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Africa Criminal Justice Reform
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The socio-economic impact of pre-trial detention in Lusaka, Zambia

20 June 2017



Acknowledgements

- Thanks are due to the following for their assistance (titles as at the time of the research):
 - Commissioner of Prisons, Mr. Percy Chato,
 - Assistant Commissioner Mr. Chrispin Kaonga, Lusaka
 - Province Regional Commanding officer, Mr. Christopher Kajimbala,
 - Southern Province Regional Commanding Officer, Mr. Richard Phiri
 - Officer in Charge, Lusaka Central Prison, Mr. Oliver Liseba,
 - Officer in Charge, Kalomo State Prison, Mr. Mulenga Nyambe,
 - The Prison Secretary, Mr. Micheal Sakala
- Thanks to researchers who carried out the research:
 - Field workers: Rumbidzai Mutasa, Chembo Dioma, Leah Mulenga, Salome Zulu, Cecily Nakazwe, Makasa Mwenya, Mapalo Mushanga, Twataizya Kasanda
 - Data Capturer: Sarah Muyunda
- Thanks to co-hosts of the launch
 - Legal Resources Foundation Zambia, in particular Androphina Bubala
 - Paralegal Alliance Network (PAN) Zambia
- Thanks to donors
 - OSISA, OSJI, OSIEA, UNDP

Pre-trial detention

- In many countries the law says a person can be detained, without being convicted, before trial, usually to make sure the person attends trial.
- However this is often a legal fiction and many people are detained in police cells or prisons without ever standing trial.
- This project sought to understand the social and economic impact of detention before trial on people being detained and their families and dependents.
- The project was carried out in Kenya, Mozambique and Zambia

Methodology

- The project involved:
 - Interviews with detainees
 - Interviews with visitors to detainees
 - Collection of data from official prison registers
- In Zambia the research was carried out as follows:
 - 118 interviews with male detainees at Lusaka Central and Kalomo State Prison
 - 30 interviews with female detainees at Lusaka Central
 - 138 interviews with affected families
 - 92 with visitors to prisons
 - 46 with traced persons
 - Supplemented with register data
 - The report is thus representative of detentions in greater Lusaka

Detainee profile

- Income-earning age:
 - Males 17 to 54, median 32
 - Females 18 to 50, median 32
- Education profile:
 - Men median Grade 9 (48% of Zambians have Grade 9)
 - Women median Grade 7
- Most (94%) economically active
 - Men farmer (23%); business (21%); driver (8%)
 - Women business (25%); farmer (22%); domestic worker (19%);
 - Earned (2012/13) between ZK150 - ZK 16 200p.m; median ZK 1 650
 - Women median ZK600
 - Zambia minimum wage 2012 was ZK 522.
- Marital status
 - 75% males married, 52% females married
 - Compared to Census, male detainees more likely to be married
 - Some 13% male detainees in polygamous unions (double the rate for Zambia)

Affected households

- Some 98% of detainees live in “fixed abode”
- Median household size 6 (range 1 to 13)
 - Zambia Census average 5.2
- More than half of affected households, detainee did not live in permanently
- Majority detainees household heads
 - (90% males, 41% females)
- For more than half of detainee households and affected households, detainee contribution comprised most or all of income
- Median household income close to minimum wage

Children and dependents

- Most (83%) men had children (1-12, median 2)
- Most (71%) women had children (1-10, median 2)
- Most (55%) men had other dependents (median 3)
- Most (42%) women had other dependants (median 2)
- Some 5% of men and 9% women had a dependant with a disability

Economic impact of detention

- 94% affected households reported loss of income
 - Loss of detainee income to household
 - Money spent on visiting and providing food and other costs of detention
 - Cost of finding and paying legal assistance
 - Loss of work opportunities due to visits
 - Borrowing and debt to make up shortfall
 - Selling of assets to make up shortfall
 - Assets negatively affected

“I have lost so much I cannot even account” – affected respondent

Quotes on lost income

- He was good at saving money. Now all the savings have finished we cannot watch him starve and suffer in prison. Plus also income from his job which no longer comes in.
- The family has lost his contribution for 8 months now. I have also spent a lot of money visiting and feeding him.
- I have been looking after him for the last 8 years, visiting him and providing food and other things. The family also lost the detainee's income which was used to educate a lot of his siblings.
- First the family lost detainee's income for its up keep. Also in the last 3 years once a month I have been visiting the detainee and bringing him food.
- Because my husband ran away from me and the detainee is the one who was helping me to look after the orphans we have in the family.
- The detainee used to buy me food and even kept my mother. He used to help me with money for food.
- Because I have to support his family as well. He used to contribute some money to my mother's welfare but now I give her money alone.
- For over a year, the family has not been getting the money that was being brought by the husband. The family has also spent money in travelling to see him.

Visiting Costs

- 83% visited at least once
- Visit costs very high
- Brought cash, food, clothing, soap, lotion, toilet paper, toothpaste, blankets, sanitary products
 - Cost of food per visit ZK 75
 - Other items monthly cost ZK 24
- Transport costs median ZK 120
- Most common journey time 90 minutes; 50km

Quotes on visits

- Both me and my sister-in-law have lost a lot of income. I have lost all my savings. There are travelling costs, costs for food, as no food is given to suspects in police cells, and telephone costs
- Especially in police detention we struggled. We have also lost the income from the chicken business.
- Instead of saving the little that we make, we end up spending it on food and transport to visit
- Buying food for detainee and transport. I have also taken three of her children and am buying for them
- I have to bring my sister lunch three times a week just to keep her spirits high

Making up shortfall

- Some 36% said they had to borrowing money
 - Median amount ZK1500
 - Most borrowed from family/friends
- Some 53% they sold an asset
 - Livestock (22%), household goods (15%), food and farming assets (5%), land (4%)

Social impact

- Social standing 74% negatively affected
- Some 3% deserted by spouses; 12% spouse only relationship left; most had been close to their extended family prior to detention.
- Children affected
 - Children had to live elsewhere
 - Children missed care of detainee / suffered trauma
 - Children no longer go to school
 - Children more vulnerable

Health impact

- Some 18% ill at time of arrest
- Some 25% became ill in detention
 - Malaria, ulcers; stomach pains; HIV; back pains, bilharzia; diarrhoea; herpes
 - Only 28% of those who became ill received treatment

Experience of CJS

- Some 98% held on one charge only
- Charges
 - 29% theft of which 55% stock theft
 - “Non-bail-able” offences prominent 23% murder 18% aggravated robbery
 - Assault, drug offences, vandalism, trespassing, dangerous driving, civil debt; arson; housebreaking; forgery; and possession of stolen property
- Half spent more than a week in police detention
- Three quarters of families were informed of detention and transfer
- Most no idea for how much longer they will be detained
- Number of times to court range 0 to 22; median 5 times
- One quarter had legal assistance (mostly LAB)
- Half of detainees interviewed had been in custody for more than ten months; 10% more than 4 years

Economic and Social Rights

The rights contained in the ICESCR include:

- The equal right of men and women to pursue economic, social and cultural rights (art 3);
- The right to work and the duty of the state to take measures to enable people to access gainful employment (art 6);
- The right to just conditions of employment (art 7);
- The right to social security (art 9);
- The duty of the state to provide the widest possible protection to the family (art 10);
- The right to an adequate standard of living and to be free from hunger (art 11)
- The right to the enjoyment of the highest attainable standard of physical and mental health (art 12); and
- The right to education (art 13)

Nature of obligations ICESCR

- The nature of the obligations on states set out by the ICESCR is not that states must ensure that every person has employment and social security.
- The obligation is that states should 'respect', 'protect' and 'promote' these socio-economic rights.
- The duty to 'respect' entails an obligation not to interfere with the resources of individuals, their freedom to find a job, or their freedom to take necessary action and to use their resources to satisfy needs.
- This duty to respect socio-economic rights intersects with fair trial rights when states make and enforce criminal procedural and criminal laws.
- The decision to detain an accused person before trial almost invariably interferes with the resources of individuals, including individuals other than those being detained.

Fair Trial Rights (ICCPR)

- Arrested persons promptly before court and entitled to trial in reasonable time or release
- Custody before trial not be the general rule
- Fair and public hearing independent court
- Equality before the law
- No arbitrary detention
- Access for lawyers
- Independent external oversight

Conclusion

- The detention of detainees in Lusaka has a clear socio-economic impact.
- Decisions to detain and to continue to detain have a broad impact.
- Impact infringes upon the rights of persons other than the detained person, frequently penalising those who are already poor and marginalised.
- Violations of the right to a fair trial are likely to exacerbate the socio-economic impact on detainees and their associated households.
- In Zambia right to be tried within a reasonable time the most serious violation of fair trial rights (especially non-bail-able offences).

Recommendations

- Respect for socio-economic requires states to ensure that criminal procedural laws and practices are designed and implemented in ways to ensure that the impact on socio-economic rights of all persons is minimised.
 - Detention of an accused should only occur when absolutely necessary and for the shortest possible duration.
- There may also be a duty to take into account socio-economic rights beyond adherence to fair trial rights, particularly when children are involved.