UNSMR, in Rule 22, states that

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

2. Sick prisoners who require special treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of qualified trained officers.

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

The role of health sector personnel is of particular importance in places of detention and in establishments in which relatives to supply them with additional clothing. However, if the detainee’s clothing is no longer available information, it appears that if a detainee shows visible signs of illness and/or injury that he is taken to a clinic or hospital. However, in Mombasa it was noted that there may be delays due to the lack of transport. Ndakieu police station reported that an NGO, Corridors of Hope, also assists in the health care of detainees. While it is not realistic to expect every police station to have a health care professional in place, efforts should be made to ensure that health care professionals at hospitals and clinics are able to detect the signs of torture and ill-treatment, and are mandated to report such cases to the appropriate authorities.

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

7.9 Safety and security

Key international instruments:
- Arts. 4-6 of the African Charter on Human and Peoples’ Rights
- Rules 27-34 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Principle 7 of the Basic Principles for the Treatment of Prisoners
- Article 6 of Code of Conduct for Law Enforcement Officials
- Principles 1-11 and 15-17 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

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

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

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

Use of mechanical restraints: Handcuffs appear to be used in two instances – when detainees are transported (e.g. to court), and when a detainee is considered to be dangerous criminal and a threat to other detainees. In the latter case, the detainee will be placed in handcuffs in the cell.
The right to contact a lawyer is a safeguard of great importance. In fact, it is frequently observed that the legal assistance that a detained person requests is the most important condition of treatment that he/l...
In Nakonde both the custody officer and the freerly and confidentially with inspectors although In most police stations, detainees can speak the regularity was not indicated. It appears that this is not done regularly. In Mansa, permanent resident magistrate visits the cells in both these instances, it appears to be limited as they are not permitted to have their mobile phones in the cells. Therefore, they have no means of contacting an external authority. Nonetheless, it was reported that relatives do facilitate the lodging of complaints, either with the police directly or with an external agency.

Inspections: A number of station reported that they are inspected on a regular basis but did not specify by whom. Mongu police station reported that relatives do facilitate the lodging of complaints with an external agency. Nonetheless, it was reported that relatives do facilitate the lodging of complaints, either with the police directly or with an external agency.

Prisoners (UNSMR)

• Art. 10(2) of the International Covenant on Civil and Political Rights (ICCPR)
• Art. 37 of the Convention on the Rights of the Child
• Rule 8(d) and 85(2) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UDLR)

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

17. Juveniles who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. Detention before trial should be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is necessary, in particular for the protection and safeguarding of minors, it may result in the matters not being dealt with.

Sanitary towels: The police service does not provide sanitary towels to female detainees so relations have to bring them. It is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expedi- tious processing of such cases to ensure the shortest possible duration of detention. Unlawful detainees should be separated from convicted juveniles.

7.13 Children (juveniles) in police detention

Key international instruments:

• Principle 5(2) of the Body of Principles for the Protection of All Persons from Being Subject to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the NCHR)
• Article 10 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLR)

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

However, female detainees are not supervised by female officers at all times. In Mongu, women are ‘usually’ supervised by female officers, while in Chipata, a male officer is allowed to enter the female cell if he is accompanied by another male officer. In Nakonde and Chipata, only male officers are on duty at night and since the toilet facility is outside, detainees must be escorted there if they want to use it.
Recommendations

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

Right to physical and moral integrity

1. The management of the Zambian Police Service must provide assertive and demonstrable leadership in relation to the human dignity of detainees and their right to physical and moral integrity – as well in relation to transparency and accountability, which are the cornerstones of a human rights-based detention system.
2. Training on the absolute prohibition of torture and other ill treatment must not only be part of general training, but also feature prominently in refresher training – and this must be conducted on an annual basis.
3. In 2006, Zambia reported to CAT that plans were underway to review the current human rights syllabus in order to make its content more responsive to the needs of the trainees such as interrogation methods, rights of suspects, treatment of people in custody and guidelines on the use of force (including firearms). The following resources from the UN Office on Drugs and Crime (UNODC) may be of assistance:
   • Model strategies and practical measures on the elimination of violence against women in the field of crime prevention and criminal justice;
   • Compendium of UN standards and norms in crime prevention and criminal justice;
   • UN criminal justice standards for UN police;
   • Practical approaches to urban crime prevention;
   • Handbook on the UN crime prevention guidelines - making them work;
   • Handbook on improving access to legal aid in Africa;
   • Handbook on effective police responses to violence against women;
   • Training curriculum on effective police responses to violence against women.
4. All deaths in police custody must be investigated by an independent and impartial authority. Given resource constraints, this may not always be possible and under these circumstances, investigations should be monitored by the ZHRC and the findings published.
5. Upon admission, detainees must be informed in a comprehensive and comprehensible manner about their rights and responsibilities, as well as the rules of the detention facility. This information should be displayed on a board inside the holding area where detainees would be able to read it, or it could be read to them.
6. All detainees must be brought before a court within 24 hours or as soon as possible thereafter (weekends and public holidays permitting). The custody officer must report each case that has exceeded this limit to the officer-in-charge and the local magistrate.
7. To protect vulnerable people:
   • Custody officers should undergo training in how to deal with vulnerable people, with particular reference to avoiding custody (e.g. bail) and detecting vulnerable individuals;
   • Each police station should have sufficient cell accommodation to separate detainees in respect of age and gender;
   • Children should not have contact with adults during custody.

Right to adequate standard of living

8. The Zambian Government, in cooperation with its partners, should investigate the medium term feasibility of a police station infrastructure improvement plan to develop accommodation that meets the minimum standards of humane detention, with specific reference to adequate capacity, ablution facilities, visitors’ facilities, eating and cooking areas.
9. Since many of the problems in relation to custody and detention will not be resolved overnight, it is therefore recommended that the police service develops a time bound plan of action that can be monitored to incrementally improve conditions of detention, including providing:
   • Access to clean drinking water in cells;
   • Flush toilets in cells;
   • Basic bedding (e.g. sleeping mats and blankets);
   • At least one nutritious meal per day, including fresh fruit on a regular basis;
   • Regular fumigation of cells to control mosquitoes, lice and other disease vectors;
   • Electric lighting in cells.

Health care

10. All new admissions must be screened for communicable diseases and injuries upon
admission. Since there is a shortage of health care professionals, custody officers must undergo basic paramedic training so they can screen new admissions, deal with medical emergencies, and conduct health inspections of facilities.

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

Contact with the outside world

12. Infrastructural improvements should ensure adequate facilities for visitors.

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

Complaints and requests

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

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

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

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

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

Children

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

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

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

8.1 Introduction

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

• The prisons are overcrowded since there has been no expansion in the infrastructure to cope with the growing demand for prison space.
• The existing infrastructure is rapidly aging and, in many regards, the existing architecture negates any chance of complying with domestic and international standards pertaining to conditions of detention.
• The combination of inadequate cells and furnishings, poor and monotonous diet, poor ventilation, sickness and disease, lack of ablution facilities and prisoner idleness stand out as key problems amounting in many regards to ill treatment of detainees in violation of Article 16 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

The victimisation of prisoners by officials, bribery and arbitrary treatment.

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

Table 1 details the date of construction (specific or estimated) of prisons in Central and Lusaka Provinces. The overall impression is that, with the exception of the newer open-air prisons, most prisons were constructed prior to Zambia’s independence from Britain. Built in 1924, Lusaka Central Prison is fast approaching its centenary.
It was not part of the scope of this survey to interview prisoners regarding conditions of detention and treatment, but rather to assess the systems and basic infrastructure in place as they relate to conditions of detention. Prisoners’ experience of imprisonment has been well documented in other studies cited in the chapter by Matakala. It should be noted that the duty of the State to provide safe custody is not limited to ensuring that officials do not torture or ill treat prisoners. The State is also responsible for preventing inter-prisoner violence and ill treatment. Moreover, the State’s obligations extend beyond that of its own officials since it has a duty towards non-State actors – in this case, all prisoners. The CAT has been clear in this regard: "The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate or punish, they may be considered responsible for their omissions."

8.2 The Prisons

The survey collected data from eight prisons across Zambia – namely Kabwe, Livingstone, Lusaka Central Prison, Lusaka (Kamwala Remand), Mansa, Mongu, Ndola and Solwezi. Due to the fact that sentenced prisoners and pre-trial detainees are not separated as a rule, it is not possible to make rigid distinctions between these two categories of prisoners and the same conditions apply essentially to both. Table 2 summarises the information that was collected during the fieldwork on the particular date of the visit to each prison.

8.3 Right to physical and moral integrity

Key international instruments:

• Art. 5 of the Universal Declaration of Human Rights (UDHR);
• Art. 7 of the International Covenant on Civil and Political Rights (ICCPR);
• Arts. 2 and 10 of the UN Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment (UNCAT);
• Arts. 2 and 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 1 of the Basic Principles for the Treatment of Prisoners, Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Rule 8(B) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UDPR);

Prohibition of torture and ill-treatment: Zambia acceded to UNCAT in October 1998 and has since submitted two reports to the Committee against Torture (CAT). However, torture has not been criminalised in domestic law as required by Article 4 of UNCAT and legislation prohibiting the use of evidence obtained under torture (as required by Article 15) has not been enacted. It should be noted that the duty of the State to provide safe custody is not limited to ensuring that officials do not torture or ill treat prisoners. The State is also responsible for preventing inter-prisoner violence and ill treatment. Moreover, the State’s obligations extend beyond that of its own officials since it has a duty to ensure that State actors – in this case, all prisoners – do not torture or ill treat prisoners. The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investi-
Deaths: The investigation of deaths in custody is initiated when the death is reported by the cell leader to the duty officer, who in turn calls the duty police officer and the medical officer. Deaths in custody are reportedly rare as "they normally die in hospital" (Mansa). The police are responsible for the investigation of any death in custody.

Expiration of warrants: The detention of a person may only be carried out in strict accordance with the provisions of the law and by competent officials who have authority for that purpose. 3 Section 55 of the Prisons Act stipulates the requirements in respect of remand warrants. While it was reported at seven of the eight prisons that all pre-trial prisoners are being held on remand warrants, Mansa prison could not confirm this due to a sudden influx of prisoners, presumably arrested during a riot. Indeed, expired warrants may be a common problem since in 2005 the ZHRC found 78 prisoners at Mpima Remand prison being held on expired warrants. 4

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

1. Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty; 5

2. Provide a form of encouragement and/or de facto safeguards regarding the deprivation of liberty, and the administrative safeguards applicable to the deprivation of liberty in the International Convention, in the form of registers and records, are also found in the UNCAT (Art. 10). According to the United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMR) (1955) and must be accepted as a reasonable and achievable requirement. 6

In all eight prisons, it was established that such provisions are generally maintained, although some admissions procedures. However, while the date of admission is recorded, the time of admission is not always recorded.

Information given: Despite the deprivation of liberty, detained people must be treated with dignity and fairness. 7 It is an important preventive measure that detained people are informed of their rights and responsibilities. If the detained person is illiterate, this information must be conveyed to him verbally. 8

At Kabwe prison, this is not being done. At the other prisons, it was reportedly being done but the extent and scope of the information that is provided could not be verified as required by UNSMR Rule 35(C). In order to facilitate compliance with Rule 35(C), it is good practice to display the rules of the institution on walls that are accessible and visible to prisoners. This was only done at Livingston prison.

Children: Children present a particularly vulnerable group in custodial settings. Therefore it is required that the prison authorities give the welfare of children should be informed of their imprisonment as soon as children are taken into custody. It is also mandatory for the Department of Social Welfare when a child is taken into custody.

The age of a child in Zambia: The legal definition of who is a child is somewhat uncertain. The Juvenile Act (Ch 35) states that "a person between the ages of 18 years cannot cast a vote in elections who- (a) is a citizen of Zambia; and (b) is qualified for registration as a voter in direct elections who- (a) is a citizen of Zambia; and (b) has attained the age of eighteen years." Moreover, a person is taken into custody. All the prisons, except Ndola, do not inform the Department of Social Welfare when a child is taken into custody.

8.4 Property belonging to a prisoner

Key international instruments:

- Rule 3 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rule 35 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UDL)
- Rule 9-16, 21 and 41 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rule 35 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UDL)
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Amount time per day outside of cells per day: under such cramped conditions must place a space per prisoner (3.5–4.5 m²). Cubic space was what can be regarded as the absolute minimum in available floor space per prisoner of only 1.5 percent up to 398 percent. These levels resulted in available cell capacity and occupation:

Quality of infrastructure and building:

Lighting and ventilation:

Lighting but it was not possible to assess if this was sufficient as cells were visited during daylight hours. Natural light during the day was sufficient. Supervision of prisoners: The shift system in place ensures that there are always officials on duty but it remains difficult to verify if this is enough for adequate supervision during the night. Access to ablution facilities and drinking water: No one of the prisons are able to provide adequate access for toilets for prisoners. In some prisoners (e.g. Livingstone) during the visits, all the prisoners are out of their cells, the cell toilets are supplemented by ablution blocks. However, 108 prisoners are locked up in the toilets ranging from one toilet for 40 prisoners to one toilet for 108 prisoners. The norm established for the ICRC is a maximum of 1:20.14 Only in Livingstone – problematic. At Mansa, prison renovations and is reportedly in good condition. All inspected cells had electric lighting but it was not possible to assess if this was sufficient as cells were visited during daylight hours. Natural light during the day was sufficient.

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

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

Access to water: Access to water is through central taps and in some prisons (e.g. Livingstone and Kabwe) prisoners share the plates available, while in Mongu the prisoners supply their own eating utensils. The practice that prisoner may indeed be poor. Interviews conducted by the ICRC is a maximum of 1:20.14 Only in Livingstone – problematic. At Mansa, prison renovations and is reportedly in good condition. All inspected cells had electric lighting but it was not possible to assess if this was sufficient as cells were visited during daylight hours. Natural light during the day was sufficient.
Clothing and bedding

8.7 Clothing and bedding  
Key international instruments:  
- Rule 17.99 and 81 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)  
- Rule 38 of the United Nations Rules for the Protection of Juveniles Detained of their Liberty (DJLJ)

(1) In exceptional circumstances, whenever a prisoner is removed outside the institution for an examination, the clothing of the prisoner shall be changed and the prisoner shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in the prison, the prisoners are to be referred to the nearest medical officer who should have some knowledge of psychiatry. The medical services should be made available to sick prisoners in conditions which will not expose them to the risk of contagion or of being observed by the general public.

(3) All 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) Sick prisoners are not supplied with beds suitable for the mattress they are assigned. Bedclothes are reportedly low and much too worn out. Bedding is not supplied at the majority of prisons. Beds were reportedly banned and moved to make more space for the high numbers of prisoners.

8.8 Health Care

Key international instruments:  
- Art. 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)  
- Rules 22-26 and 91 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)medical services

(1) At every institution there should be available the services of a qualified medical officer who should have some knowledge of psychiatry. The medical services should be made available to sick prisoners in conditions which will not expose them to the risk of contagion or of being observed by the general public.

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8.7 Clothing and bedding

(1) In exceptional circumstances, whenever a prisoner is removed outside the institution for an examination, the clothing of the prisoner shall be changed and the prisoner shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in the prison, the prisoners are to be referred to the nearest medical officer who should have some knowledge of psychiatry. The medical services should be made available to sick prisoners in conditions which will not expose them to the risk of contagion or of being observed by the general public.

(3) All 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) Sick prisoners are not supplied with beds suitable for the mattress they are assigned. Bedclothes are reportedly low and much too worn out. Bedding is not supplied at the majority of prisons. Beds were reportedly banned and moved to make more space for the high numbers of prisoners.

8.8 Health Care

Key international instruments:  
- Art. 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)  
- Rules 22-26 and 91 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)medical services

(1) At every institution there should be available the services of a qualified medical officer who should have some knowledge of psychiatry. The medical services should be made available to sick prisoners in conditions which will not expose them to the risk of contagion or of being observed by the general public.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in the prison, the prisoners are to be referred to the nearest medical officer who should have some knowledge of psychiatry. The medical services should be made available to sick prisoners in conditions which will not expose them to the risk of contagion or of being observed by the general public.
Mentally ill prisoners appear to present an equal challenge to staff due to staff shortages. This requires closer involvement of the offender management team also assists. Safety and security

Key international instruments:

- **Art. 102-105** of the International Covenant on Civil and Political Rights (ICCPR)
- **Art. 4** of the African Charter on Human and Peoples’ Rights
- **Principle 8** of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- **Rules 27 and 38** of the UN Standard Minimum Rules for the Treatment of Prisoners
- **Principle 7** of the Basic Principles for the Treatment of Prisoners
- **Rules of Conduct for Law Enforcement Officials**
- **Principles 11-15** of the Basic Principles of the Use of Force and Firearms by Law Enforcement Officials
- **Rules 63-71** of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UDLR)

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

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

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

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

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

Key international instruments:

- **Rule 27** of the UN Standard Minimum Rules for the Treatment of Prisoners
- **Rule 32** of the UN Rules for the Protection of Juveniles Deprived of their Liberty
- **Rule 59-62** of the United Nations Rules for the Protection of All Persons under Any Form of Detention or Imprisonment
- **Principle 19** of the Body of Principles states that:

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

While it was reported that this is not done, sentenced prisoners are used as guards to oversee pre-trial detainees. The role and responsibilities of the ‘cell leader’ is also not clear and both issues require further investigation. In chapter 6, Matalake describes the functions of the ‘tunnel loader’ and ‘jail lieutenant’. These are sentenced prisoners who are informally deployed by the prison service to assist in overseeing prisoners due to staff shortages. This requires closer investigation to ensure that there are no violations of UNSMIR 28(1).

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

Certain rights imposed on prisoners may amount to torture, cruel, inhuman or degrading treatment or punishment, even though the Prisons Act still provides for these punishments. 24 However, information in chapter 6 on the treatment of prisoners (Kabwe and Mansa) indicates that solitary confinement is still being used. Moreover, from Kabwe, there was reported that a non-commissioned officer can impose a prisoner a maximum of five days in solitary confinement, while an officer can give a prisoner a maximum of 28(1) of the UNSMIR states that:

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

Key international instruments:

- **Rules 17, 38, 90 and 92** of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMIR)
- **Principles 15-20** of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- **Rules 15-16** of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UDLR)
- **Article 37(6)(c)** of the Convention on the Rights of the Child

Prisoners who are unhappy with a punishment imposed on them may lodge a complaint with the general commander. However, no data were collected on how often this happens and what the results of such appeals might be.

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

The use of mechanical restraints, solitary confinement, retribution in death and corporal punishment may no longer be used as punishments, although the Prisons Act still provides for these punishments.4 However, information in chapter 6 on the treatment of prisoners (Kabwe and Mansa) indicates that solitary confinement is still being used. Moreover, from Kabwe, it was reported that a non-commissioned officer can impose a prisoner a maximum of five days in solitary confinement, while an officer can give a prisoner a maximum of 28(1) of the UNSMIR states that:

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- **Rule 59-62** of the United Nations Rules for the Protection of All Persons under Any Form of Detention or Imprisonment
- **Principle 19** of the Body of Principles states that:

> A detained person shall have the right to be visited by and to correspond with, in particular, members of family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

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

> An arrested person shall be allowed to inform immediately his family of his detention and shall be given reasonable facilities for communicating with his family and legal representatives, so that adequate redress, if necessary, may be brought to bear with regard to his detention and treatment.

Rule 37 and 92 of the UNSMIR provide for family contact and visit rights. These are enforceable by the national authorities. The right to inform is a right of the detained person, and it is the duty of the state to ensure that there is no violation of the right to inform (as falling within the range of psychological torture).

Field visits are the only means of ensuring that there is no violation of such rights, although the Detention or Imprisonment
- **Article 37(6)(c)** of the Convention on the Rights of the Child

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Key international instruments:

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- **Principles 15-20** of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- **Rules 15-16** of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UDLR)
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Consultations) may be curtailed by the officer-in-charge at all prisons, except at Mansa. However, if restricted as a disciplinary measure and this is the case, the officer-in-charge “determines what happens based on the case”. Although in Mansa the officer-in-charge does not curtail due to disciplinary infringements, but not at Ndola and Solwezi. Visits by families can subscribe to newspapers and magazines as long as they are permitted within the bounds of maintaining security reasons – in Mansa, Solwezi and Lusaka Central.

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

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

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- Art. 13 of the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT)
- Rules 35-36 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)
- Rules 72-78 of the United Nations Rules for the Prevention of Juveniles Deprived of their Liberty (UNJDLs)

Key international instruments:

- Art. 5 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Art. 10 of the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT)
- Principles 18-20 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Principles 1-3 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)

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Key international instruments:

- Prtcle 520 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Rule 8(a), 23 and 53 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)

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- Rule 8(a), 23 and 53 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)

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

Pre- and post-natal care: The prison service cannot afford to provide pre- and post-natal care services for female prisoners. Therefore, the service relies on church organisations for assistance (Livingstone) or female prisoners attending the local clinic (Mongua). In some prisons, breastfeeding mothers are supplied with nutritional supplements, but this is not consistently practiced. Infants are supplied with nutritional supplements. As for legal arrangements, measures are done to ensure that prisoners’ babies are born outside the prison and in a public hospital.

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

Key international instruments:

- Prtcle 520 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Rule 8(a), 23 and 53 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR)

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Refresher training appears to have been neglected at four of the prisons. From the collected data, it is not known what type of training was provided at the other four prisons.

Recommendations

Recommendations

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

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

3. The personnel shall possess an adequate knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

4. The Prisons Act requires substantial revision to ensure that all deaths should be reported to the ZHRC, which will also monitor the investigations, and that findings should be published.

5. Upon admission, a detained person must be informed in writing of the rules of the institution, the disciplinary code and procedures, and any other matters that will help him to understand his rights and responsibilities. They should equally be informed of the penalties they may suffer if they breach the prison discipline, and have access to legal representation. A signboard detailing this information should be placed inside the prison yard where it is visible to all detainees.

6. Upon admission, a detained person must be given self-sustaintaining practices such as ample time out of cells. Due to the fact that sentenced and unsentenced prisoners are not segregated, the cells. Due to the fact that sentenced and unsentenced prisoners cannot be provided with legal representation. A signboard detailing this information should be placed in all prisons.

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

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

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

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

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

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Health care

Recommendations

Recommendations

1. The personnel shall possess an adequate knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

2. At four of the prisons, the officials have not received the necessary training to work with pre-trial detainees and the operational constraints limit the extent to which training can be done. From the collected data, it is not known what type of training was provided at the other four prisons. The vacancy

3. Training in Solwezi. Although NGOs have apparently assisted with training in Solwezi, Refresher training appears to have been neglected at four of the prisons.

4. From the collected data, it is not known what type of training was provided at the other four prisons.

5. The official shall possess an adequate knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

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9.1 Introduction

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

9.2 Prisons

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

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

9.3 Management

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

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

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

9.3.1 Women

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

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

9.3.2 Complaints, requests and inspections

20) All prisoners should have the opportunity on a daily basis to lodge complaints or make requests. A register for this purpose should be maintained and reviewed by the officer-in-charge on a weekly basis.

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

22) A lay visitor’s scheme should be established for every prison to inspect and report on the conditions of detention and the treatment of prisoners23 since, although the ZHRC has a mandate to visit and inspect prisons, it cannot be in all places all of the time.

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

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Zambia prison sample, by year

<table>
<thead>
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<th>Year of Observation</th>
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<td>77.86</td>
</tr>
<tr>
<td>2011</td>
<td>273</td>
<td>22.14</td>
<td>100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1233</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Ndola

- Frequency: 239
- Percent: 19.31
- Cumulative: 80.61

Solwezi

- Frequency: 240
- Percent: 19.39
- Cumulative: 100

**Total**

- Frequency: 1238
- Percent: 100

Characteristics of prison remand admissions

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

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

**Zambia prison remand admissions, by age**

<table>
<thead>
<tr>
<th>Age</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 18</td>
<td>53</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>18-24</td>
<td>174</td>
<td>17</td>
<td>22</td>
</tr>
<tr>
<td>25-29</td>
<td>257</td>
<td>25</td>
<td>47</td>
</tr>
<tr>
<td>30-34</td>
<td>147</td>
<td>14</td>
<td>61</td>
</tr>
<tr>
<td>35-39</td>
<td>107</td>
<td>10</td>
<td>71</td>
</tr>
<tr>
<td>40-44</td>
<td>50</td>
<td>5</td>
<td>76</td>
</tr>
<tr>
<td>45-49</td>
<td>32</td>
<td>3</td>
<td>85</td>
</tr>
<tr>
<td>Over 50</td>
<td>55</td>
<td>5</td>
<td>100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1024</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

According to the Central Statistical Office of Zambia, there are 72 ethnic groups in Zambia. The proportional contribution of each ethnic group (largest groups only) to remand admissions is compared to the relevant ethnic group’s percentage of the total Zambian population. This table suggests that the Bemba and Tonga, two of the larger ethnic groups, are under-represented in remand admissions, while the Ushi and Kaonde are over-represented. However, the high number of missing values and the location of the particular prisons chosen in this sample must be borne in mind when determining whether this is indicative of any underlying trend in decision-making leading to remand admissions.
Time periods in prison remand

The remand register in Zambian prisons records the date of admission for each remand prisoner. Therefore, fieldworkers were required to record the date of admission for each person selected for the random sample from the remand register and then record from the warrant the last court date that the remand prisoner was to appear in court. Unfortunately, the registers do not routinely record the date of discharge of a remand prisoner.

The average time period spent on remand but it is the only measure available.

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

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

Harmonised sample of people admitted to police detention

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

Once again, theft is the most common offence among people held in police detention. The contribution of less serious offences such as ‘conduct likely to cause a breach of the peace’ (constitute the majority of cases in which people are detained, or may reflect their ability to pay fines. This reflects their greater tendency to resolve with less recourse to court, while still resulting in police detention. These three offences result in 21 percent of the turnover in police detention, yet do not result in prosecutions.

9.3 Police

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>120</td>
<td>7.5</td>
<td>7.5</td>
</tr>
<tr>
<td>2007</td>
<td>241</td>
<td>15.05</td>
<td>22.56</td>
</tr>
<tr>
<td>2008</td>
<td>200</td>
<td>12.49</td>
<td>35.04</td>
</tr>
<tr>
<td>2009</td>
<td>320</td>
<td>19.99</td>
<td>55.03</td>
</tr>
<tr>
<td>2010</td>
<td>320</td>
<td>19.99</td>
<td>75.02</td>
</tr>
<tr>
<td>2011</td>
<td>360</td>
<td>22.49</td>
<td>97.52</td>
</tr>
<tr>
<td>Total</td>
<td>1601</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>120</td>
<td>7.5</td>
<td>7.5</td>
</tr>
<tr>
<td>2007</td>
<td>241</td>
<td>15.05</td>
<td>22.56</td>
</tr>
<tr>
<td>2008</td>
<td>200</td>
<td>12.49</td>
<td>35.04</td>
</tr>
<tr>
<td>2009</td>
<td>320</td>
<td>19.99</td>
<td>55.03</td>
</tr>
<tr>
<td>2010</td>
<td>320</td>
<td>19.99</td>
<td>75.02</td>
</tr>
<tr>
<td>2011</td>
<td>360</td>
<td>22.49</td>
<td>97.52</td>
</tr>
<tr>
<td>Total</td>
<td>1601</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

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

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

The long time periods for release in the following table, especially for transferal, bond, withdrawal or release to court raises the question as to whether the registers do record the release date, or money of the detained person, various other details are recorded as well, including the date the person was admitted and the date of release, as well as the reason for release, such as court, hospital or bond. Bond refers to police bond granted by the police to permit the release of a detained person. Zambia has introduced legislation that requires a detained person to be brought before court within 24 hours. Furthermore, those arrested without a warrant must be released on bond if not brought to court. In the case of Daniel Chizoka Mbandangoma v The Attorney-General, it was confirmed that under Section 33 of the Criminal Procedure Code Act, 4, the release on bond of a person arrested without a warrant is mandatory if it does not appear feasible to bring the person concerned before an appropriate competent court within 24 hours of his/her being taken into custody, unless the offence is one of a serious nature. Where a person is retained in custody, he/she must be brought before such court as soon as practicable.

However, caution must be exercised with the use of average values, as these tend to overstate the contribution of maximum or high values. The table below presents the median and other values, which provide a more detailed picture of the situation. It is apparent that the medians for release from police detention are one, two or three days at each of the police stations, suggesting half of the people released from police detention are released within such time frames - on the other hand it suggests half are not. The high average values are largely the result of the contribution of the values in the upper quartile, and those close to the maximum values.

The long time periods for the observations, greater than the median do reflect the experience of the Zambian Human Rights Commission, which has found that the police tend to make it difficult for a person to be released on bond by insisting on the person having two working sureties, preferably civil servants. In rural towns, where most people are not in formal employment, it is very difficult to find two working sureties. The ZHRC has also found that it is sometimes the case that police officers prefer keeping a person in detention until an investigation is finished. This would accord with the finding of an average of 19 days (weighted mean) in detention for those whose cases are ultimately withdrawn.

This raises the question as to whether there has been any change over time with respect to time periods spent in police detention. The table below shows the means and median for time in police detention by year. The mean shows a decreasing trend over time, but still suggests an average of 8 days in police detention. The decrease in mean suggests exceptionally long time periods in police detention are becoming less common. The current median in 2011 of 1 day suggests that half of the people held in police detention spend more than a day in police detention, while half spend less than a day.

9.4 Subordinate courts

For the subordinate court dataset, fieldworkers met with 10 of 19 subordinate court sites over the total time period 2006-2011. However, data for every variable was not collected for all observations and the following tables report percentages for which information was available. Mean, median, and quartiles were initially targeted, data from only six sites were available at the time of analysis.

Zambia subordinate court accused, by court

<table>
<thead>
<tr>
<th>Court</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chipata</td>
<td>50</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Kabwe</td>
<td>90</td>
<td>17</td>
<td>34</td>
</tr>
<tr>
<td>Livingstone</td>
<td>90</td>
<td>17</td>
<td>51</td>
</tr>
<tr>
<td>Ndola</td>
<td>90</td>
<td>17</td>
<td>68</td>
</tr>
<tr>
<td>Livingstone</td>
<td>90</td>
<td>17</td>
<td>51</td>
</tr>
<tr>
<td>Total</td>
<td>340</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

98 99
Characteristics of subordinate court accused

Some 96 percent of people before the subordinate courts in Zambia are male. Around 5 percent are under the age of 18, while a further 7 percent are aged 18 or 19. The 20-24 and 25-29 age groups are the most over-represented, while all other age-groups are under-represented. The age composition makes the age composition of remand closely, suggesting there is little bias by age in denying bail in the courts.

Zambia subordinate court accused, by age

<table>
<thead>
<tr>
<th>Age</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative</th>
<th>Zambia adult population over 20 (percent)</th>
<th>Zambia remand admissions (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 18</td>
<td>21</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>18-19</td>
<td>30</td>
<td>7</td>
<td>12</td>
<td>-</td>
<td>7</td>
</tr>
<tr>
<td>20-24</td>
<td>115</td>
<td>27</td>
<td>25</td>
<td>27</td>
<td>25</td>
</tr>
<tr>
<td>25-29</td>
<td>91</td>
<td>22</td>
<td>21</td>
<td>39</td>
<td>23</td>
</tr>
<tr>
<td>30-34</td>
<td>70</td>
<td>17</td>
<td>14</td>
<td>17</td>
<td>14</td>
</tr>
<tr>
<td>35-39</td>
<td>44</td>
<td>10</td>
<td>10</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>40-44</td>
<td>23</td>
<td>5</td>
<td>5</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>45-49</td>
<td>17</td>
<td>4</td>
<td>4</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Over 50</td>
<td>12</td>
<td>3</td>
<td>3</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>423</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

The absence of a similar percentage of these offences in the remand population suggests that people accused of ‘white collar’ crimes are not held on remand. The custody status at the time the case was concluded (or current custody status if the case was continuing) indicated that 54 percent of accused people before the subordinate courts were held on remand (256 observations out of 471 for which this data was recorded).

Comparing the offence profile of remand accused against the total offence profile suggests that people on remand are slightly more likely to be accused of theft, burglary, drugs, escape, robbery or murder. In particular, 17 percent of people were held on remand for drug offences compared to only 11 percent of people who were before the courts for drug offences. This may be due to the fact that people charged with offences related to drug trafficking or manufacturing drugs under the Narcotic Drugs and Psychotropic Substances Act cannot be admitted to bail (see Chapter 5).

Some 94 percent of people before the subordinate courts were there in relation to one offence. The most common offence before the courts was theft, which combined with burglary accounted for 42 percent of offences. Assault and bodily harm comprised a fifth of the sample, while 1 in 9 were drug offences. Notably, there is a significant proportion of ‘white collar’ and ‘middle-class’ offences such as fraud, corruption and driving offences, which jointly compose 8 percent of all offences and is indicative of Zambia’s growing economy. However, the absence of a similar percentage of these offences in the remand population suggests that people accused of ‘white collar’ crimes are not held on remand.

Offence Total Percent Remand Frequency Remand Percent
| Theft      | 157 | 29 | 76 | 30 |
| Assault or bodily harm | 113 | 21 | 40 | 18 |
| Burglary   | 71  | 13 | 36 | 14 |
| Drug offences | 61  | 11 | 44 | 17 |
| Fraud      | 28  | 5  | 9  | 4  |
| Sexual offences | 19  | 4  | 8  | 3  |
| Malicious damage | 14  | 2  | 3  | 1  |
| Escape     | 10  | 2  | 7  | 3  |
| Driving offences | 9   | 2  | 1  | 0  |
| Robbery    | 8   | 1  | 4  | 2  |
| Murder     | 7   | 1  | 6  | 2  |
| Corruption offences | 6   | 1  | 3  | 1  |
| Other      | 38  | 8  | 5  |    |
| Total      | 540 | 100| 256| 100|

Subordinate court sample, by sentence

The table below shows the sentences handed down in subordinate courts. The results suggest the subordinate courts prefer alternatives to imprisonment in one in five cases resulting in conviction.

<table>
<thead>
<tr>
<th>Sentence category</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suspended sentence</td>
<td>15</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Community service</td>
<td>23</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>Fine</td>
<td>27</td>
<td>8</td>
<td>18</td>
</tr>
<tr>
<td>Imprisonment over 2 years</td>
<td>48</td>
<td>13</td>
<td>32</td>
</tr>
<tr>
<td>Imprisonment under 2 years</td>
<td>186</td>
<td>51</td>
<td>83</td>
</tr>
<tr>
<td>Missing</td>
<td>62</td>
<td>17</td>
<td>100</td>
</tr>
<tr>
<td>Total sentences</td>
<td>361</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Time periods in subordinate courts

The records available at subordinate courts provided the:
- Date entered or filed;
- Date of first appearance;
- Date of case status - this was the date on which...
the case status changed most recently, e.g. date of conviction, acquittal, committal to the High Court, transferal, etc. (for convenience this is referred to as ‘date of outcome’); and,
• Date of sentence – this was the date sentence was handed down, in cases where sentence was handed down.

Using these dates it was possible to calculate these time periods in the subordinate courts. These were the time between:
• The case being entered and first appearance;
• The first appearance and outcome; and,
• The conviction and sentence.

Time period between entry and first appearance

The following table indicates how many observations counted for each court were ‘same day’ observations i.e. entry and first appearance occur on the same day, and how many indicate a time period of more than one day. In all the subordinate courts, except Livingstone, the records indicate that in the majority of cases the date entered or filed is the same as the day of first appearance in court. Therefore, only in Livingstone is the median value for the time period between entry and first appearance greater than zero – at seven days.

The table shows the detailed values for the same time period for each site. Due to the presence of a few large values in the dataset, the mean time period from entry to first appearance ranges 0 to 124 days in the six courts. The weighted mean for all six courts is the estimate for Zambia as a whole, was calculated at 11 days. However, for the vast majority of cases in most courts the time between entry and first appearance is zero days.

Time period between first appearance and outcome

The average time period between first appearance and outcome (e.g. date of acquittal, withdrawal, etc.) ranged from 52 days in Solwezi to 206 days in Chipata. The weighted mean for all six courts was 107 days. The minimum time period ranged from zero days in five of the courts to 1 day in Chipata, while the maximum ranged from 245 days in Ndola to 1387 days in Chipata (three years and nine months).

The lower quartile ranged from 63 to 205 days, the median from 56 to 166 days and the upper quartile from 63 days to 205 days.

However, the time periods by outcome for all the courts together are possibly more informative. These time periods illustrate that the longest mean time periods from first appearance to outcome are for cases that resulted in committal to the High Court or transferal to another court. Ironically, cases that resulted in conviction reached that stage more quickly than any other large outcome category. Cases still continuing, which were enrolled over the time period 2006–2011, were averaging 117 days at the time of data collection.

<table>
<thead>
<tr>
<th>Court</th>
<th>Minimum</th>
<th>1/4</th>
<th>Median</th>
<th>3/4</th>
<th>Maximum</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chipata</td>
<td>0</td>
<td>55</td>
<td>164</td>
<td>299</td>
<td>187</td>
<td>206</td>
</tr>
<tr>
<td>Kalua</td>
<td>0</td>
<td>0</td>
<td>169</td>
<td>104</td>
<td>92</td>
<td></td>
</tr>
<tr>
<td>Livingstone</td>
<td>0</td>
<td>32</td>
<td>68</td>
<td>134</td>
<td>105</td>
<td>185</td>
</tr>
<tr>
<td>Nakonde</td>
<td>0</td>
<td>28</td>
<td>58</td>
<td>115</td>
<td>62</td>
<td>106</td>
</tr>
<tr>
<td>Ndola</td>
<td>0</td>
<td>9</td>
<td>36</td>
<td>97</td>
<td>245</td>
<td>61</td>
</tr>
<tr>
<td>Solwezi</td>
<td>0</td>
<td>6</td>
<td>21</td>
<td>63</td>
<td>49</td>
<td>52</td>
</tr>
</tbody>
</table>

Time from entry to first appearance, by court (detail, days)

<table>
<thead>
<tr>
<th>Court</th>
<th>Minimum</th>
<th>1/4</th>
<th>Median</th>
<th>3/4</th>
<th>Maximum</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chipata</td>
<td>0</td>
<td>55</td>
<td>164</td>
<td>299</td>
<td>187</td>
<td>206</td>
</tr>
<tr>
<td>Kalua</td>
<td>0</td>
<td>0</td>
<td>169</td>
<td>104</td>
<td>92</td>
<td></td>
</tr>
<tr>
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<td>32</td>
<td>68</td>
<td>134</td>
<td>105</td>
<td>185</td>
</tr>
<tr>
<td>Nakonde</td>
<td>0</td>
<td>28</td>
<td>58</td>
<td>115</td>
<td>62</td>
<td>106</td>
</tr>
<tr>
<td>Ndola</td>
<td>0</td>
<td>9</td>
<td>36</td>
<td>97</td>
<td>245</td>
<td>61</td>
</tr>
<tr>
<td>Solwezi</td>
<td>0</td>
<td>6</td>
<td>21</td>
<td>63</td>
<td>49</td>
<td>52</td>
</tr>
</tbody>
</table>

Time from entry to first appearance, by court (detail, days)

<table>
<thead>
<tr>
<th>Court</th>
<th>Minimum</th>
<th>1/4</th>
<th>Median</th>
<th>3/4</th>
<th>Maximum</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chipata</td>
<td>1</td>
<td>55</td>
<td>164</td>
<td>299</td>
<td>187</td>
<td>206</td>
</tr>
<tr>
<td>Kalua</td>
<td>0</td>
<td>0</td>
<td>169</td>
<td>104</td>
<td>92</td>
<td></td>
</tr>
<tr>
<td>Livingstone</td>
<td>0</td>
<td>32</td>
<td>68</td>
<td>134</td>
<td>105</td>
<td>185</td>
</tr>
<tr>
<td>Nakonde</td>
<td>0</td>
<td>28</td>
<td>58</td>
<td>115</td>
<td>62</td>
<td>106</td>
</tr>
<tr>
<td>Ndola</td>
<td>0</td>
<td>9</td>
<td>36</td>
<td>97</td>
<td>245</td>
<td>61</td>
</tr>
<tr>
<td>Solwezi</td>
<td>0</td>
<td>6</td>
<td>21</td>
<td>63</td>
<td>49</td>
<td>52</td>
</tr>
</tbody>
</table>
Time period between conviction and sentence

The weighted mean for this time period for all six courts was 42 days. However, there was a great deal of variation among the courts.

Time from conviction to sentence, by court (weighted mean, days)

<table>
<thead>
<tr>
<th>Court</th>
<th>Weighted mean (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chipata</td>
<td>341</td>
</tr>
<tr>
<td>Kabwe</td>
<td>6</td>
</tr>
<tr>
<td>Livingstone</td>
<td>5</td>
</tr>
<tr>
<td>Nakonde</td>
<td>50</td>
</tr>
<tr>
<td>Ndola</td>
<td>9</td>
</tr>
<tr>
<td>Solwezi</td>
<td>0</td>
</tr>
</tbody>
</table>

Characteristics of High Court accused

Some 98 percent of the High Court sample were men. While age data was missing in 58 percent, every accused person whose age was known was 18 or older. The following table shows the offences in the High Court sample, by offence:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>12</td>
<td>97</td>
<td>97</td>
</tr>
<tr>
<td>Manslaughter</td>
<td>17</td>
<td>25</td>
<td>34</td>
</tr>
<tr>
<td>Aggravated robbery</td>
<td>12</td>
<td>15</td>
<td>49</td>
</tr>
<tr>
<td>Assault</td>
<td>3</td>
<td>4</td>
<td>23</td>
</tr>
<tr>
<td>Drug trafficking</td>
<td>2</td>
<td>3</td>
<td>25</td>
</tr>
<tr>
<td>Assault occasioning bodily harm</td>
<td>1</td>
<td>1</td>
<td>26</td>
</tr>
<tr>
<td>Attempted murder</td>
<td>1</td>
<td>1</td>
<td>27</td>
</tr>
<tr>
<td>Breaking into a building</td>
<td>1</td>
<td>1</td>
<td>28</td>
</tr>
<tr>
<td>Burglary</td>
<td>1</td>
<td>1</td>
<td>29</td>
</tr>
<tr>
<td>Depriving beneficiaries</td>
<td>1</td>
<td>1</td>
<td>30</td>
</tr>
<tr>
<td>Disclosure of examination paper</td>
<td>1</td>
<td>1</td>
<td>31</td>
</tr>
<tr>
<td>Extortion</td>
<td>1</td>
<td>1</td>
<td>32</td>
</tr>
<tr>
<td>Incest</td>
<td>1</td>
<td>1</td>
<td>33</td>
</tr>
<tr>
<td>Obtaining money by false pretence</td>
<td>1</td>
<td>1</td>
<td>34</td>
</tr>
<tr>
<td>Theft</td>
<td>1</td>
<td>1</td>
<td>35</td>
</tr>
<tr>
<td>Theft by public servant</td>
<td>1</td>
<td>1</td>
<td>36</td>
</tr>
<tr>
<td>Theft by servitor</td>
<td>1</td>
<td>1</td>
<td>37</td>
</tr>
<tr>
<td>Unauthorised offence</td>
<td>1</td>
<td>1</td>
<td>38</td>
</tr>
<tr>
<td>Missing</td>
<td>1</td>
<td>1</td>
<td>39</td>
</tr>
<tr>
<td>Total</td>
<td>80</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Zambia High Court sample, by offence

The Mongu High Court data provides some indication of the total time period applicable to matters that are concluded in the High Court. The Lusaka High Court data was missing the necessary data to make these calculations.

Time from arrest to sentence, Mongu High Court (days)

<table>
<thead>
<tr>
<th>Min</th>
<th>1/4</th>
<th>Median</th>
<th>3/4</th>
<th>Max</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>143</td>
<td></td>
<td>297</td>
<td>374</td>
<td>673</td>
<td>1221</td>
</tr>
</tbody>
</table>

The mean for the Mongu court was 504 days (one year and five months) from the date of arrest to the date of sentence. The minimum time period was 143 days, while the maximum was 1221 days (three years and three months). The median was 374 days.

Case burden in the High Courts

Summary data was available from four High Courts (Ndola, Chipata, Livingstone and Mongu). This data indicates that these courts register on average 523 matters each year, of which 33 of which are committed for trial. However, it is unclear from the High Court registers how many matters are completed each year.

Data was available from Mongu High Court and Lusaka High Court at the time of analysis. This data comprised 80 observations enrolled in the High Court over the period 2006-2011, selected randomly as per the method outlined in the methodology.

The Mongu High Court sample indicates 421 records from 2006-May 2011, suggesting that it was able to handle 77 trial matters per year - just more than the average of 74 registered for each court. If this trend is applicable across the High Courts it suggests the courts are able to handle their load.

The following table shows the sentences handed down in the High Court sample. The use of fines suggests a preference by the courts for fines for the white collar offences in the sample.

Zambia High Court sample, by sentence

<table>
<thead>
<tr>
<th>Sentence</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 years and death</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>25 years</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>15 years</td>
<td>3</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>10 years</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>8 years</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>7 years</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>5 years</td>
<td>2</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>4.5 years</td>
<td>3</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>4 years</td>
<td>3</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>3 years</td>
<td>4</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>2 years</td>
<td>3</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>18 months</td>
<td>1</td>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>

The High Court summary table shows the sentences handed down in the High Court sample. The use of fines suggests a preference by the courts for fines for the white collar offences in the sample.

<table>
<thead>
<tr>
<th>Sentence</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fined K3.6 million</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Fined K2.5 million</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Fined K4 million</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Fined K8.2 million</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Fined K1.2 million</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Fined K5.5 million</td>
<td>5</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Fined K350000</td>
<td>2</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>President's Pleasure</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Missing or not applicable</td>
<td>52</td>
<td>65</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>80</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>
In the subordinate courts being held on remand. Before the courts, with more than half of people tried apparent from a comparison of the remand offences, particularly drug offences, is readily to police detention could be reduced by a fifth minor offences also raises concerns. Admission Deprivation of liberty by the police for a range of transferred to other forms of detention. Satisfy police bond, since those on bond spend of 24 hours appears not to be achievable for the Zambia’s achievement in steadily reducing the Analysis and Conclusions

6. Prison and Penal Reform in Africa”
7. OUAGADOUGOU DECLARATION AND PLAN OF ACTION ON ACCELERATING

5. National Human Rights Action Plan in Africa
=" 2004 to 8 days in 2011 must be acknowledged.


17. Article 5(2) of the European Convention on Human Rights “Everyone arrested or detained in accordance with the provisions of paragraph 1 of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to take proceedings before that judge or other officer in order that the lawfulness of his detention and for the release of the detention device. (a) Anyone who has been the victim of unlawful arrest or detention shall have the right to be compensated. (b) Where a person has been deprived of his liberty by arrest or detention and has been subjected to a fine or other penalty in relation to the detention shall be entitled (or shall have a right) to compensation. (c) Everyone who is deprived of his liberty by arrest or detention shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (d) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to take proceedings before that judge or other officer in order that the lawfulness of his detention and for the release of the (e) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (f) Anyone who has been the victim of unlawful arrest or detention shall have the right to compensation. (g) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (h) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (i) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (j) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation.

Sections that are not satisfied by the crimes committed by the defendants in the criminal justice system. Amongst the court data, the greatest source of concern is the longer time periods applicable to cases transferred to other courts or committed to the High Court. The data from the High Courts indicates that these courts are able to process the cases presented to them, which suggests that the delay arises in the committal process. Of further concern is the longer time periods (actions compared to conviction) applicable to cases that are ultimately withdrawn. This suggests a failure to properly screen cases at an early stage to prevent long periods being spent in custody by people, who are ultimately never convicted of an offence. Variations in time periods by location also suggest the influence of local factors. The delays experienced in Chipata are probably due in part to its isolation. While the mean forremand imprisonment appears reasonable at around 56 days, the total tardis and the high maximum observed are cause for serious concern and suggest a lack of safety for the identification and prevention of inordinate delays in the criminal justice system. 

Recommnedations

Further research and/or reform is recommended to:
- Re-train the police on the right to police bond as well as initiate changes to local practice on the requirements for police bond; 
- Review bail legislation restricting bail by offence type; 
- Identify the penal code to deteract certain crimes and actions resulting in unnecessary police detention; 
- Review the committal process and design an expedited process to enrol matters in the High Court; 
- Implement an early screening process to be adopted by prosecutors to expedite withdrawals; and, 
- Conduct independent monitoring mechanisms to identify instances of inordinate delay in relation to people on remand and trigger a review of these cases. 

Endnotes

1. Article 5(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be held on remand without adequate charges and proceedings by law. (2) Everyone has the right to recognition that he has committed no crime and, whenever he is charged with a crime, he shall be presumed innocent until proved guilty according to law. (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to take proceedings before that judge or other officer in order that the lawfulness of his detention and for the release of the person arrested or detained shall be determined without undue delay on the basis of an impartial hearing. The person arrested or detained shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (4) Anyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (5) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (6) Anyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (7) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (8) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (9) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (10) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (11) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (12) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (13) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (14) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (15) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (16) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (17) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (18) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (19) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation. (20) Everyone who is deprived of his liberty by arrest or detention shall have the right to compensation.


93. Article 10(2) (a), the International Covenant on Civil and Political Rights, 1966.


91. TB and Abuse in Zambian Prisons p 35.


88. GAOR, A/52/44, p. 37, paragraph 244.


82. See the example in the Zambia Human Rights Commission Annual Report 2009 p43.


80. GAOR, A/52/44, p. 37.

79. Article 10(1) of the International Covenant on Civil and Political Rights, 1966.


77. Article 10(1), the International Covenant on Civil and Political Rights; Article 9(1) of the International Covenant on Economic, Social and Cultural Rights; Article 5 of the African Charter on Human and Peoples’ Rights.


75. ICCPR, Art. 10(1)

74. ICCPR, Art. 10(1)

73. ICCPR, Art. 10(1)

72. ICCPR, Art. 10(1)

71. ICCPR, Art. 10(1)

70. ICCPR, Art. 10(1)

69. ICCPR, Art. 10(1)

68. ICCPR, Art. 10(1)

67. ICCPR, Art. 10(1)

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55. ICCPR, Art. 10(1)

54. ICCPR, Art. 10(1)

53. ICCPR, Art. 10(1)

52. ICCPR, Art. 10(1)

51. ICCPR, Art. 10(1)

50. ICCPR, Art. 10(1)

49. ICCPR, Art. 10(1)

48. ICCPR, Art. 10(1)

47. ICCPR, Art. 10(1)

46. ICCPR, Art. 10(1)

45. ICCPR, Art. 10(1)

44. ICCPR, Art. 10(1)

43. ICCPR, Art. 10(1)

42. ICCPR, Art. 10(1)

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39. ICCPR, Art. 10(1)

38. ICCPR, Art. 10(1)

37. ICCPR, Art. 10(1)

36. ICCPR, Art. 10(1)

35. ICCPR, Art. 10(1)

34. ICCPR, Art. 10(1)

33. ICCPR, Art. 10(1)

32. ICCPR, Art. 10(1)

31. ICCPR, Art. 10(1)

30. ICCPR, Art. 10(1)

29. ICCPR, Art. 10(1)

28. ICCPR, Art. 10(1)

27. ICCPR, Art. 10(1)

26. ICCPR, Art. 10(1)

25. ICCPR, Art. 10(1)

24. ICCPR, Art. 10(1)

23. ICCPR, Art. 10(1)

22. ICCPR, Art. 10(1)

21. ICCPR, Art. 10(1)

20. ICCPR, Art. 10(1)

19. ICCPR, Art. 10(1)

18. ICCPR, Art. 10(1)

17. ICCPR, Art. 10(1)

16. ICCPR, Art. 10(1)

15. ICCPR, Art. 10(1)

14. ICCPR, Art. 10(1)

13. ICCPR, Art. 10(1)

12. ICCPR, Art. 10(1)

11. ICCPR, Art. 10(1)

10. ICCPR, Art. 10(1)
should intend to make any difference between Article 9(1) and 9(4) of the
UDHR by limiting the possibility of the respective or the request for
their release to public opinion as "humanitarian". See also the UN
Guidelines, Art. 10 (1).

28. Rule 50 (a).

40.

30. See Body of Principles, Principle 18 on communication with
family. Principle 19 on contact with family and Principle 20 on
provision reasonably necessary to prevent discrimination of
persons detained. However, strictly defined rights to be enjoyed by
permitted contacts with family is subject to reasonable conditions
and restrictions as provided by law or legal regulations. Rule 37
SMR includes the "principle of necessary supervision" with regard
to contacts between family members. Rule 38 stresses the right of national
persons to receive visits by means of written correspondence. While
Rule 39 lays down the right to be kept informed regularly of the more
important items of news.

31. See Body of Principles, Principle 29 (a).

32. Rule 21(1)

33. See also the Inter-American Court of Human Rights, para.
161–162. See section 97-98 and 100 to 102.

34. Adopted on 9 December 2007 at the
International Psychological Trauma Symposium, Istanbul.

35. Anti-Corruption Commission.


37. ICCPR, Art. 14. The Basic Principles for the Treatment of
Prisoners establishes the principles of human rights and
fundamental freedoms despite the deprivation of liberty. “Except
for those facinations that are demonstrably necessitated by the
security of the institution, the authorized methods of seeking information
and fundamental freedoms set out in the Universal Declaration of
Human Rights, and, where the State concerned is a party, the
International Covenant on Civil and Political Rights and the Optional
Political treaties, as well as other rights as an inalienable right of every
person to be treated with respect for his or her dignity as a human
being.” See also the Inter-American Court of Human Rights, para.
161–162.

38. UN Res. 11(II) "Every person who administers shall be pro-
vided with written information about the regulations governing
the functioning of the correctional center and the disciplinary
provisions. The correctional center shall observe the rules of
fairness and due process prescribed by law or by the prin-

39. UNMTC Rule 35 (2): “Every correctional facility, the
physical environment shall be conducive to work and academic
education”.

40. Rule 35 (2).

41. UNMTC Rule 35 (2) (a).

42. UNMTC Rule 35 (2) (b).

43. Article 9(4) of the UDHR defines the right to freedom of
thought, conscience and religion.

44. Act No. 16 of 2009 (K.N). Principle 29(b) of the Body
of Principles: Principle 18 on communication with family is
increasingly the trend in regional instruments and national legis-
lative that the use of restricted diet as punishment is being addressed.
Rule 27(1) (b) of the Prison Rules (1950) allows for a change in diet based on medical reasons. See also the Inter-American
Commission on Human Rights (2002) Report on Terrorism and
Human Rights, para. 161–162.

45. Act 33

46. Art. 3 (of the COI). This should be read together with Rule 76
(b) which states that a person deprived of liberty shall be told,
"offensive" nature.

47. Article 105(a)(iii) of the United Nations Standard Minimum
Rules for the Treatment of Prisoners.


49. Anti-Corruption Commission. Zambia Human Rights
Commission (undated) State of Human Rights in Zambia 2009:

justice-and-prison-reform/tools.html?ref=menuside

51. A/HRC/13/39/Add.5 para 157

52. UNHCR Rule 35 (2).

53. See section 97-98 and 100 to 102.

54. Art. 105(a)(iii) of the United Nations Standard Minimum
Rules for the Treatment of Prisoners.

55. Zambia Human Rights Commission (undated) State of
40.
The Civil Society Prison Reform Initiative is a project of the Community Law Centre (CLC) at the University of the Western Cape and focuses on prisons and corrections, with the aim of improving the human rights situation in South African prisons through research-based lobbying and advocacy, and collaboration with civil society structures. By stimulating public debate and participation in government structures, the aim is to influence the development of appropriate human rights oriented prison reform.

The mission of the Human Rights Commission is to promote and protect human rights for all people in Zambia through investigations of human rights violations, rehabilitations of victims of human rights abuses, education of communities and advocacy for policy and legal changes influenced by evidence based research.

On any given day around the world, about three million people are held in custody awaiting trial. During the course of an average year, 10 million people are held in pre-trial detention. Some of them are detained for a few days or weeks, but many will spend months or years in custody. It is common cause that conditions for pre-trial detainees are in most instances far worse than for their sentenced counterparts. Unsentenced inmates often have limited access to legal aid/legal defence, they receive little or no training or schooling, and have little access to recreational activities. They also struggle to get access to medical treatment, reading material, bedding, and exercise. The irony is that after spending lengthy periods of time in prison, a significant number of detainees are acquitted or, once convicted, given a noncustodial sentence. Compounding this situation in Southern Africa are broader problems of poverty, underdevelopment, the HIV/AIDS epidemics, food shortages, social inequities, vast economic inequalities, in some countries, political instability, and conflicts, which place criminal justice and penal reform relatively low down on a list of pressing priorities for government, donors and civil society organisations.

Recognising these challenges, and in an effort to more fully understand the situation in respect of the use of pre-trial detention in Southern Africa, the Open Society Initiative for Southern Africa (OSISA), in partnership with the Open Society Foundation for South Africa (OSF-SA) and the Open Society Foundations Global Criminal Justice Fund (GCJF) commissioned an audit of police station/court/prison precincts in Zambia to gather information on both the legal status of awaiting trial detainees and issues pertaining to conditions of incarceration in that country. A similar process was undertaken in Malawi and OSISA is exploring the possibility of conducting this research in both Zimbabwe and Mozambique.

The information contained in this report provides rigorously researched, empirical evidence which can be used to underpin future efforts by both government and civil society to influence legislation, policy and practice with a view to ensuring the appropriate use of pre-trial detention, promoting the speedy resolution of trials and improving prison conditions in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. OSISA also plans to explore how this information and the tools that were designed during the audit process might contribute to regional efforts in respect of criminal justice reform e.g. how might this research be used in the development of regional standards for the management of pre-trial detainees.

Pre-trial detention in Zambia: Understanding caseflow management and conditions of incarceration