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**AN INVESTIGATION INTO THE CHALLENGES FACED BY CIRCUMSTANTIAL  
CHILDREN IN ZAMBIAN PRISONS: A STUDY CARRIED OUT IN LUSAKA,  
KABWE, KITWE, AND NDOLA WOMEN'S PRISONS, ZAMBIA**

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**BY**

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in Women's Law, Southern and Eastern African Regional Centre for Women's Law,  
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## ABSTRACT

Children living with mothers in prison are often forgotten by the authorities who fail to take them into consideration at the level of national policy, budgeting or within the daily operational environment of prisons. The government and society at large have turned a blind eye toward these children who are termed ‘circumstantial children’ which distinguishes them from those who find themselves in prison because they have broken the law themselves. ‘Circumstantial children’ are innocent because they find themselves in prison as a result of their parents’ (and, for the purposes of this study) their mothers’ criminal behaviour. The main objectives of this study were to identify the challenges faced by children living with their mothers in prison; to investigate whether such children are included in the prison’s mainstream budget, identify whether the state has abdicated its duties towards such children to non-governmental organisations and church organisations; and to identify whether there are guidelines regulating the treatment of the children when they leave prison without their mothers and return to society and to find out whether the state owes them a duty of care. A total of four female prisons or female sections within prisons were visited as part of the research which was conducted using the grounded women’s law approach which is an interdisciplinary methodology which integrates the law through the lived realities of the incarcerated women and their/circumstantial children. While interviews were used to gather data from mothers living with children, focus group discussions were used when talking to magistrates to discover whether there were any laws or preventive measures protecting children living with their mothers in prison and whether there was any need for children to live in prison at all. The purpose was to find out if there are ways of preventing children from entering the prison system. Much reliance was placed on the researcher’s personal observations during group interviews inside prison. The body language of the children when they were in the presence of prison officers revealed important insights into the research. Ultimately, it was determined that prison was not a fit and proper place for children. The research suggested that the Government should increase its funding of the prison department and empower visiting magistrates to make recommendations on the children’s welfare to the Commissioner of Prisons.

**Declaration**

I, LUMANO GABRIEL CHIKOMA, do hereby declare that the thesis is an original work presented towards the Masters Degree in Women’s Law, University of Zimbabwe, not presented for any degree or other ward in any academic institution.

Signed ..... Date .....

This work is approved for submission towards fulfilment of the Masters in Women’s Law by the supervisor.

Signed .....Date.....

I, ROSALIE KUMBIRAI KATSANDE, being the supervisor, have read this dissertation and approved it for partial fulfilment of the requirements of the Master Degree in Women’s Law (MWL), at SEARCWL, University of Zimbabwe.

SEARCWL

University of Zimbabwe

## ***Dedication***

*To my late father and mother and my late daughter, Gertrude, who believed in me, my wife for caring for my family in my absence, and all my children for being there for me and brothers, Charles and Pelekelo, for their trust and patience at home while I was absent for a long time.*

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## **Acronyms**

ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ART	Anti-Retroviral Treatment
BHCP	Basic Health Care Package
CADE	Convention against Discrimination in Education
COD	Concise Oxford Dictionary
CRC	Convention on the Rights of the Child
FAO	Food and Agriculture Organization
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGO	Non-Governmental Organization
OVC	Orphans and Vulnerable Children
PRISCCA	Prisons Care and Counselling Association
PRM	Principal Resident Magistrate
PWAS	Public Welfare Assistance Scheme
SEARCWL	Southern and Eastern Regional Centre for Women's Law
UDHR	Universal Declaration on Human Rights
UNESCO	United Nations Educational Scientific and Cultural Organization
UNICEF	United Nations Children's Emergency Funds

## **List of legislation**

### *Zambia*

The Constitution of Zambia, Chapter 1 of the Laws of Zambia

Juvenile Act, Chapter 53 of the Laws of Zambia

Prison (Amendment) Act, No. 16 of 2004

Zambia Education Act, No. 15 of 2011

Zambia Prison Act, Chapter 97 of the Laws of Zambia

### *South Africa*

South African Correctional Services Act, No. 111 of 1998

## **List of international human rights instruments**

The African Charter on Human and People's Rights

The African Charter on the Rights and Welfare of the Child

The Convention against Discrimination in Education

The Convention on the Rights of the Child

The International Covenant on Economic, Social and Cultural Rights

The Universal Declaration on Human Rights

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## **Executive summary**

The case of children living in prisons with mothers is something that has been forgotten and neglected by the government, society and the international community. Circumstantial children find themselves in prison not because they like the situation but because of their parents' circumstances. These circumstances may involve the mother coming into conflict with the law and in some instances mothers enter prison while pregnant or in some situations relatives refuse to keep the child because of the mother's behaviour or character and in some cases, society is just not willing to keep the child of the prisoner. In certain instances, mothers of those children do not want their children to be in foster hands, and so they take their children into prison with them. The term 'circumstantial child', therefore, refers to a female prisoner's child who goes with her into prison or a child born in prison to a woman serving a prison sentence there.

The purpose of the study was to inquire into the challenges encountered by circumstantial children. I visited the female section of Lusaka Central State Prison (commonly known as Chimbokaila), Mukobeko Female Prison in Kabwe District, Kamfisa Female Prison in Kitwe District, and Kansengi Female Prison in Ndola District with the hope of interviewing the mothers of circumstantial children who are very familiar with the challenges faced by circumstantial children while they are keeping them. The incarcerated mothers are the keepers of the children and the only way to talk to the children is through their mothers. Some circumstantial children are of a very tender in age.

The information gathered is earmarked to alleviate problems faced by circumstantial children in Zambian prisons. It is hoped that the information gathered will be utilized by the State, civil society and the general public in addressing the challenges faced by circumstantial children.

In Zambia, circumstantial children are a creation of section 56 of the Prison Act, Chapter 97. The provision allows child-to-mother bonding in prison until the child is four years old. Although the law acknowledges the existence of circumstantial children, it does not know or specify how they will survive without being considered by the law makers as well as policy makers to chart the way forward. On paper, the law acknowledges that the state has a duty to

provide food for the child, however, on the ground, the state has abdicated its obligation leaving it in the hands of non-governmental organisations and the church as well as some good Samaritans who supplement their needs by providing necessities to the vulnerable circumstantial children.

The keeping of children in prison should be done in a special way coupled with adequate arrangements to exclude the challenges of the prison in order for the child to grow well. This is because when a child grows up in prison, he or she is exposed to bad conditions and behaviour. Thus, the children should be protected from the harshness of prison life and the influence of negative behaviour.

The concept of children and children's rights is centred on the rights of children not being respected by the keepers and custodians of law. The child's four years' stay in prison is a period when his/her rights are infringed upon by the state through its operative department, the Prison Service. However, the state has largely abdicated its duty to protect these children and has allowed non-state actors to supplement its own meagre efforts.

Children have rights contained in international human rights instruments. They include the right to food, leisure, recreation, education, adequate accommodation and health. These are the rights which the state is violating. The state owes a duty to children of protecting them from discrimination from third parties. The state has the obligation to fulfil, to respect, and to protect the rights of circumstantial children.

The study was guided by various methodologies in tackling my assumptions. The study called for the use of (1) the women's law approach which is an interdisciplinary methodology which integrates the law based on women and children's lived realities; (2) the grounded theory approach to analyse my assumptions on the challenges faced by circumstantial children in Zambian prisons, and (3) the human rights approach which provided a standard set of measures on the rights that circumstantial children have. During the data collection, I interviewed officers from the Social Welfare Department as well as Magistrates who gave information in relation to children. The research findings were based on state obligations as to whether the Prison Act was providing specific needs for children, whether children are included in the prison's mainstream budget, whether the state has relegated its obligation to

provide children with their specific needs, and whether there are guidelines regulating children leaving prison without mothers.

In conclusion, children in Zambian Prisons are facing challenges in the form of food, suitable accommodation, education, recreational facilities and health requirements. In order to improve the welfare of the children, it is recommended that: the infrastructure of prisons be built and expanded, the Offender Management Units in prisons be empowered, certain relevant pieces of legislation, including the Constitution, should be amended, a national policy on children should be drafted, and the Human Rights Commission should be empowered to formulate mechanisms to evaluate and monitor the welfare of circumstantial children.

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## **CHAPTER ONE**

### **1.0 INTRODUCTION AND BACKGROUND TO THE STUDY**

#### **1.1 Introduction**

The issue of children living inside prison with their incarcerated mothers is something never to be overlooked if we are to score a mark in the lives of these innocent children. Circumstantial children are faced with an overwhelming dilemma of being subjected to unjustly prison conditions due to circumstances of their parent's imprisonment. Parental imprisonment, according to Smith and Gogging (2002), affects children in two main ways: some children accompany their mothers into prison, while others are separated from their mothers during a crucial time in their development. Parke and Clark-Stewart (2001) observe that there are several negative aspects to prison based co-detention. These include restriction on a child's freedom and the impoverished environments of the prison which may result in some impairment of young children's cognitive, emotional and social development. According to Coyle (2002), the right age at which children who accompany their mothers to prison should be separated from the imprisoned mothers may be difficult to determine.

Separation of children from their mothers during childhood also has several adverse effects on children's development. Rutter (1972: 95, 147-54) explains that several studies have shown that the risk of delinquency in children of imprisoned mothers is usually enhanced by the prolonged absence of the parents from home. However, Parke and Clark-Stewart (2001) explain that there are short and long term effects of separation resulting from the incarceration of the mother. The short-term effects may include nightmares and flashbacks related to the mothers if they were present during the mothers' arrest, other children experience emotional distress which is brought about if there is lack of explanation of the absence of the mother. The long-term effects of incarceration usually affect the quality of the children's attachment to their parents.

Attachment problems, in turn, may result in a variety of outcomes, including poor peer relations and diminished cognitive abilities, and other psychological problems such as depression, anger, aggression anxiety and withdrawal allowed to stay with their mothers for as long as the term of the sentence. Goldson (2002) however argues that since prison is not an ideal environment for children to develop, a child should not be allowed to remain with their

imprisoned mothers beyond the age of four unless there is nowhere else for a child to be taken to.

## **1.2 Background of the study**

The purpose of study was to investigate the challenges faced by circumstantial children in Zambian Prisons. The study made me visit Lusaka Central the Female Prison section, Mukobeko Female Prison in Kabwe, Kamfisa Female Prison in Kitwe and Kansengi Female Prison in Ndola where I hoped to find children as well as their mothers and gather data in order to improve the welfare of the children. Through their own voices, the women gave detailed accounts of their challenges encountered in prison during imprisonment in respect of taking care and keeping their children in. Through the voices of the mothers I was able to know how the prison authorities were treating mothers and children. In other words, the government through section 56 has vowed to clothe and provide necessities to the infant child until that infant attains the statutory age of four years in prison.

The term ‘circumstantial child’ is term that describes the female prisoners’ children who come with their mothers into prison or are born in prison due the fact that the mother was sentenced and convicted while pregnant.

## **1.3 Justification for the research**

The research will produce information on the challenges faced by children in Zambian Prisons. The information will contribute to alleviate problems faced by mothers with children living in prisons and offer solutions. The information gathered will be used by the state, civil society organisations, and the general public to address the challenges being encountered by children. It is hoped that the information of this study will shed more light on the challenges and development of children growing in prison, while stifling and encouraging policy makers , government and private institutions and other people interested in solving the problems of children living in prison.

## **1.4 Statement of the problem**

Section 56 of the Prison Act allows the infant child to accompany the mother in prison for a period of four years and during that period the state is required to supply him or her with clothing and necessities at the public expense. The infant children face various challenges in



form of food supplements and nutrients, suitable accommodation, educational needs, day care and recreational facilities as well as health. Children living with their mothers in prison will perform poorly on measures of emotional wellbeing, social conduct and cognitive development than those who are not incarcerated with their mothers. But babies and small children residing in prisons are frequently invisible to the legal and prison systems. Small children share imprisonment with their mothers and often become victims of the frequently deficient, overcrowded and harsh prison systems (Marlene Alejos, 2005).

## **1.5 Objectives of the research**

The objectives of the research were:

1. To identify challenges faced by circumstantial children under the care of incarcerated mothers.
2. To identify whether circumstantial children are budgeted for in the Prison's mainstream budget.
3. To identify how the state has relegated its duties to provide for circumstantial children to non-state actors.
4. To identify if there are guidelines regulating the circumstantial children.
5. To identify whether the state owes a duty of care to circumstantial children.

## **1.6 Research assumptions**

- 1(a) The Prison Act does not adequately provide for the needs for circumstantial children.
- 1(b) The Prison Service has failed to provide for specific needs in the form of food supplement and nutrients, suitable accommodation, educational, day care and recreation facilities and health for circumstantial children.
2. Circumstantial children are not budgeted for in the Prison's mainstream budget.
3. The state has relegated its duties to provide for circumstantial children to non-state actors (non-governmental organisation).
4. There are no clear guidelines regulating circumstantial children leaving prison without mothers.
5. The state has an obligation to provide for circumstantial children in prisons.

## **1.7 Research questions**

The research was guided by the following research questions:

- 1(a) Does the Prison Act provide adequate needs for circumstantial children?
- 1(b) Does the Prison Service provide specific needs in form of food supplement, suitable accommodation, education and recreational facilities and health for circumstantial children?
2. Are circumstantial children budgeted for in the Prison's mainstream budget?
3. Has the state has relegated its duties to provide for circumstantial children to non-state actors (non-governmental organisation)?
4. Are there clear guidelines regulating circumstantial children leaving prison without mothers?
5. Does the state have an obligation to provide for circumstantial children in prisons?

## **1.8 Delimitation of the area of study**

The research was carried out in four areas, namely, Lusaka Central Prison Female Section in Lusaka District, Mukobeko Female Prison in Kabwe District, Kamfisa Female prison in Kitwe District and Kansengi female prison in Ndola District. During the research I encountered the problem of bureaucracy and red tape due to the nature of the instructions where the investigations were conducted.

## **1.9 Literature review**

### ***1.9.1 Introduction***

There is scant literature on the topic being investigated (circumstantial children). I will review the Constitution of Zambia, Chapter One, being the supreme law of the country, the Juvenile Act, Chapter 53 of Zambia which deals with juveniles throughout the country, and Prison Act, Chapter 97 of the laws of Zambia which deals with prisons, welfare of prisoners and corrections and rehabilitation of prisons and other international instruments as well as other materials.

The Zambian Constitution does not define or explain who these infants are. This is the case for children living with convicted or detained parents, particularly their mothers or fathers. These children live in prisons not because of their own actions, but because of their parents'

circumstances. As their mothers serve their sentences or await their trials, so too do their children, living the life of the accused without ever having disobeyed the law. These are the children known as circumstantial children. A study conducted in 2010 (Simooya, 2010) showed that about 6.8% of the females incarcerated were pregnant, and of these about 50% received medication to prevent HIV infection to their unborn child. 12% decide to bring their children with them into prison. Many bring their children because they are still breastfeeding them and/or because they do not have anyone in their social network to take care of them.

There are many mothers in prison with infants who are allowed to keep them with authority.

### **1.9.2 National legislation**

National legislation includes the Constitution of Zambia,<sup>1</sup> the Zambia Prison Act,<sup>2</sup> and the Juvenile Act.<sup>3</sup>

#### **1.9.2.1 The Constitution of Zambia**

The Constitution recognises that every person in Zambia shall continue to be entitled to his or her fundamental rights and freedoms, that is to say, whatever his race, place of origin, political opinions, colour, creed, sex or marital status. The fundamental rights and freedoms declared in the Constitution include life, liberty, security of the person and the protection of the law, freedom of conscience, expression, assembly, movement and association, protection of young persons from exploitation, protection for the privacy of his home and other property and from deprivation of property without compensation (article 11). Of the fundamental rights and freedoms the most crucial when talking of children could be article 11 (c) which provides for ‘protection of young persons from exploitation.’ However, the wording in the Constitution is not so explicitly clear by mentioning circumstantial children. The Constitution is silent on the challenges of the circumstantial children. The term is not found in the Constitution. The truth remains that the Constitution does not recognise these children who end up living in prisons with their mothers despite never having committed or having been accused of a crime. Hence, the Constitution recognises the protection of young persons from exploitation only. It is important to note that the Constitution declares that a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in

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<sup>1</sup> Chapter 1 of the Laws of Zambia 1996.

<sup>2</sup> Chapter 97 of the Laws of Zambia.

<sup>3</sup> Chapter 53 of the Laws of Zambia.

the performance of the functions of any public office or any public authority in terms of article 23(2).

The word ‘discriminatory’ has been defined as:

‘affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description’ (article 23(3)).

From this definition, it can be deduced that circumstantial children are discriminated against in different ways while living in prison with their mothers. The discrimination leads to challenges faced by the children in *Zambian prisons*.

In an interesting example of existing practice, the draft *Zambian Constitution of 2005* (which did not pass a referendum) contained a provision in the children’s rights clause for the right of the child ‘not to be incarcerated on account of the mother’s incarceration’.

### **1.9.2.2 The Zambia Prison Service**

The Prisons Service has responsibility for the management and control of prisoners and prisons and for other functions that relate to prisoners as prescribed by an Act of Parliament (section 106) which empowers Parliament to make laws regulating the service. The Prisons Act, Chapter 97 contains a set of principles that governs the prison service. The Prisons Act is further supported by the Prison Rules, which are a form of secondary legislation designed to guide prison officers on the application of the law set out in the Act. The Prison Rules also contain provisions explaining which action prison officers can take when a particular prison or entire system becomes overcrowded, or an epidemic threatens the prison population. In addition, the Prison Standing Orders of 1968 and Prison Service Principle Guidelines are part of the framework that governs the establishment and operations of prisons in *Zambia*.

It is noteworthy that the long title to the Prison Act Chapter 97 and article 107<sup>4</sup> where the Constitutional functions of the Prison Service are established makes no mention of the rights of an infant child. The long title to the Prison Service Act should give every reader an impression that it is concerned with the infant child. This openly shows that the Act is not concerned about the rights of infant children. It is notable that neither the Act nor the rules contain provisions concerning the infant children living with mothers in prison. Zambia Prison Rule Number 65 has been tailored for ensuring that every article of food supplied to prisoners is of sound and good quality and that rations are issued in strict accordance with prescribed scales of diet. However, the rule does not recognise the presence of infant children and the need for them to be prescribed with a nutritious diet. The ration allocated to the mother is shared with the infant child. The Prison Act and rules do not provide for the infant's welfare but leaves them under the discretion of the Officer in Charge, who is often dependent on outside help.

Prison rule 24(1) not only establishes minimum standards for medical care but the rules also require that the Officer-in-Charge of each prison maintain a properly secured hospital/clinic within the prison. In spite of the existence of provisions protecting the right to health care, the rule does not recognise the infant children as it only recognises the convicted and unconvicted prisoners whether male or female. The Prison Act<sup>5</sup> stipulates that the different classes of convicted and unconvicted prisoners be kept apart. It is noteworthy that the infant children are not separated from their mothers. This omission results in the infant children sharing the accommodation with mothers and other convicted female prisoners in congested cells.

The South African policy in this regard is fairly representative of the usual practice. Section 20 of the Correctional Service Act (No.11 of 1998) provides that infants and young children may remain with their incarcerated mothers until five years of age, and that they preferably be accommodated in mother and baby units. The Department of Correctional Services bears responsibility for food, clothing, healthcare and facilities for the sound development of the child for the period that the child remains in prison.

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<sup>4</sup> Chapter 1 of the Laws of Zambia.  
<sup>5</sup> Section 60 of Cap.97.

### **1.9.2.3 Juvenile Act, Chapter 53**

The above Act makes provision for the custody of juveniles in need of care for the correction of juvenile delinquency. From the long title of the Act, it is clear that the Act is responsible for safeguarding the interests of children who need care after the commission of an offence. However, the Act under section 2 defines the term 'child' as, 'a person who has not attained the age of sixteen years.' The Act will presumably apply to infant children when they are away from their mothers after leaving the prison and come into conflict with the law as delinquents who need care.

### **1.9.3 International instruments**

Under international human rights instruments I will look at the following:

- Universal Declaration on Human Rights
- International Covenant on Economic, Social and Cultural Rights
- Protocol to the African Charter on Human People's and Rights for Women in Africa
- African Charter (Banjul) on Human and Peoples'
- Convention on the Rights of Children
- African Charter on the Rights and Welfare of the Child.
- United Nations Standard Minimum Rules for the Treatment of Prisoners
- Universal Declaration on Human Rights

The declaration clearly states that everyone has the right to standard to a standard of living adequate for the health and well being of himself and his family, including food, clothing, and housing and medical care and necessary social services, and the right to security (article 25(1)). The declaration clearly includes the infant children. However, it is the duty of the State party, like Zambia which is a signatory, to see to it that children have supplementary food, adequate housing and healthcare facilities as well recreational ones.

The same rights have been empathized by the Covenant on Economic, Social and Cultural rights under article 11(1). The Covenant obligates State Parties to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The

word 'everyone' is inclusive of infant children whose rights are adequately provided for. Furthermore, the Covenant mandates State parties to take appropriate steps to ensure the realisation of this right which infant children are discriminated.

The Protocol to the African Charter on Human People's and Rights for Women in Africa also mandates State Parties to provide nutritious food and establish adequate systems of supply and storage to ensure food security (article 15(a) and (b)) which can be used to feed the circumstantial children in the prisons where they are held together with their incarcerated mothers. In order to resolve the challenges faced by children, the African Charter on Human and People's Rights mandates the State parties to provide education as it states, 'Every individual shall have the right education' (article 17). It is worth noting that the words 'every individual' includes the infant children who should also benefit while being with the mother in prison.

Article 11 of the African Charter on the Rights and Welfare of the Child clearly echo what the African charter say on education as is declares that, 'Everyone child shall have the right to an education', whereas article 12 calls on State Parties to recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child. Article 30 of the same charter introduces a special provision that aims to protect the infants and young children living with mothers in prison and the unborn children of the expectant mothers. This is a unique feature of the African Charter which finds no counterpart in the international Convention on the rights of infant children as the mother is considered the primary caretaker. Article 30 provides that:

'States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
- (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- (c) establish special alternative institutions for holding such mothers;
- (d) ensure that a mother shall not be imprisoned with her child;

(e) ensure that a death sentence shall not be imposed on such mothers.’

The suggested framework in the above article requires compulsory consideration of alternatives to the custody of children to ensure that deprivation of liberty is used as the last resort. It can be deduced that this approach arises not from the concerns for the incarcerated mothers in question, but rather from the apprehension regarding the potential for violation of the rights of the affected children.

The rights under the Convention on the Rights of Children may be categorized into four areas: Survival rights, Protection rights, Development rights and the Participation rights. The survival rights may include the basic right to life which guarantees access to the highest possible standard of health and medical care. Access to medical care and facilities for the circumstantial children is of prime importance to State Parties. The Protection right includes protection from discrimination, abuse and neglect of the circumstantial children in the prisons by the state (Prison Service in Zambia).



## **CHAPTER TWO**

### **2.0 CONCEPTUAL AND THEORETICAL FRAMEWORK**

#### **2.1 Introduction**

In my theoretical structure I will discuss three concepts which will bring out the challenges faced by children in Zambian Prisons. The concepts are circumstantial children, the rights of circumstantial children and lastly the state's obligation towards circumstantial children in Zambian Prisons. I will define and explain the term circumstantial children, explain the rights of circumstantial children and then examine the state obligations towards the children in Zambian Prisons.

#### **2.2 Circumstantial children**

##### **2.2.1 Introduction**

Section 56 of the Prison Act<sup>6</sup> allows infants to accompany their mothers into prison for a period of four years and during that period the state is required to be supply them with clothing and necessities at public expense. The section stipulates that:

‘Subject to such conditions as may be specified by the Commissioner, the infant child of a woman prisoner may be received into the prison with its mother and may be supplied with clothing and necessities at the public expense:

Provided that, when the child has attained the age of four years, the officer in charge, on being satisfied that there are relatives or friends of the child able and willing to support it, shall cause the child to be handed over to the relatives or friends, or, if he is not satisfied, shall, subject to any other written law, hand the child over to the care of such welfare authority as may be approved for the purpose by the Commissioner.’

The term ‘necessities’ has been defined as, ‘the state or fact of being necessary, something an indispensable thing or something needful.’<sup>7</sup> It means that the prison authorities should make all needed things that an infant may require during her or his living with the mother. The prison service should provide without fail.

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<sup>6</sup> Chapter 97 of the Laws of Zambia.

<sup>7</sup> Concise Oxford Dictionary (Tenth ed.)

Living in prison with the mothers is an obstacle to the children's psychological and social development and their future prospects. This has been confirmed by Senanayake et al (2001), who explain that the 'prison environment is not conducive environment for children to grow in.' They explain further that although children who accompany their mothers in prison 'do not experience adverse effects of separation from their primary care givers, they are exposed to conditions that affect their emotional social and cognitive development.'

### **2.2.2 Definition of circumstantial children**

The term circumstantial child has not been defined in the Constitution of Zambia or any other statute in Zambia dealing with children. The Constitution is silent on the term and the children themselves. The Constitution does not know them at all. The Juvenile Act also has no reference of the term circumstantial, nor does the Prison Act. The Prison Act calls the circumstantial 'an infant'.<sup>8</sup> The term 'infant' simply means 'a very young child or baby denoting something in an early stage of development or a person who has not attained legal majority.'<sup>9</sup> The term circumstantial children was coined in 2004 during a seminar conducted by the Prisons Department official<sup>10</sup> who is now the officer in charge of the Offender Management Unit at Prison Headquarters during deliberations when they formed a Unit that looks after the welfare of all prisons in Zambia. One of the programmes it runs is the issue of children who appear under the special needs of persons in prisons.

'The term circumstantial child is the term that describes the female prisoners' children who come with their mothers into prison. A circumstantial child is a child born in prison and is that one brought in prison with their mothers.'

So circumstantial children are to be distinguished them from children who fall into conflict with the law.<sup>11</sup>

Nowak (2003) recommends that children should not be kept in prison, however, should this be the case, there should be special arrangements to ensure that coercive elements of prison are kept to a minimum and ensure that an environment conducive for normal development is provided inside prison. International standards demand that prisons put in place special

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<sup>8</sup> Section 56 of the Chapter 97 of the Zambia Prison Act.

<sup>9</sup> Concise Oxford Dictionary (Tenth ed.).

<sup>10</sup> Officer in Charge, Offender Management Unit Zambian Prisons Service Headquarters (2004).

<sup>11</sup> <https://sites.google.com/.../childreninprisonsinitiative/.../facts-about-child> By Anne Egelund. Accessed on 20/3/14.

arrangements to ensure that children are kept in a facility that is meant specifically for them. Alejos (2005) in her report, 'Babies and small children residing in prison' explains that the child's life inside prison leaves him or her vulnerable to disease, malnutrition and possible abuse by prison warders. Thus, small children who share imprisonment with their incarcerated mothers often become victims of frequently deficient, overcrowded and harsh prison systems.

According to Margolis (2002) living in prison presents a threat to children's safety. Margolis (2002) further states that children living with their mothers in prison forgo opportunities to interact with peers and the outside world in general, hence, children have little chance to adapt to normal society because their world is limited in scope. These children are often surrounded by culture of fear and helplessness.

Leventhal (2000: 42-59) states that children living in prison do not have the same opportunities for such growth as their peers. He explains that isolation from outside world, friends and relatives can prevent children from learning to function in society or interact with others. Leventhal (2000) mentions obstacles to attending school which inhibit children's intellectual growth while increasing isolation and reducing peer interaction. Their playmates are the same children who are staying together in prison.

There are two ways how an innocent child becomes a circumstantial child. The first is that the mother or father must have come into conflict with the law and is either arrested or remanded in the institution or convicted of an offence. The second is when the mother who is in conflict with the law is pregnant enters prison and gives birth to a child in prison. These are 'children imprisoned by circumstances as society is not ready to keep the prisoner's child.'

### **2.2.3 Liberal theory**

Liberal Theory looks at the way in which children living with mothers in prisons are supposed to be protected by existing laws. The theory stresses the role of the varied social interests and values of states, the relevance of children in accordance to existing prison laws of Zambia. According to Tong (1994), the liberal feminist believes that mothers with children are rooted in a set of customary and legal constraints that block their thoughts over the

keeping of the children by state. According to section 56 of the Prison Act,<sup>12</sup> children are supposed to be taken care of by the keeping institution. As the section stipulates all the necessities are supposed to be provided without fail by the state.

Section 20 of the Correctional Service Act of South Africa (No.111 of 1998)<sup>13</sup> provides that infants and young children may remain with their incarcerated mothers until five years of age, and that they preferably be accommodated in mother and baby units. The Department of Correctional Services bears responsibility for food, clothing, healthcare and facilities for the sound development of the child for the period that the child remains in prison. The Prison Department must bear responsibility for provision of necessities for the children.

### **2.3 Rights of children in Zambian prisons**

Zambia being a member of the international community having signed and ratified a number of them such as Universal Declaration of Human Rights (UDHR), International Convention on Civil and Political Rights (ICCPR), Convention on the Elimination Declaration Against Women (CEDAW), Convention on the rights of Children (CRC), African Charter Human and People's Rights (ACHPR), International Covenant on Economic, Social and Cultural Rights, African Charter on the Rights and Welfare of Children (ACRWC), and SADC Protocol on Gender is required to fulfil its binding international agreements.

Children have the right to food, the right to education, the right to adequate accommodation, the right to leisure, the right to recreation and health. The above have a bearing of the rights of children living in Zambian Prisons.

#### **2.3.1 Right to food**

The word 'right' has been defined as 'morally good, justified, or acceptable.'<sup>14</sup> The word denotes something ethically upright or conforming to good practices. The right to food is a right that protects people. Children are people who are supposed to have sufficient food which should adequately keep up with their dietary requirements. Children must have access to food.

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<sup>12</sup> Chapter 97 of the Laws of Zambia.

<sup>13</sup> South African Correctional Services Act, No. 111 of 1998.

<sup>14</sup> Concise Oxford Dictionary (Tenth ed.) Oxford University Press.

The Special Rapporteur<sup>15</sup> on the right to food stated:

‘The right to food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.’

The right to have adequate food for children in prisons should not be viewed in a narrow restricted sense which equate it to a package of proteins, calories and other specific nutrients. It is the duty of the Prison Department take necessary action to mitigate and alleviate hunger stalking the children in prisons because of no food supplements. It is noteworthy that section 56 of the Prison Act regarding clothing is also not complied as evidenced by one mother with a 2 year male child who said:

‘The Prison authorities have not issued my son some clothes or blankets apart from the church which usually donate some clothes to the children in prison including mine. Also most children are not given their special children’s food.’

Food is a right because it allows all human beings to live in dignity, thus removing hunger, malnutrition and food insecurity. The right to food is all about people having the capacity to feed them. This means that the children must be fed. Right to food is not about assistance but having the capacity to feed the children in prisons because these children are vulnerable.<sup>16</sup>

It is important to note that the international human rights and the humanitarian law protect the right to food which has been recognised under the Universal Declaration on Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 25 of UDHR stipulates:

‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.’

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<sup>15</sup> Captured from Mr. Olivier De Schutter, (Belgium), Special Rapporteur on the right to food, May 2008.

<sup>16</sup> Captured from Mr. Olivier De Schutter, (Belgium), Special Rapporteur on the right to food, May 2008.

Article 11 of CESCR calls on state parties to recognise the right to food as it includes every one. It does not exclude the children at all since children are vulnerable to hunger as the Covenant says ‘food is a right to everyone.’<sup>17</sup> Hence, the covenant offers an inclusion for them.<sup>18</sup> It is surprising to learn that mothers share their rations with their children. This calls for us to inquire into the type of food that incarcerated mothers share with their children. In order to answer the above statement the required daily ration for an inmate whether male or female is required to be known. Prison rule 17 gives the following daily ration for each inmate: 113 grams of fresh meat, 170 grams of flesh fish, and 85 grams of dried fish. These will be taken as relish. They may be used alternatively or substitute daily depending on what is readily procured, 454 grams of maize meal, 454 grams of millet meal, and 340 grams of unpolished rice. Also these will be used alternatively or as substitute for the other daily. The above food ration is issued daily to each inmate.<sup>19</sup>

Having examined the daily inmate ration intake, it is true that that this type of meal is not fit for children from 0 – 4 years. Under UNICEF, the recommended food for such children is as follows: vegetables, fruit, lean meat, bread, porridge, rice and milk.<sup>20</sup> This type of meal is supposed to given to the child within 1 to 4 years which is the statutory age for a child to remain in prison.

The CRC stipulates that parents and the government give the children nutritious food for them to stay healthy indeed. The Convention goes further to instruct the stake holders that children must have good quality health care, clean water and a clean environment.<sup>21</sup> This article instructs relatives of the incarcerated mother staying with her child to supplement food which is nutritious; in Nshima and Kababa the mother receives and shares with the child in prison.

Zambian prisons have no policy or regulation on the children as this applies to the country’s Child National Policy which as no clause on infants living with mothers in prison. This article is an eye opener in that a mother can sue the prison department for failing to provide the child with nutritious food as stipulated in section 56 of the Prison Act Chapter 97.

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<sup>17</sup> Art.11(1) of ICESCR.

<sup>18</sup> Art.11(2) of ICESCR.

<sup>30</sup> Rule 17 of the Zambia Prisons Service, Chapter 97 of the Laws of Zambia.

<sup>20</sup> [http://www.health.qld.gov.au/ph/documents/hpu/healthy\\_food\\_1to4.pdf](http://www.health.qld.gov.au/ph/documents/hpu/healthy_food_1to4.pdf) Accessed on 12.3.2014.

<sup>21</sup> Art. 24 of the Convention on the Rights of Children.

Adequate food exists in the country when all people have economic access enough to safe and nutritious food that meets their dietary needs. This safe and nutritious food is required to reach the prison walls and be issued to the children who need it for their development and growth. Once this is achieved, the food security is realised. Food security breeds utilisation, availability access and stability of supply. This calls for the country to fulfil its relevant human rights obligations as contained in the international instruments signed and ratified by it.<sup>22</sup> The right to food is permissible and human which clearly give rise to distinct obligations of states in their quest to lessen malnutrition and undernourishment.

Article 11(2) stipulates that: ‘The State Party to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes.’ This means that the state parties through its operative systems, the Prison authorities, should see to it that they develop programmes that will bring food to their institutions and have practicable measures of monitoring that children eat or are given nutritious foods that will make them grow in a health manner and develop intellectually.

### **2.3.2 *Right to leisure***

Article 31 of CRC spells out what is expected of the child who is with the mother in prison. The article stipulates: ‘All state parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and arts.’ The article calls on state parties to facilitate recreational facilities for these children living inside prison with their mothers. It is the mandate of the state parties to see to it that facilities which afford the children room to engage in play are provided at the institution within the prison premises. If these are put in place, they are termed or regarded as necessities according section 56 of the Prison Act.<sup>23</sup> The Prisons authorities should create time and space for the children by providing recreational facilities to promote societal attitudes that encourages the use of such activities.<sup>24</sup>

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<sup>22</sup> Rule No. 16 of the Voluntary Guidelines of FAO. Adopted by the 127th Session of the FAO Council November, 2004.

<sup>23</sup> Chapter 97 of the Laws of Zambia.

<sup>24</sup> Art.31(1) of the Convention on the Rights of Children (CRC).

The elements contained in article 31 serve to enrich the lives of children by describing the conditions which are necessary to protect the children and their development. The children's realisation of their development usually provides the conditions for creativity through self initiated play which enhances physical motivation.

The Committee on the Rights of Children commented on article 31 as follows:

'Play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence, self-efficacy, as well as physical, social, cognitive and emotional strength and skills. They contribute to all aspects of learning;<sup>25</sup> they are a form of participation in everyday life and are of intrinsic value to the child, purely in terms of the enjoyment and pleasure they afford.'<sup>26</sup>

As observed by the committee, play takes anywhere and involves the exercise of independence, bodily mind activity with elasticity and non-productivity. It is better to understand that leisure and rest are critical to children in prison because they help in their growth as the fundamentals of nutrition, health care, and education. When there is not enough rest, children will lack the energy, mental capacity, motivation as well as bodily body attributes. If one denies a child rest, the child can have unalterable physical and mental impact on the development and well being of the child. Children need leisure and rest.<sup>27</sup> As seen from above, it is the responsibility of the prison in question wherever they are holding the children to provide for the children.<sup>28</sup>

### **2.3.3 Right to recreation**

Recreation is an activity that people engage in during their free time, that people enjoy, and that people recognize as having socially redeeming values.<sup>29</sup> Recreation has the connotation of being morally acceptable not just to the individual but also to society as a whole.

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<sup>25</sup> UNESCO, Education for the twenty-first century: issues and prospects (Paris, 1998).

<sup>26</sup> General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31).\*

<sup>27</sup> <http://blogs.lawrence.edu/vcsc/2011/10/with-dignity-the-right-to-rest-and-leisure.html> Tags: [Article 24](#), [human rights](#), [Marika Straw](#), [reading period](#), [rest and leisure](#), [social justice](#), [The Lawrentian](#), [Universal Declaration of Human Rights](#), [With Dignity](#) Accessed 10.3.14.

<sup>28</sup> <http://blogs.lawrence.edu/vcsc/2011/10/with-dignity-the-right-to-rest-and-leisure.html> Tags: [Article 24](#), [human rights](#), [Marika Straw](#), [reading period](#), [rest and leisure](#), [social justice](#), [The Lawrentian](#), [Universal Declaration of Human Rights](#), [With Dignity](#) Accessed 9.3.14.

<sup>29</sup> <http://www.humankinetics.com/excerpts/excerpts/definitions-of-leisure-play-and-recreation. An excerpt from The Park and Recreation Professional's Handbook by Amy R. Hurd and Denise M. Anderson. Accessed> on 12.3.14.



Recreation activities can take many forms such as sports, music, games, travel, reading, arts and crafts, and dance. Participants hope that their recreational pursuits can help them to balance their lives and refresh themselves from their work as well as other mandated activities such as housecleaning, child rearing, and so on. This right to recreation is a social instrument because of its contribution to society. Recreation in children produces a socially desirable outcome, such as the wise use of free time, physical fitness, and positive youth development. It is important to note that article 31<sup>30</sup> recognises the importance of age of the child to fittingly take on in play and recreation. The age of the child matter in determining the amount of time given the nature of environment to ensure safety and security.

Recreation facilitates the children's capacity to talk, regain touching sense of balance, resolve conflict and make decision as they discover and understanding the world around them. It is through recreation that children try out new ideas, roles and learn to comprehend their social place in the world. It is important to note as children in prison grow old so are their desires and wishes which progress from settings that suggest opportunities to socialise with others or alone.<sup>31</sup>

As a state party is called to respect the rights of the child, the institutions keeping the children should provide such facilities where the children will have to access to them.<sup>32</sup> The children are supposed to participate in the plays that offer concrete opportunities for them, independently or as a collection, to express individually without restraint, to converse, perform and fit into place in creative activities, with a vision to the full growth of their personalities. The committee on the rights of children noted:

‘States parties must therefore ensure the necessary and appropriate preconditions for participation to facilitate and promote opportunities for the realization of the rights under article 31.’

The government should see to it that children enjoy their rights as those who are outside prison. When this is done, then a fulfilment of article 31 will be as it stipulates:

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<sup>30</sup> Art.31 of CRC. Accessed 10.3.2014.

<sup>31</sup> General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31).

<sup>32</sup> Art. 31(2) of CRC.

‘Every child must be afforded equal opportunities to enjoy his or her rights.’<sup>33</sup>

This means that equal opportunities are supposed to be provided in order to balance the necessities properly throughout to the children whether in prison or not. This is crucial for the government to strike the equilibrium on the rights of children. Therefore, meticulous attention should be specified to children living in prison with their mothers.

The Committee on the rights of children once again observed that:

‘There is need for State Parties to work towards the de-institutionalization of circumstantial children. Therefore state parties adopt measures to ensure that the institutions (prison) guarantee opportunities for children to associate with their upper class in the community, to play and exercise physically in cultural and artistic life like those outside the institution of prison.’

#### **2.3.4 Right to education**

The term education refers to all types and levels of education and includes access to education, the standard and quality of education, and the conditions under which it is given.<sup>34</sup>

This right is a universal privilege that has been accepted by both the Conventions for the rights of children and the economic, social and cultural rights as human rights which includes the right to free obligatory primary education for all children regardless wherever they may be. This education is an obligation which all children must access it at all costs. The right to education is a fundamental and one for the exercise of children and because it actually promotes individual freedom as it empowers the children with knowledge. Children are disadvantaged of this privilege and all its opportunities.

The *Zambian Education Act*<sup>35</sup> states that a child has the right to free basic education<sup>36</sup> and the educational institution shall not discriminate against a learner in any manner.<sup>37</sup> The Act stipulates that the Minister of Education shall ensure that equal access to all learners with special education needs such as circumstantial children staying prison with their mothers take into consideration the best interest of the learner.<sup>38</sup>

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<sup>33</sup> Art. 31(2) of CRC.

<sup>34</sup> Art. 1(2) of Convention Against Discrimination in Education.

<sup>35</sup> Education Act No. 15 of 2011.

<sup>36</sup> Section 15 of the Education Act, No. 15 of 2011.

<sup>37</sup> Section 19 of the Education Act, No.19 of 2011.

<sup>38</sup> Section 22(a) of Education Act, No. 15 of 2011.

It is the duty of the Minister of Education to make consultations with the Minister responsible for Home Affairs as well as Social Welfare and other stake holders in order to establish a decentralised and comprehensive system of identifying the children who are vulnerable by assessing their necessities and determining how best to meet their educational needs.<sup>39</sup> If the Ministers mentioned and the Prison authorities were working hand in hand, the plight of the children in Zambia prisons in terms of education would have been alleviated. The Convention on the Rights of Children under article 28 instructs State Parties to recognise the right of children to education with a view to achieving an equal opportunity for all children. Again the convention is inclusive. The inclusiveness has always been ignored by the relevant authorities who are supposed to bring change to the children of circumstances. Article 29 of the Convention encourages State Parties to agree that the education of the child be directed to the development of the child's personality, talents and mental and physical abilities to his or her fullest potential.<sup>40</sup>

The Covenant on Economic, Social and Cultural Rights is very clear in its elaboration. It instructs the State Parties to recognise the right to everyone to education.<sup>41</sup> This education as earlier stated above is directed to the full development of the children. The covenant further instructs the State Parties to agree that the education required for the children shall enable them to participate effectively in a free society, promote understanding, tolerance and friendship among themselves when they leave their mothers upon attaining the statutory qualification of being in prison.

In the same vein, the African Charter on the rights and welfare of children also instructs State parties to recognise the right to education. It further states that every child shall have the right to education in the view to the promotion and development of the child's personality, talents and physical abilities to their fullest potential.<sup>42</sup> In prison the right to education has been recognised especially when it concerns the inmates who have come into conflict with the law.

The children are discriminated against by the system which has authorised them to be in prison lawfully. This on its own is a breach of section 56 of the Prison Act which states that those children were accepted into prison with their mothers should be provided with

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<sup>39</sup> Section 22(b) of the Education Act, No. 15 of 2011.

<sup>40</sup> Art. 29(1)(b) of the Convention on the Rights of the Child (CRC).

<sup>41</sup> Art.13 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>42</sup> Art.11(1)(2) of African Charter on the Rights and Welfare of the Child (ACRWC).

necessities. Education is one of the necessities which the prison department should provide to the vulnerable children in prison who have found their way by circumstances beyond their control. It is through education that children can lift themselves up out poverty and other suffering. Education to the children is empowerment as it is known that education is a powerful tool with which to equip children.

Zambia being a signatory to UDHR has failed to implement the special requirement on the right to education as contained in article 26 which also reiterates that everyone has the right to education. As seen from the article, children are also included to receive this entitlement. This education if offered must be free in the elementary and fundamental stages.<sup>43</sup> The elementary and fundamental stages are the ages from 1 to 4 years a statutory age for children. The State parties should have made some fitting mechanisms for the vulnerable children without discriminating against them in relation to the rights to which they are entitled.

Despite numerous instruments which the country has signed and ratified on education, the Zambia Prison Service still practices discrimination against the children. The Convention against Discrimination on Education defines the term ‘discrimination’. Discrimination includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality in education and in particular (a) depriving any person or group of persons to access to education of any type or at any level and of (b) limiting any person or group of persons to education of an inferior standard.<sup>44</sup> One Kamfisa mother told me that:

‘We do not have a class in this prison yard and there are no teachers for the children. There is no day-care facility and I am keeping a child of tender age who should go a nursery school if there was one.’

The government, through its operative department, is practising discrimination in that children have been deprived access to education at all levels, making them children of an inferior standard whereas convicted inmates whether young or old have access to education at all levels if they so desire so. What has gone wrong with the system to prevent children from

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<sup>43</sup> Art 26 of Universal Declaration on Human Rights (UDHR).

<sup>44</sup> Art. 1 of the Convention Against Discrimination in Education (CADE).

children accessing education? Are these children punished indirectly for the faults of their mothers or is it a failure of national oversight on these children?

### **2.3.5 Right to accommodation**

Accommodation was recognised as part of the right to adequate standard of living in 1948 by UDHR and the ICESCR in 1966. The right to accommodation was recognised by the Declaration<sup>45</sup> under article 25 where it states that everyone is entitled to adequate housing as a qualification to standard of living. To this effect the Covenant on Economic, Social, and Cultural Rights recognizes<sup>46</sup> this important right of adequate housing which is relevant to all states and, most importantly, penal institutions. This right to adequate housing should not be interpreted lightly when it comes to a child who goes to prison with his or her mother.

In penal institutions accessibility to adequate housing in Zambian prisons, especially for children as these, share the same buildings as other female convicts other than the mothers keeping them or separating them completely from the mothers. Accommodation for children should offer security, peace and dignity. The right to adequate housing will not be termed adequate if the specific needs of the vulnerable children are not considered in detail or taken into serious account for the purposes of improving them.

It is important to note that when section 56 of the Prison Act mentions providing the infant child of a woman prisoner with necessities, it means that the prison department is supposed to provide adequate accommodation for the infant child with the mother in prison not that the infant to be sleeping in a congested rooms combined with other female convicts not mothers. In reality, the children are supposed to be separated from the mothers during sleeping hours and the prison to offer a special caregiver to them.

The Office of the High Commissioner for Human Rights observed that the right to adequate housing is an important right which should not be taken lightly and commented:

‘The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.’<sup>47</sup>

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<sup>45</sup> Art. 25 of the Universal Declaration on Human Rights.

<sup>46</sup> Art. 11(1) International Covenant on Economic, Social and Cultural Rights.

<sup>47</sup> CESCR General Comment No.4 , Sixth Session, 13/12.1991.

The Covenant clearly instructs State Parties to undertake to guarantee that the rights enunciated will be exercised without discrimination of any kind as to race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status.<sup>48</sup> This article calls on governments and its operatives not to discriminate children by not accommodating them in their own houses in the specified prison where the mother is being held or serving the sentence. The covenant requires that children be accorded children's accommodation free from female inmates who are not their mothers.

It is important for the State members through its operative department to make accessible to the sleeping houses in prison yard where women have children and are living with them. The reason for accessibility is that children are entitled to decent reasonable and adequate housing. The vulnerable children should be ensured some degree of priority consideration in the housing needs of these vulnerable people languishing in prison without their having committed any offence. The government should take full responsibility into the building houses or other alternative accommodation suitable for children who are aged from 1 (one) to 4 (four) years.<sup>49</sup>

The Commissioner of Prisons admitted that there was accommodation crisis at the Senior Prisons Annual Party:

‘I wish to state here that the crisis of accommodation in the Prison Service is a very disheartening matter because of the lack of it, while demand runs high.’<sup>50</sup>

Looking at the state of accommodation in Zambian Prisons in terms of the human rights of children and their mothers, some non-governmental organisations have started pushing the state to improve conditions of mothers and their children.

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<sup>48</sup> Art. 2(2) of CESCR.

<sup>49</sup> The right to adequate housing (Art.11 (1)): 13/12/1991. CESCR General Comment 4. (General Comments).

<sup>50</sup> Statement made during the 2013 Senior Prisons Annual Ball held at Phillip Sinyangwe Tennis Club in Kabwe.  
<http://webcache.googleusercontent.com/search?q=cache:SMmDISvJ10MJ:daily-mail.co.zm/blog/2014/01/29/zambia-prisons-service-2013-successes-and-challenges/+Accommodation+in+Zambian+Prisons&hl=en&strip=1>

This is evidenced from a story carried in one of the tabloids, the Zambia Daily Mail, on January 30, 2014:

‘However, a consortium of three Non-Governmental Organisations (NGOs) on the Copperbelt has broken the silence with the launch of a project on “The Rights Of Women Prisoners And Their Circumstantial Children” aimed at influencing Government policy engagement on the need to respond to the human rights of female prisoners and their circumstantial children with regards to accommodation, food, health, water and sanitation.’<sup>51</sup>

The issue of children and their challenges is something that the state cannot deny as it has turned a blind eye to the sufferings to the people who it has allowed to be in its penal institutions. In confirmation of the statement above the Zambia Human Rights Commission during its tour of prisons countrywide observed the challenges and commented saying:

‘Despite the law recognising the existence of circumstantial children and allowing these children to live with their mothers in prisons, the prisons did not have any special provisions such as separate accommodation for mothers and children or additional nutrition for such children. For juveniles, most of the prison did not have any separate accommodation for them or recreational activities.’<sup>52</sup>

The Prison Act<sup>53</sup> sets out the obligations to providing clothing and necessities to the children as a requirement. The requirement is mandatory enough for the operative arm of the government to work out plans and make policies that suit the children in their respective areas. This term ‘necessities’ as used in the Act comprises of the following: accommodation, education, health, leisure, day care facilities, recreational facilities and food for the children. All the above are the things which the state party with the operative organs should provide for the children in order for them to realise the gains of their human rights. The worst part is that the children do not know when the provision can reach them and who should complain on their behalf.

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51 This article is issued by The Forum For Good Governance, Gender Equity and Justice. 30.1.2014. <http://webcache.googleusercontent.com/search?q=cache:b4mp9MIF6MkJ:daily-mail.co.zm/blog/2014/01/30/women-prisoners-their-childrens-rights>.

52 Zambia Human Rights Commission. Annual Report 2010.

53 Section 56 of Cap. 97 of Zambian Laws.

### **2.3.6 Right to health**

The right to health was defined by the World Health Organisation in 1946 in its Constitution as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.’ In its preamble, the Constitution of WHO stated by declaring that: ‘The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.’<sup>54</sup>

Health services in Zambia are provided by government institutions, church institutions, and private health facilities, mining and other industrial companies. The Basic Health Care Package (BHCP) is delivered in the public health care system at various levels of care, which comprise the health post, rural health centre, district hospital, general hospital and central hospital. The overall Zambian context affecting child health is most characterized by an economy that is failing to grow at a rate that can ameliorate the worsening poverty felt by its citizens.<sup>55</sup>

Article 25(1) of the UDHR stipulates:

‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.’

The article recognises the right to health. As can be seen, the Declaration does not exclude children at all. It is inclusive. Children are supposed to be given a preference to health in prisons because children belong to the state.<sup>56</sup> The Universal Declaration on Human Rights declaration acknowledges the right to health as a human right. We cannot separate human rights of children from health because there is a close relationship between them.

One woman confirmed that the prison department is doing a commendable job:

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<sup>54</sup> WHO Fact Sheet No.31. The Right to Health P.3.

<sup>55</sup> The Zambia Child Health Situation Analysis was undertaken by the Ministry of Health, Zambia with technical and financial support from the United Nations Children’s Fund (UNICEF) and the World Health Organization (WHO). (2002).

<sup>56</sup> As stated by the Executive Director PRISSCA Mr. Malembeka.



‘When a child is sick, I usually take the child to the prison clinic for treatment and if the illness continues, the clinic staff at the clinic will issue a referral letter to the main hospital. Once admitted, I will remain with my child and the prison will provide guard guarding me until my child is discharged.’

The right to health in Zambia provides that every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. This is done making sure the government makes an effort to ensure that health services provision in the country meets the following criteria: functional and availability.<sup>57</sup>

The International Convention on Economic, Social and Cultural Rights also gives clear protection to the right to health:

‘The State Party to the present Covenant recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’<sup>58</sup>

Since the right to health has been recognised in terms of several international human rights instruments, it simply remains for the state party to implement what it signed and ratified. The international instrument is inclusive in that the children are taken care of.

This right to health is inclusive and contains the right to be liberated from non-consensual health check treatment and at the same time, the right includes entitlements such as the right to a system of health protection providing children a quality of prospect for everyone to enjoy the maximum achievable level of health, management, avoidance and control of diseases as well as access to essential medicine if suffering from HIV/AIDS.

It is important to categorically state that the right to health is dependent on many other human rights such as the right to food, to water, to a sufficient housing, freedom from discrimination. All the above rights touch on the children. All the above rights are necessities which the prison authorities are obliged to provide for the benefit of the children living in prison with their incarcerated mothers.<sup>59</sup>

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<sup>57</sup> Annual State of Human Rights Report in Zambia: Fifth National Development Plan P.19.

<sup>58</sup> Art. 12(1) of ICESCR.

<sup>59</sup> Art .3. General Comment No. 4 Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4 (2000), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 85 (2003).

The African Charter on Human and Peoples (article 16) states that every individual shall have the right to enjoy the best attainable state of physical and mental health. The same Charter instructs the State Parties to take necessary measures to protect the health of their people and ensure that they receive medical attention when they are sick.<sup>60</sup> The prison authorities have adhered to the above instruction by taking measures repealing section 16 of the Principal Act and replacing it with section 16A.

The Act reads:

‘The Minister may appoint as a medical officer of a prison any medical practitioner.’<sup>61</sup>

The principal Act was amended because it did not cater sufficiently well for inmates. Hence, the amendment creating a situation where the prison has its own medical officers appointed by the Commissioner of Prisons.<sup>62</sup>

The amended section 16A reads as follows:

‘The Commissioner shall appoint a director of health services on advice of the Minister responsible for health on recommendations of the Police and Prisons Commission.’<sup>63</sup>

The amendment led to the establishment of clinics throughout prisons in the country from which the children are benefitting. The amended Act<sup>64</sup> stipulates the duties conferred on the Director as follows:

‘The Director (a) shall be responsible for the efficient and effective day to day administration of the Prison Health Service; and (b) supervise the medical officers appointed under section 17.’

Section 17A of the Prison (Amended) Act empowers the Commissioner of Prisons to: (1) appoint for each prison such number of medical offers as shall be necessary for the provision

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<sup>60</sup> Article 16 (1), (2) of African Charter on Human and People’s Rights (ACHPR).

<sup>61</sup> Section 16 of the Principal Act, Chapter 97 of the Laws of Zambia.

<sup>62</sup> Section 16A of the Prison (Amendment) Act, 2004.

<sup>63</sup> Section 16A(1) of Prison (Amendment) Act, No. 16/2004.

<sup>64</sup> Section 16A(1) of Prison (Amendment) Act, No.16 /2004.

of health care to the prisoners in that prison and the appointed medical officer shall have the general care of the prisoners and in addition shall visit the prison daily where practicable or when called upon by the Officer in Charge.<sup>65</sup> The amendment and empowerment of the Commissioner of Prisons to deal with the situation of health in the prisons is a step in the right direction because this has helped children in those prisons wherever they are. As observed by one Director of a NGO who said:

‘Government allows mothers to take the circumstantial children to benefit from the 21 prison based clinics spread in 87 prisons countrywide. These are issues when a child has a serious illness, the prison based clinics or health workers will refer these to big hospitals.’

The Zambia Prisons Department has achieved a milestone by taking necessary measures to protect children’s right of health. Initially, the move taken by the Commissioner was and is meant for the benefit of the prisoners (male and female) including those juveniles who are in conflict with the law in various prisons. As observed from the Principal Act (Chapter 97) and the amended section of the Act (No. 16 of 2004) do not mention children or their health. The Act is silent. Even the amending Act and the principal Act are only concerned with the convicted prisoners. Section 56 of the principal Act is not seen to be of any use when it comes to the provision of necessities to children. Section 17A of the amended Act uses the term ‘general care’ to mean that even the children will have a share in the established Prison Health Service whose aim or purpose is to provide health care within the prison service.<sup>66</sup>

The Zambian Constitution recognises and declares that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, rights whatever his race, place of origin, political opinions, colour, creed, sex or marital status.<sup>67</sup> Children’s rights are still a primary challenge in Zambia. There still is no harmonisation in the definition of a child between the laws of Zambia and the customary definitions.<sup>68</sup>

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<sup>65</sup> Section 17A(1) and (2) of the Prison (Amendment ) Act, No. 16/2004.

<sup>66</sup> Section 16A of the Prisons (Amended) Act, No. 16/2004.

<sup>67</sup> Art 11 of the Constitution of Zambia.

<sup>68</sup> Human Rights in the Fifth National Development Plan: State of Human Rights in Zambia 2007.

## 2.4 The state's obligation towards circumstantial children

The term obligation means an act or course of action to which a person is morally or legal bound. In other word an obligation is a debt of gratitude for a service or favour.<sup>69</sup> When I say the State owes a duty to the children I mean that the operative arm of the government should take the duty of lifting vulnerable children above the challenges they are facing inside the prison walls. These children lack supplementary nutritious foods, clothing, education, adequate accommodation, and health.

The International Covenant on Economic, Social and Cultural Rights has called upon state Parties to recognise the right of every one to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.<sup>70</sup> Zambia is a signatory to this international instrument which is binding on it. Hence, the country is called to take appropriate steps to ensure the realizations of this right. In other words it means that the State must provide the specific needs required to the children without fail. It is required to take up responsibility of providing for the children.

State obligations involve the following: the obligation to fulfil, respect and to protect. The obligation to respect requires state parties to refrain from interfering, directly or indirectly in the enjoyment of the provided rights under article 11(1) of ICESCR and article 31 of CRC plus many more.

State parties are encouraged to protect the children from discrimination by preventing third parties also from interfering in their rights. This obligation is important because it guarantees the enjoyment of rights by the children. The third obligation is that of fulfilling.

The state parties must fulfil their obligations as contained in the statutes. The best example is that one in section 56 where the prison department is mandated to provide clothing and necessities to children in prison. In reality prisons are failing to fulfil this obligation.<sup>71</sup> In such a situation, who should provide for the child languishing in prison with the convicted mother? What is to become of the rights of the children if their protectors continue undermining the

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<sup>69</sup> Concise Oxford Dictionary (Tenth ed.). Oxford University Press.

<sup>70</sup> Art.11(1) of International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>71</sup> Statement made by the Officer in Charge Kamfisa Female Prison.

rights of the underprivileged? If they continue trampling the rights of the vulnerable, how will justice for the children be achieved?

Under this obligation to fulfil, state parties are required to introduce necessary laws (legislative) managerial, judiciary, and budgetary allocation rules for the children and other promotional procedures aimed to facilitate the complete satisfaction of the rights as provided in the international instruments. State parties should take measures aimed at alleviating the sufferings of children and make available all essential services, and opportunities.

The Covenant on Economic, Social and Cultural Rights strongly encourages and imposes State parties to struggle to ensure that children enjoy the widest possible enjoyment of the pertinent rights under the existing state of affairs found in the penal institutions wherever there are. Children are dependent on their mothers for survival. In short, children should look to the State for their survival.<sup>72</sup>

## **2.5 Conclusion**

The chapter above has looked at the conceptual and theoretical frame work and I investigated the rights of children which have been continuously infringed by the state through its operative department the Zambia Prison Service. The chapter has also looked at the state obligations to the children. The next chapter will discuss the methodological framework.

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<sup>72</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990) on Nature of State Parties Obligation, Para 11.

## **CHAPTER THREE**

### **3.0 METHODOLOGICAL FRAMEWORK: HOW WAS THE RESEARCH CONDUCTED?**

#### **2.1 The women's law and other methodological approaches**

In the course of trying to investigate the challenges faced by the children in Zambian Prisons, I needed to develop an appropriate research frame work so I used the women's law approach. This methodology was found to be a suitable perspective as it takes women and their children staying together in prison as a starting point. The methodology takes it to the point of the real position of children living with the mothers in prison. The methodology I chose was really instrumental because I was able to examine the situation and challenges of children and I was able to understand the lived realities of the children and their mothers in Zambian prisons after the statutory authorisation. The methodology helped me collect data on the ground based on the children and their mother's lived realities and their experiences as the beginning for my analysis of the situation in Zambian Prisons in trying to access clothing and necessities.

I chose the methodology because my aim was to capture the voices of women and children in prison in relation to the challenges they were encountering. The methodology provided me with a holistic analysis of the lived realities of the children living with their mothers in prison. I was able to capture voices of women living with children in prison particularly Lusaka Central Female Prison, Mukobeko Female Prison, Kamfisa Female Prison and Kasenji Prison female section where I interviewed 17 mothers living with their children in the prison premises. It is here where I was able to learn and understand the real lived realities in form of challenges faced by children in the above prisons. One mother from Kamfisa Female Prison explained to me of her major problem and said:

‘Another problem is that I am on Anti retroviral treatment (ART) and I have been advised to stop breastfeeding my 7-month daughter by health authorities, however, because there is no baby food supplement for my child, I have continued breastfeeding her.’

The situation occurred because the prison authorities were not providing necessities to meet its obligation. In this way an appropriate diet as recommended by UNICEF was required for the infant in order for her to stop being breastfed by her mother.

I carried out the study using the methodology to establish the possible challenges children face during their legalised stay in prison together with their mothers. From the very beginning, I thought children were being looked after by the prison department being supplied with all specific needs. After the first visit at Lusaka Central Female Prison, I came to learn that the children in prison with their mothers were not being taken care by the prison department. The children were being fed from their mother's ration and the mothers were the ones who were taking responsibility of the children. Upon learning the lived reality of the children in Lusaka Central Prison, my first reaction was to purchase some powdered milk for use in the porridge and nutritious baby foods which I then shared among them. By doing so, I was able to gain the trust of the mothers whom I was interviewing. My assumption that the Prison service does not adequately provide for the children in form of food supplement and nutrients, suitable accommodation, education, recreational facilities, education, and health was not challenged. This was confirmed by one mother taking care of a female child aged 1 year and 8 months (one year and eight months) old who said:

‘Food here is also a problem. My child feeds on *nshima* and *dagga* (meaning, kapenta and rice). The above lack nutritious ingredients. However, the mothers with children are given one cup of dry rice to last for a week which we pound into flour making porridge without powdered milk for the children. This is the Officer in charge's discretion as this provision for feeding circumstantial children who are not prisoners is not there.’

This reality made me discover that the Prison Department does not implement the laws governing it in its daily activities. The outstanding law is that found in section 56 of the Prison Act<sup>73</sup> which states that children will be provided with clothes and necessities during her or his stay in prison.

The women's law approach theories helped to reveal impediments to the children's enjoyment of their rights, and in the process I interviewed the mothers of the children

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<sup>73</sup> Chapter 97 of the Laws of Zambia.

concerning the adequacy of their sleeping hostels. In response to my question, one convicted mother with a female daughter aged one year and four months (1 year and 4 months) told me:

‘The female prison is congested hence a lot of diseases, thus, making the life of children very serious as they contract various diseases inside. Most of the time my daughter sleeps on my chest due to the congestion.’

The approach helped me to understand that since the inception of prisons in Zambia, the only people considered for accommodation were men.<sup>74</sup> The construction of prison building was not gender sensitive at all as children who accompanied their mothers were not considered to staying in prison with mothers. I came to learn that the children in these prisons I visited were not registered for proper data analysis.

The principle approach allowed me to embark on the research with a more open mind. As a starting point it was important to investigate the challenges of the children and experiences of their mothers as my respondents. This gave me a clearer understanding of the problems children encounter in prison while living with their mothers.

Using my assumptions, the approach helped me to analyse the lived realities of children living with their mothers in prison. For example, one assumption was that, *‘Circumstantial children are not budgeted for in the Prison’s mainstream budget.’*

One Officer in charge among the prisons I visited and interviewed remarked:

‘Children are not budgeted for by the prison department. Only mothers are budgeted for. In most cases, the churches usually come to the aid of the children.’

With this approach, I was able to further delve into the challenges faced by the children during their statutory stay without being cared for by the keeping institution that continued to violate their rights. I saw the importance to have the children included in the prison mainstream budget because this would help to supplement shortfalls in terms of food supplements. I managed to go deeper with my investigations using grounded theory where one female prison officer told me:

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<sup>74</sup> As told by the Officer In Charge Offender Management Unit during an interview at Zambia Prison Headquarters.



‘Children are not prisoners and that is why they are not budgeted for in the prison’s main budget, hence, we use our discretion by giving the children little rice. In most cases, children eat from their mothers who are budgeted for in the prisons’ mainstream budget.’

I came to realise that the plight of the children needed deep government involvement and strong monitoring so that funding could be increased to include the children so that they could be fed a balanced diet. The funding could be used to purchase clothing for them as a required by law.

In conformity with the information I got through the interviews, I came to understand that prison officers especially women officers were sympathising with mothers with children by supplementing provisions of soap, clothes and food from their own pockets. This was confirmed by one female convict with a female child aged one year four months from Kamfisa female prison who narrated:

‘The female warders usually ask us mothers with children what we are lacking for the children because we have no money and we usually tell them. They usually bring because they sympathise with the situation circumstantial children survive in prison.’

This attitude of female prison warders of giving necessities to the children stems from nurturing virtues traditionally associated with women, such as sympathy, patience and concern.<sup>75</sup> This attitude exhibits the predominant attitude of men called the ethic of care which focuses on the concrete relationships of concern and responsibility for others. The attitude of these officers brings mothers of children seeing them operating within a web in which care for others is crucial. The attitude of the female prison warders is based on love, connection, interdependence and care, their generous giving to mothers with children.

Human rights are sets of universal entitlements that individuals enjoy, irrespective of their sex, gender, age, nationality, religion, culture or status that are inherent to human beings and that are proclaimed and protected by international law. With this approach I focussed on the state obligations in fulfilling the rights of the children, the country’s obligations in complying with the international human rights framework to which it is a signatory and those it has

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<sup>75</sup> As informed by the Officer in Charge of Kamfisa Female Prison during interviews.

ratified. Article 23 of the Zambian Constitution prohibits discrimination in all its forms. However, the study established that the Magistrates in sentencing the mothers with children do not consider or see the children as being problematic to the prison department. They are only concerned with the offence and offender. They do not see the paramount status of the children in their quest to dispense justice. One mother explained:

‘There is no class in this prison even a recreation club for my child, hence teach my child to read and want to play with him.’

The approach made me realise that all rights pertaining to children such as right to education right to leisure and other rights were not available to children compared to children who live outside prison.

I focused on whether the Prison service is respecting the rights of the children during their stay in prison. Using the human rights approach, I came to learn that children are not adequately accommodated in that they share with the mothers and other female prisoners in their hostels. I found that Kamfisa female prison has a hostel for mothers with children sharing with pregnant female convicts. The approach also made me understand that children have the right to leisure, free movement as there entitlement. However, the rights mentioned above are curtailed by the state during a lock-up at 1600hrs. This is against article 23(3) of the Zambian Constitution which stipulates that:

“discriminatory” means affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.’<sup>76</sup>

This is a direct breach of the supreme law of the land by the state agencies against the innocent imprisoned child whom society does not want to help because of the mother’s past conduct or lack of relatives to take care of them or to tender to be under foster care. I came to understand that the right to food for children is grossly violated by the keepers of children.

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<sup>76</sup> Article 23(3) of the Republican Constitution of Zambia.

This is because the prison authorities do not provide a dietary scale for children in question. They only feed them on the rations of their mother, hence, denying them their right to food.

In identifying who were the real stake holders in alleviating the children out of the challenges they were in, I used the actors and structure approach. This approach made me discover that in order for me obtain information I needed, I had to talk to church organisations, the NGOs, the mothers keeping children, the social welfare department, and the officers-in-charges of prisons who are custodian of both children and the Magistrates.

Having identified the above actors, I went into the field armed with my assumptions hoping to get information from mothers living with children. It is from these actors I hoped to obtain information of the lived realities of the children inside prison and their challenges. While in the field, I interviewed church organisations such as the Catholics and the Seventh Day Adventist who told me:

‘We do charitable work in Mukobeko female prison delivering food as well as toys and clothes for circumstantial children. She added saying since their duty is of God they extend the visit to male convict where they offer spiritual guidance to the inmates.’

I used the actors approach in order to determine whether the Social Welfare had a course of action in to relation to children and whether they have centres where children are kept. I realised that Magistrates were in position to tell me their role towards the children during and after court deliberations. This approach made me interrogate the role of NGOs towards the children. I also used the approach to ask the officers-in-charge of the total number of children throughout the year and they said the number kept fluctuating due releases and discharges. Mothers with children were interviewed to uncover the reality on the ground as to whether children in Zambian prisons have access to the specific needs. This was also done through group discussions. I came to understand that the government was not adequately honouring its obligation towards the children’s challenges and, as a result, the government continued abrogating the social contract they have for the children.

## **3.2 Methods of collection data**

### **3.2.1 *In-depth interviews***

Before I started the interview with the respondents, I informed the mothers with children that the interview was not to render or pass judgment over them. Hence, by allowing women living with children to voice their lived realities was fundamental to the rules of natural justice. Hence, the filtering of the mother's voices or language through the interpretative lens of another was achieved easily with full co-operation. The study used the respondents own words, thereby reducing the potential for distortion and misperception.

I interviewed four magistrates after being given permission by the (CJ) Chief Justice to talk to the Honourable Magistrates at Lusaka Magistrate Complex. I interviewed magistrates about the way they handled cases of mothers with children and how they gave effect to article 3 of the CRC concerning 'the best interests of the child.' During the interview, one senior magistrate (PRM) told me that since her tour of duty as an adjudicator, she has never come across any law or laws in relation to sentencing of mothers with children and the handling of such children.

Heidensohn (1985) stated:

'The search for the authentic voices of women and children involved into abuse of rights and crime is difficult. So often those voices...are more concerned to demonstrate their lack of criminality than to illuminate their actions, although these attitudes are of course enormously revealing about the status of the children and their mothers in society and societal reactions to them.'

I came to learn that Magistrates when faced with a mother living with a child, the court looks at the circumstances of the case and the seriousness of the offence during sentencing. The child with mother who is in conflict with law is not seen. The same adjudicator admitted that when a mother with a child is sentenced to serve a sentence the child is also sentenced. She said:

'Sending the mother with a child to prison is equally sending the child to prison as well indirectly because the child is sentenced too and has no freedom at all.'

I used the interview method with Magistrates at Lusaka Complex because these were cognizant with the law pertaining to children and well aware of the requirements relating to offenders and non-offenders. I learnt that it was advantageous talking to magistrates because they have knowledge of the law governing the children and were aware of the implications of article 3 of the CRC which stipulates that:

‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’

Article 3(2) of the Covenant implies that those responsible for the welfare of the child shall take all appropriate legislative and administrative measures to improve the welfare of the child.<sup>77</sup> The disadvantage to children living in prison with the mothers of is that magistrates during prison visits never work for the advantage of the children by making recommendations that benefit the children living in prison. The data collected from the magistrates is very helpful in that if implemented it would improve the welfare of the children living in prisons. From the group discussions with the honourable Magistrates, I came to understand that a child is nothing before the adjudicators because there is no visible regulation or law to guide the adjudicators. The other disadvantage with the magistrates is that they are not using the bench to pronounce protective measures to the children living with mothers in prison, as they only focus on the offence committed and offender who committed it, i.e., the mother. This is a serious situation which is not in line with the children when considering the best practices enshrined in article 3 of the CRC.

I came to learn that children can turn into street children when he or she turns 4 years in prison if upon release there is no reliable foster parent or relative to take care of him or her. In certain situations when the mother is released from prison in order to make ends meet she becomes a street vendor going with the child to sell goods in streets. A child exposed to this way of life will be spoiled. There are no specific guidelines to regulate or monitor the children when they released are from prison and out of the safekeeping of their mothers.

I interviewed officers from the Ministry of Community Development, Mother and Child Health where the Department of Social Welfare with the hope of trying to find out how the

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<sup>77</sup> Article 3(1) and (2) of CRC.

partnership with the Government is working and whether Social Welfare is monitoring the random visits with the children in terms of visitation with their mothers. I came to learn that there was a partnership between the government and children's homes or centres where the government gives grants to run the children's homes. I came to learn that the funds came from the central government through the Ministry of Finance and Planning. I also used interviews in order to gather more collectively and consensus information. However, one disadvantage of this method is it takes time for the group to come to agreement on a point and at times consensus is not reached at all.

### **3.2.2 Observations**

In the prisons I visited taking of photographs was prohibited. In order for me to get the required information I used the observation method. I was observing the female prisoners, police female warders, visitors who were allowed into prison and the most importantly the children living in prison. I used observation as a method of data collection. The observation method helped me to gather information of the various people I mentioned above. Observation is the habit of noticing things or habit of hearing statements and remarks made in an observed area. While I was in prison this method was a fundamental and basic method of getting data about children living with mothers and how and what they ate. Observation has been an active accurate tool for me in watching the activities the children were doing and noting the phenomenon by which prison life occurs in the nature with regard to the cause and effect of mutual relations.<sup>78</sup>

During my visit to Mukobeko Female Prison where there were children aged between 2 to 3 years old, I observed that the children in prison were afraid of men and were only free with their mothers especially those in Mukobeko and Kamfisa because when they saw me they started crying and hiding behind the mother. The fear was extended to visitors who had entered the female prison enclosure to conduct some repairs inside prison.

I also observed that the children were healthy and had toys they were using within the prison yard after the supplements from the churches and Non-governmental organisations such as PRISCCA. These bodies were providing food to the children in prison. The children came to me when I gave them sweets and biscuits. That is when they came very close. The method

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<sup>78</sup> Oxford Concise Dictionary (Tenth ed.)

helped me realize the department of social welfare does not have a schedule of visiting those children whom they have deposited into children's homes. I observed that the children living in Prison with their mothers are conscious about time and usually imitate the language used by prison warders and inmates. I observed one male juvenile calling inmates saying:

*'Imwe bakaili foleni, foleni.'*  
(Meaning, 'You prisoners get in the line.')

This was during lunch time.

I used this method because it was the most direct method for collecting data, because I could study human behaviour, and moreover the data I collected was very accurate in its nature and reliability. Observation also improved my research precision and results, as the problem of depending on respondents is decreased. This method also helped me in understanding the verbal utterance and response used by the boy when calling inmates to cue. Moreover, observation is less demanding in nature, hence, by observing, I was able to identify that the language and long stay of children in prison spoils their development.<sup>79</sup>

One disadvantage I found while observing in Mukobeko and other prisons I went to was that my actual presence as an observer was almost unknown. This to me was a disadvantage in my method of observation. And also the attitudes studied cannot be observed and in this sampling cannot be taken into use. This means one cannot study opinions; hence the dependence on documentaries, therefore, problems of the past cannot be studied by means of this method.

### **3.2.3 Emerging issues**

An emerging issue may be defined as one that has very recently been identified and for which the available data base to conduct a risk assessment is very limited.<sup>80</sup> One of the issues that emerged during my research was the issue of the children who were with their mothers in court, in working places and in prison itself. I unearthed this issue after one mother complained that the courts do not take cognisance of her child when it inquires into the alleged offences the mother is charged with. The main issue is that there is no mechanism

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<sup>79</sup> <http://www.mbaofficial.com/mba-courses.observation/> Accessed on 23.3.14.

<sup>80</sup> [http://ec.europa.eu/health/ph\\_risk/committees/04\\_scenihp/docs/scenihp\\_s\\_01.pdf](http://ec.europa.eu/health/ph_risk/committees/04_scenihp/docs/scenihp_s_01.pdf) (Scientific Committee on Emerging and Newly Identified Health Risks) Accessed on 29.2.14.

that has been put in place to protect these children during those trying moments and time, looking at one of my assumptions which state that:

‘There are no clear guidelines regulating children when leaving mothers in prison.’

This assumption has not been challenged because if there were clear guidelines regulating children starting from when the mother is at the pre-trial stage at police cells, full detention in remand prison and her or his mother’s appearance before and after court up to the disposal of the case at court, the child is still with the mother, there could have been some intervention factors to separate the child from the mother at all costs. The laws of the country have no remedy for that apart from permitting the infant of a woman prisoner to reside with the mother inside prison.

Article 4 of CRC offers protection rights to children as it imposes a responsibility to take all available measures by State Parties so that the rights of children are respected, protected and fulfilled. This responsibility involves assessing funding for other services which involve children, educational levels social services, legal, adequate accommodation and health indeed. Such changes come about through the same process by which any law is created or reformed within the state party. It is also a thorny issue to separate the child from the mother according article 3 of the Convention on Rights of Children. However, article 9 of the same should be invoked by the courts when faced with a child from plea to conviction.

Article 9 states:

‘State Party shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.’

Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. The above article empowers the courts of law to devise a mechanism to resolve the emerging issue which is before it and correct the anomaly without delay rather than for the child to face the challenge.



The other emerging issue which I came across is that of a mother who was on Anti Retroviral Treatment (ART) was breastfeeding after a timely warning by health management. I unearthed this situation when I had a group discussion with mothers staying with their children. Before the mothers came to me I requested the female prison warders if mothers could come with their children. The reason why I made such a request was to make comparison on the health of the children like those I found in Mukobeko who were well supplemented on food by the church and other NGOs such as PRISCCA. When the women came, one baby boy child was continuously coughing and having diarrhoea. Upon asking the mother if she reported the matter to the prison clinic, she answered the prison authority were aware of the situation. The prison authorities when asked of the situation of the mother on ART breastfeeding her child stated clearly that they were aware, however, they are waiting for the best nutrients they can give the woman so that she can stop breastfeeding her 9 months baby son. Article 24 of CRC on health and health services states very clearly those children have the right to good quality health care. This good quality care means the best health care possible such as safe drinking water, nourishing food together with breast feeding, a clean and safe upbringing, and information to help them stay health. A risk has been created by failing to adhere to the hospital instructions as the mother could have already passed the infection to her infant through the breastfeeding. The mother was also feeding her son with porridge made from rice. This risk is much greater if the infant is fed both breast milk and other liquids and foods than if fed breast milk alone. Also on this emerging issue, I feel my assumption that '*The prison service is failing to adequately meet the needs of circumstantial children*' has been not been challenged because if it were challenged I could not have unearthed this important emerging issue.

Article 24(b) of the CRC is very instructive to a state party like Zambia which signed and ratified CRC in 1990 to pursue full implementation and take appropriate measures to ensure that the provision of necessary medical assistance and health care to all children and to combat disease and malnutrition by taking into consideration the dangers of breast feeding a child while the mother is on ART with its dangers and risks. It is not healthy for child to be breast fed from the mother who is sick due the non-availability of supplementary nutritious food for the baby. The prison departments are duty bound to provide the children necessities that will nourish her or his body for good development. The term necessities have been defined as 'the state or fact of being necessary or an indispensable thing.'

This is in line with the African Charter on the Welfare and Rights of the Child which says that:

‘Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. This includes the provision of nutritious food and safe drinking water, as well as adequate health care.’<sup>81</sup>

### **3.3 Limitations of the study**

The research period started in October 2013 and ended in December 2013. The period was not enough to cover the whole country where mothers with children are incarcerated. Also the research was hindered due to the position taken by the prison authorities of only allowing me to visit four prisons out of 86 penal institutions and also their refusal to allow me to take photos of children living with mothers inside prison due to security reasons. The other limitation was the presence of prison officers present during interviews because this hindered the female inmates from opening up and explain the real issues as they feared reprisals from the prison warders.

### **3.4 Conclusion**

The chapter dealt with the methodological framework. This shows how the research was conducted through the methods of collection of data, in-depth interviews, observations during research, emerging issues within the research and limitation of the research. The next chapter will discuss the findings of the study and its discussions.

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<sup>81</sup> Art.14 of ACRWC.

## CHAPTER FOUR

### 4.0 FINDINGS AND DISCUSSION

#### 4.1 Introduction

The chapter will discuss the findings of the research in detail as per the headings listed below.

#### 4.2 Findings and discussion

##### 4.2.1 *Does the Prison Act provide for the specific needs of circumstantial children?*

The term ‘specific needs’ means ‘mental, emotional, or physical problems in a child that require a special setting for education.’<sup>82</sup> The term can be used interchangeably with ‘special needs’ which also include food, education, accommodation, recreation, day care and health which are needs required for the child to grow and develop into a healthy person. The issue of specific needs for children living with their mothers in prison is crucial for a child in Zambian Prisons. Specific needs include food, education, accommodation, recreation, day care and health.

Section 56 of the Prison Act provides:

‘The infant child of a woman prisoner may be received into the prison with its mother and maybe supplied with clothing and necessities at the public expense.’

According to the above section,<sup>83</sup> once a child has been admitted it means that the prison has assumed the responsibility of caring for the child. It means that the state is the guarantor of everything that the child needs, whatever his/her age. It means that it is the sole provider of all the child’s needs. The Act refers to these needs as necessities.

During my tour of the female section of Lusaka Central Prison, commonly known as Chimbokaila, I found three mothers with their children whose ages ranged from one month to one year nine months and all their mothers had been convicted of various offences. A fourth mother who had been charged with assault had a one week old baby. One female mother

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<sup>82</sup> <http://www.merriam-webster.com/dictionary/special%20needs> Accessed on 25.3.2014.

<sup>83</sup> Section 56 of the Chapter 97 of the Laws of Zambia.

informed me that she had been admitted to Chimbokaila when she was six months' pregnant and that she had given birth inside the institution. While she was pregnant the medical staff used to take her for testing for HIV/AIDS and they were taking care of her. She continued telling me that the problem started when she gave birth to a baby boy called Israel Siame who is now one year nine months old. She said that her husband did not know about her arrest even up to the current time he does not appear to know where she is because he has neither visited nor brought anything for the baby. She told me that since she gave birth, the prison service has never given her any clothing or baby blanket for her son. This included milk and other nutritious foods for her baby. She was and is still feeding her son from the ration she has been allocated. She continued:

'My ration every day includes *nshima*, *kababa* (kapenta) and beans. This type of meal is available daily for lunch, and supper. Sometimes, the church such as the Seventh Day Adventist and the Catholic are bringing cerelac milk and mustard meal for making porridge for the babies. The cooking is also a problem because there are no braziers (*mbaula*) where we can cook. Hence, we ask the female warders for charcoal and braziers for us to cook for the children. The church is donating food and clothes to our children. PRISCCA is donating food to our children and toys for the children to play with. These days children use the same toys to play with because our children are not allowed to go out where there is no one to take care of them. The prison authorities also do not separate us from other female convicts without children. We are mixed and this is a danger to the children because women do a lot of things while our children do seeing and observing.'

After completing my visit and interviews at the female section of Lusaka Central Prison, I travelled to Kabwe town heading for Mukobeko Female Prison. I was allowed to enter the prison where I found five convicted female prisoners taking care of five children aged between five months to three years. One mother who has been there for five days told me that when she was admitted to the prison, the authorities did not issue any baby food nor baby blankets for her son and as a result she shared her food with her child. She told me that mothers with children have no room for themselves, as they are mixed with other female prisoners. This was in the presence of the shift officer for the women. However, the second time I visited the institution with my supervisor, I was told that the women had since been allocated an old storeroom which had been renovated to accommodate mothers with children and pregnant women. I considered this to be a positive step in decongesting the already congested female hostel.

While at Mukobeko Female Prison, one mother told me that when she was arrested by the police and brought to court and later convicted she had left her child with her husband. After staying in prison for one week, she was surprised to see her husband bringing the child to her to give her to look after. She continued:

‘He told me that the child is not fit to live without the mother despite the mother being in prison because of how tender the child was. My daughter was thin when the father was brought in the prison. The officer in charge allowed him to leave the child with me.’

The woman continued saying that despite her child being three years old, she lacked education because the prison does not provide such facilities for the children. Since her arrival in prison she said that she had never once seen the prison authorities issuing necessities like soap and other things to the children. Only the church and PRISCCA donated these necessities to the children. All the mothers in Mukobeko told me that the prison authorities in that institution do not offer or issue nutritious food to the children as they always share their mothers’ food. It is well wishers, such as the churches and non-governmental organizations, who provide necessities specifically for the children.

I also travelled to Kamfisa Female Prison where I found seven mothers living with their children and one of the seven was awaiting the hearing of her case for murder. I was informed by all the mothers there that they have a mothers’ shelter where they sleep together with their children. Although the room is spacious enough for all of them, one mother told me that she and her son sleep near the toilet as this was the position she was allocated. I was also told that the toilet is used by other inmates and it poses a danger to a child if one is suffering from diarrhoea as children may also become infected. I found one mother taking anti-retroviral treatment while she was still breastfeeding her child with the full knowledge of the prison authorities. The mothers in that institution complained of lack of nutritious food for the children, lack of education, lack of day care and recreational facilities. In one case a mother has already taken the initiative of teaching her child to read and write.

The officer in charge of the institution said mothers face a lot of challenges in form of nutritious food for the children, lack of clothes for the children, educations facilities, day care facilities and other accessories because the government is yet to provide them within the institutions throughout the country.

The majority of the complaints in Kamfisa from the mothers were similar to those from the first and second institutions I had visited. It was only then that I realised that the authorities manning these institutions were fully aware that the challenges being faced by these women and their children were real. I learnt that at times the female police warders felt so moved by their plight that they asked them what they needed and gave it to them. This gesture was made and met because female prison officers are also mothers and caregivers who know what the responsibility of caring for children means. The very relationship between mothers as caregivers and children illustrates the important connection between relationships and autonomy: the care giving that mothers provide enables children to become autonomous persons, yet, at the same time, this care giving relationship constrains maternal autonomy.<sup>84</sup> I was also told that one mother had left her daughter with her sister outside the prison, but after a week her sister brought the daughter to her mother saying that she was unable to keep the child any longer and that it was better for her to live inside the prison with her mother.

My last visit was to Ndola Kasenji Female Prison where I found only one mother awaiting trial for murder who had twin girls who had attained the maximum statutory age of four (4) years living in the prison with their mother. She told me that a social worker collected her twin girls when they reached the age of four years nine months and they were taken to Lusaka for safe keeping. The woman told me that during the stay of her children in Kasenji Female Prison, her children had no accommodation as all female inmates were grouped into one congested room. She also complained of the poor diet of *nshima*, *kababa* and beans that was not nutritious for her children but they had no choice but to eat it in order to survive. She narrated further:

‘During the four years nine months, I was with them the father was supplementing food and soap. However, the children had no freedom of movement and the language inside prison by the female prisoners was not good for my children. When they were sick the prison clinic attended to them adequately that I had no complaint. On 26 March, 2013, the Social Welfare Department from Lusaka came and took away by children where I am told that they are now attending lessons. The problem I have is that I can only see my children when I call for them. The prison department has no deliberate programme for visitation of children like my case.’

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<sup>84</sup> <http://link.springer.com/article/10.1007/s10691-010-9152-3>. Autonomy for Mothers? Relational Theory and Parenting (Susan B. Boyd). Accessed on 22.3.2014.

Based on the four prison visits I made and interviews I had with mothers, the following were the major challenges faced the children living in prison with their mothers: lack of nutritious food, inadequate accommodation, and lack of day care and recreation facilities, health and lack of education for the children. These were common problems to all the prisons. Non-state actors, however, were intervening to supplement the state's inadequate provisions in most cases. To be specific, the PRISCCA, the Catholic Church and the SDA (Seventh Adventist Church) were the biggest providers of supplementary support to the government in respect of supplying food and generally contributing to the welfare of the children in prison. I cannot exclude the female prison warders (in their individual as opposed to their government capacities) who were helping female inmates to meet their children's. The food that the prison service was issuing to the mothers of the children was not the right type of food for the children. *Nshima, kapenta* and beans are not a good balanced diet for children. Rather, they should eat a well-balanced diet of fresh milk, cerelac milk, cereals, vegetables, fish, lean meat, eggs and so forth in order to promote healthy bodily development. During one interview one mother told me:

‘Feeding from outside and feeding from inside prison is totally different, because in prison children are fed on *nshima*, *daggar* and beans whereas the environment outside is different in that children have variety of food stuffs which are nutritious for their bodies.’

Looking again at section 56 of the Zambia Prison Act, Chapter 97:

‘Subject to such conditions as may be specified by the Commissioner, the infant child of a woman prisoner may be received into the prison with its mother and may be supplied with clothing and necessaries at the public expense: Provided that, when the child has attained the age of four years, the officer in charge, on being satisfied that there are relatives or friends of the child able and willing to support it, shall cause the child to be handed over to the relatives or friends, or, if he is not satisfied, shall, subject to any other written law, hand the child over to the care of such welfare authority as may be approved for the purpose by the Commission.’

it is the duty of the prison service through its operative organ to address all the difficulties faced by female inmates living in prison with their children. As already mentioned as well, the State Party, i.e., Zambia, has an obligation to clothe children in prison and provide them with all their necessities without fail. A necessity, as discussed above, includes all what the mothers in prison are lacking to feed their children so that they can grow up healthily and

develop well. The role of the non-governmental organisations and community based bodies are supplementing the state's efforts but that should not stop the government from fully discharging its obligation as specifically mandated by the Prison Act.

Having signed and ratified the UDHR, an instrument which is binding on Zambia, the government is required to take measures to ensure that everyone in the country has the right to a standard of living adequate for the health and well being of himself or herself, his family, which includes food, clothing, housing and medical care.<sup>85</sup>

With the prevailing situation in the prisons concerning children and their mothers, the Prison Service has failed to protect and meet the rights of the children in the penal institutions since it is the body that is legally mandated to maintain infants who accompany their mothers to prison. The cause of its failure could be as a result of (1) the institution being poorly funded, (2) the Prison Service budget being gender insensitive to the growing rate of female incarceration, (3) the lack of political will among the law makers or (4) the insensitivity of policy makers to problems faced by children in Zambian prisons.

During an interview one female inmate said:

‘There is congestion in this prison. Mothers with children are not separated from other female convicts. The children in prison have no freedom of movement because they living in enclosed premises. They lack exposure to the outside as compared to those outside who are enjoying life and even play with other children.’

It is important to note that the International Covenant on Economic, Social and Cultural Rights instructs the State Parties to recognize this fundamental right of everyone and further commands the State parties to take appropriate steps to ensure the realization of the right and implement specific programmes towards the enjoyment of rights by the circumstantial children.<sup>86</sup> Hence, the government of Zambia, through its operative department, should respect the rights of ‘the children by being pro-active, not being reactive.’

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<sup>85</sup> Art.25 of UDHR.

<sup>86</sup> Art. 11 of the International Covenant on Economic, Social and Cultural Rights.



During the interviews in all prisons, except for Kamfisa Female Prison, I discovered that the issue of accommodation was a challenge children were facing. Accommodation remains a critical part of the problem as mothers share the same hostels with other female offenders without children. There are separate buildings to separate mothers with babies. I also learnt that most prison buildings were very old and they were built for men, meaning that women and children were once at some point in history never considered potential prison occupants.

I also found out that the Prison Service denied education to children incarcerated with their mothers as there were no schools or day care facilities for them. Education is a right which has been recognized as being part of the mental development of children. One mother incarcerated in Kamfisa Prison with her 7 month old baby girl commented:

‘The prison authority here has no nursery school or baby care where I could leave my child when I go for manual work as a result I carry her with me. However, there are private schools outside the prison building where old circumstantial children are taken to learn. The churches are responsible for their education not the prison.’

One Officer-in-Charge of the most sensitive unit dealing with the Welfare of Prisoners, i.e., the rehabilitation and reintegration of prisoners back into society, also looked at the welfare of children (also known as ‘special needs of persons in prison’) and told me during an interview that:

‘The Prison Act does not provide adequate provisions to meet the children’s needs. However, children are legally allowed to be in prison with their incarcerated mothers up to 4 years, if there are no relatives to take care of them.’

#### ***4.2.2 Are circumstantial children included in the Prison Service’s mainstream budget?***

According to Concise Oxford Dictionary, the word ‘budget’ has been defined as ‘an estimate of income and expenditure for a set period of time or a regular estimate of national revenue and expenditure put forward by a finance minister.’<sup>87</sup> It is noteworthy to learn that children do not have a vote in the prison mainstream budget. During an interview, one senior officer at Prison Headquarters explained as follows:

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<sup>87</sup> Concise Oxford Dictionary (Tenth ed.) Oxford University Press.

‘Since the inception of prison service, there has never been a national budget for children living in prison with their mothers and only the 2012 national budget allocated K20 million which was also not equivalent to cater for the 68 prisons in order for the Offender Management Unit to share to children between 10 provinces against the 58 children, as these children are not budgeted for in the main budget stream.’

When the law under section 56 of the Prison Act states that an infant child can accompany their mother into prison, the law gives responsibility, the entire responsibility of sourcing funds for the feeding of the child. It is unfortunate that there is no established fund set aside for children to cater for their needs while they are staying in prison. Because of the non-inclusion of children in the mainstream budget, it is very difficult for the responsible department to find ways to accommodate the needs of these children without running the risk of misappropriating or misapplying other prison funds which are not allocated to children living with their mothers in prisons.<sup>88</sup> This simply means that there is no political will to provide for the needs of these children and they are, essentially, a forgotten entity. The operative department should come up with appropriate measures and policies which may help these children. The money should go towards their food, recreational facilities, building a kindergarten for them and providing for their education. One senior officer based at Prison Headquarters confessed to the non-availability of any budgetary allocation for these circumstantial children, admitting:

‘Children are not budgeted for in the prison mainstream budget. There is no authority for that at all. However, we usually indicate some funds under the offender management unit to include the circumstantial children which also is very little against 58 children.’

The failure by the Prison Service to budget for children is also a failure of the government to allocate more funds to the Prison Service so that it can use the same to mitigate the challenges faced by these vulnerable circumstantial children. As mentioned above, the law makers and politicians are the people who seem to have no will to fund the prisons so that it can meet its obligations as required by the Act. The Prison Service in conjunction with the Prison Care and Counselling Association (PRISCCA) has been calling on the government and other stakeholders to increase funding to the department in order to meet the challenges it is facing, especially the problems of children who are not allocated food, accommodation,

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<sup>88</sup> As told by the Divisional Offender Management Unit Officer in Charge based at Zambia Prison Service Headquarters on 17.12.2013.

and education. PRISCCA has been lobbying the government through the Ministry of Home Affairs to fund the prison service in order for it to operate efficiently. This organisation has been advocating for an increase in the budgetary allocation to the Prisons Department through the Minister of Finance and is planning to champion the case of circumstantial children including the creation of data space for expectant mothers and mothers with circumstantial children.<sup>89</sup>

#### ***4.2.3 Has the state relegated its obligation to provide circumstantial children with their specific needs?***

It is the duty of the government to provide for the needs of circumstantial children just as it is required to and does provide for children and adults who are in conflict with the law. The Prison Service is mandated to actually provide for the children because the Prison Act allows them to do so. Section 56 of the Prison Act<sup>90</sup> states that:

‘Subject to such conditions as may be specified by the Commissioner, the infant child of a woman prisoner may be received into the prison with its mother and may be supplied with clothing and necessaries at the public expense: Provided that, when the child has attained the age of four years, the officer in charge, on being satisfied that there are relatives or friends of the child able and willing to support it, shall cause the child to be handed over to the relatives or friends, or, if he is not satisfied, shall, subject to any other written law, hand the child over to the care of such welfare authority as may be approved for the purpose by the Commissioner.’

The wording of section 56 of the Prison Act means that the law allows, encourages and promotes child-mother bonding. Where such bonding is encouraged, it means the law is ready to take charge of the situation. The child-mother bonding has three implications, i.e., for the government and its partners, for the relatives of incarcerated children and for the parents who live outside prison and whose children are incarcerated. These are termed duty bearers in terms of child welfare in prison, especially those who are not in conflict with the law.

The first duty bearer is the government through its operative arm, the Zambia Prisons Service, which has been mandated to supply the infant with a woman prisoner clothing and necessities coming from the public accounts. I have noticed that despite having that provision

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<sup>89</sup> <http://lusakavoice.com/2014/03/16/prisons-service-appeals-for-more-funding/> Accessed on 17.3.2014.

<sup>90</sup> Chapter 97 of the Laws of Zambia.

in the Prison Act, the government does not fully discharge its obligations to the children as mandated by law. In order to meet this obligation, non-state actors have come in to supplement at all the gaps which the government has not met. The gaps filled by third parties where the government has failed to meet its obligations include the provision of food which is supplemented by churches, clothes and other necessities that children require. The other partner filling the gap left by the government is in education where there is one non-governmental organisations headed by Godfrey Malembeka called PRISCCA (Prisons Care and Counselling Association) which is based in Lusaka and has branches in all 68 prisons. It has come up with a complete 3 x 4 classroom block built at a Mwembeshi Open Air Farm Prison for the children. The building is intended to cater for children living with mothers in prison, the children belonging to prison officers, the surrounding members nearby and lastly inmates who want to educate themselves. The non-profit organisation has employed a teacher to take care of the school. The non-governmental organisation is planning to build another such school at Lusaka Central Prison. PRISCCA has also provided three swings at Lusaka Central Prison and it also continues to supply toys to the children in prison.

The other duty bearer in partnership with the government are the children's homes. They receive grants which are insufficient to shelter the children since the Department of Social Welfare has no homes of its own. Even though the government has homes where they can keep the children, they rely on these other bodies, such as Star Ministries, House of Moses, and so forth.

Lastly the other duty bearers are fathers who live outside prison and whose children are incarcerated in prison. It also includes friends and relatives who are required to supplement the feeding in prisons where their children are held. This supplement should come in the form of nutritious foods for very young children, soap and clothes to the mother.

The language of the statute is crystal clear in that it gives responsibility of custody and care, inclusive of feeding and other necessities, to the state. It is the state who is required to feed and educate these young children, provide them with recreation and leisure as well as their health needs. The Act does not shift the obligation to other bodies. If the government fails to provide what it has promised it should be taken to task because it has breached what it ought to do at the right time. That is the role of the government.

The Prison Act gives a time limit to the providing of clothing and necessities to the child in question during the mother-child bonding stage as is stipulated in the proviso of section 56:

‘...Provided that, when the child has attained the age of four years, the officer in charge, on being satisfied that there are relatives or friends of the child able and willing to support it, shall cause the child to be handed over to the relatives or friends, or, if he is not satisfied, shall, subject to any other written law, hand the child over to the care of such welfare authority as may be approved for the purpose by the Commissioner.’

From the above proviso, it is clear that the Prison Service will cease to provide for the child when the child attains the statutory child mother bonding age of 4 years. It means that at that age the positive duty of taking care of such children and providing them with necessities and protecting their human rights will cease. The responsibility will then shift to the final duty bearers being relatives and friends as well as friends in need.

It should be remembered that the prison service is the custodian of the children’s rights during the child-mother bonding period up to the child’s fourth birthday. It is the sole responsibility of the Officer in Charge of the respective prison to see to it that children inside the prison enjoy all the same rights as those outside the prison.

The Prison Act, Chapter 97, sets out conditions for the release of the child after attaining the statutory child mother bonding period of four years. The Commissioner of Prisons lays down conditions for the child to be admitted in prison. This simply means that due to certain problems, the Commissioner may give a go ahead to the Officer in Charge prison either to receive or not receive the child.

The conditions for release from prison are:

- a. The child must have attained the statutory age of 4 years (i.e., the end of the child-mother bonding period);
- b. Approval from the officer-in-charge of the prison where the child was being kept;
- c. There must be relatives or friends outside the prison willing to take custody of the child; or
- d. Such relatives or friends outside the prison must be willing to accept and take care of the child;

- e. The mother's consent to release the child into their custody.

When the Officer-in-charge has been satisfied that the relatives are reliable and trustworthy, he will release the circumstantial child to their custody. This means that the government's direct responsibility has ended. It will be the duty of relatives or friends who have collected the child to into his or her clothing and necessities. Where the Officer-in-charge is not satisfied because the child is under age or because the character of the relatives is not desirable and/or not trustworthy, the Officer-in-charge will notify the Department of Social Welfare to come and take the child into its custody.

Upon the release of the child from prison the consent of the mother is very important because some mothers do not want their children to go to their relatives or friends because of their relations with them and, therefore, they prefer to live with their children in prison or allow them to be released into the care of the Social Welfare department.

Section 56 of the Prisons Act gives the Officer-in-charge two choices when the child has attained the statutory age to leave prison. If he is satisfied that the child can be released to the relatives, he may do so. However, if he is not satisfied, he shall handover the child to the care of such the Social Welfare Department. Once this is done it is no longer the responsibility of the State through the operative organ of its Prison Service to safeguard the human rights of the child. It is now the responsibility of the State through the operative organ of its Social Welfare to take up that mantle of feeding and clothing and providing all the necessities required to the circumstantial child.

The Social Welfare Department receives reports from the Prison Service concerning the condition of children living with their mothers in prison. When a report has been received from the Prisons Service, the social welfare officers will inquire if there are capable relatives or friends who are willing, reliable and trustworthy to take custody and care of the child. If these criteria are not met, the Social Welfare Department will officially accept or take-up the responsibility of taking care of the child. Once the Social Welfare has accepted that it will take care of the circumstantial child, it has the responsibility of finding a suitable shelter where the child will all the necessities and clothing. The department will have to look for a shelter or home which will offer the child proper education, health care and general welfare. The term 'general welfare' is a broad term which simply means that the department should

ensure that the child's welfare is guaranteed. It is important to note that the Department of Social Welfare has no children's home or shelter of its own for the safekeeping of circumstantial children. It does not handle the issue of taking care of these vulnerable children alone. The social welfare department regulates various centres or homes that keep such children and guides them as to how to run such institutions by following the minimum standards. Institutionalisation is the last option for the department in accepting the responsibility of keeping and taking care of the circumstantial. Institutionalisation occurs when the child will be taken to children's homes or centres that will take care of the child.

#### **4.2.3.1 Guidelines for collection of children from the police custody<sup>91</sup>**

- a. The consent of the mother;
- b. The period the mother requires the Social Welfare Department to keep the child for her;
- c. Examination of the status of the circumstantial child;
- d. Opening of a case record;
- e. A prepared report adhering to keep the circumstantial child; and
- f. Age of the child.

Status is a condition in which the child is as the mother to have access to the child. The age of the child matters most when considering where to place him or her for the sake of continuing to keep in touch with the parents of the child. We can now categorically pronounce that the Department of Social Welfare has taken up the role that the Prison Services played when the child was in custody with his/her mother by supplementing his/her food, clothing, recreation, health and education.

The Department of Social Welfare, as a government institution, supplements the children's centres with funds which come from the central government through the Ministry of Finance and Planning. Children are covered by a component of Public Welfare Assistance Scheme (PWAS) which is twice issued. PWAS is meant to incorporate all households and orphans and vulnerable children (OVCs). The circumstantial children are termed vulnerable by the Ministry. As stated earlier, the Department of Social Welfare does not own children's homes. It only regulates these homes. The children's homes are given grants from the central

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<sup>91</sup> As told to me by Lusaka Assistant Social Welfare Officer, Mrs. Nandazi Helen Phiri.

government to run the homes; hence, the centres support the children that are received into them.

#### **4.2.3.2 Children homes or centres**

The following are the names of the children's homes partnering with the Department of Social Welfare:

- House of Moses
- Billy and Betty (falling under Christian Alliance)
- Star Ministries
- Family Legacy - comprising Chalala House and Tree of Life
- Daughter of Zion
- Mathew Ministries
- Emmanuel Homes
- Kabwata Orphans Homes
- Kids Alive
- Kaza Children's Homes

All these children homes are based in Lusaka Province of the Lusaka District. Except for Kabwata Orphans homes and Kids Alive (which accept children up to the age of 18 years), the rest of the homes only accept children up to the age of 8 years. In accommodating the individual rights and physical and social needs of a child, the homes cover the following:

- Education
- Right to play
- Clothing
- Suitable accommodation
- Leisure
- Recreation and
- Health.<sup>92</sup>

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<sup>92</sup> How to run a child care facility, Community Development and Social Welfare Booklet: In conjunction with UNICEF. P.5.



The above ten homes are non-state actors known as non-governmental non-profit making organisations. The non-governmental organization's role in the lives of children and other orphans is to supplement government efforts. They come in to fill the gap between government and the children. They supplement by providing food, clothes, shelter, education and health. Notably, there is another NGO known as Prisons Care and Counselling Association based in Lusaka. (PRISCCA). It was founded in 1997 by ex-prisoners based on their experiences in prison and its mission is to champion the welfare of prisoners throughout Zambian prisons. The organisation is a non-profit making organisation. PRISCCA complements government's efforts to improve prison conditions and ensure that prisoners access their rights countrywide through the promotion of balanced humane system of imprisonment and ex-prisoners reintegration into society.<sup>93</sup> One of its objectives is to help children living with their mothers in Zambian prisons. It looks into children's nutrition, accommodation, education, day-care facilities and recreation. PRISCCA supplements the government's efforts in meeting the specific needs of the children in all prisons. It donates toys, clothes, and food to children in prisons. The same non-organisation has built a 3x4 classroom in order to meet the needs of education for circumstantial children at Mwembeshi Farm Prison. The classroom is intended to be used by circumstantial children, children of officers, and prisoners who want to further their education. This is complements the state's effort. In other words, it is correct to say that the state has relegated its duties to non-state actors, such as PRISCCA, and the ten abovementioned children's homes.

#### ***4.2.4 Are there guidelines regulating circumstantial children leaving prison without mothers?***

A guideline is a principle or piece of advice.<sup>94</sup> It can be a general rule also. It can be a rule or instruction that shows or tells how something should be done.<sup>95</sup> The matter under investigation is whether there are guidelines or regulations giving direction to the prison officers about how to deal with the release of children (upon their attaining the statutory age of four years) to the relatives or friends or to the Social Welfare Department. The question further interrogates whether there are guidelines or regulations directing magistrates during the trial of a mother who is carrying a child with her in court due the fact that there are no

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<sup>93</sup> <http://www.osisa.org/law/zambia/prison-care-and-counselling-association-priscca-zambia>. Accessed on 10.3.2014.

<sup>94</sup> Concise Oxford Dictionary (Tenth ed.) Oxford University Press.

<sup>95</sup> [www.merriam-webster.com/dictionary/guideline](http://www.merriam-webster.com/dictionary/guideline). Accessed on 15.3.2014.

relatives to take care of the child or the child is of tender age that child mother bondage is required.

However, the Act is silent on what is to become of the child when the relatives have taken it. And furthermore, the Act is silent as to who takes responsibility during the statutory stay in prison, especially with regard to the provision of food staffs and clothes, soap and other necessities needed for the child. If the guidelines were formulated they would have addressed issues such as education, day care, recreation, leisure, health, accommodation and food of the circumstantial child as well as budgeting for child while living within the statutory allowance of four (4) years duration. As a matter of practice, the section gives little solace to the child. The Officer-in-charge of Kamfisa Female Prison commented as follows on the issue of guidelines:

‘There are no guidelines regulating circumstantial children by the prison. However, before the officer-in-charge releases a child, he or she must be satisfied that the person to whom the child is released is reliable and trustworthy.’

Magistrates during inquiries into offences committed by the mothers of children have failed to see beyond the law and beyond the Convention on the Rights of the Child in order to alleviate the challenges faced by the circumstantial child. The CRC is very cardinal especially when dealing with children, as it states:

‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’<sup>96</sup>

Zambia signed the CRC in September, 1990 and ratified it in on 6 December, 1991. So this instrument is binding to the country and all its organs. The Judiciary, being the third arm of the government which interprets the law, is expected to be very well versed in the convention and be able to look at the children’s challenges when he or she is before the court with his/her mother. The best interests of the child should be of paramount importance to the magistrate who should not hide behind the law or claim that there are no policies directly concerned with circumstantial children. One magistrate at the Lusaka Complex said:

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<sup>96</sup> Article 3(1) of CRC.

‘There are no laws in relation to children the courts use in sentencing mothers with children in prison, and also there are no arrangements either made by the judiciary or the law upon children when mothers are sentenced by courts. There are no protective measures relating to children. The courts do not look at the protective measures during the sentencing of mothers. The courts focus on the offender not the child. Courts are concerned with anything to do with the offender and offence. The courts have nothing to do with a child.’

#### **4.2.4.1 Gaps in international instruments**

The preamble of the Convention on Rights of Children is very clear when it says the Universal Declaration of Human Rights and other international covenants on the rights of children and have agreed that everyone is entitled to all the rights and freedoms without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. So children living in prisons with their mothers are no exception at all.

I say the preamble is clear on the wording that ‘everyone is entitled to all rights and freedoms without distinctions of any kind.’ The gap comes in article 9 which states:

‘States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.’

The instrument has created a gap when it comes to the rights of the children living with parents in prison because it says ‘everyone is entitled to all rights and all freedoms without distinction.’ There is a distinction created by article 9 as it states that: ‘a child shall not be separated from his or her parents against their will.’ The convention should have put in place or suggested a mechanism for keeping children of women out of court and/or accompanying their convicted mothers to prison and which state parties could have domesticated into their national laws. This to me is a serious gap created by the CRC because it is harmful to children because it allows for the creation of a group of vulnerable children called circumstantial children.

The other gap occurs where article 9 of CRC states that, 'except when the competent authorities subject to judicial review determine in accordance with the law applicable and procedures that such separation is necessary for the best interest of the child.'

In my view the courts of law will only separate the child from the mother when there is a dispute between parents or in the case where the mother or father has a conflict with the law. There is a *lacuna* in the wording of the convention because it should have openly stated that a child found living with the mother or father who has come into conflict with the law at any stage should be separated from the parents.

The words 'subject to judicial review' opens the challenges of children living with their mothers in prison because with these children there is no judicial review only when there is property sharing and custody of children and this is usually under civil action. The child suffers at the hands of law when the mother or father has come into conflict with criminal law. In the end the child becomes a child of the prison through the institutional invincibility.

Children should not be with their mothers at the beginning of their conflict with the law with the police, their being incarcerated in remand prisons and or at the final disposal of their case when a sentence has been passed on the women with a child. The State Parties through the domestication of international instruments should have provided a way of dealing with children who have found themselves a victim of their parent's criminal circumstances. African society has failed to exercise its role of being the caretaker of one another under their communal system of living together and taking care of one another. That way of living has died a natural death or has faded away because the citizens are not ready to keep the child of the prisoner. The nuclear family has taken over the concept of communalism of the *ubuntu*. Communalism would take and foster a child of one who has come into conflict with the law until his/her mother is released.

The other way to make sure that the children do not enter the Prisons Service is through the government building their own infrastructure through the Department of Social Welfare where they may be taken care and taken into custody where day care facilities, kindergarten schools, toys are available, and a good productive food supply is available for the children. In other words, where all rights of children are taken care of which is an objective stated in the preamble of CRC and which should be taken up and implemented by state parties. Despite

State parties are encouraged to take all appropriate legislative and administrative measures by formulating guidelines in relation to children, the ministry in charge has adopted a relaxed mood due low funding from the government.

#### **4.2.4.2 Best interests of the child**

The term ‘the best interests of the child’ appears five times in relation to the separation of the child under the CRC with the key formulation found in article 3 which states:

‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’

Article 40 speaks of juvenile justice. In the Zambian context it is mentioned a great deal in the Juvenile Act, Chapter 53. In article 37 it is also used when there is the issue of deprivation of liberty to which children living in prison have their liberty taken away despite their not being a prisoner. Article 21 of the CRC is concerned with those who are adopted. At times children may be adopted by some people while their parents are in prison. Sometimes, however, mothers in prison do not want their children to be adopted. Article 18 is concerned with relatives or friends who foster children of those incarcerated and article 9 is a cardinal article which provides that a child may only be separated from its parents for legal cause. It requires that a child should be with his/her parent and it emphasises parental responsibility over the child.

### **4.3 Conclusion**

The chapter discusses in detail the findings of the research in detail showing how the state through its operative department has failed to discharge its obligations towards circumstantial children. The state continues to infringe the rights of the circumstantial children despite its acknowledgement that the children have been allowed to be living with the mother for a qualified statutory duration. The next chapter will discuss the conclusion and its recommendations.

## **CHAPTER FIVE**

### **5.0 CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Introduction**

The chapter will discuss the conclusion of the study and make recommendations.

#### **5.2 Conclusion**

Children living with mothers in Zambian Prisons are faced with difficult challenges in that they are not provided with special needs such as nutritious baby food or proper dietary supplements by the Prison Service authorities. They are not allocated suitable accommodation which should separate them from other female prisoners who exert a negative behavioural influence over them and from whom they learn vulgar prison language. These children living with their mothers in prison also lack access to day-care facilities, kindergarten and nursery schools and as a result they are cut off from all forms of education, unlike children who live normal lives outside prison.

Children living with their mothers in prison are being discriminated against in that they are denied access to education in breach of section 15 of the Education Act which provides that every child has the right to free basic education. The prison institution which does not provide education to children living in prison with their mothers is also breaching section 19 of the Education Act No. 15 which prohibits any educational institution from discriminating against a learner in any manner. Furthermore, the Prison Service is also in breach of section 22 of the same Act which requires the Minister of Education to ensure equal access to quality education for all learners with special education needs and these include vulnerable children living in prison with their mothers. Their case is even stronger if one takes into account their best interests.

Children living in prison with their mothers share their mothers' rations instead of receiving appropriate food for their fragile, growing bodies. It is advisable for government to include them on the Prison Service's mainstream budget which should also be made gender sensitive. The government should fund the institution so that it will be self sufficient. The role of non-state actors, such as churches and other non-governmental organisations, is to supplement the

government where it fails to fulfil its obligations. The state, through its Ministry of Child Gender and Mother Development and its Ministry of Home Affairs, should formulate policies and regulations to protect children when they leave prison after the maximum stay of four years being the crucial mother-child bonding period.

### **5.3 Recommendations**

I recommend the following measures:

#### ***5.3.1 Building and expanding the infrastructure of prisons***

The government should give first priority to building separate hostels for pregnant women who enter prison, and mothers' shelters for mothers with circumstantial children. The government should put up day care and recreational facilities which will help the children's development. The expansion and building of the prisons will help in decongesting the already congested prisons. There is a need for non-governmental organisations to be involved in the building of infrastructure. The intended expansion should include kindergartens.

#### ***5.3.2 Empower the Offender Management Unit***

The Ministry of Home Affairs and Ministry of Finance and Planning through the Prison Service should increase the allocation of funding to the Offender Management Unit so that the unit can cater for the special needs of circumstantial children in all prisons. The allocation of funds to the Offender Management Unit which looks at the welfare of prisoners will also have oversight of the welfare of circumstantial children in all areas. The government should increase the prison service budget so that the Prison Service will be able to honour its obligations in terms of section 56 of the Prison Act.

#### ***5.3.3 Law reform***

There is a need for appropriate amendments to be made to the following pieces of legislation to improve the welfare of the children in Zambian prisons: the Juvenile Act, Chapter 53, the Prison Act, Chapter 97, and the Constitution, Chapter 1.

The Constitution has no specific articles concerning children living in prison with their mothers. It is silent about these children. Under article 23 it discourages discrimination in all its forms when it states that 'discriminatory means affording different treatment to different

persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.’ The article makes a general prohibition against discrimination but does not state categorically the type of children whose rights should not be discriminated against. The Constitution should be amended to spell out who these children are. They are the children who enter prison and those who are born in prison.

The Juvenile Act, Chapter 53, is silent about circumstantial children in prison and so section 9 should be urgently amended to include them. They are just as vulnerable and need just as much special protection from the state as those who enter prison because they have broken the law themselves.

The Prison Act, Chapter 97, should also be amended. The general purpose of the Act should include the term ‘management of circumstantial children’. Section 56 should be amended so as to give direction to the Prison Service as to how to manage circumstantial children when they are admitted to prison with their mothers. It should also specify precisely how to cater for the specific needs of these children in all areas of their lives so that all their rights can be safeguarded and their welfare protected throughout their four-year stay in prison. The section should protect the children right from the moment of their mother’s arrest until their release from the Prison Service.

Sections 124, 125 and 126 of the Prison Act should also be amended so that these children may benefit from the combined reconstructed group visitations of the Police, Prison Officers, Drug Enforcement Officers, Immigration officers, Magistrates and Judges. The sections should encourage the visiting Magistrates and Ministers to demand to see the mothers and children and receive suggestions as well as complaints from them. The joint visiting group should be required to submit a report to the Minister of Home Affairs and to the Commissioner of Prisons who should, in turn, prepare a report for onward transmission to the Permanent Secretary for the Ministry of Home Affairs with a view to debriefing the President on the status of innocent children held in prison because of the circumstances of their parents. Such is the importance and sensitivity of their vulnerable condition in prison.



#### ***5.3.4 Human Rights Commission to formulate monitoring mechanisms***

The Human Rights Commission of Zambia, with its wide mandate, should come up with some mechanisms to monitor the rights of circumstantial children in prisons. This will help in improving the welfare of children living in prisons with their mothers. The monitoring mechanisms will help to normalize the abuse of human rights of the children by the State's operative departments, including the Prison Service. The Commission should make strong recommendations that children should not enter prison at all once the government actually builds proper children homes for such children because, no matter how comfortable prison may be made for such children, the ideal is that they should never enter the prison environment.

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# Appendix 1: Authorisation letter to conduct interviews in Zambian Prisons

Telephone: 222121 – 4  
Fax: 223916  
Telefax: 81428  
Email: registry@zambiaprison.gov.zm  
www.zambiaprison.gov.zm



REPUBLIC OF ZAMBIA  
**ZAMBIA PRISONS SERVICE**

OFFICE OF THE COMMISSIONER  
PRISONS HEADQUARTERS  
P.O BOX 80926  
KABWE

In reply please quote:

No.....

1<sup>st</sup> October 2013

Mr. Garbriel Lumano  
House No. 201, Lilayi Police Camp  
Zambia Police Training College  
Lilayi  
**LUSAKA**

**RE: REQUEST TO CONDUCT RESEARCH.**

Reference is made to your letter dated 26<sup>th</sup> September, 2013 in which you requested to conduct research in the Zambia Prison Service namely Lusaka Central Prison, female section, Kabwe female Prison, Kamfinsa female Prison and Kasenjeji Prison female section on the challenges faced by circumstantial children in Zambia Prisons.

I am pleased to inform you that permission has been granted for you to conduct the said research in the above mentioned formations.

The data collected should be used strictly for academic purposes only.

By the copy of this minute, the concerned Prisons authorities are informed accordingly and requested to facility the research.



A. Hamaleya  
Assistant Commissioner – Research, Planning & IT  
**For / COMMISSIONER OF PRISONS**

- CC: The Regional Commanding Officer, Lusaka Region –**LUSAKA**
- CC: The Regional Commanding Officer, Copperbelt Region – **NDOLA**
- CC: The Regional Commanding Officer, Central Region – **KABWE**
- CC: The Officer in Charge, Kabwe Female – **KABWE**
- CC: The Officer in Charge, Kamfinsa State Prison – **KITWE**
- CC: The Officer in Charge, Lusaka Central Prison – **LUSAKA**
- CC: The Officer in Charge, Kasenji Prison -**NDOLA**

## Appendix 2: Authorisation letter from the Ministry for researcher's supervisor to enter Prison

TEL: LUSAKA 254261/2  
TELEGRAPH: MINHOME, RIDGEWAY  
TEL FAX: 254336  
Email: homeaffairs@zamtel.zm

In reply please quote :  
No.....



### REPUBLIC OF ZAMBIA MINISTRY OF HOME AFFAIRS

INDEPENDENCE AVENUE  
P.O. BOX 50997  
LUSAKA

MHA/101/3/15

6<sup>th</sup> December, 2013

Mr. Gabriel Lumano  
House No. 201  
Lilayi  
LUSAKA

*Allowed 14:00 hrs  
on 07/12/13  
[Signature]*

**RE: PERMISSION FOR MY SUPERVISOR MS ROSALINE KUMBIRAI KATSANDE TO ACCOMPANY ME TO CONDUCT INTERVIEW WITH FEMALE PRISONERS AT LUSAKA CENTRAL PRISON.**

I refer to your letter dated 4<sup>th</sup> December, 2013 on the above subject matter.

Permission is hereby granted for your Supervisor, Ms Rosaline Kumbirai Katsande from Zimbabwe Faculty of Law, Southern and Eastern Africa Regional Centre for women to accompany you to Lusaka Central Prison where you will conduct interview with female prisoners.

Her passport No. is BN996750.

The information collected should be used strictly for academic purposes only.

By copy of this minute, prisons authorities are hereby requested to facilitate the visit.

  
Michael Sakala  
Superintendent  
Deputy Prisons Secretary  
For/PERMANENT SECRETARY

CC: The Commissioner of Prisons, Prisons Headquarters – **KABWE**  
CC: The Regional Commanding Officer, Lusaka Region – **LUSAKA**  
CC: The Officer in Charge, Lusaka Central Prisons – **LUSAKA**

### Appendix 3: Table showing places visited and types of people interviewed

Place Visited	Type of People Interviewed	Sex		Number
Lusaka Central Female	Convict		F	1
Lusaka Central Female	Remandee		F	5
Lusaka Findeco House	Secretary		F	1
Lusaka Findeco House	Executive Director	M		1
Lusaka Findeco House	Legal Counsel	M		1
Mukobeko Female Prison	Remandee		F	1
Mukobeko Female Prison	Convict		F	6
Kamfisa Female Prison	Remandee		F	1
Kamfisa Female Prison	Convict		F	6
Kamfisa Female Prison	Officer -in - Charge		F	1
Kansenji Female Prison	Remandee		F	2
Kansenji Female Prison	Female Prison Warder		F	1
Kansenji Female Prison	Officer -in - Charge	M		1
Lusaka Social Welfare	Assistant Social Welfare Officer		F	1
Lusaka Subordinate Courts	PRM		F	2
Lusaka Subordinate Courts	PRM	M		2
Star Ministries	Centre Administrator	M		1
Kabwe Prison Hqs	Officer - in- charge O. M.U.	M		1
<b>TOTAL NUMBER</b>		6	12	35



#### Appendix 4: Table showing categorisation of circumstantial children

Circumstantial Children Categorization					
Date of Visit	Place Visited	No. of children	SEX		Age Range
			F	M	
15/10/2013	Lusaka Central Prison	3		1	1 year 9 months
				1	3 months
				1	1 month
19/10/2013	Mukobeko Female Prison	6		1	5 months
				1	3 years
				1	3 months
				1	4 months
				1	6 months
				1	3 years
21/10/2013	Kamfisa Female Prison	7		1	2 years
				1	7 months
				1	11 months
				1	2 months
				1	1 year 8 months
				1	1 year 4 months
				1	3 weeks
22/10/2013	Kasenji Female Prison	1	1		1 year 8 months
<b>TOTAL</b>					
No.		17	7	10	3 wks to 3 years

## Appendix 5: Table showing country breakdown of circumstantial children

COUNTRY BREAK DOWN NUMBER OF CIRCUMSTANTIAL CHILDREN IN  
ZAMBIAN PRISON- BETWEEN OCTOBER & DECEMBER 2013

PROVINCE	NUMBER	FEMALE	MALE
CENTRAL	7	4	3
EASTERN	4	1	3
COPPERBELT	9	6	3
N/WESTERN	5	4	1
SOUTHERN	7	6	1
LUSAKA	8	5	3
NORTHERN	7	3	4
LUAPULA	5	2	3
WESTERN	5	4	1
MUCHINGA	1	1	
TOTAL	58	36	22