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RESEARCH TOPIC:

**ASSESSING THE PRISONER'S RIGHT TO HUMAN DIGNITY,
INTERROGATING THE SITUATION IN ZIMBABWE.**

SUBMITTED BY

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DECLARATION

I, **MONICA WADZANAI CHINGWADZA**, do hereby declare that this dissertation is the result of my own investigation and research, except to the extent indicated in the acknowledgement, references and by comment included in the body of the report, and that it has not been submitted in part or in full for any other degree at any other University.

.....

STUDENT SIGNATURE

...../...../.....

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APPROVAL FORM

The undersigned certify that they have read and recommended to the Midlands State University for acceptance a research project entitled “Assessing The Prisoners Right to Human Dignity, Interrogating the situation in Zimbabwe” submitted by Monica Chingwadza, Student Registration Number R132988E, in partial fulfilment of the Bachelor of Laws Honours Degree in the Faculty of Law at Midlands State University.

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DEDICATION

To the King of Kings

ACKNOWLEDGEMENTS

I owe it all to the Almighty, I came this far because of his grace and I can never thank Him enough. 'Ndinodzorera Mbiri Yose Kuhwayana YaMwari'

I extend my most profound gratitude to my parents for their unwavering support and sacrifices throughout the duration of this academic endeavor, I am forever indebted.

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And to my beautiful babies and future husband mommy did this for you, thank you for driving me.

LIST OF ABBREVIATIONS

ZACRO	Zimbabwe Association for Crime prevention and Rehabilitation of the Offender
CSA	Correctional Services Act
UDHR	Universal Declaration for Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ACHPR	African Charter on Human and People's Rights
ZHCR	Zimbabwe Human Rights Commission

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CHAPTER 1

1.1 INTRODUCTION

This dissertation seeks to establish whether upon conviction prisoners are still being afforded their right to human dignity. This basic right is assured by the Constitution and prisoners are entitled to it regardless of the fact that they are incarcerated.¹ Prisoners like all other citizens are entitled to the enjoyment of the greatest achievable standard of human dignity. This dissertation also seeks to call upon the government to urgently address the issues of disease outbreaks, food shortages, treatment of prisoners and living conditions in prison. The Prisons and Correctional Services of Zimbabwe must also ensure that the prison health system is integrated into the health system and establish links and collaborations with the Ministry of Health and Child Care in an effort to curtail disease outbreaks in prisons and curb preventable deaths.²

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1.2 BACKGROUND

A report by the Zimbabwe Human rights forum revealed that there are massive human rights violations in Zimbabwean prisons as they are characterized by inhumane conditions of incarceration³ Despite Zimbabwean prison system's adoption of international values of imprisonment, the living conditions of Zimbabwean jails are described by the Zimbabwe association for crime prevention and rehabilitation of the offender⁴ as not suitable at all for human inhabitation. Prisoners are supposed to be provided with two pairs of prison uniform⁵, but due to lack of funds, they are only issued with one pair that is usually tattered. Prisoners exchange these uniforms when they attend court or go out on work

¹ Constitution of Zimbabwe

² Zimbabwe Human Rights Prison Report, 2018

³ Zimbabwe Human Rights Prison Forum Report, 2019

⁴ Zimbabwe Association for Crime Prevention and Rehabilitation of The Offender Report 2010

⁵ Prisons Act [Chapter 7:11]

errands, and in so doing they expose themselves to the risk of contagious diseases.⁶

The leading case which called upon the relevant authorities to respect prisoners' rights to human dignity was the case of *Kachingwe & Others v Minister of Home Affairs & Another*⁷ In this case, Supreme Court personnel had the occasion of inspecting the conditions at High lands Police Station cells. It was perceived that detention under those conditions amounted to inhuman and degrading punishment in violation of s 15(1) of the previous Constitution. The applicant's account of Zimbabwe prison life is disheartening to say the least. On arrival into police custody, the Applicant and her fellow cellmates were given one small torn blanket for five prisoners to share forcing them to snuggle together under one blanket in the cold. The cell had no windows and there was no flushing toilet only a small container for all to use in public without any privacy. They were made to suffer the degradation of relieving themselves in public much to the humiliation and disgust of everyone made to undergo such indecency.⁸

It is quite disturbing to learn that in 2013, over 100 inmates died of hunger owing to the fact that the economic situation in our country had deteriorated and the government could no longer cater for prisoners.⁹ Government should ensure that inmates have access to food and other health requirements. The following phrase by Nelson Mandela was quoted by S Kaggwa: "... one cannot judge a nation until one has been inside its jails. A nation should not be judged by how it treats its illustrious citizens, but by the treatment gives the marginalized like prisoners."¹⁰ It is owing to this current state of prisons in Zimbabwe that this dissertation seeks to highlight the situation in prisons and call upon the government to take action as a matter of urgency and see to it that prisoners' right to human dignity is not violated in any way.

More often than not, the Zimbabwean prison system takes away the right to human dignity

⁶ Zimbabwe Human Rights Prison Forum Report, 2019

⁷ *Kachingwe & ors v Minister of Home Affairs & anor* 2005(2) ZLR 12 (S)

⁸ *Kachingwe case* (see n5 above)

⁹ Zimbabwe Human Rights Bulletin, March 2014

¹⁰ Report of the special Rapporteur on Prisons and conditions of detention in Africa at the 52nd ordinary session of the African Commission on human and people's rights Yamousokro Court de Ivoire 9-22 October 2012

from prisoners which right is of importance to this study. As a result, our prison system fails to achieve its goal of rehabilitating prisoners. Prisons are intended to be rehabilitative but in actual fact they are unbearable for most prisoners who come out worse than they were when they arrived at prison. Zimbabwean prisons are a far cry from being the rehabilitation centers they ought to be. An impartial and sophisticated legal system affords a constitutional right to due process. As such, the government of Zimbabwe should do its utmost best to improve lives of prisoners and ensure that they enjoy their constitutional rights to health and human dignity.

1.3 PROBLEM STATEMENT

The right to human dignity is provided for under section 51 of the Constitution of Zimbabwe.¹¹ In terms of that provision, every person has the right to dignity and the right to have that dignity respected and protected. This right is entrenched under the Bill of rights and everyone should enjoy it. However, the chief law governing Zimbabwean prison operations, The Prisons Act¹² is silent on the prisoner's right to human dignity and the standards of prisoners' treatment. The situation in Zimbabwean prisons is that the Zimbabwe Prisons and Correctional Services is neglecting the Prisoners' right to human dignity. The legal problem that currently subsists is the absence of legal framework specifically providing for the right to human dignity of prisoners leading to the lack of implementation of the said right on the part of the State.

1.4 RESEARCH OBJECTIVES

The main objective of the study is to establish the extent to which Zimbabwe Prisons and Correctional Services afford inmates their Constitutional right to human dignity.

The sub objectives include:-

To determine the legal framework establishing the right to human dignity.

¹¹ Constitution of Zimbabwe 2013

¹² Prisons Act [Chapter 7:11]

To determine the international law framework establishing the right to human dignity.

To see the extent to which the Zimbabwean legal framework is in sync with the international framework on the protection of prisoner's right to human

To carry out a comparative analysis with the United Nations Minimum Standards on Treatment of Prisoners and South Africa's Prisons and Correctional Services Act.

To make recommendations on how the prison system in Zimbabwe can be changed into the proper rehabilitation Centres they are supposed to be.

1.5 LITERATURE REVIEW

The right to human dignity is one of the most important of all human rights, and the source of all other human rights in the Bill of rights¹³, as such, the writer seeks to have the right to human dignity which is the subject of this discussion recognized in prisons. "By committing ourselves to a society founded on the recognition of human rights one is required to value this right above all others"¹⁴ Andrew Coyle¹⁵ stated that what constitutes punishment is the period of time a person is sentenced to not the actual treatment in prison, Prisoners should still be treated like any other person with rights when they are sent to prison. According to T Danda,¹⁶ The Zimbabwe Prisons and Correctional Services has a holding capacity of 17 000 prisoners but by 2013 there were over 22 000 prisoners making the prisons overcrowded by over 5000 inmates.

After spending 18 years at Chikurubhi Maximum Prison, Kevin Woods¹⁷ said that the prison conditions were deadly so much that an inmate required immense strength and will power to stay alive. Woods says amongst other things that he went without food for

¹⁴ The Bill of rights Handbook 5th Edition Iain Currie & Johan de Waaltr

¹⁵Andrew Coyle: The treatment of prisoners: International standards and case law page 2

¹⁶ Investigating into revenue generating activities to bridge the funding gap- a case of Zimbabwe Prisons and Correctional Services for the period 2011-2013 page21

¹⁷ 'My naked Hell in Zim Jail' 9 July <https://www.iol.co.za/news/politics/my-naked-hell-in-zim-jail-284749> (Accessed on 20 March 2019)

days and had to smuggle food into his cell in order to survive, endured overflowing toilets with no water or electricity. As if such conditions were not bad enough, he was stripped naked most of the time whilst in the cells. Yet another prisoner who corroborates Kevin Woods' account of Zimbabwean prison life is Simon Mann¹⁸ he says that one is stripped off of their basic human rights the moment they enter prison were agony is the order of the day.

Roy Bennet, a former MP, gave an awful ordeal of his 4 months at Mutare prison after being jailed for pushing then Justice Minister, Patrick Chinamasa during a scuffle in parliament. Roy Bennet described prison as a place where if you are fortunate enough to escape torture, you still have to fight off starvation because you are lucky to be fed once a week. He went further to say that, "This was worse than anything I've heard of, or could have thought, to experience people being beaten on a daily basis, hearing their screams, seeing people half naked, seeing them stripped off their dignity is unimaginable" Mr Bennett said he himself was stripped naked in front of guards and later given a filthy prison uniform covered with human excrement upon his initial admission into jail. Bennett referred the conditions in the prisons as a human rights tragedy and a serious abuse of human rights ¹⁹

The Parliamentary portfolio committee also visited some of the Zimbabwean prisons and found that the conditions were horrendous and left a lot to be desired. The Parliamentary committee report²⁰ noted with concern that prisoners who should have at least three blankets²¹ use tattered, lice infested blankets and live in cells with no toilets forcing them to resort to using buckets, the toilets were not functional but prisoners were still using them regardless of the fact that the system was not working thereby exposing inmates to spread of diseases. There was also lack of adequate water for cleaning, cooking and

¹⁸<https://www.dailymail.co.uk/news/article-article-2052222/four-long-years-in-a-Zimbabwean-jail> (Accessed on 20 March 2019)

¹⁹These were the words of Roy Bennet who was jailed at Mutare Prison after being accused of assaulting then Justice Minister Patrick Chinamasa during a heated debate in Parliament.

<http://www.theindependent.co.zw/2014/02/07/zims-prison-catastrophic-hellholes> (Accessed on 21 March 2019)

²⁰ Portfolio committee on Justice and Legal Affairs Report on the state of the prison system in Zimbabwe, March 2011

²¹Prisons Act [Chapter 7:11]

bathing which is hazardous to health as running water is very critical to an institution such as a prison which accommodates thousands of inmates. The Committee also noted that inmates go for months without some of the basic commodities, there were shortages of sugar, cooking oil, meat and mealie meal. The prison clinic had no drugs to treat ill prisoners and one prisoner reported that he could not get an X ray done because there was no transport to take him to hospital, in a similar case, another inmate could not get an X ray done because the Zimbabwe Prison Services had no money to pay for the X ray.²²

It has come to the writer's attention that in as much as authors are acknowledging that the situation in Zimbabwe prisons is bad they are silent on the way forward in order to make prison life bearable for inmates.

1.6 RESEARCH METHODOLOGY

This study undertakes a desktop research approach which comprises of primary and secondary sources of law. It is also a comparative study which seeks to compare and contrast the South African and Zimbabwean prison life. In carrying out this research the writer will use the following: Human rights textbooks, journals on prison conditions, deductive and descriptive research, case law, treaties, newspaper articles and internet research.

1.7 LIMITATIONS OF THE STUDY

This dissertation shall focus on the general framework that has been laid down by The Zimbabwe Prisons and Correctional Services and its overall objective of retribution and rehabilitation of convicted persons. This dissertation will also make a human rights critique of the ZPCS *vis a vis* the right to human dignity. Reference will also be made to International law using statutes and covenants. This study will also make a comparative analysis of the Zimbabwe prison system and the South African Prison system.

²²No. 17 above

1.8 SIGNIFICANCE OF THE STUDY

This research is significant because it will unravel the actual situation on the ground in Zimbabwean prisons. This research will also reveal the conditions in our prisons that do not further the constitutional right to human dignity. It is also the hope of the writer that this study ensures that deprivation of prisoners' right to human dignity is a thing of the past. Recommendations will also be given to enable the ZPCS and the state to improve living conditions in Zimbabwean prisons and to ensure that the prisoners' right to human dignity is respected and protected by all means.

1.9 CHAPTER SYNOPSIS

Chapter one

The first Chapter of this research is the introductory chapter which deals with the background and the problem statement, the objectives, purpose and significance of study. It deals with the literature review, theoretical framework, and limitation of study and methodology of the study.

Chapter two

This chapter contextualizes the right to human dignity. It provides understanding of the meaning and scope of the right.

Chapter three

This Chapter links the right to human dignity with what is happening in Zimbabwean prisons. It also effectively deals with the issue of whether or not the right to human dignity is being respected, promoted and observed in the prison systems. Thus the research is centered on the extent to which this right is being promoted.

Chapter four

This Chapter is a comparative analysis of the Zimbabwean Prison system with the Nelson Mandela Rules and the South African Prison System.

Chapter five

The author will make concluding remarks and recommendations with a view to provide a guideline to the legislature on how best to promote the fundamental right to human dignity. It will also deal with the impediments which may hamper the reform of the prison and correctional services.

CHAPTER 2

2.1 INTRODUCTION

Chapter one was the introductory chapter. This Chapter carries out a conceptual analysis of the right to human dignity by looking at the various definitions of human dignity, its historical development as a right, importance of human dignity and the concepts of human dignity. This Chapter also seeks to give a clear understanding of the right to human dignity and what it entails so that one can better appreciate the said right and be able to then point out whether the right is being respected in the Zimbabwean Prison system.

2.2 WHAT IS A HUMAN RIGHT?

Professor L Henkin defines human rights as the privileges every individual has, upon society in which she or he lives²³. To call them human rights suggests that they are universal, they are due to every human being in every society.²⁴ They know no geography, history, culture or ideology, political or economic system or state of development. To call them human rights implies that they need not be earned or deserved. They are more than aspirations or assertions of the good but claims of entitlements and corresponding obligations. Jack Donnelly further states that human rights are literally the rights that one has simply because one is human.²⁵ Human rights rest on nothing more than being human. They are held by all human beings universally.²⁶ They are rights that accrue to a person by virtue of being human.

2.3 CHARACTERISTICS OF A HUMAN RIGHT

They are universal- due to every human being in every society.

²³ Professor L Henkin, 'The rights of man today' Volume 11, (1979)

²⁴ See n23 above

²⁵ Jack Donnelly (ed) Universal Rights in theory and practice (2013)

²⁶ Jack Donnelly (Ed) Universal Human Rights in theory and practice (2013)

They are inalienable – everyone is entitled to them and cannot be taken away.

They are indivisible and interdependent –exist simultaneously

They inhere from the dignity of the human person

Their enjoyment is based on the principle of non-discrimination, all people are equal before the law and are entitled to equal enjoyment of human rights.

2.4 THEORETICAL CONCEPTUALIZATION OF DIGNITY

Dignity is defined as the state of being worthy of honor and respect.²⁷ When this concept is associated with the adjective human, it is used to denote that all the human beings possess equal and inherent worth and therefore ought to be accorded the highest respect and care regardless of age, sex, socio economic status, health condition, ethnic origin, political ideas or religion. Inherent dignity cannot be separated from the human condition, it is the same for all, cannot be gained or lost and does not allow for any degree.²⁸ This entails that even a criminal cannot be stripped off his or her inherent dignity and has therefore the right not to be subjected to inhuman or degrading treatment or punishment.

Most scholars have highlighted that it is difficult to define human dignity in a legal context as it is not even defined in the Universal Declaration of Human Rights,²⁹ the first declaration that recognizes the right to human dignity and other covenants that followed thereafter. Human Dignity is the fundamental principle of all international statutes, treaties and covenants. Article 1 of the UDHR states that all humans are born with inherent dignity, this implies that human dignity is a birth right not just a mere right conferred by the Constitution.³⁰ All humans are born equal in dignity hence everyone is entitled to have basic human rights regardless of social class.

²⁷ Oxford Encyclopedic English Dictionary

²⁸ Human Dignity: A challenge to contemporary philosophy (1971) World Futures The Journal of General Revolution

²⁹ Universal Declaration of Human Rights 1946

³⁰ Universal Declaration of Human Rights 1946

It is safe to say that the law lacks a principled definition of human dignity. The modern legal notion of dignity displays a complex character of crossbreed interaction between an illustrative quality and a prescriptive concept, the so called is ought dilemma in law, a legal phenomenon which was described by Habermas³¹ as a "fusion of moral content with coercive law." Dignity represents a "wide moral view"³², a concept that implies an objective moral principle on one hand and on the other legal recognition of equal human right.

2.6 THE IMPORTANCE OF HUMAN DIGNITY

Human dignity is the foundational concept of the global human rights regime, the ultimate value that gives soundness to human rights.³³ According to the International Human Rights Covenant of 1996, human rights flow from the inherent dignity of the human person.³⁴ Further, The Vienna Declaration reiterates this position saying that all human rights derive from the worth and dignity inherent in a person.³⁵ The right to human dignity is the greatest human right that is the source of all rights.³⁶ It is agreed that there is no clear definition of human dignity but if one is to analyse the definitions proffered by all the scholars it is apparent that the importance of human dignity is that it serves as a foundation of every other human right.

2.7 THE LEGAL CONCEPT OF HUMAN DIGNITY

The concept of human dignity is one of the most vital and innovative elements introduced by the Universal Declaration of Human Rights.³⁷ The UDHR is a celebrated instrument in human rights history, it highlights that inherent dignity is the foundational principle of

³¹Jurgen Harbemus, 'The concept of Human Dignity and the Realistic Utopia of Human Rights' (2010)

³²Doron Shultziner, Human Dignity-Functions and Meanings (2003) 85

³³ K J Hasson 'Religious Liberty and Human Dignity: A Tale of two Declarations' (2003) Vol 27 Havard Journal of Law

³⁴ International Human Rights Covenant 1996

³⁵ Second perambulatory paragraph, The Vienna Declaration, 1993

³⁶ Professor Hbil Dr Alfonsas Vaisvila, Human dignity and the right to dignity in terms of legal personalism

³⁷ Kretzmer D and Klien E, The concept of dignity in human right discourse, (2002) 111

peace and justice in the world.³⁸ The United Nations has in the Charter reiterated its faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and has determined to promote social progress and better standards of life in larger freedom.³⁹ The Charter also declares that human rights are universal hence they should be enjoyed by all people no matter who they are, whether they are free or incarcerated.⁴⁰

2.9 THE AFRICAN CONCEPT OF HUMAN DIGNITY

Dignity is highly significant for the African people as they consider it as a mental state inherent upon every human being. This can be taken to mean that automatically every human being is entitled to worth and honour. This right is possessed by everyone inherently regardless of their mental state or position in life. The African Charter on Human and Peoples Rights also recognizes inherent dignity.⁴¹ It states that the vital objectives to realize legitimate aspirations of Africans are dignity, justice, freedom and equality. Dignity is highly valued in the African culture because it is the foundation of each person's humanity. It should therefore be respected and protected by all means.

2.10 THE CONSTITUTIONAL FRAMEWORK FOR THE RIGHT TO HUMAN DIGNITY IN ZIMBABWE

The right to human dignity is provided for in the Constitution of Zimbabwe which is the supreme law of the land. Not only does it appear as a right on its own in section 51, it also forms part of the founding values and principles of the Constitution,⁴² and the Courts are enjoined to take into account values that underline an open, just and democratic society based on human dignity, equality and freedom. Human dignity is thus one of the values

³⁸ It should be noted that provisions of the UDHR are not binding on states, but provisions are regarded as customary international law because many states have incorporated it into their legislation thus it remains binding to most states with the exception of those states which have objected.

³⁹ Universal Declaration of Human Rights 1946

⁴⁰ Universal Declaration of Human Rights 1946

⁴¹ African Charter on Human and peoples' Rights

⁴² Constitution of Zimbabwe 2013

Courts must take into account when interpreting the Constitution. In *State v Moyo*, Cheda J clearly stated as that, it should not be forgotten that, irrespective of how bad the offender is in the eyes of society, he is still entitled to human treatment, for it is his human right to be so treated.⁴³ In *Kachingwe & Others v Minister of Home Affairs & Another*, the Constitutional Court had no hesitation in holding that prison conditions in holding cells, created conditions which subjected the Applicant thereto, Nancy Kachingwe to cruel and degrading punishment in conflict with the then Section 51 of the Constitution of Zimbabwe.⁴⁴

2.11 CONCLUSION.

It is difficult to define human dignity but what is clear is that it is an inherent and inalienable right, all human beings are born equal in dignity and in rights deserving full moral respect. One can safely say that prisoners are not any lesser of human beings because they have committed crimes thus they are also entitled to the right to human dignity. Human dignity functions as the basis of constitutional rights thereby providing a broad protective scope for these rights. Human Dignity is protected as a right in both international and many domestic jurisdictions. The Zimbabwean law makers also recognized the importance of human dignity and entrenched it as a right in the Constitution.

⁴³State v Moyo & ors 2006(2) ZLR 315 at 318G

⁴⁴ Kachingwe & ors v Minister of Home affairs and anor 2005(2) ZLR 12 (S)

CHAPTER 3

3.1 INTRODUCTION

Chapter two was basically a conceptual analysis of the right to human dignity and an exposition of the framework policy for this right in Zimbabwe. This Chapter links the right to human dignity with what is happening in Zimbabwean prisons. It also seeks to critically examine whether the Zimbabwean government through the Zimbabwe Prisons and Correctional Services is adhering to the constitutional, statutory and international obligations to promote, respect and fulfil prisoner's rights. The research is centred on the question of whether this right is being promoted or being ousted. Living conditions in every prison meant for the custody, care and treatment of offenders are to be compatible with human dignity in all aspects including but not limited to accommodation, hygiene, sanitation, food, clothing and medical facilities.⁴⁵

3.2 LEGAL FRAMEWORK ADDRESSING THE RIGHT TO HUMAN DIGNITY IN ZIMBABWE.

The Constitution of Zimbabwe is the supreme guideline in guaranteeing the rights of prisoners. Section 51 is the most relevant and subject of this study as it provides the right to human dignity.⁴⁶This section is read together with section 53 of the Constitution which states that no person may be subjected to physical or psychological torture or to cruel, inhumane or degrading treatment or punishment.⁴⁷Further, section 99 of the Constitution also calls for security services including Prisons and correctional services to respect and protect every person's fundamental rights and freedoms as they execute their functions.⁴⁸ The national legislation that governs prisons in Zimbabwe is the Prisons Act⁴⁹ and

⁴⁵ United Nations Minimum Rules on Treatment of Prisoners

⁴⁶ Constitution of Zimbabwe 2013

⁴⁷ Constitution of Zimbabwe 2013

⁴⁸ Constitution of Zimbabwe 2013

⁴⁹ Prisons Act [CAP 7.11]

Statutory Instrument 96 of 2012.⁵⁰ The latter goes a step further to state the standard dietary scale for inmates.

Section 50(5)(d) of the Constitution provides for detained persons' right to conditions of detention that are consistent with human dignity, including the provision of medical treatment at the State's expense.⁵¹ Thus, the right to medication for detainees does not appear to be subject to progressive realisation. The Constitution also confers on every person the right to safe, clean and potable water. It further provides that detained persons have the right to conditions of detention that are consistent with human dignity, including the provision at State expense of adequate accommodation, ablution facilities and personal hygiene.⁵² The Constitution provides for every citizen and permanent resident's right to have access to basic health care and reproductive health care services; including access to basic health care for chronic illnesses.⁵³

The Zimbabwean Constitution protects the right of every person to the entitlement of inherent dignity in their private and public life, and right to have that dignity respected and protected. The right to human dignity is foundational and has been equated with the right to life.⁵⁴ Thus, the right to human dignity which includes the protection of personal security is at the cornerstone of the constitutional order introduced by the new Constitution. The human dignity, in our new Constitution becomes a justiciable and enforceable right. There is no question that being treated like an object without any hope, as described and testified by witnesses who have actually been inside Zimbabwean prisons, assaults and infringes on their human rights. A human being does not deserve to be treated as an object and should be subjected to retribution and reintegration.

The Prisons and Correctional Services Act⁵⁵ also highlights the manner in which inmates should be treated so as to respect their humanity and dignity. It states that the Minister is at liberty to make regulations on safe custody, diet, clothing, maintenance and treatment

⁵⁰ Statutory Instrument 96 Of 2012

⁵¹ Constitution of Zimbabwe 2013

⁵² Constitution of Zimbabwe 2013

⁵³ Constitution of Zimbabwe 2013

⁵⁴ S v Makwanyane 1995 (3) SA 391 (CC)

⁵⁵ Prisons and Correctional Services Act 2016

of prisoners. It further states that clothing, furniture, cells and surroundings thereof are to be kept clean at all times.⁵⁶ The Prison Service is to provide inmates with essential health care services and access to preventative health measures and sick prisoners are to be isolated and the seriously ill are to be transferred to private hospitals. This Act therefore strives to ensure that prison living conditions are consistent with human dignity.

3.3 THE ZIMBABWEAN SITUATION

3.3.1 OVERCROWDING IN PRISON CELLS

The UN rules on the Treatment of Prisoners clearly state that all sleeping accommodation is supposed to meet all requirements of health paying specific attention to climatic conditions, cubic content of air, minimum floor space, lighting, heating and ventilation.⁵⁷ The findings below however suggest that Zimbabwean prisons have dismally failed to adhere to the rules. At Chikurubi and Bindura prisons specifically, prisoners sleep in overcrowded cells.⁵⁸ The cells are overcrowded to an extent that inmates interviewed by the ZHRC complained of lack of space to manoeuvre at night and that when they are locked up they feel suffocated because the cells are too stuffy⁵⁹. Chikurubi prison cells which ought to house 20 prisoners can hold over 40 prisoners. One can therefore rightfully say that such a state of affairs where prisoners stay in overcrowded cells is indeed tantamount to a lack of respect of prisoner's right to human dignity. Overcrowding poses as a major problem in Zimbabwe's 46 prisons which hold over 20 000 prisoners regardless of a maximum carrying capacity of 17 000 inmates It is also an affront to the right to human dignity because healthy prisoners are being forced to share cells with

⁵⁶ Prisons Act Chapter 7.11

⁵⁷ UN basic principles on Treatment of Prisoners

⁵⁸ Zimbabwe Human Rights Bindura Prison Visit Report 2018

⁵⁹ Zimbabwe Human Rights Commission Prison Report

prisoners with tuberculosis when it is common cause that tuberculosis patients are supposed to be isolated so as to curb spreading of the disease.⁶⁰ The health personnel at Chikurubhi confirmed to the ZHRC that there is a considerable number of inmates battling tuberculosis.⁶¹

The ZHRC further reported that there was overcrowding at Harare Remand Prison which had 978 inmates despite a holding capacity of 900 inmates. Understaffing was also a problem as these inmates were being managed by 279 officers against a required compliment of 379 officers.⁶² At Tabudirira Satellite Prison in Mutoko, there was only one cell which was a disused shed that had been converted to house inmates.⁶³ Incidents of serious overcrowding were also reported at Mutare Farm Prison as cells that had a holding capacity of between 15 to 20 prisoners housing up to 35 inmates per cell.⁶⁴ The overcrowding taking place at most prisons clearly infringes upon detainees' right to adequate accommodation as provided for in international law and in the Constitution.⁶⁵

The Standard Minimum Rules of Untried Prisoners states that prisoners are entitled to special facilities to the extent of having to sleep in single cells.⁶⁶ The rules state that untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.⁶⁷ This is however a far cry from the situation on the ground in Zimbabwean prisons where prisoners are sleeping in awfully overcrowded cells. This is no doubt a direct attack on the right to human dignity of prisoners.

⁶⁰ Zimbabwe Human Rights Prison Report 2018

⁶¹ Zimbabwe Human Rights Prison Report 2018

⁶² ZACRO and the Forum, Harare Remand Prison Visit Report 2

⁶³ ZACRO and the Forum/ Tabudirira Satellite Prison Visit Report 2

⁶⁴ ZACRO and the Forum, Mutare Farm Prison Visit Report,1

⁶⁵ Constitution of Zimbabwe 2013

⁶⁶ United Nations Standard Minimum Rules for the treatment of Prisoners 2015

⁶⁷ Nelson Mandela Rules, 2015

3.3.2 DIET AS A CORNERSTONE OF HUMAN DIGNITY

Article 20 of the United Nations rules on treatment of prisoner's states that every prisoner shall be provided by the administration at the usual hours, with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. It further provides that drinking water shall be available to every prisoner whenever there are in need of it.⁶⁸ Statutory instrument 96 of 2012 provides for the minimum nutritional food that may be served to inmates and these are: sadza, meat, vegetables, sugar, salt and porridge.⁶⁹

The Zimbabwe Prisons and Correctional Services is on record many times admitting that there are severe food shortages in the prisons and correctional institutions, Officer in charge of Chikurubhi Maximum Prison, Ernest Pombabyi admitted to the Zimbabwe Lawyers for human rights that food is inadequate.⁷⁰ It is submitted that failing to provide prisoners with food of good quality and quantity amounts shows that the prisoner's right to human dignity is not being taken seriously. Cases of malnutrition and food deficiency diseases are rampant in the Zimbabwean prisons. According to reports by the Zimbabwe Lawyers for Human Rights in the year 2013, over 100 prisoners died because of malnutrition related diseases. In the year 2015, four prisoners were reported dead and several others injured.⁷¹ According to the prison official reports, this was as a result of the shootings that occurred in protests over food. The reason behind the protest is that the prison had gone for more than 3 years without providing meat for the inmates.⁷²

At this juncture, it is pertinent to note the times which prisoners have food in the Zimbabwean prisons. Breakfast at Chikurubi and Bindura prisons is served around 7am and 8am, Lunch is served between 11:30 to 13:00 and supper served between 14:00 and 15:00.⁷³ Food ought to be served at the proper times especially in jails where prisoners do not have a chance to grab a snack from the fridge when they are hungry. The time supper

⁶⁸ United Nations standard minimum Rules for the treatment of Prisoners 2015

⁶⁹ Statutory Instrument 96 of 2012

⁷⁰ Zimbabwe Human Rights Prison Report 2018

⁷¹ Zimbabwe Human Rights Prison Report 2018

⁷² Zimbabwe Human Rights Prison Report, 2018

⁷³ Zimbabwe Human Rights Commission Prison visit Report 2017

is served is the most disturbing because for the 14 hours that is from 16:00 to 08:00 the following morning, prisoners will be under lock down they will be hungry most of the time.⁷⁴ Most Zimbabweans talk of going to jail to die and a visit by the Parliamentary Human rights committee revealed that this was owing to the crippled economy which made it difficult to feed prisoners.⁷⁵ The officer in charge of Chikurubhi maximum prison, Ernest Pombayi further reiterated that food is not adequate hence the difficulties in feeding inmates.

It is submitted that failing to provide food of proper quality and quantity is tantamount to inhumane treatment. This is so because whilst in prison there is no significant means which prisoners can initiate to put food on their table. Failure to provide adequate nutritious meals for inmates is tantamount to condemning the prisoners to a slow, painful and miserable death.

3.3.3 ADEQUATE CLOTHING

It is common cause that all inmates in Zimbabwe prisons wear uniforms that identify them. However, in some provinces, prisons are not in a position to provide uniforms hence inmates resort to wearing their own clothes.⁷⁶ A shortage of jerseys, knee high socks and closed shoes was reported at Mutare Farm Prison.⁷⁷ Every prisoner who is not allowed to wear their own clothing ought to be provided with clothing that is not humiliating or degrading, which is suitable for the climate and also adequate to keep him in good health.⁷⁸ The Zimbabwean Constitution makes no direct reference to right to clothing. It however provides that detained persons have the right to detention conditions that are that are consistent with human dignity including personal hygiene.⁷⁹ Prisoners are provided with uniforms but most of them only have a single pair which is usually worn out. This is contradictory to the statutory requirement for two uniforms per inmate. Some of

⁷⁴ Zimbabwe Human Rights Prison Visit Report,2018

⁷⁵ Prisoners starve in Zimbabwe's overcrowded jails. News24, 20 May, 2015

⁷⁶ ZACRO and the forum Harare Remand Prison Visit Report,8

⁷⁷ ZACRO and the Forum Mutare Prison Visit Report

⁷⁸ United Nations Standard Minimum Rules on Treatment of Prisoners

⁷⁹ Constitution of Zimbabwe 2013

the uniforms are sewn by inmates but some are in tatters and beyond repair. Interviewed inmates confirmed lack of bedding, clothing, bath and washing soap.⁸⁰ In most cells inmates use tattered lice infected bedding and the most recurrent complaint was that of poor and inadequate bedding, there are also no mattresses and inmates are forced to sleep on the hard cold prison floors.⁸¹

3.3.4 SANITATION

The sanitation standards in Zimbabwean prisons are disheartening to say the least. The conditions of our prisons clearly show that prisoners' right to human dignity is being disregarded, A prisoner interviewed by the ZHRC indicated that they only get running water three times a week and one can safely say that this is a serious health hazard.⁸²

An article in the Daily News indicated that the D section of the female prison, where two or three women share a cell are reported not to have any toilets. Cynthia Manjoro, who was part of the 29 Glen View activists suspected of killing a policeman in May in the year 2011, stated that the experience of living in a cell with no ablution facilities left her feeling like she was not a human being anymore.⁸³ She further stated in the article that the female prisoners had to resort to cutting two litre bottles and use them when they want to relieve themselves for the 14 hour period they will be under locked in cells.⁸⁴

A critical element of Zimbabwe's prison cells is the urgent need for ample sanitary facilities to allow prisoners to conform to the needs of nature in a hygienic and decent way, and also the need for shower or bathing facilities that are compliant with the geographical and climatic conditions.⁸⁵ Sustaining prisoners' health and cleanliness is also reliant on the fact that prisons are squeaky clean and maintained at all times and that each inmate should have their own bed with clean and adequate bedding which is changed on a

⁸⁰ Zimbabwe Human Rights Prison Report 2018

⁸¹ Zimbabwe Human Rights Prison Report, 2018

⁸² Zimbabwe Human Rights Prison Visit Report, 2018

⁸³ Daily News Article, Life in Chikurubhi Maximum Prison, 5 February 2013

⁸⁴ <https://www.dailynews.co.zw/articles/2013/02/05/life-in-chikurubhi-maximum-prison> accessed on 20 March 2019

⁸⁵ United Nations Standard Minimum Rules on Treatment of Prisoners

regular basis.⁸⁶After taking consideration of the above it can be categorically stated that the sanitation issues in our prison are shocking. A human being with human dignity inherent in himself cannot be subjected to sleep or live in the same room with his toilet or any ablution facility whatsoever.

It is reported that there were serious concerns regarding cell conditions and sanitation at Whawha Young Offenders Prison despite the fact that the prison had access to adequate municipal water, one cell block visited by the Zimbabwe Human Rights Personnel had one inside toilet and three outside ablution facilities including a urinary.⁸⁷ The inmates used the bucket system during the day as the water came without much pressure. There were five showers in that block, they all need repair as they were not working and also there were shortages of detergents as soap and other washing aides were rarely supplied by the Prison and inmates relied on what they received from relatives and good Samaritans.⁸⁸ These cell conditions violate detainees' right to conditions of detention that are consistent with human dignity and to the provision at State expense of adequate accommodation, ablution facilities and personal hygiene as provided for by section 55 (5) (d) of the Constitution. ⁸⁹

According to the Human Rights prison Report, at Mutare Farm Prison, there was inadequate bathing soap in the washrooms and body lotion such that inmates had to rely on provisions brought by their relatives during visitations lice had also become a serious problem and there was need for fumigation to fix the situation.⁹⁰ There was erratic municipal water supply and the toilets were dilapidated indicating that there was a protracted neglect to repair them. Due to the erratic water supply, inmates had to resort to using water in buckets to flush the toilets.⁹¹ These conditions violate the prisoner's right to be placed in conditions of detention that are consistent with human dignity as provided for in the Constitution.⁹² As demonstrated above, the provision that requires State to

⁸⁶ United Nations Standard Minimum Rules on Treatment of Prisoners

⁸⁷ Zimbabwe Human Rights Prison Visit Report,2018

⁸⁸ Zimbabwe Human Rights Prison Visit Report,2018

⁸⁹ Human Rights Prison Visit Report 2018

⁹⁰ ZACRO and the Forum, Mutare Prison Visit Report 2

⁹¹ ZACRO and the Forum, Mutare Farm Prison Visit Report 2

⁹² Constitution of Zimbabwe 2013

provide adequate ablution facilities and personal hygiene are integral elements of the right to be placed in conditions of detention that are consistent with human dignity.⁹³ Being left to wash one's body without soap or having to wait for relatives to provide the basic necessities required for personal hygiene or being left to live in conditions that permit for an 'outbreak' of lice is hardly consistent with the right to human dignity.

Unfortunately, prisoners in other jails experience more serious challenges than having lice or bathing without soap. For instance, there was no toilet in the cells at Tabudirira Satellite Prison, there was one bucket in the cell which inmates used to relieve themselves and the bucket was now in a dilapidated State.⁹⁴ However, there was only one Blair toilet with 5 holes that were then almost full and some overflowing. There were inadequate detergents to clean the toilets. The provision of soap and other washing material largely came from the relatives of the inmates, not the State, although it could sometimes be provided by government.⁹⁵

There is no doubt that these cell conditions are inconsistent with every detainee's right to be treated in a dignified way and to be provided with ablution facilities that foster personal hygiene as stipulated in the Constitution.⁹⁶ They also violate the right to an adequate standard of living as stipulated in various international human rights instruments.

3.3.5 ACCESS TO HEALTH CARE SERVICES

Prisons in Zimbabwe are beset by over-crowding, very poor sanitation conditions, shortages of blankets, soap, shortages of medicines and severe food restrictions. Over-crowded prisons are breeding grounds for tuberculosis, a problem which prompted the WHO to issue guidelines for dealing with TB in prisons over a decade ago. Hunger is a sad reality in Zimbabwean prisons.⁹⁷ A recent article by Jocelyn Alexander published in *The Lancet* begins with the sentence: "A bare struggle for survival, with food at its core,

⁹³ Constitution of Zimbabwe 2013

⁹⁴ ZACRO and the Forum, Tabudirira Satellite Prison Report 2

⁹⁵ ZACRO and the Forum, Tabudirira Satellite Prison Monitoring Visit Report, 2

⁹⁶ Constitution of Zimbabwe 2013

⁹⁷ Zimbabwe Human Rights Prison Report 2018

has come to define prison life in Zimbabwe” Describing the appalling conditions, the author continues with quoting gruesome statistics of deaths across Zimbabwe’s 40-odd prisons, which reaches well into the thousands.⁹⁸ In a country where resources are spread to the limit, prisoners are the last in line, denying food, safe water, toilets and medical care to prisoners constitutes grave violations of their human right to health and their right to human dignity.⁹⁹ Human rights cannot be denied to persons and every human is a bearer of these rights whether incarcerated or free. International human rights legislation is very clear: that every person has the right to health. The reality of Zimbabwean prisons is that a minor prison sentence can be tantamount to a death sentence as prisoner’s right to health is not being respected. This is regardless of the fact that the Constitution and plenty international human rights instruments provide that prisoners have the right to the highest attainable standard of physical and mental health.¹⁰⁰

3.4 CONCLUSION

As has been clearly demonstrated above, the government still has a long way to go in order to realise the prisoner’s right to human dignity. Overcrowding, adequate food and clothing and lack of access to health care still pose as great challenges in the Zimbabwean prisons and the government should take appropriate measures to ensure that the right to human dignity is recognized, protected and respected. The Constitution provides that all arrested persons have the right to conditions of detention that are consistent with human dignity and these include sanitation, clothing, accommodation and access to health care services. The right to human dignity requires that the state ensures the provisions of these and other minimum conditions of detention.

⁹⁸ <https://www.thelancet.com-death-and-disease-in-zimbabwe-prisons-> (accessed on 13 March 2019)

⁹⁹ See n98 above

¹⁰⁰ Universal Declaration of Human Rights, ICESR, CRPD, DEVAW

CHAPTER 4

4.0 INTERNATIONAL LEGAL FRAMEWORK STANDARDS FOR PERSONS IN DETENTION

4.1 INTRODUCTION

The discussion in Chapter Three concluded with a finding that the prisoner's right to human dignity is being grossly violated in Zimbabwean prisons. This Chapter compares Zimbabwe's legislation with the provisions of South Africa's Correctional Services Act and the United Nations Standard Minimum Rules for the Treatment of Prisoners. The aim is to highlight what Zimbabwe could 'borrow' from South Africa and the global world so that her prisons uphold the concept of human dignity for its inmates.

4.2 THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

The rules came into force in 1990 after the General assembly of the United Nations agreed on the relevant principles. According to the rules, all prisoners ought to be treated with respect due to their inherent dignity and value as human beings.¹⁰¹ Amongst many other examples, treatment with human dignity according to the rules, means prisoners must be served with enough nutrition, and be given enough bedding and clothes. South Africa is one of the countries to have adopted some of the United Nations rules.

4.3 CUSTODY OF PRISONERS UNDER CONDITIONS OF HUMAN DIGNITY

The Bill of Rights, under Chapter 2 of the South Africa Constitution, lays down the rights of all persons in South Africa. Of particular importance for prisoners is the right to be

¹⁰¹ United Nations Standard Minimum Rules for Treatment of Prisoners.

treated with human dignity. Such right is based primarily on section 10 of the Constitution which states that:

“Everyone has inherent dignity and the right to have their dignity respected and protected.”¹⁰²

For prisoners, the respect for human dignity provided for in the South Africa constitution is further complemented by the Correctional Services Act¹⁰³ which provides for conditions under which prisoners are to be detained. The statute provides for a number of rights but this chapter will put an emphasis on accommodation, nutrition, clothing and bedding, health care, and religion as canons that further the concept of human dignity for the incarcerated.

4.4 THE BASIC RIGHTS THAT FOSTER RESPECT FOR HUMAN DIGNITY IN THE CORRECTIONAL SERVICES ACT (111 OF 1998)

Although Parliament passed the CSA in 1998, it only came into full force in October 2004. Chapter 3 of the Act describes the General Requirements for the treatment of prisoners. These rights apply to all prisoners and as such lay down the minimum standards for the treatment of prisoners under South African law.

4.5 CLOTHING AND BEDDING

The Act,¹⁰⁴ states that upon admission, every sentenced prisoner must be provided with a full set of clothing and bedding. The South African provision is couched in peremptory language which makes the provision of a full set of clothing and bedding mandatory. A similarly worded provision in the Prisons Act would be a good addition for Zimbabwe which could do away with instances of prisoners walking half naked because of lack of proper clothing. To uphold human dignity, yet to be sentenced prisoners are allowed to wear their own clothes, but if they are issued with prison clothes, such garments must be

¹⁰² Constitution of South Africa

¹⁰³ Correctional Services Act [Chapter 111:1998]

¹⁰⁴ Correctional Services Act [Chapter 111:1998]

different from the clothes worn by sentenced prisoners. In addition, a prisoner may wear such religious or cultural attire as allowed by the Department.

4.6 HEALTH AND SECURITY

When large numbers of people are kept in relatively small spaces, there are health risks. Such risks can be made worse when too many people are kept in poorly ventilated spaces with inadequate toilet and shower facilities. Such has been the case in Zimbabwe prisons. Contagious diseases, such as tuberculosis, spread rapidly under such conditions and therefore prisoner health requires very careful management and monitoring. In terms of the Act, ¹⁰⁵as soon as possible after a prisoner has been admitted to prison, he or she must have a bath or shower and undergo a medical examination by a registered doctor or nurse that must include testing for the specified contagious diseases.

4.7 ACCOMMODATION

Just like in Zimbabwe, the majority of prisoners in South Africa are accommodated in communal cells that were built to accommodate a group of prisoners who share communal cell facilities such as the showers, toilets, and common space. To avoid cases of overcrowding in cells, meaning that cells accommodate more people than what they were intended to, the Correctional Services Act¹⁰⁶ provides that prisoners must be held in conditions that do not undermine their human dignity. The provision, by inclusion of the word *must* informs that this is a peremptory provision. The provision specifies that the floor space and cubic space must be adequate for each prisoner to move about freely and sleep comfortably within the cell, Lighting in a cell (natural and artificial) must be of such a nature that prisoners inside are able to read and write, ventilation must be adequate, and that there must be adequate ablution facilities (showers and toilets) for the number of people who are supposed to use them and they must be accessible at all times. These facilities must have hot and cold water. In communal cells, the ablution facilities

¹⁰⁵ Correctional Services Act [Chapter 111:1998]

¹⁰⁶ Correctional Services Act [Chapter 111:1998]

must be partitioned off. In addition, every prisoner must have a bed and be provided with sufficient bedding depending on the climate. This applies to both cells and prison hospitals.

4.8 NUTRITION AND MEALS

In Zimbabwe the general practice is that prisoners would be locked up at approximately 14:00 after they had been counted because the daytime staff shift comes to an end at 16:00. In addition, Zimbabwe prisons are notorious for serving prisoners inadequate and/or low quality food. This is inhumane. On the aspect of food, the Correctional Services Act¹⁰⁷ and Regulations are very specific so prisoners' dignity is not negatively affected by the food they receive. Each prisoner must receive sufficient food to promote good health; the calorie counts and that the diet must provide for a balanced distribution of food from the five major food groups.¹⁰⁸ It is also law that the diet must make special provision for children and when and where possible, the diet must recognize religious and cultural preferences. Food must be well prepared and served at intervals of no less than 4½ hours and no more than 6½ hours. There may be a break of no longer than 14 hours between the last meal of the day and the first meal of the next day.¹⁰⁹ Prisoners must have access to clean drinking water at all time.¹¹⁰ In Zimbabwe however food served to all inmates and their babies has dietary deficiencies in the sense that it lacks basic nutrients.¹¹¹ Whilst the Zimbabwe Prison System is hailed for introducing Statutory Instrument 96 of 2012¹¹² with a dietary scale it is not being implemented because of lack of funding.

4.9 HEALTH CARE

Health care in prisons is a contentious issue. Although tuberculosis has been associated with prisons for a long time, HIV/Aids has brought a new dimension to the prison health

¹⁰⁷ Correctional Services Act [Chapter 111:1998]

¹⁰⁸ Correctional Services Act, Regulation 4

¹⁰⁹ Correctional Services Act [Chapter 111:1998]

¹¹⁰ Correctional Services Act [Chapter 111:1998]

¹¹¹ <http://www.herald.co.zw/36-babies-behind-bars/> (accessed on 30 March 2019)

¹¹² Statutory Instrument 96 Of 2012

care debate. In South Africa, the Correctional Services Act stipulates that prisoners have the right to adequate health care based on the principles of primary health care.¹¹³ This means that at least the same level of health care must be available to prisoners as to members of the community. In addition, Prisoners may consult their own medical practitioner at their own cost.¹¹⁴ In Zimbabwe the prisoner's right to health is being neglected, The Harare Remand Prison Report,¹¹⁵ and Mutare Farm Prison Report¹¹⁶ indicated that both prisons do not have an independent clinic or dispensary to cater for sick prisoners.

4.11 CONCLUSION

The United Nations Standard Minimum Rules for Treatment of Prisoners provide the best template on how prisoners should be looked after. The template encourages respect for human dignity. Unlike in Zimbabwe, the legal framework for the treatment of prisoners in South Africa is in sync with United Nations recommendations.

¹¹³ Correctional Services Act [Chapter 111:1998]

¹¹⁴ Correctional Services Act [Chapter 111:1998]

¹¹⁵ ZACRO and the Forum, Harare Remand Prison Visit Report

¹¹⁶ ZACRO and the Forum, Mutare Farm Prison Visit Report

CHAPTER 5

5.1 INTRODUCTION

Chapter 4 was a comparative analysis of the Zimbabwean Prison system and the South African Prison System. The Chapter also highlighted what Zimbabwe could borrow from South Africa and the global world to ensure that the prisoner's right to human dignity is respected. The finding of the previous chapter was that the Zimbabwean prison system is a far cry from the South African Prison system. This Chapter is the concluding Chapter and it will give recommendations on how to deal with the violation of the right to human dignity in Zimbabwean prisons.

5.2 SUMMARY OF FINDINGS

All incarcerated persons deprived of their right to liberty are entitled to the inherent right to human dignity which accrues to all persons by virtue of being human. Human Dignity functions as the basis of all Constitutional rights and thus it should be protected and respected. Chapter 3 revealed that in as much as the Constitution clearly states that conditions of detention are to be consistent with human dignity the state has dismally failed to implement the right to human dignity. Prisons in Zimbabwe are an insult to the right to human dignity as they are characterized by overcrowding making risks of disease outbreaks and spread very high, serious food shortages because of lack of funding, prisoners wearing worn out and torn uniforms, use of tattered lice infested blankets, and poor sanitation conditions for female inmates who are only given one pad a day and resort to using pieces of blankets during their menstrual cycle.

5.3 SPECIFIC RECOMMENDATIONS

5.4 DIVERSION SYSTEM

Zimbabwe ought to give serious thought to alternative imprisonment so as to ensure that prisons are not overcrowded. Diversion is meant to hold children accountable for their behavior without formal Court involvement.¹¹⁷ Diversion involves referral of cases away from formal criminal court procedures where there is enough evidence to prosecute. Diversion system will help decrease the number of youths sent to prison facilities significantly. The cost of sending juveniles to prison is often greater than the cost of going the diversion route. The Prison system's limited resources should instead be used towards those who commit grave offenses.

5.5 OPEN PRISON SYSTEM

The writer also advocates for an open prison system, the current open prison system in Zimbabwe is discriminatory towards female inmates. There is only one open prison system for men when in actual fact it would be more appropriate for mothers with children as it addresses their gender specific needs better than the conventional prison. Mothers are primary caregivers to their children, their incarceration therefore has a negative impact on both them and their children.

5.6 LEGISLATION REFORM

For there to be proper prison system reforms the starting point will be to address the legislation governing prisons. It is submitted that both the Prison Act and the Prison Regulations are now outdated. This is so given the fact that these legislative pieces were adopted during the colonial era where prison was meant to facilitate the suppression of the indigenous people. These legislative instruments were also drafted in the era where the idea of human rights was not yet a practical reality. In that same vein attention ought

¹¹⁷ Mackin et al, Juvenile Treatment Court outcome and Cost Evaluation, 2010

to be given to constitutional rights as far as the rights of prisoners are concerned. The Prisons Act and Regulations also have to be amended to ensure that they comply with the needs of the Constitution and International law.

5.7 GENERAL RECOMMENDATIONS

5.8 NON- CUSTODIAL SENTENCE

The Ministry of Justice, Legal and Parliamentary Affairs should consider alternative sentencing options such as avoiding pre-trial detention and imposing non-custodial sentences for deserving offenders such as community service. This is whereby the Court offers the offender the opportunity of compensating the community for the wrongs s/he has done through performing work in the community instead of going to prison. The government is running on a tight budget that cannot cater for the increasing prisoners population thus action has to be taken to ensure that only deserving offences result in imprisonment. Prisons are costly to maintain, millions are needed to feed, clothe, house and provide medical facilities for thousands of prisoners. Government incurs additional expenses when some prisoners are not even a threat to society and both the government and the prisoners would benefit by using community service as an alternative punishment.

5.9 HAVING A MAXIMUM PERIOD OF TIME A PRISONER CAN BE PLACED ON REMAND

The writer suggests that if a prisoner is to be put on remand then there should be a maximum period of time they are to be on remand. Most prisons are overcrowded with prisoners who have not been tried yet and whose trial dates have not even been set. Prisoners whose trial dates have not been set should be released from prisons until such a time the Courts allocate a trial date. Prisoners undergoing lengthy trials which take years ought to be released from prison to attend their trials from home because prisons are overcrowded with prisoners awaiting trial who do not have the slightest idea of when

their trials will commence. In Swaziland, the maximum remand period is 60 days and if the Zimbabwean prison system is to adopt this limit the situation in our prisons will change for the better. The police in Zimbabwe arrest to investigate whereas they should only arrest persons after gathering full evidence and not make innocent people rot in jail, a person charged is deemed innocent until proven guilty thus it is unfair to have someone spend years in prison and then be found not guilty. People spend time in remand prison only for them to be acquitted or for their cases to be forgotten, prisons are congested with many forgotten victims and this has to come to an end.

The main conclusion that flows from this dissertation is that the prisoner's right to human dignity is not being sufficiently protected and implemented in Zimbabwe. This dissertation has shown to a greater extent that the prisoner's right to human dignity is being neglected and this is a source of serious concern. To conclude, the writer poses two serious questions, firstly, according to the findings of this dissertation Does Zimbabwe meet the required Constitutional standards in protecting the prisoner's right to human dignity. The author can rightfully say on paper yes, but in practice no as this right is not being implemented in Zimbabwean prisons. Secondly, if the statement by Nelson Mandela that a country is judged by the way it treats its prisoners is anything to go by will Zimbabwe be counted in? Unfortunately the answer is no as Zimbabwe is lagging far behind and will remain behind until the foregoing recommendations are given a serious consideration.

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