



Zimbabwe  
**HUMAN RIGHTS**  
NGO Forum



# **RIGHTS**

# **BEHIND BARS**

A Study of Prison Conditions In Zimbabwe

**2018**

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**Designed and Printed by**

Lighthouse Print

**Edited by**

Tafadzwa Christmas and Blessing Gorejena

**Research Team**

Edson Chiota, Kenias Shonhai, Michelle N Matsvaire, Patricia Munatsi, Rukudzo Kanda- Makuyana

**External Consultant**

Dr Admark Moyo

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Email: [admin@hrforum.co.zw](mailto:admin@hrforum.co.zw)

Website: [www.hrforumzim.com](http://www.hrforumzim.com)



### ABOUT THE FORUM

The Zimbabwe Human Rights NGO Forum (the Forum) is a coalition of 22 human rights organisations working towards the realisation of a society that respects all human rights in Zimbabwe.

#### Members of the Forum

- Amnesty International-Zimbabwe (AI- Z)
- Catholic Commission for Justice and Peace – Zimbabwe (CCJP- Z)
- Civic Education Network (CIVNET)
- Counseling Services Unit (CSU)
- Gays and Lesbians of Zimbabwe (GALZ)
- Justice for Children (JC)
- Legal Resources Foundation (LRF)
- Media Institute of Southern Africa (MISA)
- Media Monitors (MM)
- Non-Visible Action and Strategies for Social Change (NOVASC)
- Research and Advocacy Unit (RAU)
- Students Solidarity Trust (SST)
- Transparency International-Zimbabwe (TI- Z)
- VERITAS
- Women of Zimbabwe Arise (WOZA)
- Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender (ZACRO)
- Zimbabwe Association of Doctors for Human Rights (ZADHR)
- Zimbabwe Civic Education Trust (ZIMCET)
- Zimbabwe Human Rights Association (ZIMRIGHTS)
- Zimbabwe Lawyers for Human Rights (ZLHR)
- Zimbabwe Peace Project (ZPP)
- Zimbabwe Women Lawyers Association (ZWLA)

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## **LIST OF ACRONYMS**

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AWP	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPEA	Criminal Procedure and Evidence Act [chapter 9: 07]
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DEVAW	Declaration on the Elimination of Violence against Women
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights



## LIST OF INSTRUMENTS CITED

### International Treaties and Conventions

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, 85 Entered into force on 26 June 1987

Convention on the Elimination of All Forms of Discrimination against Women G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, Entered into force on 3 September 1981

Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, 3. Entered into force on 2 September 1990

Convention on the Rights of Persons with Disabilities GA res A/RES/61/106. Entered into force on 24 January 2007

International Covenant on Civil and Political Rights GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967). Entered into force on 23 March 1976

International Covenant on Economic Social and Cultural Rights, General Assembly resolution 2200A (XXI) United Nations, Treaty Series, vol. 993, p. 3. entered into force on 3 January 1976

United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI. Adopted by the General Assembly Resolution 2847 (XXVI) of 20 December 1971, entered into force on 24 September 1973.

Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331. Entered into force on 27 January 1980.

### Regional Treaties

African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), (ACHPR). Entered into force on 21 October 1986.

African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), (ACRWC). Entered into force on 29 November 1989.

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003, (AWP). Entered into force on 11 July 2003.

## **Declarations**

Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104 Entered into force on 23 February 1994.

Universal Declaration of Human Rights, 10 December 1948, 217 A (III), entered into force on 3 January 1976

## **Principles, Minimum Rules and Principles**

UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment : resolution / adopted by the General Assembly, 9 December 1988, A/RES/43/173

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175.

United Nations Basic Principles for the Treatment of Prisoners: resolution / adopted by the General Assembly, 28 March 1991, A/RES/45/111



## 1. EXECUTIVE SUMMARY

The primary objectives of this study were to assess the compliance of selected prisons with international and domestic standards on conditions of detention; to consolidate the findings from the prison monitoring project conducted by the Zimbabwe Human Rights NGO Forum (the Forum) and its membership; to make recommendations for reforms and propose key priority areas. The central aim was to determine whether the conditions in our prisons are consistent with the international and domestic standards that are provided for in international instruments, the Constitution and the Prisons Act [Chapter 7:11]. To make this determination, the Forum, in conjunction with the Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender (ZACRO), carried out prison monitoring visits at seven (7) correctional or custodial institutions representing different types of prisons in the country.

The custodial institutions selected for the study include Connemara Open Prison; Bindura Farm Prison; Mutare Farm Prison; Tabudirira Satellite Prison in Mutoko; Whahwa Young Offenders Prison; Mlondolozhi Prison (which predominantly houses prisoners with mental health challenges) and Harare Remand Prison. As can be gleaned from the list of correctional or custodial institutions visited, the idea was to select prisons or places of detention that operate under very different circumstances in order for the Forum and ZACRO to be able to understand what the situation is like at different institutions. Besides, it was necessary to select institutions detaining persons under different circumstances to ensure that there is adequate representation of all types of prisons in this report. For these reasons, the selected prisons included a 'prison without walls' (ie an open prison); two farm prisons; one satellite prison; one young offenders' prison; one prison housing detainees with mental health challenges and one remand prison. Mlondolozhi also gives an insight into women issues as it houses women as well.

To address these objectives of the study and to identify which instruments and standards were relevant to the study, the Forum compiled a list of key issues that arose from the Prison Monitoring Visit Reports. A survey of these reports indicated that the topical issues in our prisons include pre-trial detention; prisoners' dignity, cell conditions and sanitation; bedding; adequate clothing; the right to sufficient food; the right to safe, clean and potable water; the right to health care services; access to education, vocational training and work; and a number of issues relating to juveniles deprived of their liberty. When it comes to juveniles deprived of their liberty, the main issues that arose from the reports revolved around the child offender's rights to be kept separately from detained persons over the age of 18 years and to be treated in a manner and kept in conditions that take account of the child's age. This Executive Summary narrates the main findings and recommendations made with regards to each of these themes in the order they have been outlined above.

With regards to pre-trial detention, it is worth noting that the periods for which many prisoners have been placed in remand violate the standards set out in the Constitution and international human rights instruments. In most of the trials that fail to kick off, the reason is often the result of the State's failure to proceed with the trial. As demonstrated below, detained persons continue to be deprived of their liberty as a result of such minor challenges as the shortage of fuel or the lack of knowledge regarding

the whereabouts of State witnesses. In other cases, the witnesses have either died or allegedly relocated to foreign countries. Either way, the reasons for the State's failure to continue with the trial are often not attributable to the accused person, but to either the State or other unforeseen circumstances. Yet the accused is made to remain in detention as if they were the cause of the surrounding circumstances.

The right to dignity, an important part of the catalogue of rights specifically extended to prisoners and detainees, forms the basis of most international human rights instruments. While some prisons largely complied with international and domestic standards governing cell conditions and humane treatment, many other prisons experience high levels of overcrowding and detainees have to resort to using water in buckets to flush the toilets due to erratic water supply. To overcome the inhuman and degrading treatment experienced by some detainees at different correctional institutions, it is necessary for the State to ensure that all prisons have the same standards of living and detainees enjoy the same bundle of rights throughout the country.

At the international plane, rights pertaining to bedding and adequate clothing are not explicitly regulated by 'hard' law in the form of treaties. However, these rights are implied in 'the right to an adequate standard of living' that is expressly provided for in a number of international instruments of either a soft or hard law variety. At the domestic level, the Constitution refers to conditions of treatment that are consistent with human dignity and the Prisons Act [Chapter 7: 11] makes reference to clothing and bedding without necessarily casting these issues in the language of rights. Some prisons provide blankets that are arguably sufficient enough to keep each detainee or prisoner, with or without a bed, sufficiently warm even during the winter season. Nonetheless, the shortage of bedding and blankets were reported to be an enduring challenge at other correctional institutions such as Mutare Farm Prison, Bindura Farm Prison and Tabudirira Satellite Prison. The shortage of clothing was also an enduring challenge as each detainee usually had one set of uniforms at a time.

The right to adequate food is recognised by several international human rights instruments as part of the class of rights that are extended generally to 'everyone' and specifically to detainees. Some of the few prisons were able to supply adequate basic food items to inmates. Even then, it can hardly be said that these prisons fully complied with international and national standards on the provision of adequate food. There were severe food shortages at many of the prisons that were visited. An overwhelming majority of the prisons visited had run out of protein and cooking oil, and prisoners were allowed to source food from their relatives. Many prisons serve a basic meal of *sadza*, cabbage and vegetables with no protein for long periods. The situation amounts to a violation of detainees' right to sufficient food and the State should secure enough food items to comply with international and domestic standards.

The right of access to water is also protected in international law and the Constitution. Access to safe drinking water was not a challenge at many prisons in Zimbabwe, but the challenge arose with regards to lack of adequate water for ablution facilities. Detainees in the majority of the prisons were not able to use flushing toilets and had to resort to the bucket system due to erratic water supply from the



municipalities.

The right to health care services is recognised in the Zimbabwean Constitution as well several international instruments to which Zimbabwe is a party. At the practical level, the majority of Prisons are provided with and never ran out of anti-retroviral drugs for the treatment of HIV/AIDS inmates. However, health infrastructure proved to be a challenge at many institutions and patients were treated in make-shift rooms with no privacy and adequate facilities for the storage of medication. The shortage of trained medical staff at many prisons clinics compromises the quality of the care that is given to prisoners and it is important for the State to provide the much needed resident health care professionals. Generally it has been observed that Prisons comply with the obligation to take the necessary measures to protect the health of prisoners and to ensure that they receive medical attention when they are sick as required by international and domestic standards. However, the quality of service provided by non-resident doctors and nurses who make *ad hoc* visits is of a lower standard due to the limited time available than the service that could be provided by resident doctors and nurses. Apart from the need to provide support services to medical staff and prisoners, the State should always provide protective clothing to health care staff and prioritise clinics that provide treatment to vulnerable detainees; these include mental health patients, persons with disabilities, child offenders and the like.

It is worth noting that the Constitution and international instruments adequately protect detainees' rights to education, vocational training and work. The absence of educational programmes and learning facilities at custodial institutions violates detainees' and prisoners' right to education. It prevents intellectual development and, in the case of sentenced prisoners, it makes full integration upon release impossible. Furthermore, there were very few teachers in light of the number of inmates and resources were very scarce. Accordingly, the government should take all appropriate measures to ensure access to education by all children of compulsory school going age and to encourage all prisoners to take part in educational and vocational training programmes.

There are specific guarantees conferred only upon juveniles in detention. Both the Constitution and international instruments provide for the right of every accused juvenile person to be separated from adults during pre-trial and post conviction detention. This has been achieved by establishing separate prisons for young offenders and setting up of juvenile sections in adult prisons. On this issue, the government has largely complied with its international and domestic legal obligation to ensure that young offenders are kept separately from detained persons over the age of 18 years. However, the establishment of separate institutions or sections for youth offenders is not of itself sufficient for the State to comply with international and domestic law. These institutions should be child-friendly and staffed by well-trained and child friendly officials. Unfortunately, anecdotal evidence demonstrated that notwithstanding the unique nature of young offenders' prisons, such institutions operated like any other prison, with no special safeguards for the young inmates.

## 2. INTRODUCTION

The rights of persons deprived of their liberty are both explicitly and implicitly provided for in various international and regional instruments.<sup>1</sup> Of the various regional and international treaties, Zimbabwe has signed, ratified or acceded to the ICCPR, CEDAW, ICESCR, CRC, CRPD, ACHPR, AWP and the ACRWC. The signing of a human rights instrument does not mean the State consents to be bound by the treaty, but it is an expression of the State's willingness to complete the treaty-making process and an obligation to 'refrain, in good faith, from acts that would defeat the object and the purpose of the treaty'.<sup>2</sup> Ratification or accession to a human rights instrument is the international act which indicates a State's consent to be bound by a treaty.<sup>3</sup> Therefore it means that the provisions of the instruments which Zimbabwe has ratified or acceded to are legally binding on it, and the State has an obligation to domesticate the provisions into national law.

The main Principles, Minimum Rules and Declarations which provide a comprehensive outline of safeguards and the rights of persons deprived of their liberty are the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);<sup>4</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;<sup>5</sup> and the Basic Principles for the Treatment of Prisoners.<sup>6</sup> The rights of children deprived of their liberty are provided for separately in rules and guidelines adopted by international and regional bodies.<sup>7</sup> These instruments are centred on the principle of the best interests of the child, and they deal with issues related to both prevention and treatment in child justice. Although the Principles, Minimum Rules and Declarations constitute 'soft law'<sup>8</sup> and are not legally binding, they are of persuasive value in international law and would be consistently referred to in

- 1 United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI; UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III); UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p 85; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3; UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13; UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3; UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106; UN General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104; Organization of African Unity (OAU), African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982); African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003; Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990).
- 2 Articles 10 and 18 of the Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331.
- 3 Articles 2(1)(b), 14 (1) and 16 of the VCLT.
- 4 See General Assembly, A/RES/70/175.
- 5 UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment A/RES/43/173.
- 6 UN General Assembly, Basic Principles for the Treatment of Prisoners: resolution / adopted by the General Assembly, 28 March 1991, A/RES/45/111, available at: <http://www.refworld.org/docid/48abd5740.html> [accessed 28 December 2017].
- 7 UN General Assembly, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines): resolution / adopted by the General Assembly, 14 December 1990, A/RES/45/112; UN General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules): resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/33; UN General Assembly, United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly, 2 April 1991, A/RES/45/113 and The African Commission on Human and Peoples' Rights, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, meeting at its 32nd ordinary session held in Banjul, The Gambia.
- 8 Soft law refers to guidelines, policy declarations or codes of conduct which set standards of conduct; it does not create enforceable obligations.



this report. They are also particularly critical in that they outline specific provisions which are tailor made for persons deprived of their liberty. This is important as persons deprived of their liberty have peculiar needs, since they are in unique circumstances and are particularly vulnerable. The 'soft law' therefore complements the provisions outlined in the 'hard law' by providing precise context specific details.

The Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution) also contains provisions which protect persons that have been deprived of their liberty. In this report, the Forum highlights the international law and constitutional provisions governing conditions of pre-trial detention, cell conditions and bedding, access to education and vocational training facilities while in detention; access to clothing, bedding, food and clean water, access to health care and prisoners' right to dignity in so far as they affect persons deprived of their liberty. The central idea is to discuss the international and domestic standards relating to conditions of detention and to assess the compliance of selected prisons and conditions of detention with the Zimbabwean Constitution and international standards on prison conditions. More importantly, the discussion takes place with a view to making recommendations for reforms and proposing key priority areas for decisive intervention.

The collection of valid and reliable data relating to conditions of detention was necessary for the Forum to have a better understanding of both the challenges faced by inmates in the prisons and the attitudes, perceptions and beliefs of prison officers particularly with regards to their understanding of their duties under national and international law. To this end, the Forum extensively relied on the information supplied to them by the prisoners and prison officials that were visited for purposes of monitoring compliance with national and international standards. Lastly, the Forum adopted a thematic approach to the research, opting to identify specific human rights themes from the prison monitoring visit reports and use that information as the basis for measuring the compliance of specific practices in custodial institutions against the standards that are articulated in national and international law

### 3. METHODOLOGY

It is imperative to recall that the primary objectives of the study were to assess the compliance of selected prisons with international and domestic standards on conditions of detention; to consolidate the findings from the prison monitoring project conducted by the Forum and ZACRO as well as its entire membership; and to make recommendations for reforms and propose key priority areas. To address the objectives of this study, the approach taken was both theoretical and empirical in nature. It was largely theoretical in the sense that it involves an analysis of relevant legal and human rights instruments and frameworks at international and domestic level. Whilst the identification of international and domestic standards on prisons and conditions of detention required theoretical desktop research, determining whether the conditions that obtain in Zimbabwean prisons comply with international and national standards required the Forum to embark on empirical research.

With regards to identifying applicable international and domestic standards on prisons and conditions of detention, the study largely relied on primary and secondary sources to address the key issues that arose from the prison monitoring visits. To identify which instruments and standards were relevant to the study, it was necessary to compile a list of key issues that arose from the Prison Monitoring Visit Reports made by ZACRO and the Forum. From a survey of the reports, it was evident that the topical issues in the prisons include pre-trial detention; prisoners' dignity, cell conditions and sanitation; bedding; adequate clothing; the right to sufficient food; the right to safe, clean and potable water; the right to health care services; access to education, vocational training and work; and a number of issues relating to juveniles deprived of their liberty. To identify international and domestic standards on prisons, the study relied on primary and secondary sources of information.

At the primary level, the study predominantly relied on United Nations official documentation; various treaties; and international and regional human rights instruments that are binding on Zimbabwe. Further, the study relied on provisions of the Zimbabwean Constitution; national statutes such as the Prisons Act; relevant case law; government briefings; and reports on reviews of national legislation applicable to prisoners. The focus on domestic instruments and case law relating to prisons and conditions of detention proved important for purposes of determining whether or not the national normative standards are in sync with the equivalent provisions of international law.

At the secondary level, the study relied on general comments of the United Nations treaty monitoring bodies, special reports; reviews of relevant legislation; 'soft law' documents such as declarations and the standards contained in many prescriptive minimum rules regulating the rights of persons deprived of their liberty. All the major Principles, Minimum Rules and Declarations which provide a comprehensive outline of safeguards and the rights of persons deprived of their liberty were relied on in compiling this report. Extensive reference was also made to the major rules, guidelines and principles, especially in areas that are not explicitly regulated by international and national law.

Given the lack of guidance on, for instance, such issues as bedding, adequate clothing as well as vocational



training and work while in detention facilities, it became important for the Forum to look to standard minimum rules and guidelines for purposes of determining what exactly should be done for detainees in areas that are not regulated by such 'hard law' as international treaties, the Constitution and the Prisons Act. Whilst these rules, principles and guidelines are not necessarily authoritative in the domestic landscape, they serve as persuasive authority for cementing particular detainee friendly approaches to criminal justice and provide a useful basis upon which to critique domestic shortcomings in addressing the rights of prisoners and detainees. Therefore, they remain useful in supporting suggestions on how to address current legislative, interpretive and policy gaps at the national level.

Apart from identifying the obligations imposed on the State by international standards, this study also sought to explore conditions of detention as they obtain in Zimbabwean prisons. This required an empirical approach to the research and it became necessary for the Forum to carry out prison monitoring visits to assess the situation on the ground. The central aim was to determine whether the conditions that obtain in the prisons are consistent with the international and domestic standards that are provided for in international instruments, the Constitution and the Prisons Act. To make this determination, the Forum, in conjunction with ZACRO carried out prison monitoring visits at seven (7) correctional or custodial facilities representing different types of prisons in the country.

There were slight variations on who had to be interviewed; especially owing to the fact that the correctional facilities that were visited have different focus areas. Nonetheless, ZACRO and the Forum took all steps necessary to interview relevant persons at each institution. The relevance of the persons interviewed was determined by the thematic areas of the study and the strategic positioning of the interviewee in the prison administration. The key personnel in the relevant departments responsible for the thematic areas of study and some of the inmates were interviewed. Apart from having in-depth interviews with the Officer in Charges of every correctional institution, ZACRO and the Forum interviewed key personnel such as officials in the departments responsible for health, workshops; kitchens; schools; farms and many more.

All ethical issues relating to informed consent by research subjects and the fact that they could withdraw from the research at any time they wished to do so, were fully explained to participants before the interviews started. In addition, issues concerning the non-disclosure of information obtained from them to third parties were also explained. The information obtained from correctional officers and prisoners was supplemented by first hand information obtained from the inspection of the prisons. Together, the information gathered from interviewees and from the inspections of the prisons then enabled the Forum to assess the country's compliance with international and national normative standards.

## 4. INTERNATIONAL AND NATIONAL STANDARDS ON PRISONS AND CONDITIONS OF DETENTION

This section examines the international and national standards on prisons and conditions of detention. The discussion follows the thematic areas identified above.

### 4.1. Pre-trial detention

Pre-trial detention may only be permissible if undertaken in accordance with procedures established by law in a place of detention that has been authorised,<sup>9</sup> and such detention must not be arbitrary.<sup>10</sup> The right to be presumed innocent until proven guilty suggests that unconvicted detainees should be treated in a manner which is different to those that have been convicted. This right is provided for in several international human rights instruments<sup>11</sup> and the Zimbabwean Constitution.<sup>12</sup> Further, detention may only be permitted upon the written order of the competent authority.<sup>13</sup> These rights are meant to promote every accused person's right to a fair, speedy and public trial within a reasonable time before an independent and impartial court established by law as required by the Constitution.

International instruments require that detained persons be brought promptly before a judge or other officer authorised by law to exercise judicial power and be tried within a reasonable period of time.<sup>14</sup> All untried prisoners should be immediately informed of the reasons for their detention and the charges against them.<sup>15</sup> At the municipal level, section 50(2)(b) of the Constitution provides that following arrest and detention, a person who is not released shall be brought before a court as soon as possible and, in any event, not more than 48 hours after the arrest or detention began.<sup>16</sup> In *S v Mukwakwa*,<sup>17</sup> where a suspect escaped from a police cell after more than 60 hours of detention, the court stated that the custody from which the accused had escaped was not lawful because he had been detained beyond the 48 hours stipulated by the law.<sup>18</sup> However, the detention of the arrested person may also be extended if a warrant for his further detention is obtained from a court of law. The State should be required to advance reasons for the delays in bringing the matter to trial.<sup>19</sup> A proper reason such as difficulties in locating a vital witness normally justifies an appropriate delay but again the delay should not be very long.

9 Robben Island Guidelines, para 23.

10 Article 9 of the UDHR, article 9(1) of the ICCPR and article 6 of the ACHPR.

11 See article 11 of the UDHR, article 7(1) of the ACHPR, Rule 111(2) of the Nelson Mandela Rules and Principle 36(1) of the Body of Principles.

12 See section 70(1)(a) of the Constitution.

13 Section 70(1)(b) and (c) of the Constitution and article 37 of the Body of Principles.

14 See articles 9(3) of the ICCPR; Principles 37 and 38 of the Body of Principles Rule 84(2) of the Standard Minimum Rules and Rule 6(1) of the Tokyo Rules.

15 Robben Island Guidelines, paragraph 25 and 26.

16 See section 50(6) of the Constitution and section 32(2) of the Criminal Procedure and Evidence Act (Chapter 9:07).

17 1997 (2) ZLR 298 (H).

18 *S v Mukwakwa* 1997 (2) ZLR 298 (H). See also *R v Sambo* 1964 ZLR 565 and *Re Mlambo* 1991 (2) ZLR 339 (S) at 344B-C.

19 See *Fikilini v Attorney General* 1990 (1) ZLR 105 (S); *S v Kusangaya* 1998 (2) ZLR 10 (H); *Re Masendeke* 1992 (2) ZLR 5 (S) and *S v Kusangaya* 1998 (2) ZLR 10 (H).



## 4.2. Prisoners’ dignity, cell conditions and sanitation

The right to dignity is an important right which forms the basis of most international human rights instruments.<sup>20</sup> Some of these instruments explicitly provide for the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person.<sup>21</sup> In addition, several minimum rules, principles and guidelines reiterate the State’s obligation to treat all prisoners with the respect due to their inherent dignity and value as human beings.<sup>22</sup> A critical element of prisoners’ cell conditions is the need for adequate sanitary facilities to enable prisoners to comply with the needs of nature in a clean and decent manner and the need for adequate bathing or shower facilities that are consistent with the climatic conditions and geographical conditions.<sup>23</sup> Maintaining prisoners’ health and cleanliness further requires that the prisons are properly maintained and cleaned at all times; and that each prisoner should have a separate bed with clean and sufficient bedding which is kept in good order and is regularly changed.<sup>24</sup>

In the same vein, the Zimbabwean Constitution grants every person inherent dignity in both their private and public life; as well as the right to have the dignity respected and protected. In the context of detention, the Constitution provides that ‘any person who is arrested or detained...has the right to conditions of detention that are consistent with human dignity, including...the provision at State expense of adequate accommodation, ablution facilities, personal hygiene’.<sup>25</sup> Thus, the right to dignity requires that the State ensures the provision of these and other minimum conditions of detention.

## 4.3. Bedding

Whilst none of the international human rights instruments explicitly provide for prisoners’ rights to bedding, this right is implied in ‘the right to an adequate standard of living’ which is provided for in a number of these instruments.<sup>26</sup> The Mandela Rules explicitly provide for every prisoner’s right to be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.<sup>27</sup> These conditions are necessary for purposes of curbing the rise and spread of diseases in the prison system.

At the domestic level, the Zimbabwean Constitution does not explicitly refer to the bedding of inmates, but provides for the right to ‘conditions of detention that are consistent with human dignity...adequate accommodation’.<sup>28</sup> Accordingly, constitutional rights of universal application such as the right to dignity and to have that dignity protected should be read broadly to require the State to provide enough bedding

20 See the Preambles to the UN Charter, ICCPR and ICESCR.  
 21 See article 10 of the ICCPR; article 5 of the ACHPR; and articles 3 and 24 of the AWP.  
 22 Rule 1 of the Nelson Mandela Rules; Principle 1 of the Body of Principles; Rule 1 of the Beijing Rules  
 23 See Rules 15 and 16 of the Mandela Rules.  
 24 Nelson Mandela Rules, Rule 21.  
 25 Constitution of Zimbabwe, Section 50(5)(d).  
 26 See articles 25 of the UDHR; 11(1) of the ICECSR; 25(1) of the CRPD and 16 of the AWP.  
 27 Rule 21 of the Mandela Rules.  
 28 Constitution of Zimbabwe, Section 50(5)(d).

to citizens incarcerated in its jails. In terms of the Prisons Act, the right to receive and duty to use, diligently, bedding can be derived from provisions that make it a criminal offence to refuse to wear or keep clothing given to the prisoner in question. To this end, the Prisons Act makes it an offence for any prisoner to omit or refuse to use bedding issued to them. It is also an offence for a prisoner to deface or refuse to keep clothing, blankets, bedding or equipment clean (Prisons Act, Part II).

#### 4.4. Adequate clothing

According to international law, the ‘right to clothing’ is implied as a component of the right to an adequate standard of living. The CRPD is the only international human rights treaty which explicitly makes reference to adequate clothing as a component of an adequate standard of living specifically for persons with disabilities. In terms of the Nelson Mandela Rules, untried prisoners are entitled to wear their own clothing.<sup>29</sup> In addition, every prisoner who is not allowed to wear their clothing should be provided with clothing which is not degrading or humiliating, which is suitable for the climate and which is adequate to keep him in good health.<sup>30</sup> The Constitution of Zimbabwe makes no explicit reference to ‘the right to clothing’ or the right to an adequate standard of living. However, it provides that detained persons have the right to conditions of detention that are consistent with human dignity, including personal hygiene. In terms of the Prisons Act, the right to receive and duty to adequate clothing can be derived from the provisions that make it a criminal offence to refuse to wear or keep clothing given to the prisoner in question. To this end, the Prisons Act makes it an offence for any prisoner to omit or refuse to use clothing issued to them or to deface or refuse to keep clothing, blankets, bedding or equipment clean (Prisons Act, Part II).

#### 4.5. The right to sufficient food

The right to adequate food is recognised by several international human rights instruments as part of the class of rights that are extended to ‘everyone’, including prisoners.<sup>31</sup> The Standard Minimum Rules also provide that ‘every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served’.<sup>32</sup> At the domestic level, the Constitution explicitly and implicitly extends to every person, including prisoners, the rights to food and clean water. With regards to persons placed in detention, the Constitution provides for detained persons’ right to ‘conditions of detention that are consistent with human dignity, including the provision, *at State expense*, of an adequate standard of nutrition’. The right to adequate food is a right which is important for the realisation of other rights. As such, it should therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.<sup>33</sup>

29 Nelson Mandela Rules, Rule 115.

30 Nelson Mandela Rules, Rule 19(1). See also Rule 36 of the Beijing Rules.

31 See articles 25(1) of the UDHR; 11(1) of the ICESCR; 24(2) and 27(3) of the CRC; and 25(f) and 28(1) of the CRPD.

32 Rule 20 of the Standard Minimum Rules.

33 Committee on Economic, Social and Cultural Rights, General Comment No. 15.



In May 1999 the Committee on Economic, Social and Cultural Rights (CESCR) developed General Comment No. 12 (1999) on the right to adequate food.<sup>34</sup> The Committee explained that the realisation of the right to food requires everyone to individually and collectively have physical and economic access to adequate food, or to means for its procurement. General Comment 12 further outlines that the right to food implies that food should be available in sufficient quantities and adequate quality to satisfy the dietary needs of individuals, that it should be free from adverse substances, and that it should be culturally acceptable.

## 4.6. Access to clean water

Access to water is an integral element of the right to an adequate standard of living.<sup>35</sup> The right to water is arguably 'one of the most critical fundamental conditions for survival'<sup>36</sup> and hence, it is largely recognised as a critical element of the overall right to an adequate standard of living.<sup>37</sup> Rule 20 of the Standard Minimum Rules for the Treatment of Prisoners provides that drinking water shall be available to every prisoner whenever he needs it. General Comment No. 15 explains that the legal content of the right to water as follows:

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related diseases and to provide for consumption, cooking, personal and domestic hygienic requirements.<sup>38</sup>

The Constitution also confers on every person the right to safe, clean and potable water. It further provides that detained persons have 'the right to conditions of detention that are consistent with human dignity, including the provision at State expense of adequate accommodation, ablution facilities, personal hygiene'.<sup>39</sup> Detainees' and prisoners' right of access to clean water is patently implied in this right.

## 4.7. The right to health care services

Several international human rights instruments provide that prisoners and all detained persons have the right to the highest attainable standard of physical and mental health.<sup>40</sup> Further, the Nelson Mandela Rules highlight that the State has the responsibility to ensure the provision of health care to prisoners, and to ensure that prisoners enjoy the same standard of health that is available to the community free

34 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, available at: <http://www.refworld.org/docid/4538838c11.html> [accessed 27 December 2017].

35 See articles 11 and 12 of the Covenant

36 General Comment 15, para 3.

37 See also article 14(2) of the CEDAW and 28(2)(a) of the CRPD.

38 General Comment 15, para 2, Committee on Economic, Social and Cultural Rights.

39 Section 50(5)(d) of the Constitution.

40 See articles 25 of the UDHR, 12(1) of the ICESCR; 16 of the ACHPR, 14 of the AWP, 25 of the CRPD and 3(f) of DEVAW.

of charge.<sup>41</sup> Particular attention should be paid to prisoners with special health care needs or issues that may hamper their rehabilitation. Further, both the physical and mental health needs of prisoners should be addressed.<sup>42</sup>

Rule 75(2) and (3) of the Nelson Mandela Rules provides that training which is tailored to the general and specific duties of prison staff, including continuous in-service training courses, should be provided.<sup>43</sup> Rule 78 further provides that prison staff shall include a sufficient number of specialists such as psychiatrists, psychologists and social workers.<sup>44</sup>

At the domestic level, the Zimbabwean Constitution provides for every citizen and permanent resident's right to have access to basic health care and reproductive health care services; including access to basic health care for chronic illnesses.<sup>45</sup> Further, section 50(5)(d) of the Constitution provides for detained persons' right to conditions of detention that are consistent with human dignity, including the provision of medical treatment at the State's expense. Thus, the right to medical treatment for detained persons doesn't appear to be subject to progressive realisation.

#### 4.8. Education, vocational training and work

Prisoners do not forfeit their right to education by virtue of their committal to custodial institutions. Persons deprived of their liberty enjoy all the rights set forth in international and domestic human rights instruments, subject only to the restrictions that are unavoidable in a closed environment (HRC, GC 21, para 3). The education of illiterate prisoners and of young prisoners is compulsory and special attention should be paid to it by the prison administration (Rule 104(1), Mandela Rules). Where it is fairly possible and barring any other compelling considerations, the education of prisoners, including juveniles, must be provided by qualified teachers and integrated with the educational system of the country so that after their release they may continue their education without difficulty (Rule 104(2), Mandela Rules and Rule 38, Beijing Rules). These rules should be read together with every person's right to basic state-funded education, including adult basic education, as provided for in section 75(1)(a) of the Zimbabwean Constitution.

International standards on education, vocational training and work are articulated in great detail when it comes to young offenders. Every young offender of compulsory school age has the right to education suited to their needs and abilities, and designed to prepare them for return to society (Rule 38, Beijing Rules). Youth offenders who are illiterate or have cognitive or learning difficulties should be provided with special education (Rule 38, Beijing Rules). Young offenders aged above the compulsory school-going age should be allowed and encouraged to attend school if they wish to do so and the State should provide them with access to appropriate educational programmes (Rule 39, Beijing Rules). Every

41 Nelson Mandela Rules, Rule 24(1).

42 Nelson Mandela Rules, Rule 25(1).

43 Nelson Mandela Rules, Rule 75(2) and (3).

44 Nelson Mandela Rules, Rule 78(1).

45 Section 76(1) of the Zimbabwean Constitution.



detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it (Rule 41, Beijing Rules).<sup>46</sup> Juveniles have the right to receive vocational training in occupations likely to prepare them for future employment and should be permitted to choose the type of work they wish to perform.<sup>47</sup> All standards relating to education, vocational training and work seek to ensure that prisoners have somewhere to start when they are released.

## 4.9. Juveniles deprived of their liberty

There are specific guarantees conferred only upon juveniles in detention. These guarantees are specifically enumerated in international and domestic law. In the context of detention, two guarantees specifically stand out and these are the right to be kept separately from detained persons over the age of majority and the right to be kept in conditions, and treated in a manner, that take into account the child's age. The protection of these rights in international and domestic law is explored below.

### 4.9.1 The right to be kept separately from detained adult persons

International instruments provide for the right of every accused juvenile person to be separated from adults during pre-trial and post conviction detention.<sup>48</sup> Under international law, young offenders should be kept separately from adult offenders.<sup>49</sup> In line with international human rights instruments and standards, section 81(1)(i) of the Constitution also provides for the child's right to be kept separately from detained persons over the age of 18 years. Section 63(2)(c) of the Prisons Act also stipulates youth offenders as a group of prisoners that should be kept separate from other categories of offenders. The separation of adult and youth offenders serves as a mandatory precondition for ensuring that youth offenders are later afforded treatment that takes their age, immaturity and vulnerability into account. When carrying out human rights reporting, States parties have the obligation to pay the necessary attention to this mandatory standard and to stipulate what measures have been taken to separate juvenile offenders from adult offenders (HRC GC 21, para 13).

The rule that young offenders deprived of liberty should be separated from adults implies that such offenders should not be placed in an adult prison or other facility for adults. As the Committee on the Rights of the Child would have it, '[t]here is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate...States parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices' (CRC GC 10, para 85). There is sufficient evidence demonstrating that where child offenders are detained in the same facilities with their adult counterparts, the relevant places of institutional confinement serve as schools for crime and

46 Rule 40 of the Standard Minimum Rules.

47 See article 28(1)(b) of the CRC and Rules 42 and 43, Beijing Rules.

48 See articles 37(c) of the CRC and 10(2)(b) of the ICCPR.

49 See CRC General Comment 10, para 85 and Rule 8 of the Standard Minimum Rules.

irreversibly damage innocent children.

#### 4.9.2 The right to be treated in a manner, and kept in conditions that take account of the child's age

Where a child offender is committed to a custodial institution for any offence, they retain their right to be treated in a manner and kept in conditions that take into account the child's age. This is stipulated in international instruments and the Zimbabwean Constitution.<sup>50</sup> The segregation of young offenders from adult offenders would not serve any purpose if the treatment accorded to them (young offenders) were not appropriate to their age and legal status with regards to conditions of detention.<sup>51</sup> The sort of treatment to be afforded to juvenile offenders of different ages 'is to be determined by each State party in the light of relevant social, cultural and other conditions' (HRC GC 21, para 13). All persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice and all forms of deprivation of liberty. The conditions of confinement and the manner in which the child offender is treated should be age-appropriate ie it should take into account the vulnerability and fragility of young offenders of different ages.

50 See articles 37(c) of the CRC and 10(3) of the ICCPR. See also section 81(1)(i)(iii) of the Constitution.

51 HRC General Comment 21, para 13.



## 5. GENERAL OBSERVATIONS AND FINDINGS

### 5.1. Pre-trial detention in Zimbabwean prisons

Most of the prisons visited by ZACRO and the Forum are custodial institutions meant to house convicted and sentenced prisoners. Therefore, the discussion in this section revolves around the practice at Harare Remand Prison, one of the main places where detainees are confined pending trial. There were numerous discoveries about accused and detained persons who had been held for periods that are way longer than the constitutionally ordained periods of pre-trial detention. The first case involved an inmate who had been arrested in 2007 and had been in remand since then. This means the accused had been on remand for more than 10 years. There were two State witnesses, one of them had passed away and the other one was nowhere to be found. He had a *pro deo* lawyer whom he alleged that he had last contacted him many years back. The accused person had neither a remand date nor a trial date. The accused did not know what to do with his case given the circumstances, he wanted to apply for bail but his lawyer was slow in responding to this wishes. He last received a relative visitor in 2011 (ZACRO and the Forum, Harare Remand Prison Monitoring Visit Report, 6-7).

The second case involved Lameck Akim, a prisoner who had been in remand for more than seven (7) years, since March 2010. In October 2016, he applied for bail but instead the trial started on November 2016. The matter was then remanded to 7 February 2017, but could not go to court because of fuel challenges. He had a *pro deo* lawyer, but was not in touch with him. He does not know what happened to his case since he failed to appear on the 7th of February 2017. He rarely received visitors and wished his trial could kick off. The third case involved a prisoner accused of murder who had been in prison for 6 years 10 months at the time of the monitoring visit. He had a *pro deo* lawyer as well, but due to fuel shortages experienced by the prison at that time, the accused person failed to appear in court twice. The fourth reported case involved another murder accused inmate, Albert Nherera, who had been in prison for five (5) years. The accused had legal representation, but he alleged that the trial had been postponed since 2015 due to lack of witnesses.<sup>52</sup>

The experiences of the four detained persons interviewed are just a ‘tip of the iceberg’ as there are hundreds of pre-trial detainees at Harare Remand Prison. There is no doubt that the periods for which many prisoners have been placed in remand violate the requirements set out in the Constitution and standards in international human rights instruments. International and domestic law requires an accused to be brought to court within 48 hours of their arrest and to be detained for a reasonable period of time stipulated by a competent court thereafter. In the case of *S v Tau*,<sup>53</sup> the High Court found that a delay of five years in finalising a trial was due to the State’s administrative inertia and incompetence, and could not be attributed to the accused person. Sadly, some prisoners have been in detention for more than 10 years despite international and domestic standards suggesting that they should be released.

52 ZACRO and NGO Forum, Harare Remand Prison Monitoring Visit Report, 7.

53 1997 (1) ZLR 93 (H). See also *S v Chakwinya* 1997 (1) 109 (H).

In most of the trials that failed to kick off, the reason is often the result of the utter incompetence of the State. As demonstrated above, accused and detained persons continue to be deprived of their liberty as a result of such excuses as the shortage of fuel or the lack of knowledge regarding the whereabouts of State witnesses. In other cases, the witnesses have either died or allegedly relocated to foreign countries. In almost all cases, the reasons for the State's failure to continue with the trial are not attributable to the accused person, but to either the State or other unforeseen circumstances. Yet the accused is made to remain in detention as if he or she were the cause of the circumstances.

## 5.2. Human dignity, cell conditions and sanitation

While some prisons largely complied with international and domestic standards governing cell conditions, others fared equally badly. At Connemara Open prison, the cells were in a block which had both the toilets and showers. Further, there was a block for bath rooms and toilets which had running water at all times. The system is intact with no challenges at all. The open prison is ideal for better living conditions and the State's handling of the prison largely complies with international and domestic standards relating to humane treatment of prisoners. However, the prison and Officers have not been optimally utilised as there was overstaffing and the staff had no equipment or tools to use. Accommodation, though ideal for human habitation and with a lot of privacy, was not being fully occupied.

Similarly, Mlondolozhi Prison largely complies with international and domestic standards governing adequate accommodation. The prison boasts of very good infrastructure. It was recently renovated and reconfigured by the International Committee of the Red Cross (ICRC). The living environment is very humane with no overcrowding. The smallest cell measures 5,4 square metres and had three inmates at the time of the visit. The cells are big enough and well ventilated with good lighting. Inmates had enough sleeping mats/beds with adequate bedding. The ablution facilities had all the amenities. Different categories of inmates live separately. One good example is of nursing mothers. They had their own cell. (ZACRO and the Forum, Harare Remand Prison Visit Report, 3). Whilst the prison infrastructure is in good shape, there is persistent shortage of basic necessities such as food, relish (protein), cooking oil and toiletries as well as detergents. This violates the prisoners' right to live in conditions that are consistent with human dignity.

Bindura Farm Prison also fared relatively well when it comes to the number of inmates as there was no overcrowding. The prison, which has a holding capacity of 80 inmates, had a total number of 67 inmates at the time of the visit (ZACRO and the Forum, Bindura Farm Prison Monitoring Visit Report, 1). However, it was unfortunate that there were no constructed cells and an undivided shade was used to house the 67 inmates. There were some holes in the roof of the shed and these would drip water in when there was heavy rainfall earlier in the year (2017). Four of the six flushing toilets were fully functional, but one of the toilets had to be flushed using a bucket as there was no direct supply of water to the toilet. Water supply for the toilets was erratic and this made it difficult for prisoners to use the flush toilets as and when they



wished to do so. In addition, hygiene became an issue with the toilets owing to erratic water supply. There were also reports of diarrhoea having occurred mainly due to the limited supply of detergents and anti-bacterial products.<sup>54</sup>

There was overcrowding at Harare Remand Prison which had 978 inmates despite a holding capacity of 900 inmates. Understaffing was also a problem as these inmates were being managed by 279 officers against a required compliment of 379 officers.<sup>55</sup> At Tabudirira Satellite Prison in Mutoko, there was only one cell which was a disused shed that had been converted to house inmates.<sup>56</sup> Incidents of serious overcrowding were reported at Mutare Farm Prison as cells that had a holding capacity of between 15 to 20 prisoners housed up to 35 inmates per cell.<sup>57</sup> The overcrowding taking place at many prisons clearly infringes upon detainees' right to adequate accommodation as provided for in international law and section 50(5) (d) of the Zimbabwean Constitution.

There were serious concerns regarding cell conditions and sanitation at Whawha Young Offenders Prison despite the fact that the prison had access to adequate municipal water. One cell block visited had one inside toilet and three outside ablution facilities including a urinary. The inmates used the bucket system during the day as the water came with low pressure. There were five showers in that block, they all need repair as they were not working. There were shortages of detergents as soap and other washing aides were rarely supplied by the Prison and inmates relied on what they received from relatives and well wishers.<sup>58</sup> These cell conditions violate detainees' right to conditions of detention that are consistent with human dignity and to the provision at State expense of adequate accommodation, ablution facilities and personal hygiene as provided for by section 55(5)(d) of the Constitution.

At Mutare Farm Prison, there was inadequate bathing soap in the washrooms and body lotion such that inmates had to rely on provisions brought by their relatives during visitations. Lice had become a serious problem and there was need for fumigation to fix the situation. There was erratic municipal water supply and the toilets were dilapidated indicating that there was a protracted neglect to repair them. Due to the erratic water supply, inmates had to resort to using water in buckets to flush the toilets.<sup>59</sup> These conditions violate the prisoner's right to be placed in conditions of detention that are consistent with human dignity as provided for in the Constitution. As demonstrated above, the provision that requires State to provide adequate ablution facilities and personal hygiene are integral elements of the right to be placed in conditions of detention that are consistent with human dignity. Being left to wash one's body without soap or having to wait for relatives to provide the basic necessities required for personal hygiene or being left to live in conditions that permit for an 'outbreak' of lice is hardly consistent with the right to human dignity.

54 ZACRO and the Forum, Bindura Farm Prison Monitoring Visit Report, 2-3.

55 ZACRO and the Forum, Harare Remand Prison Visit Report, 2.

56 ZACRO and the Forum, Tabudirira Satellite Prison Visit, 2.

57 ZACRO and the Forum, Mutare Farm Prison Monitoring Visit Report, 1.

58 ZACRO and the Forum, Whawha Young Offenders Monitoring Visit Report, 3-4.

59 ZACRO and the Forum, Mutare Farm Prison Visit Report, 2.

Unfortunately, prisoners in other jails experience graver challenges than having lice or bathing without soap. For instance, there was no toilet in the cells at Tabudirira Satellite Prison. There was one bucket in the cell which inmates used to relieve themselves and the bucket was now in a dilapidated State.<sup>60</sup> However, there was only one Blair toilet with 5 halls that were then almost full. There were inadequate detergents to clean the toilets. The provision of soap and other washing material largely came from the relatives of the inmates, not the State, although it could sometimes be provided by government.<sup>61</sup> There is no doubt that these cell conditions are inconsistent with every detainee's right to be treated in a dignified way and to be provided with ablution facilities that foster personal hygiene as stipulated in the Constitution. They also violate the right to an adequate standard of living as stipulated in various international human rights instruments.

### 5.3. Bedding

There were variations in the provision of bedding at different institutions. At Connemara Open Prison, each inmate had as many blankets as they needed and each had to wash their own blankets but there were no laid down intervals for washing them.<sup>62</sup> At Whawha Young Offenders prison, 'inmates slept on the floor as there were no beds and inmates were said to receive six blankets each which were rolled on the floor. The responsible officer highlighted that only 'Class A' inmates received mattresses'.<sup>63</sup> Generally, many prisons provide blankets that are arguably sufficient enough to keep each detainee or prisoner, with or without a bed, sufficiently warm even during the winter season.

However, at Mutare Farm Prison, it was reported that there were inadequate blankets, jerseys, knee high stockings and closed shoes. Bedding and blankets were mentioned as one of the areas that needed serious attention.<sup>64</sup> At Tabudirira Satellite Prison in Mutoko, there were no beds for prisoners. The inmates slept on the floor but were provided with a minimum of four blankets per inmate. Inmates also washed their own bedding at their own volition, but when they were provided with soap, washing at that particular time became mandatory.<sup>65</sup> To comply with international and domestic standards, the State must take the necessary steps to improve on the provision of adequate bedding to all inmates at all prisons. This is particularly important in light of the fact that moderate respiratory infections are caused by the bad sleeping conditions (sleeping on the floor, inadequate blankets) were reported to be an enduring challenge at some prisons.<sup>66</sup>

60 ZACRO and the Forum, Tabudirira Satellite Prison Visit Report, 2.  
 61 ZACRO and the Forum, Tabudirira Satellite Prison Monitoring Visit Report, 2.  
 62 ZACRO and the Forum, Connemara Open Prison Visit Report, 5.  
 63 ZACRO and the Forum, Whawha Prison Monitoring Visit Report, 4.  
 64 ZACRO and the Forum, Mutare Farm Prison Visit Report, 2 and 6.  
 65 ZACRO and the Forum, Tabudirira Satellite Prison Visit, 2.  
 66 ZACRO and the Forum, Bindura Farm Prison Monitoring Visit Report, 2.



## 5.4. Adequate clothing

Inmates at all correctional institutions are expected to wear uniforms. However, due to the shortage of uniforms most inmates at Harare Remand Prison and Connemara Open Prison wore their own clothes.<sup>67</sup> At Harare Remand Prison, the Officer-in-Charge pointed out that there was a shortage of uniforms and that inmates on remand were not forced to wear uniforms.<sup>68</sup> The fact that unconvicted prisoners are allowed to wear their own clothes complies with the Prisons Act, the Nelson Mandela Rules and other international standards as such prisoners have the right to do so under these instruments.

Particular mention was made on the shortage of jerseys, knee high socks and closed shoes at Mutare Farm Prison.<sup>69</sup> This falls short of the requirements of Rule 19(1) of the Nelson Mandela Rules which entitles inmates that are not permitted to wear their own clothing to be provided with clothing. The Mutare Farm Prison Report further outlines that there is a shortage of protective clothing which should be used as inmates carry out farming activities. This contravenes Rule 19(1) of the Nelson Mandela Rules which makes reference to the need for prisoners to be provided with clothing which 'is adequate to keep them in good health.'

Inadequate clothing was also reported to be an enduring challenge at Connemara Open Prison. Most inmates were in their own personal clothes. The Officer-in-Charge pointed out that there was a shortage of uniforms. Even though the open prison does not prescribe that inmates should wear uniforms, he said that it was necessary for identification purposes.<sup>70</sup> At Tabudirira Satellite Prison, it was reported that inmates were normally given one or two set(s) of uniforms depending on the availability. They were also given a second pair only when one of the uniforms was old and torn. Prisoners were also allowed to wear personal plain white clothes.<sup>71</sup> The challenge associated with one pair uniform is that when the prisoner washes it, they essentially have to remain naked unless they have their own plain white clothes.

The Mlondolozhi Prison Monitoring Visit Report indicates that inmates were given two garbs depending on the frequency of supply which was hardly predictable. Prison garbs for the female inmates were in good conditions since the State gives them preference over their male counterparts. However, only the mentally challenged inmates had received clothing in 2017 and the rest had last received their stock in 2015 which points to an undesirable situation. The shortage of clothing at many prisons is a blatant violation of prisoners' rights and undermines the dignity of the human person. As stipulated in the Mandela Rules and the Beijing Rules, every prisoner who is not allowed to wear their clothing should be provided with clothing which is not degrading or humiliating and which is adequate to keep him in good health. Given that inmates are held at the mercy of the State, the State bears an obligation to provide clothing items to inmates who do not afford to buy such items.

67 ZACRO and the Forum Harare Remand Prison Visit Report, 8.

68 ZACRO and the Forum, Harare Remand Prison Visit Report, 8.

69 ZACRO and the Forum Mutare Farm Prison Visit Report, 2.

70 ZACRO and the Forum, Connemara Open Prison Visit Report, 6.

71 ZACRO and the Forum, Tabudirira Satellite Prison Visit, 3.

## 5.5. Food provision

Some of the few prisons were able to supply adequate basic food items to inmates. Even then, it can hardly be said that these prisons fully complied with international and national standards on the provision of adequate food. At Tabudirira Satellite Prison in Mutoko, there were sufficient starches in the form of rice and maize meal. Vegetables were also in abundant supply such that the prison even supplied Mutoko main prison. There was adequate supply of tomatoes and onions as these were farmed at the prison. There was no meat protein. Cooking was done using firewood. As there were 24 inmates, there were adequate plates and cups. The shortage only arose when the prison is at full capacity.<sup>72</sup>

Whawha Young Offenders Prison had a garden and was able to supply adequate vegetables to inmates. Inmates also had beans, but rarely had meat. They also produced tomatoes and onions now and again. They emphasised that they had plenty of mealie-meal and vegetables and had managed to preserve some by drying them for use when vegetables were scarce. Inmates had gone a while without meat, but they obtained their protein from beans which was said to be enough. At the time of the visit, however, the prison had gone for a week without cooking oil and they were not sure when they would receive the next supply since the supply was irregular. Sugar was also in short supply. Whawha Young Offenders prison also had challenges for those on special diet since they could not cater for their needs due to scarcity of special meals.<sup>73</sup> Similar challenges were reported at Harare Remand Prison; Mutare Farm Prison and Mlondozhi.<sup>74</sup> At Mlondozhi, the diet did not address the needs of those on medication especially given that the prison houses mental health patients who take tablets on a daily basis. The prison administration could not remember when they last received protein products ie meat/beans.

It is evident that while the prison administration has made significant strides to ensure access to sufficient food, there are still persistent shortages of certain food items and this violates the international and domestic standards governing food provision. The food shortages amount to a violation of article 11(2) of the ICESCR which recognises everyone's right to be free from hunger and section 77(b) of the Constitution which recognises everyone's right to sufficient food. In addition, food shortages are also inconsistent with General Comment No. 12 of the CESCR which outlines that the realisation of the right to food requires all persons to have 'physical and economic access to adequate food'. There is need for considerable improvement in the provision of food items if the majority of the prisons visited are to comply with international and domestic standards on access to sufficient and nutritious food.

In an attempt to curb food shortages, many prisons permit relatives of inmates to bring food items for inmates during visits. However, supplementary food provisions only work for those who receive visitors and have supportive relatives; thereby leaving the majority of prisoners confronting hunger and malnutrition. Unfortunately, some prisoners have poor relatives who cannot afford to purchase food items or visit them regularly. The situation becomes worse with foreigners who are detained in

72 ZACRO and the Forum, Tabudirira Satellite Prison Monitoring Visit Report, 2.

73 ZACRO and the Forum, Whawha Young Offenders Prison Monitoring Visit Report, 3.

74 ZACRO and the Forum, Harare Remand Prison Monitoring Visit Report, 1 and 3; Mutare Farm Prison Monitoring Visit Report, 2.



Zimbabwean prisons. In addition, the supply of supplementary food can endanger the health of the entire prison population especially during times of disease outbreaks like the recent typhoid outbreak.

## 5.6. Access to clean and potable water

Access to safe and clean drinking water was not reported to be a problem at the prisons that were visited. The main challenge arose in the context of water for use in ablution facilities. At Connemara Open Prison, there was a block for bath rooms and toilets which had running water. The ablution system was intact with no challenges at all. This is consistent with international and domestic standards on access to water for domestic and hygienic purposes. Mlondolozhi Prison also had running borehole and municipal water. At Tabudirira Satellite Prison, the water that was available at the prison was from an electric borehole and community water source. There were no challenges relating to water for ablution facilities as the prison only had one five-holed block of blair toilets.<sup>75</sup> Similar success stories were reported at Harare Remand Prison. Generally speaking, these prisons comply with international and national standards on every prisoner's right to water for personal and communal use.

Whawha Young Offenders Prison also had access to adequate municipal water, but inmates used the bucket system to flush human waste during the day as the water came with low pressure. There were five showers in that block, but they were not working and in need of repair.<sup>76</sup> The Mutare Farm Prison Visit Report outlines that there was erratic municipal water supply, the toilets' flushing systems needed to be repaired, prisoners are to flush the toilets with buckets of water.<sup>77</sup> This is inconsistent with international and national standards because the right to clean water does not only imply the availability, but also accessibility of the water. If the water is difficult to access or use, the standards would not have been met. This means that there is a high likelihood that the requirements for a sufficient, adequate and safe amount of water for consumption, cooking, personal and domestic hygienic requirements<sup>78</sup> as provided for in ICESCR and other instruments were not adhered to.<sup>79</sup>

Despite the availability of water at Harare Remand Prison, the situation on the ground was gravely worrying at the time of the visit. The toilets had become dysfunctional for close to a year and they were full of human waste. Prisoners used the outside flushing system which was very unhealthy. Inmates were forced to endure the smell of human waste the whole night.<sup>80</sup> Apart from infringing the right of access to clean, potable and safe water, these prison conditions violate every person's right to the provision at State expense of adequate accommodation, ablution facilities and personal hygiene as provided for by section 55(5)(d) of the Constitution.

75 ZACRO and the Forum, Tabudirira Prison Monitoring Visit Report, 2.

76 ZACRO and the Forum, Harare Remand Prison Monitoring Visit Report, 3-4.

77 ZACRO and the Forum Mutare Farm Prison Visit Report, 2.

78 CESCR, General Comment No. 15.

79 See also articles 14(2) of CEDAW, 15(2) of the AWP, 28(2)(a) of the CRPD and 24(2) of the CRC.

80 ZACRO and the Forum, Harare Remand Prison Monitoring Visit Report, 4.

## 5.7. Access to health care services

In terms of the Harare Remand Prison Report and the Mutare Prison Farm Report, both prisons did not have an independent clinic and or dispensary for treatment. At the Harare Remand Prison inmates were treated from two rooms with no privacy and no furniture which are located on the veranda, whilst at the Mutare Farm Prison inmates were treated from a house with inadequate storage space and equipment that was meant to accommodate one of the prison officials.<sup>81</sup> The Whawha Young Offenders Prison also had insufficient storage space;<sup>82</sup> However, the Connemara Open Prison had two modern stand-alone clinics reserved for inmates and officers as well as for dependents of the officers and the community.<sup>83</sup> Unlike the other prisons, the clinics at Connemara had more space and facilities comprising of a store room, a consultation room and a treatment room,<sup>84</sup> and the clinic for inmates had the status of a primary health care centre.<sup>85</sup>

The conditions and facilities of the aforementioned prisons, save for Connemara, were inadequate, and cannot enable the State to fulfil its obligation to ensure the prevention, treatment and control of diseases. In addition, there were no 'conditions which would assure medical service and attention to all in the event of sickness as envisaged in articles 12(1) of the ICESCR and 16(1) of the ACHPR. Similarly the conditions and facilities that were obtaining could not guarantee the realisation of everyone's right to the enjoyment of the highest attainable standard of physical and mental health.<sup>86</sup>

Whilst inmates requiring a Doctor at the Connemara Open Prison were referred to the Gweru General Hospital,<sup>87</sup> this prison was better off than the Harare Remand Prison and the Whawha Young Offenders Prison. Patients at Harare Remand Prison were served by one (1) General Practitioner who visits the prisons once a week, a specialist medical doctor sought on a case by case basis and 11 general nurses, with 2 to 3 nurses being available at any given time.<sup>88</sup> At Whawha, a Provincial medical doctor visits the prison upon request. The clinic has three (3) nurses, no nurse aides, no physiotherapists, no Mental Health staff, no Social Workers and 4 Rehabilitation Officers respectively.<sup>89</sup> It was however worrying to note that despite the rehabilitative nature of the Whawha Young Offenders prison, it had a considerably lower numbers of health professionals that service it.

At Bindura Farm Prison, there was only one registered nurse. Primary care was provided, but to a limited extent. There were instances when the supplies were not adequate although they came monthly from Natpharm (National Pharmaceuticals) through the prison services. At the time of the visit, the prison had no status for anti- retroviral treatment and inmates were referred after they had been tested. Alternatively,

81 ZACRO and the Forum Harare Remand Prison Visit Report, 6.  
 82 ZACRO and the Forum Whawha Young Offenders Prison Visit Report, 5.  
 83 ZACRO and the Forum Connemara Open Prison Visit Report, 4.  
 84 ZACRO and the Forum Connemara Open Prison Visit Report, 4.  
 85 ZACRO and the Forum Connemara Open Prison Visit Report, 4.  
 86 ICESCR article 12(1), ACHPR Article 16(1), DEVAW Article 3(f).  
 87 ZACRO and the Forum Connemara Open Prison Visit Report, 4.  
 88 ZACRO and the Forum Harare Remand Prison Visit Report, 6.  
 89 ZACRO and the Forum Whawha Young Offenders Prison Visit Report, 4.



inmates could come with their own anti-retroviral treatment supplies. Inmates requiring secondary care were referred to other health care institutions.<sup>90</sup> The shortage of trained health care staff compromises the quality of the care that is given to prisoners and it is important for the State to provide the much needed resident health care professionals.

Whilst all the Prisons generally comply with the obligation to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick as required by international and domestic standards, the quality of service provided by doctors who make *ad hoc* visits is of a lower standard due to the limited time available than the service that could be provided by resident doctors. This violates the principle that prisoners should enjoy the same standard of health as available in the community.<sup>91</sup> It is however worth noting that the inadequacy of medical personnel generally makes it difficult for the State to fulfil its obligation to prevent and control disease outbreak as required by international and national law.

The Mutare Farm Prison and the Tabudirira Satellite Prison were the only prisons that had adequate specialised medical personnel.<sup>92</sup> More specifically, the unavailability of specialist medical personnel in the majority of prisons visited is particularly worrying. Even mental health related detention facilities (such as Molondozi Prison) experienced shortages of general and specialist medical personnel. For instance, the prison had nine (9) mental health staff against a recommended number of 25 staff; one (1) Psychiatrist against a recommended number of two (2); one (1) Rehabilitation officer against a recommended number of two (2); one (1) Physiotherapist against a recommended number of two (2); and had no Psychologist against a recommended number of one (1).<sup>93</sup> These figures fell short of the obligation to ensure that particular attention is given to prisoners with special health care needs or issues that prevent their rehabilitation.<sup>94</sup> It further fell short of the rule that prison staff should include a sufficient number of specialists such as psychiatrists, psychologists and social workers.<sup>95</sup>

Medication was scarce, save for ARV's which were always available at the Harare Remand Prison, the Mutare Farm Prison and the Whawha Young Offenders Prison; however there were no medical sundries and there was no refrigeration to store medication which requires refrigeration.<sup>96</sup> The Mutare Farm Prison always had Tuberculosis medication and regular analgesia; however medication for chronic Hypertension, Asthma and Diabetes Melitas were not available.<sup>97</sup> Inmates therefore had to rely on their relatives to supply them with medication during prison visits.<sup>98</sup> The Tabudirira Satellite Prison only had regular analgesic medication in stock;<sup>99</sup> the reason being that inmates were examined by nurses on

90 ZACRO and the Forum, Bindura Farm Prison Monitoring Visit Report, 2-3.

91 Nelson Mandela Rules, Rule 24(1).

92 ZACRO and the Forum Mutare Farm Prison Visit Report, 2 and Tabudirira Satellite Prison Visit Report, 2

93 ZACRO and the Forum, Mlondozi Prison Monitoring Visit Report, 5.

94 Nelson Mandela Rules, Rule 25.

95 Nelson Mandela Rules, Rule 78(1).

96 ZACRO and the Forum Harare Remand Prison Visit Report, 6; Mutare Farm Prison Visit Report, 3; Whawha Young Offenders Prison Visit Report, 4.

97 ZACRO and the Forum Mutare Farm Prison Visit Report, 3.

98 ZACRO and the Forum Mutare Farm Prison Visit Report, 3.

99 ZACRO and the Forum Tabudirira Satellite Prison Visit Report, 2.

a weekly basis, and inmates with terminal illnesses were not transferred to the satellite prison as it is focused on agricultural activities.<sup>100</sup> Nurse aides monitor the administration of treatment on inmates to screen for the development of common illnesses, and inmates that develop serious conditions are transferred back to the main prison.<sup>101</sup> The Whawha Young Offenders Prison always had medication for Tuberculosis, Hepatitis, Pellagra and Communicable Diseases, however no medication was available for common cancers.<sup>102</sup> Despite dealing primarily with mental patients, Mlondolzi Prison experienced chronic shortages of mental health drugs and this poses a high risk to both the inmates and care givers. There were real dangers of relapsing. When mental health patients do not receive their drugs on time they become very violent.<sup>103</sup>

The scarcity of medication at most of the prisons constitutes a barrier to the realisation of the highest attainable standard of physical and mental health for prisoners as provided for in the ICESCR, the ACHPR and the DEVAW.<sup>104</sup> This means that the State is unable to realise its obligation to ensure that prisoners receive medical attention and treatment when they are sick in terms of Article 16(2) of the ICESCR and section 50(5)(d) of the Constitution.<sup>105</sup> It is, however, commendable to note that medication for HIV/AIDS was available at all the prisons, save for Whawha Young Offenders Prison. This largely complies with the provisions of section 76(2) of the Constitution which gives every person living with a chronic illness the right to have access to basic healthcare services for the illnesses. Cancer is also classified as a chronic illness, therefore medication for cancers should be available to all prisoners as stipulated by section 76(2) of the Constitution.

One compelling issue relates to support services for patients. The Health Officer at Bindura Farm Prison highlighted that there should be health education every morning, but it was usually done on the weekends. The health education was usually on Tuberculosis and HIV/AIDS but specific health issues affecting the prisoners were also addressed. Voluntary testing and Provider Initiative Testing were also done.<sup>106</sup> At Mutare Farm Prison, health Information Education and Communication (IEC) material were available to prisoners upon request and where the need arises.<sup>107</sup> Health support groups and health education sessions were conducted daily at the Mutare Farm Prison and regularly at the Tabudirira Satellite Prison to address prisoners individually or collectively.<sup>108</sup> At Whawha Young Offenders Prison, the available support groups were only for HIV/AIDS, whilst at Tabudirira, there were no IEC materials on health at the time of the visit.<sup>109</sup> The report at Tabudirira Prison indicates that upon the release or transfer of prisoners, counselling and comprehensive referral assessments are conducted, an exit medication package was provided and communication with the relevant community health facility were

100 ZACRO and the Forum Tabudirira Satellite Prison Visit Report, 2.

101 ZACRO and the Forum Tabudirira Satellite Prison Visit Report, 2.

102 ZACRO and the Forum Whawha Young Offenders Prison Visit Report, 4.

103 ZACRO and the Forum, Mlondolzi Prison Monitoring Visit Report, 6.

104 ICESCR article 12(1), ACHPR Article 16(1), DEVAW Article 3(f).

105 ICESCR Article 16(2)

106 ZACRO and the Forum, Bindura Farm Prison Monitoring Visit Report, 2-3.

107 ZACRO and the Forum Mutare Farm Prison Visit Report, 3.

108 ZACRO and the Forum Mutare Farm Prison Visit Report, 3; ZACRO and NGO Forum Tabudirira Satellite Prison Visit Report, 3.

109 ZACRO and the Forum Tabudirira Satellite Prison Visit Report, 3.



also conducted.<sup>110</sup> It is commendable that most of the prisons comply with the ICESCR's obligation to prevent and control diseases through the provision of health education sessions and support groups.

There were also concerns arising from the failure by the State to provide protective clothing to staff. Protective clothes were not enough at Mlondolozhi Prison, thereby causing a health hazard to care givers and staff members.<sup>111</sup> However, Tabudirira Satellite Prison provides protective clothing and Post Exposure Prophylaxis (PEP) for the medical personnel.<sup>112</sup>

## 5.8. Access to education and opportunities for vocational training

At Harare Remand Prison, there were 23 juveniles, the youngest being 11 years old. One of them had been in the prison for almost three years. There were reading materials as well as a television. Notwithstanding the fact that all the juveniles were of the school going ages, there were no adequate learning programmes and facilities.<sup>113</sup> As noted above, the education of illiterate and young prisoners is compulsory and special attention should be paid to it by the State. The absence of educational programmes and learning facilities violates detainees' and prisoners' right to basic education as provided for by international instruments and section 75(1) of the Constitution. It prevents intellectual development and, in the case of sentenced prisoners, makes full re-integration into the community upon release impossible.

At Whawha Young Offenders Prison, the Officer in Charge indicated that education of young offenders, though it is part of rehabilitation, was not taken seriously as evidenced by what was obtaining on the ground. There were very few teachers as compared with the number of inmates and resources were very scarce. The prison relied on donors when it came to rehabilitation. As for vocational training, there was a dysfunctional workshop due to lack of resources.<sup>114</sup> The Education Department had five teachers, four qualified and one on attachment, against a total student population of well over 300 students. There were 128 juveniles of primary school going age; 215 of secondary school going age; 10 pursuing Advanced Level studies and three waiting to go to University.

Whawha Young Offenders Prison employs composite classes and they follow the government curriculum.

110 ZACRO and the Forum Tabudirira Satellite Prison Visit Report, 3.  
111 ZACRO and the Forum, Mlondolozhi Prison Monitoring Visit Report, 5.  
112 ZACRO and the Forum Tabudirira Satellite Prison Visit Report, 3.  
113 ZACRO and the Forum, Harare Remand Prison Monitoring Visit Report, 5.  
114 ZACRO and the Forum, Whawha Young Offenders Prison Monitoring Visit Report, 2

Sino Zimbabwe (a private company) managed to build two classroom blocks but the other classes had been converted from cells. The prison largely relied on well-wishers for donations for stationery, textbooks and exam fees. Furniture and charts were not enough for everyone. There were no computers for research and the student teacher ratio was very high.<sup>115</sup> With regards to stationery, textbooks, reading materials and well-equipped libraries, it was clear that the situation currently prevailing in Zimbabwean prisons is inconsistent with international standards of both a 'soft law' and 'hard law' variety. Given that prisoners and detainees are at the mercy of the State and live in conditions which do not allow them to fend for themselves, the duty of the State to ensure adequate access to educational programmes and learning facilities becomes more compelling. Accordingly, the government should take all appropriate measures to ensure access to education by all children of compulsory school going age and to encourage all prisoners to take part in educational and vocational training programmes.

There were numerous opportunities for vocational training of inmates at Connemara Open Prison. There was a workshop that houses a number of departments which include tailoring, carpentry, shoe-making, welding/fabrication and gardening. The tailoring department was responsible for making uniforms for both officers and inmates for the whole of Midlands ZPCS province. They had commercialised their work with both inmates and students from tertiary institutions being attached to the workshop. Due to the shortage of inmates, the Officers often relied on their skilled members and students on attachment from tertiary institutions to support their various departments. At the time of the visit, they had ten sewing working machines which they said were not enough. There was only one boiler iron and there was no library for tailors.<sup>116</sup> The shortage of inmates who could take part in some vocational training activities at Connemara tends to suggest that there is need to review the criteria for determining whether a prisoner qualifies to be sent to the open prison.

When ZACRO and the Forum visited Connemara Open Prison, the carpentry department was described as a white elephant. There were no Officers manning the workshop and there were no equipment and materials to use. The department relied on hand tools and this was not tenable for a workshop of that magnitude and importance. There was great scope for turning the workshop into an economic hub if resources were channelled to the department.<sup>117</sup> The shoemaking workshop was manned by two old inmates including one disabled inmate who did not have any formal training in shoe making. All the skills they had were acquired from the prison. They were simply repairing shoes of officers and of their fellow inmates. There were no skilled officer, nor materials and machinery to use. Like the carpentry department, the shoe-making department was being put to waste even though it had a lot of potential. Similar challenges were also reported in the welding or fabrication department.<sup>118</sup>

The idea of workshops was very noble for the rehabilitation of inmates which is now fundamental in the new constitutional dispensation when it comes to inmates. Inmates could be equipped with necessary

115 ZACRO and the Forum, Whahwa Young Offenders Prison Monitoring Visit Report, 3.

116 ZACRO and the Forum, Connemara Prison Monitoring Visit Report, 3.

117 ZACRO and the Forum, Connemara Prison Monitoring Visit Report, 3.

118 ZACRO and the Forum, Connemara Prison Monitoring Visit Report, 3.



skills needed when they are released from prison. However, the workshops were ill-equipped or underutilised. This is a patent violation of international and domestic standards on access to education, vocational training and work. On the other hand, even when officers had the equipment and materials to use, there often had inadequate inmates to be working everywhere let alone in the workshops. Some inmates were so old and frail that they could not be deployed in any area that required physical strength.<sup>119</sup>

## 5.9. Juveniles deprived of their liberty

### 5.9.1 Separation of adults and young offenders in Zimbabwean prisons.

Whawha Young Offenders is a juvenile prison that houses young male inmates under the ages of 21 years. It is located some 20 km outside of Gweru along the Gweru-Mvuma Highway. It was put in place as a measure to rehabilitate young persons in conflict with the law. The prison offers a respite to young people where they are taught good behaviour as well as being allowed to attend school. The establishment of Whawha Young Offenders as a separate custodial institution for young offenders ensures that juveniles deprived of liberty are not placed in adult prisons or other facilities that house adults. This positive step should be commended and complies with the international standards described above. Whawha Young Offenders makes it possible for the State to guarantee juveniles' basic safety, well-being, and future ability to remain free from crime and to reintegrate into communities upon release. To this end, the government has largely complied with its international and domestic legal obligation to ensure that young offenders are kept separately from detained persons over the age of 18 years.

However, the fact that the prison houses young offenders under the age of 21 years makes it theoretically possible for adult prisoners between 18 years and 20 years to interact with young offenders in their early teenage years. This may compromise the safety and future ability of young prisoners to be free from crime and to re-integrate. Similarly, at Harare Remand Prison, an adult accused person who had been fatally shot during an armed robbery was housed in the Juvenile Section of the prison.<sup>120</sup> Although the accused is disabled and is unable to wake up or walk unassisted, his presence in the juvenile section violates juvenile detainees' right to be kept separately from detained persons over the age of 18 years as provided for by the Constitution and international law.

### 5.9.2 Juvenile offenders' right to be treated in a manner and kept in conditions that take account of the child's age

As shown above, the establishment of a separate institutions or sections for youth offenders is not of itself sufficient to comply with all requirements of the law. These institutions should be child-friendly and staffed by well-trained and child friendly officials. This is because every child offender has a justiciable

119 ZACRO and the Forum, Connemara Prison Monitoring Visit Report, 6-7.

120 ZACRO and the Forum, Harare Remand Prison Monitoring Visit Report, 6.

right to be treated in a manner, and kept in conditions, that take account of the child's age. Unfortunately, anecdotal evidence demonstrated that notwithstanding the unique nature of Whawha Young Offenders Prison, the institution operated like any other prison, with no special safeguards for the young inmates. In essence, there was no difference between Whawha Young Offenders Prison and other custodial institutions except that it housed young offenders.<sup>121</sup>

Since its inception, Whahwa has been operating without a policy for young offenders. The Officer-In-Charge had wide discretion and would often adopt 'policies' that she considered effective for the young offenders. In addition, the administration was confronted a number of challenges with regards to rehabilitation, chief among them was the shortage of the requisite number of officers specialising in rehabilitation of young offenders – ie social workers, psychologists, counsellors and so on.<sup>122</sup> Worse still, the education and training of young offenders, which could play an important role in the rehabilitation of young offenders, are not taken seriously at the young offenders' prison.

In their interview with the Juvenile Section Officer at Harare Remand Prison, ZACRO and the Forum established that although the cells were generally clean and not congested, there were no toiletries and cleaning detergents. As for access to education, reports indicated that there were no educational programmes and learning facilities for juveniles at the remand prison despite the fact that some children were being detained for years without attending court.<sup>123</sup> Considered holistically, these conditions cannot be said to be consistent with the child's age and it was clear that the State had mainly achieved mere separation between youth offenders and adult offenders. Yet, the conditions of detention should promote rehabilitation to ensure that the child is prepared for eventual re-integration into the community.

121 ZACRO and the Forum, Whahwa Prison Monitoring Visit Report, 2.

122 ZACRO and the Forum, Whahwa Prison Monitoring Visit Report, 2.

123 ZACRO and the Forum, Harare Remand Prison Monitoring Visit Report, 1 and 5.



## 6. SPECIFIC FINDINGS AND RECOMMENDATIONS

This section summarises the main research findings outlined in the report and provides recommendations for reform in selected priority areas of the rights of detainees.

### 6.1. Specific Findings

The discussion in this report was largely thematic and the specific themes/rights discussed related to pre-trial detention; prisoners' dignity, cell conditions and sanitation; bedding; adequate clothing; access to sufficient food and clean water; access to health care services; issues pertaining to education, vocational training and work; and the rights of juveniles deprived of their liberty. With regards to pre-trial detention, there are adequate domestic and international safeguards with regards to being tried within a reasonable period of time. Despite the fact that there are local cases that have stipulated that detention without trial for a period of five years is unreasonable and violates the rights of persons deprived of their liberty, some prisoners have been detained without trial for more than 10 years. To make matters worse, the reasons for not being tried constituted administrative challenges for which the prisoner or detainee could not be faulted.

Persons deprived of their liberty are entitled to the right to dignity and cell conditions and sanitation must be consistent with this right. There was overcrowding in some prisons and the risks of disease outbreak and spread were very high. There were shortages of detergents, soap, body lotion, and other washing aides were rarely adequately supplied and inmates relied on what they received from relatives and well wishers. At many prisons, the inmates used buckets to flush human waste either because of water shortages or because the flushing system for the toilets had not been repaired. At Mutare Farm Prison, lice were reported to have become a serious problem and there was need for fumigation to fix the situation. There was no toilet in cells at Tabudirira Satellite Prison in Mutoko. There was one bucket that was put in the cell which inmates used to relieve themselves and the bucket was now in a dilapidated State. These conditions violate the prisoner's right to be placed in conditions of detention that are consistent with human dignity as provided for in international instruments and section 50(5)(d) of the Constitution.

While none of the international human rights instruments explicitly provides for prisoners' rights to bedding, this right is implied in the right to an adequate standard of living. At the domestic level, the Prisons Act explicitly refers to every prisoner's entitlement to adequate bedding. Many prisons provide blankets that are arguably sufficient enough to keep each detainee or prisoner, with or without a bed, sufficiently warm even during the winter season. As far as clothing is concerned, the same provisions that ground the right to bedding also ground the right to adequate clothing. In as far as practice is concerned, it is worth noting that unconvicted prisoners were allowed to wear their own clothes as required by international and national law. Nonetheless, there were shortages of clothing at many

prisons and detainees were often made to do with one uniform which was only replaced when it became seriously torn. This could be problematic when the prisoner wishes to wash their uniform.

The rights to adequate food and clean water are recognised by several international human rights instruments and the Constitution as part of the class of rights that are extended to 'everyone' and as a specific right to be enjoyed by detainees. Some of the few prisons were able to supply *basic* food items to inmates, but it can hardly be said that these prisons fully complied with international and national standards on the provision of adequate food. The shortage of food, particularly protein, cooking oil and meals for those on special diet, was reported to be a persistent problem in many of the prisons that were visited. At Mlondolozi Prison, food shortages also seriously affected mental health patients who needed to be consistently taking medication. Access to safe and clean drinking water was not reported to be a problem at the prisons that were visited. The main challenge arose in the context of water for use in ablution facilities and, even then, the problem was not really water shortage. Rather, the problem arose because the flushing systems for toilets were not working and prisoners had to use buckets to flush human waste.

Persons deprived of their liberty are entitled to the right of access to health care services as protected in the Constitution and international law. There is need for improvement in the provision of health care services for treatment at almost all prisons. At many of the prisons visited, inmates are treated from rooms with no privacy or from buildings with inadequate storage space for medication. Virtually all prisons visited had a shortage of ordinary clinical staff, let alone specialist staff such as psychologists, social workers, specialist doctors and the like. Another trend that emerged from the reports was that the majority of staff servicing prison clinics were non-residents (they lived in some other place) and they were servicing more than one hospital or clinic. These conditions violate the right to access to health care services as provided for in national and international instruments.

With regards to education, vocational training and work, it is worth noting that prisoners do not forfeit their right to education by virtue of their committal to custodial institutions. Notwithstanding the fact that all the 23 juveniles detained at Harare Remand Prison were of the school going ages, there were no learning programme or facilities. The absence of educational programmes and learning facilities violates detainees' and prisoners' right to education. It prevents intellectual development and in the case of sentenced prisoners, makes full integration upon release impossible. As far as vocational training is concerned, the idea of workshops implemented at Connemara Prison is very noble as it equips inmates with the skills needed when they are released from prison.

This report also discussed specific guarantees conferred only upon juveniles in detention. These guarantees are the right to be kept separately from detained persons over the age of majority and the right to be kept in conditions, and treated in a manner that takes into account the child's age. With regard to separation of young from adult offenders, it is encouraging that our prisons comply with the standards laid down in the Constitution and international law. Even where young offenders are placed at the same



custodial institution as adult offenders, the former are placed in their own section.

With regards to the young offender's right to be treated in a manner and kept in conditions that are consistent with their age, anecdotal evidence suggests that the State has failed to comply with this standard. The reports demonstrated that notwithstanding the unique nature of Whawha Young Offenders Prison, the institution operated like any other prison, with no special safeguards for the young inmates. To comply with international and national standards, the State should ensure that young offenders are not just separated from adult offenders, but are also treated in a manner that takes account of the age.

## 6.2. Recommendations

The Forum notes that most of the recommendations are related to the need to fund the country's prisons through Treasury in order to improve cell conditions and guarantee prisoners' welfare. In addition to the recommendations already made in the course of this report, the Forum hereby makes the following specific recommendations for action:

- (a) Prison officials should be offered human rights training to ensure that they are familiar with the rights of prisoners.
- (b) There is need for the State to ensure that it constructs more open prisons that are modelled around the ones that exist now to ensure that conditions of detention are consistent with human dignity. In addition, the State should ensure that it revises the existing criteria for sending prisoners to open prisons to ensure that such prison are filled to capacity and to avoid underutilising prison facilities when there is congestions in other prisons.
- (c) It is also necessary to amend the Prisons Act and the regulations to ensure that they are compliant with the demands of both the Constitution and international law. When amending the Prisons Act, Parliament should borrow from international standards governing prisons and conditions of detention.
- (d) Zimbabwean prisons and the courts should ensure that detainees enjoy their right to a fair, speedy and public hearing as provided for by the Constitution. The State should release pre-trial detainees from remand prison on such conditions as would ensure that they are brought to justice as soon as witnesses surface unless the accused person is a flight risk or is likely to interfere with State witnesses or to be endangered by their own release.
- (e) The State should commit more resources to all prisons to fully address or at least limit violations of the rights of detainees as contained in the Constitution and international law. To this end, it is necessary for the State to ensure that all prisons have the same standards of living and detainees

enjoy the same bundle of rights throughout the country.

- (f) The State should drill boreholes at all prisons to manage the water crisis in prisons, particularly in light of the fact that prisons that have boreholes in their premises rarely experience water supply problems.
- (g) When it comes to bedding and adequate clothing, it is recommended that the prison administration address chronic shortages of relevant items as soon as possible. The State should respect principles of equality and non-discrimination to ensure similar treatment of all prisoners and detainees at all correctional facilities. At a more practical level, the State should commit more resources towards purchasing prison garb to ensure that detainees enjoy the right to be treated in conditions that are consistent with human dignity.
- (h) It is recommended that the State provide adequate food items to all prisons. In its distributive policies, the State should prioritise prisons that house mental patients and other vulnerable groups such as persons with disabilities, women and young offenders.
- (i) To ensure compliance with every person's right to conditions of detention that are consistent with human dignity and to the provision at State expense of adequate accommodation, ablution facilities and personal hygiene as provided in the Constitution and international law, the State should provide access to adequate water for ablution purposes.
- (j) In the context of detainees' access to education and vocational training, the State should develop educational programmes and learning facilities for all persons deprived of their liberty as a means to make their re-integration into communities upon release possible. Further, the State should address the shortage of qualified staff and learning materials at many of the prisons and detention facilities. In addition, composite classes involving pupils of different grades or forms should, as a rule, be avoided to limit the confusion of detainees in lower grades or forms.
- (k) With regards to vocational training, it is recommended that the system of workshops continue to be utilised in the way it has been utilised in the past however they should be equipped and properly resourced. The State, particularly the prisons department, should also facilitate for trade testing on those who would have successfully completed the training in various fields. The officers in every department should be highly qualified to ensure that inmates get appropriate training while serving time in prison.
- (l) As far as access to health care services is concerned, it is recommended that detainees be



treated in rooms that afford them privacy; that the State provide adequate resident medical staff who can respond to emergencies timeously; that the State supply at every health care institution serving detainees adequate medication for all diseases; that the State always provides protective clothing to health care staff, and that the State prioritise clinics providing treatment to vulnerable detainees such as mental health patients, persons with disabilities and child offenders.

(m) With regards to custodial institutions housing young offenders, it is imperative for these institutions to formulate and implement child-friendly policies; employ staff that are trained in juvenile justice, social work and other relevant disciplines; and respect every young offender's right to be treated in a manner that takes cognisance of their age. To ensure compliance with national and international standards, the State should also ensure that young offenders are not just separated from adult offenders, but also receive treatment that takes account of their age.

**Zimbabwe Human Rights NGO Forum**

Suite 4

No.1 Raleigh Street,

P.O. Box 9077

Harare

Zimbabwe

Telephone: +263 4 772860, 770170, 770177

Email: [admin@hrforum.co.zw](mailto:admin@hrforum.co.zw)

[www.hrforumzim.org](http://www.hrforumzim.org)