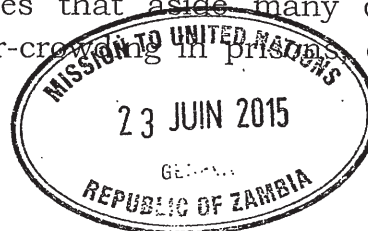


**RE: ANALYTICAL REPORT ON THE IMPLICATION OF OVER-
INCARCERATION AND OVERCROWDING FOR THE HUMAN
RIGHTS OF PERSONS DEPRIVED OF THEIR LIBERTY
(RESOLUTION 24/12 OF THE HUMAN RIGHTS COUNCIL)**

The Government of the Republic of Zambia appreciates the challenges posed by over-incarceration and overcrowding in prisons and the effects that both have on human rights. Incarceration deprives one of basic fundamental rights such as the right to liberty, the right to vote, separation from family, loss of employment and difficulties in finding new employment after incarceration. Overcrowding in prisons may further lead to inhuman and degrading conditions in prisons, leading to a further violation of human rights. However, while recognising the importance of the right to liberty and other human rights and fundamental freedoms that are curtailed by incarceration, a society without laws on dos and don'ts is a recipe for anarchy and a basis for human rights violations. Therefore, laws must exist to protect a society and sanctions must be imposed on those who break the law to ensure the survival of society.

The Government of Zambia further recognises that aside many other implications of over-incarceration such as over-crowding in prisons over-



incarceration leads to more government expenditure on prisons, money that could have been spent on education and health programmes to improve communities. Over-incarceration also means more costs for families of incarcerated offenders. However, Zambia does not rank highly on over-incarceration. As at 2014, the prison population rate (per 100,000 of national population) stood at 117 based on an estimated national population of 14.55 million, representing approximately 0.117% of the population. The total number of prisoners in Zambia (including pre-trial detainees/remand prisoners) stood at 17, 038 as at 2014. This is over the official capacity of prisons in the country and has led to overcrowding in certain prisons.

However, the Government realised this challenge and embarked on the rehabilitation and construction of prisons and other detention centres around the country aimed at improving the living conditions of prisoners and other detainees. The Zambia Prisons Service has been decongesting highly congested Prisons such as the Lusaka and Kabwe Prisons by transferring inmates mainly from Lusaka Central Prison and Mukobeko Maximum Prison in Kabwe to Kamfinsa State Prison in Kitwe, which has been renovated and the holding capacity expanded.

The Government has also renovated and upgraded Livingstone Central Prison to a grade "B" Maximum Prison. This move has helped to decongest Mukobeko Maximum Security Prison, which, until recently, was the only Maximum Prison in the Country made to house long term Prisoners. However, the Government has completed the construction of a Modern Maximum Security Prison at Mwembeshi, approximately 10 kilometres from Lusaka, at a cost of over 1 Million United States Dollars. This has helped in decongesting Prisons in the country. Furthermore, the Government has embarked on the process of constructing new prisons in all the 10 provinces. So far, new prisons have been constructed in Western, Northern and Eastern provinces. Apart from the construction and renovations of prisons, Presidential Pardons have had a positive effect on reducing overcrowding in prisons. Between 2010 and 2014, a total of 6,990 inmates have received presidential pardons. This resulted in the reduction of the prison population in Lusaka Prison from an all-time high of 3,000 inmates to 1, 000 and below. This has greatly helped in reducing the number of incarcerated offenders.

The National Parole Board has also extended its role in the decongestion of Prisons through the conditional release of prisoners. Between 2010 and 2014, a total of 1,108 inmates were released on parole. Of these, 1,071 were male and 37 were female. Furthermore, pursuant to section 111 A of the *Prisons (Amendment) Act No. 16 of 2004 of the laws of Zambia*, the

Commissioner of Prisons may, with the approval of the Minister, order the discharge from prison of any terminally ill prisoner on the recommendation of the Regional Commanding Officer and the medical officer responsible for the health care of the prisoner. This provision has been used and between 2010 and 2014 a total of 63 terminally ill prisoners were released, further decongesting the prisons. This does not only accord terminally ill prisoners humane treatment but further reduces the number of incarcerated offenders.

The Government of the Republic of Zambia further recognises that prisoners have equal rights to receive health care, including preventive measures and treatment equivalent to that available in the open community. This realisation has led to the establishment of a medical directorate in the Prisons Service in order to comply with the *Prisons (Amendment) Act No. 16 of 2004*. The directorate has formulated a five (5) year strategic plan for Prisons health matters designed to run from 2011 to 2016. The directorate has so far managed to send Coordinators to all Prisons Stations and Provinces and the work of these coordinators is to give monthly statistics on HIV/TB so that the Government can respond effectively to the needs of the Prisoners. This initiative has seen improvements in the mortality and morbidity rates among inmates in the prisons. The directorate has also embarked on a countrywide Voluntary Counselling and Testing campaign and has been conducting mass screening programmes as from 2010 as a result of which the Prisons Service has managed to reduce and control the transmission rate of TB in the period under review. For instance, at the beginning of 2014, Lusaka Central Prison had about 23 TB patients as opposed to 100 patients in years preceding the screening programme. At the end of 2014, there were a total of 791 TB patients in all prisons country wide. Of these, 781 were male and 10 were female.

The directorate has among its staff, an environmental technician who advises the Prisons Service on the fitness of the environment in which some inmates live and recommends the closure of certain infrastructure if such infrastructure is not habitable to human beings. The Technician also advises whether the food that the inmates consume is fit for human consumption and in accordance with the law. The medical directorate of the Prison service of Zambia also has a coordinating body on HIV/TB called the Prisons Aids Advisory Committee (PAAC). This body coordinates all HIV/TB related programmes in the Prisons Service.

Another positive step that has been taken by Government is the proposed change of the name of the Zambia Prisons Service to Correctional Service. This proposal has been submitted to cabinet and it is hoped that the name

will soon change to reflect the desire by the Government to reform the prisons from punitive to rehabilitative and correctional. The Zambia Prisons Service has also taken measures to ensure that prisoners do not re-offend after discharge through a number of Rehabilitation programmes that the Offender Management Unit in the Service handles, further contributing to the reduction of incarceration.

Although Zambia does not rank highly on over-incarceration, a number of solutions can be proposed to counter over-incarceration and serve as alternatives to detention. These solutions counter the main causes of over-incarceration and overcrowding in prisons. They include:

- ◀Minimizing mandatory sentences imposed on offenders for certain crimes.
- ◀Minimizing maximum sentences imposed on offenders for certain crimes.
- ◀Increasing the availability of parole to offenders.
- ◀Encouraging presidential or executive pardons.
- ◀Encouraging the release of terminally ill prisoners.
- ◀Encouraging less use of the criminal justice system in addressing social ills.
- ◀Relaxing bail conditions to reduce the number of pre-trial detainees.
- ◀Enhancing rehabilitation of inmates to aid their smooth integration back into society.
- ◀Developing, promoting and implementing non-custodial community supervision service and rehabilitation programmes for first offenders for misdemeanours and non-violent felonies where there are no aggravating circumstances such as drug related offences. This serves as an alternative to detention and enables offenders to contribute positively to their communities through various community programmes they will be required to undertake such as outreach for drug related offenders. In addition, offenders on community supervision programmes continue paying taxes, which further benefits the Government as no revenue will be lost as is the case with incarceration.

◀Fines should be preferred for first offenders for misdemeanours and non-violent felonies where there are no aggravating circumstances.