

# Zimbabwe

## 1. FAIR JUSTICE

### 1.1 Judicial system capability.

In 2006, Justice Rita Makarau described Zimbabwe's prison conditions as "embarrassing and disturbing" because she had visited Harare Central Prison and met ten people who had been incarcerated for up to ten years without trial. She quite rightly said, "We have no excuse for this delay - it is imperative prisoners who deserve to be released should not stay here."<sup>1</sup>

Like many in the civil service, magistrates have resigned in large numbers to find better jobs; building longer delays into the system and exacerbating an already severe problem, with tragic consequences for those on remand.<sup>[1]</sup>

The constitution provides for the right to a fair trial; however, this right frequently was compromised in practice due to political pressures. Defendants enjoy a presumption of innocence under the law; however, this was not always preserved in practice.<sup>2</sup>

### 1.2 Legal assistance to persons living in poverty.

Every defendant has the right to a lawyer of his or her choosing, but a local attorney reported that most defendants in magistrates' courts did not have legal representation. In criminal cases an indigent defendant may apply to have the government provide an attorney, but this was rarely granted except in capital cases, where the government provided an attorney for all defendants unable to afford one.<sup>[2]</sup>

The majority of Zimbabwean prisoners are very poor and cannot afford legal representation, which means - regardless of whether they are innocent or guilty - they have to wait their turn for legal help. Waiting your turn for legal representation can mean upwards of two years in jail before they get their day in court.<sup>1</sup>

### 1.3 Justice for women and juveniles.

Domestic violence against women, especially wife-beating, continued to be a serious problem. In 2006 the Musasa Project, a local NGO that worked for the protection and promotion of women's rights, reported that approximately one-third of women in the country were in an abusive marital relationship. Most cases of domestic violence went unreported due to traditional sensitivities and fear of economic consequences for the family. Authorities generally considered domestic violence to be a private matter and usually only arrested an offender for assault if there was physical evidence of abuse. On October 25, the government enacted the Domestic Violence Act, which criminalizes domestic violence and provides enhanced protection for victims of abuse; the act was viewed as a milestone by women's rights groups.<sup>2</sup>

Child abuse, including incest, infanticide, child abandonment, and rape continued to be serious problems during the year. The local NGO Girl Child Network reported cases of child sexual abuse had increased during the year. Anecdotal evidence suggested that a relative or someone who lived with the child was the most common abuser.<sup>2</sup>

During the 2005 Operation Restore Order, the government detained many street children and took them to transit camps or juvenile detention centers. At year's end NGOs were uncertain how the operation affected the number of children living on the streets, which in previous years had risen dramatically. One local child welfare advocacy group reported that the continuing economic decline and the government's lack of support to social welfare institutions contributed to a noticeable rise in the estimated 12,000 street children throughout the country. NGOs operated training centers and homes for street children and orphans, and government officials referred children to these centers.<sup>2</sup>

Trafficking was a serious problem. Rural children were trafficked into farms or cities for agricultural labor, domestic servitude, and commercial sexual exploitation, often under the false pretenses of job or marriage proposals, according to one NGO. Reports suggested that those children in desperate economic circumstances, especially those in families headed by children, were most at risk. Women and children were reportedly trafficked for sexual exploitation in towns along the borders with the four surrounding countries. There were also reports that young women and girls were lured to South Africa, the People's Republic of China, Egypt, the United Kingdom, Canada, and Zambia with false employment offers that resulted in involuntary domestic servitude or commercial sexual exploitation. Women and children from the Democratic Republic of the Congo, Malawi, Mozambique, and Zambia were trafficked through the country to South Africa. Small numbers of South African girls were trafficked to the country for forced domestic labor.<sup>2</sup>

Victims suffering from child or domestic abuse were treated with special procedures in victim-friendly courts, and trafficked persons had the option to take cases before such courts. Local immigration and social services officials referred trafficking victims to NGO-funded centers. Save the Children Norway also offered shelter and referrals for medical attention at the IOM reception center in Beitbridge for unaccompanied children and trafficking victims.<sup>2</sup>

### **1.5 Arbitrary or severe penalties.**

The constitution and law prohibit arbitrary arrest and detention; however, some laws effectively weakened this prohibition, and security forces repeatedly arbitrarily arrested and detained persons.<sup>2</sup>

The government increasingly used arbitrary arrest and detention as a tool of intimidation and harassment, especially against opposition members and supporters, civil society activists, student activists, and journalists. The Zimbabwe Human Rights NGO Forum reported over 1,600 cases of unlawful arrest and detention during the year. According to the Solidarity Peace Trust and Institute for Justice and Reconciliation report *Policing the State*, an evaluation of 1,981 politically-motivated arrests in the country from 2000 to 2005 showed that 1,721 cases resulted in no trial, 256 cases came to trial but resulted in no conviction, and only four cases resulted in a conviction. This trend continued during the year.<sup>2</sup>

"Anybody that is going into prison for any sustained length of time and does not have family who have the means to support them and come and visit them in prison and bring them food, those people are going to die – because the diet that is there nobody can live on".<sup>1</sup>

## **2. PRISON SYSTEMS BASICS**

### **2.1 Structure.**

The introduction of community service within the criminal justice system of Zimbabwe played a significant role in relieving the country of the costly expenses it was incurring in maintaining offenders in prisons. It further helped in solving the problem of overcrowding. Mukemo<sup>[3]</sup> stated that about 17500 offenders benefited from community service programmes from 1993 to 2000, and 90% completed their punishments.

The successful inception and implementation of community service by the Zimbabwean government later inspired many African countries to incorporate community service as a non-custodial measure, especially with regard to minor offences. However, today it would be difficult for one to assess whether the community service programme is still as effective as it was in the 1990s, considering the prevailing political and economic upheavals going on in the country.<sup>[4]</sup>

## **2.2 Physical space and separations.**

Prison conditions remained harsh and life threatening. The government's 43 prisons were designed for a capacity of 16,000 prisoners but held approximately 25,000, according to media reports.<sup>2</sup>

Edison Chiota, ZACRO's national director said, "I can tell you that a cell designed to carry 10 prisoners is usually packed with 40 people". Solidarity Peace Trust reported on the way "political arrestees are routinely and deliberately overcrowded, with 30 or more people being kept at times in cells intended for six." In 2004, a former prisoner gave a clear idea of how severe the overcrowding was when he described how prisoners slept in the close confines: "We slept fitting into each other like spoons... Once you have taken a sleeping position you cannot turn and change sides the entire night due to overcrowding. Alternatively, prisoners take turns to sleep."<sup>1</sup>

Juveniles were not held separately from adults. The Prison Fellowship of Zimbabwe, a local Christian organization working with former inmates, estimated in 2006 that more than 200 children were living in the prison system with their detained mothers. Due to overcrowding in police stations and remand prisons, pretrial detainees were often held in prisons with convicted prisoners until their bail hearings.<sup>2</sup>

## **3. PROTECTION OF INCARCERATED PERSONS**

### **3.2 Abuse of incarcerated persons.**

Last year, in a confidential report written for Paradzayi Zimondi, senior prison officials noted that at least 900 inmates had died in the Mashonaland Region alone, pointing out that more people had died in Zimbabwean prisons in 2008 than any other year. This massive death toll is directly attributable to neglect and gross mismanagement; their terrible human suffering derives from an unacceptable tolerance within the prison services (traced right up to those in senior positions) for the criminal and inhumane treatment of human beings.<sup>1</sup>

Zimbabwe's prisoners are suffering untold horrors in Zimbabwe's jails. The State is condemning them to slow starvation and possible death from nutrition-related illnesses or the vast array of other diseases they are exposed to through unhygienic conditions. Despite terrible desperation, their position as 'prisoners' means they are denied the most basic human instinct and that is to fight for survival: inmates can't beg for food from passers-by, they can't forage for wild berries in the bush, and they can't rummage through dustbins for waste food. Because of this, Zimbabwe's prisons constitute a unique and especially cruel form of torture that has both physical and psychological impacts on the people affected.<sup>1</sup>

## **4. HEALTH SERVICES FOR INCARCERATED PERSONS**

### **4.1 Health Care.**

Poor sanitary conditions persisted, which aggravated outbreaks of cholera, diarrhea, measles, tuberculosis, and HIV/AIDS-related illnesses.<sup>2</sup>

In 2004, when we first wrote about the conditions in Zimbabwe's prisons, a prison officer told us that tuberculosis (TB), an opportunistic disease, spread like wildfire through the cells with an average of 15 prisoners dying each week from the disease. In March 2004, 130 people died from TB at Khami Prison in a single month. Those who are HIV positive and have compromised immune systems are particularly susceptible to getting TB.<sup>1</sup>

Cholera is a disease that thrives in unsanitary conditions, passed on through bacteria found in human feces; and it is contagious: one gram of feces can contain 10 million viruses, one million bacteria, one million parasite cysts and a hundred worm eggs. One of the first things that most people comment on when they describe Zimbabwe's prison cells is the overwhelming stench of human urine and excrement.

Those who have been severely beaten by the police and have fractures and other injuries, are routinely

denied any access to health care or medication for varying period of time.<sup>2</sup>

Prisons have struggled for food supplies for several years now. A policeman told reporters in 2006: "We give [prisoners] sadza and matemba (dried fish) boiled in water once every day in the afternoon, when resources are available". In June 2006, MP Claudius Makova told parliament that some inmates at Highlands police station were going for two days without food. In 2008, things were much worse: a confidential report written for Paradzayi Zimondi advised him that prisoners at Chikurubi Prison went for days without a meal and were occasionally supplied with food "only meant to keep a person alive" such as sadza and salted, unclean water.<sup>1</sup>

## **6. SOCIAL RIGHTS OF INCARCERATED PERSONS**

### **6.2 Visitation.**

The law provides that international human rights monitors have the right to visit prisons, but government procedures and requirements made it very difficult to do so. The government granted local NGOs access on a number of occasions during the year.<sup>2</sup>

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<sup>[1]</sup> Sokwanele, [http://www.sokwanele.com/articles/sokwanele/zimbabwesprisonsaredeathtraps\\_31march\\_310309](http://www.sokwanele.com/articles/sokwanele/zimbabwesprisonsaredeathtraps_31march_310309)

<sup>[2]</sup> U.S. country reports, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119032.htm>

<sup>[3]</sup> Mukemo, C.W. (2000). Justification for the introduction of Community Service in Uganda. (Diploma thesis) Department of Law. Law Development Centre, Makerere Uganda-Kampala.

<sup>[4]</sup> Charles Birungi, "Community Service in Uganda as an Alternative to Imprisonment," University of the Western Cape, 2005, [http://etd.uwc.ac.za/usrfiles/modules/etd/docs/etd\\_init\\_3844\\_1177065474.pdf](http://etd.uwc.ac.za/usrfiles/modules/etd/docs/etd_init_3844_1177065474.pdf)