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Policy Brief 3

The Rights of marginalized groups in Prisons.

Executive Summary

Research and Advocacy Unit (RAU) conducted a baseline study on key issues affecting people in contact and conflict with the justice system and it also paid particular attention at specific marginalized groups to assess how they are interact with the justice system and the challenges they face. The provisional findings relating to the challenges faced by the marginalized groups are highlighted in this policy brief. Commonly, it is acceptable practice that regardless of whether a person belongs to a marginalized group or not, they are entitled to their dignity and to be treated in a humane manner, but this is not usually the case when one is in contact with the justice delivery system. Hence, there is need for the improvement of the treatment of inmates who are incarcerated. Central to this policy brief are issues affecting women, juveniles, foreign nationals, and people with disabilities who are in the prison system in Zimbabwe.

Problem description

The plight of prisoners is generally overlooked by society as there is a lack of knowledge and understanding of prisoners' rights and needs. The fact that a person is in prison does not mean loss of basic rights as a human being. The Zimbabwe Prisons and Correctional Services system does not adequately cater for the needs and fundamental rights of members of marginalised groups who are incarcerated for having broken the law. The Research and Advocacy Unit provisional study notes that groups such as women, foreign nationals, people with disabilities and foreign nationals fare much worse when they are in contact and in conflict with the justice delivery system and little is done to accommodate their respective needs. In addition to the insufficient resources to make the necessary changes there is a lack of understanding of the needs and challenges of these marginalized groups which are not in line with international human

rights principles. Below is a summary of RAU's findings on the treatment marginalised prisoners.

Women

Zimbabwe only has three female prisons namely: Chikurubi, Mlondolozi and Shurugwi. All the other prisons have a section that has been set aside for women and the conditions are not favourable and suitable to female inmates. According to the RAU provisional findings:

The ZPCS has converted sections of the male prison to accommodate women. The infrastructure was not meant for women and is not gender sensitive. There are bathrooms inside the prisons which are not flushable and this compromises their privacy particularly during their menstrual cycles. There is a provision in the rules that correctional officers of the opposite sex should always be in the company of the same sex as the inmate for the protection of both the inmates and the correctional officers. The challenges for women in prison include poor diet, inadequate provision of sanitary wear and underwear and unhygienic ablution facilities. Another challenge is that there is a lack of sexual and reproductive rights education, particularly for the juvenile females in prison, some of who do not even know how to handle their menstrual cycles. Other challenges include non- communicable diseases like cervical and breasts cancers and the fast spread of diseases like colds.

The above observation by RAU highlights the failure by the State to provide for women inmates. This is in violation of the right to the protection of the dignity of the female inmates which is guaranteed for them in section 51 as well as in section 50 (5) (d) of the Constitution¹, as explained above. Furthermore this is a violation of the “right to have access to basic health-care

¹ [Constitution of Zimbabwe Amendment \(No. 20\) Act, 2013](#)

services, including reproductive health-care services” which is guaranteed in section 76 (1)² of the Constitution. Unlike their male counterparts, women have special needs which include: accommodation which is consistent with their physiological and biological needs. Women in prison also need proper health services, an adequate and balanced diet especially for pregnant women and lactating mothers. If these needs are met then the State would have acted on its obligation to respect, protect and fulfil the rights of its citizens.

Juveniles

In Zimbabwe children below the age 18 who are in conflict with the justice system or incarcerated are referred to juveniles. Such categorization ensures that they are not treated as adults, rehabilitation takes place and there is no form of imprisonment to mitigate recidivism. For rehabilitation to happen there is need for the justice system and infrastructure to be child friendly. In 2016 the ZPCS rolled out the pre-trial diversion program which aims to strengthen rehabilitation and reduce re-offense, it has been operational however, it needs to be reinforced for effective rehabilitation.

With respect to children or juvenile offenders, RAU notes that:

“Zimbabwe only has one prison that caters for juvenile offenders-WhaWha prison in Gweru-which caters for male offenders only.....WhaWha is not able to take in all juveniles meaning that others have to be accommodated with adult inmates. When juvenile offenders are mixed with adults, they tend to imitate the behaviour of the adults. Adults easily influence the juveniles, as they are young and impressionable and the influence is usually detrimental as they often fall prey to abuse by these adults. As with other groups, children in the system complain about the poor diet, the overcrowding and unhygienic

² [Constitution of Zimbabwe Amendment \(No. 20\) Act, 2013](#)

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conditions, including the toilets, clothes and bedding. Their challenges include abuse by adult inmates, including verbal, physical and sexual abuse.”

The above is evidence of violations of the rights of children guaranteed in Section 81 of the Constitution. Section 81 (1) (d)³, states that:

“Every child has a right to family or parental care or to appropriate care when removed from the family environment”.

In addition, Section 81 (1) (e)⁴ also stipulates that:

“Every child has a right to be protected from economic and sexual exploitation, from child labour, and from malnutrition, neglect or any form of abuse”.

The State must therefore ensure that if juvenile inmates are to be detained this should be done in appropriate conditions which protects and promotes their human rights. On the other hand, WhaWha only houses male offenders, hence, there are no prisons for female juveniles therefore, they housed together with adult female offenders. This exposes them to abuse and retarded development. Similarly to adult female inmates, female juvenile also lack sexual reproductive health services namely sanitary wear and undergarments and this poses a threat to their health. It is imperative to note that the SMR⁵ clearly states that:

“Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women’s health care and have regular access to gynaecologists, similar to adult female prisoners.”

³ [Constitution of Zimbabwe Amendment \(No. 20\) Act, 2013](#)

⁴ [Constitution of Zimbabwe Amendment \(No. 20\) Act, 2013](#)

⁵ UN General Assembly, *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, available at: <https://www.refworld.org/docid/5698a3a44.html>

Therefore, there is need for the ZPCS to ensure that female juveniles get adequate sexual reproductive health service and adequate sanitary wear and other services which enhance their welfare.

People with disabilities

The findings from RAU’s research reveal that disability in all its forms is encompassed in this section, i.e. physical (including visual and aural) and mental illness. People with disabilities face discrimination directly or indirectly throughout their lives, despite legislation prohibiting such discrimination. The discrimination that persons with disabilities face in society is intensified in prison. With respect to persons with disabilities, RAU notes as follows:

“The difficulties people with disabilities face in prisons are much greater, given the nature of the closed and restricted environment, and violence resulting from overcrowding and poor hygienic facilities. For example, there are no toilets for people with disabilities and lack of proper care from correctional officers. Prison overcrowding accelerates the disabling process, with the neglect, psychological stress and lack of adequate medical care, characteristic of overcrowded prisons.”

In addition to the duty to protect the dignity of persons with disabilities, Section 83 (c)⁶ and (d) of the Constitution compels the state to undertake reasonable measures, subject to resources available, to protect persons with disabilities from all forms of exploitation and abuse as well as to give them access to medical, psychological and functional treatment. The above description of the plight of prison inmates with disabilities reveals violation of the right to dignity as well as the right to be protected from abuse. There is need to strengthen the use of existing legal

⁶ [Constitution of Zimbabwe Amendment \(No. 20\) Act, 2013](#)

mechanisms for the well-being and release of inmates with mental illnesses. Inmates with mental disabilities are ill-equipped to survive in the environment of prisons, and their condition most often deteriorates in the absence of adequate health care and appropriate psychosocial support. The increase of people with mental health care needs in prisons because of the widespread misconception that all people with mental disorders are a danger to the public. There is also general intolerance of many societies to difficult or disturbing behaviour; the failure to promote treatment, care and rehabilitation, and, above all, the lack of, or poor access to, mental health services.

More so, responsibility of the health of inmates should be shifted from the justice system to the health system so that it maintains service delivery in prisons. In Zimbabwe only two prisons have dedicated units for the care of inmates with mental illnesses however, they are underfunded and lack effective mental health care facilities and personnel. Currently, ZPCS is not well equipped to deal with people with disabilities. It needs to be capacitated so that it can accommodate people with disabilities. There is need for prison officers to be trained and the infrastructure has to be modified to ensure that the different forms of disability are catered for. Therefore, it is essential for the government to adequately fund the ZPCS.

Foreign Nationals

When it comes to foreign nationals, the government of Zimbabwe has international and domestic legal obligation to ensure that the needs of foreign nationals are catered for and their rights are respected and protected. Foreign nationals are a vulnerable group and have special needs whether as convicted prisoners or as detained persons waiting for trial. The provisional study produced by RAU notes as follows:

“In Zimbabwe prisons most of the foreigners are in there for immigration-related offences and are often frequently targeted by the police as a result. Their embassies do not take much notice of them because they are

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undocumented. They spend anything from 3 months to 2 years in remand awaiting deportation. Currently Zimbabwe prisons hold 345 foreign nationals. There are often no policies dealing with foreign nationals who have language, cultural and religious barriers. This is another area that requires further research.”

Further, foreign nationals also other difficulties in prisons which include language barriers, distance from their families, a foreign legal system, lack of access to education, slow process deportation, social and cultural isolation. Prison officials are not trained to handle foreign nationals and do not usually recognize the difficulties foreign nationals face in prison. This leaves incarcerated foreign nationals feeling discriminated against and having little room to exercise their rights.

Recommendations

The following are therefore recommended:

Women

- The need for access to portable water and sanitation for hygiene purposes, and inclusion of cleaning detergents and fumigation of cells under the right to health.
- There should be modification of prisons to ensure privacy for female inmates.
- Extension of open prison facilities to female inmates particularly for pregnant and lactating mothers.
- Provision of specialist services like gynecologists to cater for sexual and reproductive rights of women, pediatricians for the children for children accompanying their mothers to prison, as well as palliative care.
- There is need for a gender responsive budgeting mechanism to be put in place.

Juveniles

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- Specialized training in juvenile justice, child rights, communicating with children and reporting on the children's views, desires and best interests.
- Strengthening of the pre-trial diversion to ensure that juveniles are not incarcerated but are rehabilitated into the society effectively.

People with disabilities

- The State should focus on improving the lives of prison inmates with disabilities by making the prisons accessible, i.e. ramps and the provision of sign language interpreters and Braille material.
- A special mental health board as stated by the Mental Health Care Act of 2002 should be set up in institutions where mental patients are detained so that it monitors the treatment and care of mental illness patients. This board should focus mainly on inmates with mental illnesses across the country.
- There is need for the recruitment of Mental Health staff such as psychologists and psychiatrists who care for inmates with mental illness.
- Human rights organizations working with prisoners with disabilities must advocate for the development of policies and strategies to reduce the imprisonment of offenders with disabilities, while ensuring that the human rights of those in prison are protected and their special needs are addressed.

Foreign nationals

- The Department of Immigration needs to put measures in place to ensure the swift deportation of foreign national who violate immigration laws to avoid their unnecessary incarceration that in some cases stretch on for years.
- Government should avail translation services to foreign nationals to enable them to understand court documents, communicate with lawyers and follow court proceedings.