

An April 28 2009 installment of the Prison and Justice Assessments in Africa

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As another in the series of CURE's collection of prison and justice assessments, in African countries, we here present a report on:

Zambia

1. FAIR JUSTICE

1.1 Judicial system capability.

The judicial system is competent and impartial but has no capacity to handle the judicial functions. The waiting time is excessive for an accused who waits in jail for a trial.³

The judicial system is hampered by inefficiency, corruption, and lack of resources. Poor working conditions caused many magistrates to leave their jobs. There were 149 magistrates employed at the end of the year. Fully qualified attorneys occupied approximately 35 magistrate positions during the year, up from 12 in 2007; lay magistrates filled the rest.^{[1],[2]}

1.2 Legal assistance for persons living in poverty.

There is Legal Aid provided by an NGO called Legal Resource Foundation and the Catholic church offers similar assistance through Paralegal services. Legal advice is rarely provided to the poor. Paralegal service is not available at the police stations or to those incarcerated. There is no mechanism for alternative dispute resolution, except in rare cases, one can be referred to mediation.³

Indigent detainees and defendants rarely had the means to post bail. The government's legal aid office, responsible for providing representation for indigent detainees and defendants in criminal or civil cases, assisted very few arrestees.²

A number of remandees are on invalid or expired remand warrants. The cause for this is either lack of transport to take the remandees before court or an inadequate number of magistrates against a huge inmate population.¹

1.3 Justice for women and juveniles.

A child is sent to prison at the age of seven for reformation. Young people are tried at 16 years. There are no special procedures used, except there is a police service wing called "Victim Support Unity," which handles most domestic violence, family dysfunction or childhood crimes.³

Domestic violence against women was a serious problem, and wife beating and rape were widespread. There is no specific law against domestic violence, and cases of domestic violence were prosecuted under the general assault statutes. Penalties imposed for assault ranged from two to 25 years' imprisonment, depending on the severity of injury and whether a weapon was used.²

The Female Section of the Mukobeko Maximum Security Prison was congested. Despite the congestion, the section was fairly clean as the inmates kept the cells and surroundings clean. The cooking facilities were good and there was a fridge to keep food fresh. There was a problem with water and sanitation. Of the 6 inmates in remand, 4 were held on expired warrants.¹

At the Kabwe medium security prison, there were 29 inmates in the Juvenile Section of the prison and this part of the prison was impressive. There were clean blankets, mattresses, good toilets and almost all facilities, including the kitchen, were good and neat.¹

On November 19, President Banda signed a new anti-trafficking law that prohibits the transport, reception, and harboring of trafficking victims. Female citizens were trafficked within the country and to other parts of Africa and to Europe, and the country was used as a transit point for regional trafficking of women for prostitution.²

1.4 Unfair treatment by discrimination.

There are major biases in the system, especially involving economic status. Those who are financially able get representation.³

1.5 Arbitrary or severe penalties.

Some legislated punishments are evidently excessive and cruel. Some crimes ought to be decriminalized. There is a legal death penalty; the numbers are not easily released. They have sentences of life without possibility of parole.³

2. PRISON SYSTEMS BASICS.

2.1 Structures and alternatives.

There are gradations of confinement, with different levels of security and freedom, but these are not always complied with. There are alternative punishments rather than incarceration. This does not include treatment for alcohol or drug addictions or mental health, but does include community service or financial recompense. It does not include family group conferencing or victim-offender mediation. There are "open" prisons (minimum security, depending on inmate responsibility). The situation in reality does not comply with the Kampala Declaration on Prison conditions in Africa.^[3]

2.2 Physical space and separations.

Overcrowding is a major problem; inmates are kept in cells where there is no sleeping space. Chingola state prison has never been extended since it was built in the 1960 to accommodate 100 inmate but yesterday's lock up stated that there were more than 546. There was no sleeping space in the cells except sitting position overnight.³

There is a separation of men and women; but not children and adults; the elderly, accused and convicted are mixed up together; persons deprived of liberty for civil reasons and those deprived of liberty on criminal charges are as well mixed together. Separate prisons for juveniles were there before but now they are mixed up.³

An inefficient judiciary delayed court proceedings and exacerbated overcrowding. The country's prisons, which were built to hold 5,500 inmates, held nearly 15,000 prisoners and detainees. Lusaka Central Prison, which was designed to accommodate 200 prisoners, held more than 1,500, forcing some inmates to sleep sitting upright.²

Mukobeko Maximum Security Prison was constructed in 1961. It was built for a capacity of 400 inmates but it now accommodates 1,442 prisoners.¹

2.3 Pretrial services and process.

Pretrial does not exist as per *The Ouagadougou Declaration on Accelerating Prison and Penal reform in Africa*. The needs of the accused are not assessed and no recommendations are done. There is no mechanism for releasing pre-trial detainees, such as in-bond or release on own recognizance. The bail system is administered only when one has money for a lawyer or relatives pay a certain sum of money. Incarcerated persons are given credit for time served pre-trial i.e., when they were in Remand Prison.³

Prolonged pretrial detention was a problem, and some defendants awaited trial for as long as three years. Approximately one third of persons incarcerated in prisons had not been convicted of a crime or received a trial date. Judicial inefficiency, lack of resources, and lack of trained personnel also contributed to prolonged pretrial detention.²

2.4 Standards.

There are statutory written prison standards, prison codes, manuals and acts of prison procedure. They are rarely enforced by the prison authorities. There is an independent agency to monitor prisons and jails i.e. the Human Rights Commission. Judges do not regularly visit and affect conditions in prisons.³

3. PROTECTION OF INCARCERATED PERSONS

3.1 Grievances.

Incarcerated persons are able to make complaints to the central prison authority, but they fear victimization. Serious grievances are investigated, but not in a timely and thorough manner. Members of the Community/Press/Civil Society are not able to enter the prison premises and interview incarcerated persons. In-prison photos are not permitted.³

3.2 Abuse of incarcerated persons.

There is a policy for humane treatment in keeping with the dignity of every human person but it is not enforced. Corporal punishment, torture, dark cells, or any other cruel, unusual or degrading treatment are prohibited but in certain cases it is practiced. Incarcerated persons are subjected to threats and acts of collective punishment. Solitary confinement is used excessively. Persons who are abused or injured by law enforcement officials are not given adequate compensation and support. There are prison gangs that abuse others. There are incarcerated persons that have administrative, disciplinary or supervisory authority over other incarcerated persons.³

The State has agreed to the UN Standard Minimum Rules for the Treatment of Prisoners. The State has supported the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty, but it is not implemented.³

3.3 Sexual Security.

Incarcerated women are effectively protected from sexual abuse by overseers, because women are guarded by female officers. However, homosexuality is a major issue in the prisons. The government does not acknowledge its presence and have criminalized it.³

3.4 Correctional Officers.

Prison personnel are not subjected to periodic specialized training, with an emphasis on human rights, or on the prohibitions regarding the use of force, firearms, and physical restraint. No attempts are made to develop mutual respect between incarcerated persons and correctional officers.³

3.5 Research and statistics.

Information is gathered yearly on the number of deaths and their details. Universities in the country are not doing research in the prisons.³

4. HEALTH SERVICES FOR INCARCERATED PERSONS

4.1 Health Care.

The prison does not provide adequate health care for incarcerated persons, - for example: adequate medical, psychiatric, and dental care, availability of suitable and impartial medical personnel, testing and treatment for drug addictions and prevalent diseases. There are no medical exams (health checks) for incarcerated persons on admittance and on discharge. Sanitary facilities are not adequate. Overcrowding is a serious health hazard. Only one meal a day is served. Incarcerated persons eat the same food every day or whatever is available. Beds are not provided for incarcerated persons. Incarcerated persons do not get outside in the fresh air every day, except when they go out for court sessions or to work. Soap and clothing are not provided by the prison.³

Poor sanitation, inadequate medical facilities, meager food supplies, and lack of potable water resulted in serious outbreaks of dysentery, cholera, and tuberculosis, which were exacerbated by overcrowding. Failure to remove or quarantine sick inmates and the lack of infirmaries at many prisons resulted in the spread of airborne illnesses such as tuberculosis, leading to prisoner reinfection and death. Drugs to combat tuberculosis were available but the supply was erratic. Many prisoners were malnourished because they received only one serving of corn meal and beans per day, called a "combined meal" because it represented breakfast, lunch, and dinner. The HIV/AIDS prevalence rate in prisons was estimated at 27 percent. Antiretroviral treatment (ART) was available to some prisoners with HIV/AIDS; however, poor nutrition often rendered ART ineffective.²

The sewer system in Mpima Remand Prison was completely broken down. Waste matter floated all over around the sleeping quarters in small ponds. This posed a health risk to both the remandees and the prison warders living in proximity to Mpima Remand Prison. Tuberculosis (TB) patients were not isolated from the rest of the inmate population.¹

At the Kabwe Medium Security Prison, Medical service was provided at a clinic within the premises but the clinic lacked drugs and was understaffed with only two nurses. HIV/AIDS was a problem although home care was provided. TB patients were isolated. The Kabwe structure was dilapidated and the broken down sewer system made the living conditions inhuman. Water supply was erratic, creating risk of disease due to poor sanitation. The prison relied on one borehole which was over used and frequently broke down. There were no blankets and mattresses because of poor funding.¹

At the Munsakamba Open Air Prison, the inmates had adequate meals supplied from the main district prison where the storeroom was well stocked with beans, kapenta and mealie meal. There was no transport and, in emergencies, the inmates walked to and from Mkushi Town for medical attention, a distance of 19.5 km. Malaria was the prevalent disease. Well wishers provided mosquito nets after prison authorities appealed to the local community for assistance. There was no clean water supply. Water for drinking was drawn from the river and was adulterated with foreign materials and objects.¹

5. RESTORATIVE PRACTICES

5.1 Rehabilitation Programs.

There are some job skill development and work assignments to help to prepare for economic survival on the outside. Incarcerated persons are not paid a wage for their work. Successful rehabilitation programs worthy of emulation include the farming and carpentry projects where inmates produce food stuffs and furniture.³

Due to lack of equipment and funds, some rehabilitation activities at the Mukobeko Maximum Security

Prison had been abandoned. Such activities included carpentry and joinery, shoe repairing, tailoring, soap making, and academic studies.¹

At the Kabwe medium security prison, prisoners with teaching background provide academic education to fellow inmates from Grade 5 to GCE 'O' level. A prison officer coordinates with the Ministry of Education to ensure that the syllabus is followed.¹

The Munsakamba Open Air Prison has 28 hectares of land where inmates receive skills in maize and vegetable growing. At the time of the Commission's visit on 2 September, 2005, 750 x 50kg bags of maize were reported to have been produced in the previous farming season. The environment at the Open Air Prison was generally conducive to the rehabilitation of the prisoners. There was plenty of fresh air and the living quarters and surroundings were suitable. Four cells were in use where prisoners slept and lived.¹

The Prisons Service is running both academic and literacy classes. The major problem is inadequate up-to-date books in the libraries. Apart from the academic and literacy classes, there are inmates engaged in life skills. This group lacks workshop tools and machinery. It was recommended (by the human rights commission) to revamp these trade skills to not only fulfill the requirement for the rehabilitation of prisoners but also reduce the burden on the Government of providing basic needs such as soap and uniforms. These can be made by the inmates. It was further recommended that government allows the prison authorities to retain at least 50% of the monies they make from their ventures for their running costs. Things like plates, spoons and cups can be purchased with the proceeds from the ventures.¹

5.2 Reentry Programs.

There are no programs for pre-release or re-entry assistance for incarcerated persons. There is earlier release or parole based on rehabilitation efforts. These are done as presidential pardon on particular days of the year, e.g. The African Freedom Day, on 25TH May. The criteria for early release is not based on compassionate grounds, health or age but reformation of character

6. SOCIAL RIGHTS OF INCARCERATED PERSONS

6.1 Voting.

Pre-trial and/or sentenced persons do not have the right to vote. One is able to vote once he is discharged from the prison. That right is restored immediately after coming out of prison, after going through voter registration.³

6.2 Visitation.

Religious volunteers are encouraged for all religions. Other volunteer services are encouraged.³

The government permitted prison visits by both domestic and international nongovernmental organizations (NGOs) and by resident foreign diplomats during the year. The International Committee of the Red Cross (ICRC), provincial human rights committees, and the LRF periodically inspected prison conditions during the year. In June the HRC visited prisons in the North Western Province.²
