



Human Rights Commission



**A Survey Report on the Application of
Bond and Bail Legislation in Zambia
2014**



A Human Rights Commission Project

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A Survey Report on the Application of
Bond and Bail Legislation in Zambia

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ACRONYMS AND ABBREVIATION

| | |
|-------|---|
| ACHPR | African Charter on Human and People’s Rights |
| APPB | Arrest and Prisoner Property Book |
| CEDAW | Convention on the Elimination of All Forms Discrimination against Women |
| CRPD | Convention of the Rights of Persons with Disabilities |
| CJF | Child Justice Forum |
| CPC | Criminal Procedure Code |
| DPP | Director of Public Prosecutions |
| HRC | Human Rights Commission |
| ICCPR | International Covenant on Civil and Political Rights |
| NPA | National Prosecution Authority |
| OB | Occurrence Book |
| ZPS | Zambia Prisons Service |
| SMR | Standard Minimum Rules for Treatment of Prisoners |
| UNHCR | United Nations High Commission for Refugees |
| UNCRC | United Nations Convention on the Rights of the Child |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| ZP | Zambia Police |


ACKNOWLEDGEMENT

The Human Rights Commission (HRC) with its mandate of ensuring that the enjoyment of human rights and fundamental freedoms is a reality for all persons in Zambia is always striving to find ways in which to enhance the respect for and promotion of human rights of all its citizens including those who find themselves in conflict with the law. In this regard the completion of this research on bail conditions and the committal process could only have been achieved through the concerted efforts of a dedicated staff and the support of our perennial collaborating partners.

The Commission would like to acknowledge Open Society Initiative for Southern Africa (OSISA) for its confidence in the work and ideals of our institution. In particular the Commission thanks OSISA for making the entire project on Pre-trial Justice in Zambia possible through the financial support rendered.

The Commission would also like to thank the following organizations for their cooperation throughout the entire project; The Judiciary, Zambia Police Service, Zambia Prison Service, National Prosecution Authority and Legal Aid Board.

The Commission recognizes the importance of increased partnership and collaboration with various stakeholders in enhancing the administration of justice in Zambia.



Florence Chibweshwa
DIRECTOR

EXECUTIVE SUMMARY

This survey was conducted to collect information on factors affecting access and conditions regarding bail among people found to be in conflict with the law in Zambia. The survey was conducted for a period of six months in all ten provinces of the country. The findings of this study are meant to provide a basis for the review of current bail legislation relating to bail conditions in Zambia by promoting easy access for suspects or inmates to bail regardless of their social and economic conditions.

The target respondents for the surveys were inmates in prisons, police officers in charge of a police station, magistrates and public prosecutors. The survey also examined the current committal process of matters to the High Court and the transfer process of matters to other courts so as to determine causes of delays in the two processes. A total of 2,168 respondents were interviewed in this survey.

The findings reveal that on average suspects in Zambia are kept in police custody for fourteen days before they are made to appear before the court. The survey has shown that in Lusaka suspects were kept in police custody for about 22 days. Eastern province had the least detention days of 6 days.

Another key finding is that about 30% of the remandees indicated that they have been awaiting judgment for a period of over one year. Two-thirds said they have been awaiting judgment for a period of less than one month. Nearly 6% have been waiting for judgment for at least 9 months.

The survey also revealed several reasons explaining why few suspects attempted applying for bail. The reasons brought forward included suspects lack of knowledge that they can apply for police bond or bail and; suspects having no working sureties to sign police bond for them. The survey revealed that bail conditions in Zambia are stringent, requiring suspects to provide two working sureties as a condition for granting of bail.

Findings also showed that time taken for cases to be committed to the High Court can be inordinately long as can be the rendering of judgments.

The survey thus revealed that there were challenges at every stage of the criminal justice process that hindered accused persons' enjoyment of their due process rights.

In this regard, the Commission found that the criminal justice system has more often than not failed in its function of ensuring that the rights of the accused are protected with the country falling short of the principles enunciated in the international standards to which it is a party.

There is therefore need for a thorough review of the existing law regarding the bail and police bond conditions in Zambia as well as the law and processes that regulate the committal of cases to the High Court. In addition to this is the need for sensitisation of the citizenry on the rights to bond and bail in Zambia.

Chapter 1 focuses on the problem statement and situational analysis. It further speaks to the survey objectives and methodology used.

Chapter 2 focuses on the law relating to bail and committal in Zambia. It demonstrates the relationship between human rights and criminal justice; the law relating to bail and committal; preliminary inquires; survey procedures and committal sentencing.

In Chapter 3 of the report, the findings of the survey are discussed. These relate to the demographic characteristics of the respondents, arbitrary and over detention of suspects, the issue of legal representation and judgement. The findings reveal the bail and bond conditions, bail during trial, reasons for the court not granting bail and the process of transfer of cases from the lower court for committal to the high court.

Finally Chapter 4 concludes with recommendations from the Human Rights Commission regarding the need for reform in the legal and justice system and specifically regarding bail and police bond and the committal process.

CHAPTER 1:

INTRODUCTION

1.0 INTRODUCTION

After 50 years of independence, Zambia is still grappling with the problem of congested prisons with the main identified contributing factor being the excessive overuse of pre-trial detention. This problem has persisted despite the presence on the country's Statute Book of provisions relating to human rights guarantees in criminal procedure, and provisions relating to bail.

Zambia is also a signatory to various international human rights instruments which safe guard the rights of accused persons and person's in places of detention and for the humane treatment of person who find themselves in conflict with the law. Principally, instruments such as the Universal Declaration on Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and other Cruel or Inhuman and degrading Treatment or Punishment (CAT) all have specific provisions dealing with the protection of rights of persons who find themselves in conflict with the law. The country is also a party to the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms Discrimination against Women (CEDAW) and the Convention of the Rights of Persons with Disabilities (CRPD) which all provide specific protections for these vulnerable groupings.

At regional level Zambia is a party to the African Charter on Human and People's Rights (ACHR) which also has specific provisions relating to the secure protection of the law for suspects. The country is also guided by standards such as the Standard Minimum Rules for the Treatment of Prisoners (SMR) and the African Charter on Human and Peoples Rights. As such the country is expected to domesticate their principles into its legislation and policy. However monitoring visits by the Human Rights Commission has shown that in spite of this body of laws and principles that inform the country, the excessive overuse of pretrial detention continues to be a problem

In 2010, the Open Society Initiative for Southern Africa (OSISA) in partnership with the Open Society Foundation for South Africa (OSF-SA) and the Open Society Foundation Global Justice Criminal Justice Fund (GCJF) commissioned

an audit of pre-trial detention in Zambia which was carried out by the Human Rights Commission and the Community Law Centre at the University of Western Cape, South Africa. The overall goal of the project was to collect accurate and reliable information relating to pretrial detention so that future policy reform and development in Zambia would be based on concrete evidence.

The audit report revealed the excessive use of pretrial detention in Zambia as well as serious inadequacies in the administration of the pretrial justice process which needed to be addressed so as to ensure that pretrial detention is only used as a precautionary measure.

As a result, the Commission sought to follow up on this previous research in order to not only provide interventions to some of the problems identified, but also to ascertain the factors that lead to this problem in order to make informed decisions on the interventions that need to be put in place. This is with the view of improving the country's criminal justice system and allowing detainees to be able to access bail while protecting the interest of society as a whole.

The project has also sought to examine the current committal of matters to the High Court and the transfer of matters to other courts so as to determine causes of delays in the two processes. The 2010 audit report revealed excessive delays in both the committal and the transfer processes and recommended the design of a committal process and a transfer process that will expedite the committal and transfers of matters.

Overall the aim was to reduce the time periods spent by an accused person in detention and to reduce the overuse of pretrial detention by promoting the use of the bail system as an alternative to pretrial detention and to review the committal and transfer processes in order to expedite the committal or transfer of cases.

The project has included various aspects such as training of law enforcement officials on the rights of accused persons and the legal provisions on bail and bail bond; interaction with the various criminal justice institutions on challenges faced in the administration of bail and the implementation of bail legislation and the conducting of a survey on pre-trial detention and bail and why so many inmates are not accessing bail before or during trial.

This report gives the findings on the survey which was conducted and the recommendations that emanated from it.

1.1 PROBLEM STATEMENT AND SITUATION ANALYSIS

Pre-trial detention refers to the detention of a person accused of a criminal offence

before the trial has taken place or while it is ongoing. Reasons for the detention can be varied, such as the accused person's failure to meet the conditions for bail or the refusal by a magistrate or judge to release the defendant for various reasons such as fear of intimidating witnesses or that the accused may be likely to fail to surrender for trial if released on bail. An accused person may also be denied bail because the offence he is accused of is one that precludes bail under the statute¹. Statistics therefore have shown that the number of pre-trial detainees in Zambian prisons is inordinately high.

In 2012 for example, out of a population of more than 16, 600 prisoners, almost 40% of these were pre-trial detainees (over 6000 detainees)². This excessively high number indicates that there is excessive use of pre-trial detention in Zambia.

The effects of pre-trial detention are numerous and lead to all sorts of challenges for the state, the accused persons and their families. Firstly, excessive use of pre-trial detention contributes to congestion in prisons. Zambian prisons are currently congested by over 200%. Statistics from 2012 showed that the prisons were congested by 208%². This congestion puts a strain on prison infrastructure which was mostly built before the country's independence.

Excessive pre-trial detention also leads to the abrogation of the human rights of the detainees as they are subjected to conditions that are inhuman and violate their dignity and personal integrity. The congestion in the prisons means detainees are subjected to unsanitary conditions, lack of fresh air and inadequate food. In many cases, the detention center (i.e. the police station or prison) may be a long distance away the detainees' families thus depriving them of contact with their family. This situation is worse for detainees in police stations where the police are under no obligation to provide detainees with food and thus detainees rely on relatives for food

The excessive use of pre-trial detention also negates a person's civil rights such as the right to be presumed innocent and the right to liberty.

The negative effects on accused persons, pre-trial detention has an impact on families and friends of detainees who incur costs in travelling to the detention centers (some over long distances, in providing food and other necessities for the detainees. These factors and other psychological and emotional factors, put strain on the concerned family and friends.

Under Zambian law, persons accused of having committed offences are entitled to be released on bail on the understanding that such person shall avail themselves to

¹ Section 123 Criminal Procedure Code; offences for which one cannot be granted bail are murder, treason, aggravated robbery and theft of motor vehicle as a subsequent offence.

² Statistics from Zambia Prisons Service

the courts of law at the appointed time in order to be tried for the offence for which they have been accused. However, the excessive numbers of pre-trial detainees in places of detention; many of whom have been accused of offences that are bailable; indicates that many accused persons are not accessing this facility. While not all inmates may be eligible for bail or police bail bond, bail can be granted at any stage during criminal proceedings.

However, even for those detainees whose liberty has been legally curtailed due to their offences being non-bailable; challenges also arise in that their cases take too long for them to be committed to the High Court. These persons are either left to languish or are taken to court for mention without their cases progressing to the High Court without being informed how far their cases have progressed.

The *Zambian Constitution* guarantees the right of a person charged with a criminal matter to be presumed innocent until proven guilty and the right of that person to be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. The right for a person to be presumed innocent is a fundamental human right and a core principle in the administration of criminal justice. Relevant to the principle of presumption of innocence, is the general right of an accused person to liberty before trial and sentence. The Constitution also guarantees the right to a fair trial within a reasonable time, ensuring that an accused person is not left in limbo as to the outcome of the case.

However, despite these constitutional guarantees, the presumption of innocence is being infringed upon by the systematic overuse of pretrial detention in *Zambia*. At an increasing and alarming rate, many accused persons are now spending the duration of their trials in detention despite the existence of alternatives to pretrial detention such as police bond or bail. It is clear that the purpose of detention and the way in which it relates with the presumption of innocence may not be clearly understood by all players involved in the criminal justice system.

Likewise, the right to a fair trial within a reasonable time is one that has been violated often. Reasons for long durations of time have included the inadequate human resource in terms of magistrates and other judicial personnel, the lack of decentralization of the NPA and inadequate resources to transport accused persons to courts. As a result many accused persons on unbailable offences spend inordinate amounts of time on remand and for those who are ultimately found innocent; there is a feeling of having been punished for an offence they did not commit.

This survey sought to investigate factors affecting access to and conditions regarding bail for people found to be in conflict with the law and to find out why so many accused persons facing non-bailable offences are waiting so long to have their cases committed to the High Court for trial.

The findings of this study should help in the review of current bail legislation relating to bail conditions by promoting easy access for suspects or inmates to bail regardless of their social and economic conditions. The findings should also inform in the review of the committal process.

1.2 SURVEY OBJECTIVES

1. To identify factors leading to the high levels of remand detainees in Zambian prisons
2. To establish the law on bail and reasons for granting of stringent bail conditions
3. To assess the ability of pre-trial detainees to comply with bail conditions
4. To identify factors leading to extended lengths of time for transferring of cases and committal to the High Court.

1.3 SURVEY METHODOLOGY

This study employed a descriptive and analytical approach. These involved exploring reasons for granting of stringent bail conditions to inmates as well as identifying factors leading to high levels of remand detainees in Zambian prisons. The study population was drawn from ten provinces in Zambia. In each of the ten provinces prisoners were selected based on availability of a prison, police station and or a subordinate court in the study area. The sampling units were inmates in prisons, police officers in charge of police stations, magistrates, and prosecutors. The survey also examined the current committal process of matters to the High Court and the transfer process of matters to other courts so as to determine causes of delays in the two processes. A total of 2,168 inmates were interviewed in this survey.

1.4. CHALLENGES FACED IN THE COLLECTION OF DATA

During the course of the fieldwork, the HRC was faced by various factors which hampered the effective collection of data. Listed below are the challenges faced.

- There was a general lack of uniformity in the recording and storage of information pertaining to prisoners or detainees from one station to another. This was the case in all the criminal justice institutions visited i.e. the judiciary, the police and the prisons service. Some stations were highly

organized with comprehensive information on their charges, while others ranged from only storing some of the information needed, to the worst case scenario where only the name of the inmate and the date of admission were recorded with no other particulars.

There was no uniformity from one station to another and in some cases from one year to the next in the same station. This made the collection of uniform data difficult

- There was inadequate interface between the Subordinate courts and the High Court in the sense that once a case is committed to the High Court and the record transmitted, the High opens a whole new file with a new cause number, thus making it difficult to track cases from their inception in the Subordinate Court to their conclusion in the High Court
- In most instances it was also difficult to track cases because some Subordinate Courts did not include in their records what the fate of the accused person was.
- There was also a sense of disillusionment by inmates who felt that organizations were always collecting information from them but the prisoners were not seeing this translate into improvement in their lives. Thus some prisoners were reluctant to give information.

CHAPTER 2:

LAW RELATING TO BAIL AND COMMITTALS

2.1 HUMAN RIGHTS AND CRIMINAL JUSTICE

The criminal justice system refers to the (procedure by which criminal conduct is investigated, arrests made, evidence gathered, charges brought, defenses raised, trials conducted, sentences rendered and punishment carried out. Criminal justice systems throughout the world including Zambia tend to be sources of grave human rights violations. The Human Rights Commission often receives complaints of extra judicial killings, torture and arbitrary detention at the hands of the police, Zambia Wildlife Authority and the Prisons Service.

In terms of pre-trial detention, detainees endure many rights abuses including beatings, having to be detained in cramped and unhygienic conditions, delays in the completion of their cases and often times having to be detained in areas that are far away from their families. This is exacerbated by the fact that these are persons who have not yet been found guilty and for many, will eventually be found innocent.

The goal of criminal procedure is to protect the criminal defendant against police misconduct and prosecutorial abuses as well as to secure a fair trial for the accused³. This must be seen in light of the fact that the prosecution has the power of the State behind it in terms of the investigations of the law enforcement agencies and the legal expertise of the National Prosecutions office. The accused on the other hand must rely on their own wits and resources and many accused persons are often poor and uneducated.

Thus the criminal justice system should have safeguards to ensure that the accused's procedural rights are protected and that due process of the law is followed. (the rights under Article 18) Under the Zambian Constitution, these principles are found in Article 18 under secure protection of the law and includes; inter alia; the right to be presumed innocent until proved guilty, to counsel of one's choice or

³ Chanda A.W., Human Rights Law in Zambia: cases and materials, University of Zambia, 2011, p201

legal aid where one cannot afford a lawyer, to be informed as soon as is reasonably practical of the charge against them in a language that they understand and the right not to be compelled to give evidence. The mandates of the court to entertain applications for and to grant bail is one way of ensuring that an accused person is afforded secure protection of the law until the determination of their case.

2.2 THE LAW RELATING TO BAIL IN ZAMBIA

Bail in human rights discourse is basically premised on two aspects. The main aspect is the presumption of innocence which under Zambian law is provided for under Article 18(2) (a) of the Constitution⁴. This is the protection that ensures that the State as the party that alleges an accused person's guilt must prove that guilt. As such, the State may not deprive that person of his or her liberty until it has shown to the satisfaction of the court, beyond reasonable doubt that the accused person did in fact commit the offence of which they are accused. Thus bail acts as a safe guard to ensure that an accused person does not unduly suffer a violation of their rights and gives them the opportunity to continue to enjoy their freedom until such a time when or if they are found guilty.

The second premise flows from the first and is a person's right not to be deprived of his personal liberty except as may be authorized by law⁵. Although the Constitution gives instances when liberty may be deprived including where there is a reasonable suspicion that the person has committed or is about to commit a criminal offence; the granting of bail limits the infringement of a person's rights to personal liberty to only instances when it is mandatory under the law or where the circumstances of the case make an accused's detention necessary.

The Criminal Procedure Code⁶ (CPC) provides in Section 33 that a person who is arrested without a warrant for an offence other than that punishable with death, shall be released upon executing a bond, where the officer in charge of the police station determines that it is not possible to take such person before the appropriate court within 24 hours of arrest and where the officer has determined that the matter is not of a serious nature.

Where the person is retained in custody he shall be brought before a competent court as soon as practicable. This provision clearly protects accused persons from arbitrary and over detention and it goes on to state that the officer in charge may release a suspect where after due police inquiry, he determines that there is insufficient evidence to proceed with the charge.

⁴ Chapter 1 of the Laws of Zambia

⁵ Art. 13 of the Constitution

⁶ Chapter 87 of the Laws of Zambia

Similarly, in terms of juveniles, Section 59 of the Juveniles Act⁷ provides that an officer in charge of a police station shall release a person under the age of nineteen who is arrested with or without a warrant, where such person cannot be brought before a court. The Section provides only three exceptions where the juvenile may be remanded in custody namely;

- Where the charge is one of homicide or other grave crime; or
- Where it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or
- Where the officer has reason to believe that the release of such person would defeat the ends of justice

Section 61 of the Juveniles Act goes further to state that such juvenile shall not be remanded to a prison but a remand prison or a place of safety. It is therefore sad to note that findings of the HRC during prison monitoring have consistently found juveniles on remand in prisons.

The law on bail is mainly enunciated in the CPC and bail is usually granted by courts. Police officers in charge of police stations are also empowered to issue bail bond.

Section 123 (1) of the CPC provides as follows;

123. (1) When any person is arrested or detained, or appears before or is brought before a subordinate court, the High Court or Supreme Court he may, at any time while he is in custody, or at any stage of the proceedings before such court, be admitted to bail upon providing a surety or sureties sufficient, in the opinion of the police officer concerned or court, to secure his appearance, or be released upon his own recognizance if such officer or court thinks fit:

Provided that any person charged with-

- (i) murder, treason or any other offence carrying a possible or mandatory capital penalty;**
- (ii) misprision of treason or treason-felony; or**
- (iii) aggravated robbery;**
- (iv) theft of motor vehicle, if such person has previously been convicted of theft of motor vehicle.**

shall not be granted bail by either a subordinate court, the High Court or Supreme Court or be released by any Police Officer.

Other pieces of legislation also provide for preclusion of bail and include offences under the Narcotics and Psychotropic Substances Act⁸, the offence of desertion

⁷ Chapter 53 of the Laws of Zambia

⁸ Chapter 96 of the Laws of Zambia

under the Defence Act⁹ and offences under the Preservation of Public Security Act¹⁰. In Zambia an accused person can apply for bail at essentially any stage during his criminal case and as such there are basically four types of bail bonds; police bond, bail pending trial, bail pending appeal and Constitutional bail.

Police bond: the police in Zambia can grant bail, however this is at the discretion of the officer in charge.

Bail pending trial: Courts have unfettered discretion to entertain applications for bail in offences prescribed as bailable and make determinations on the applications taking into consideration a mix of factors. This can be done at first appearance or on subsequent appearances while appearing for mention or during trial. However, in cases involving serious offences prescribed as non-bailable the Courts are precluded from granting bail except as has been held by the Supreme Court in relation to Constitutional bail.

Bail pending appeal: this kind of bail is given with caution, as the person has already been convicted. It is provided for under s. 22 of the Supreme Court of Zambia Act¹¹.

Constitutional bail: This is bail that may be granted under Article 13 (3)(b) of the Constitution which provides that any person who is arrested or detained on reasonable suspicion of having committed a criminal offence; and who is not released, shall be brought without undue delay before a court; and if they are not tried within a reasonable time, then, they shall be admitted to bail either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial. This type of bail can only be granted by the High Court and can be granted in all offences including bailable ones; provided that serious offences such as murder and treason are rarely admitted to bail. The subordinate court has no power to grant bail in a murder case, and the Supreme Court enjoys only appellate jurisdiction.

Bail is granted at the discretion of the court and the court may refuse to grant bail were for example if it is of the view that the accused may abscond, or interfere with witnesses. Matters to be considered by the court when deciding whether to grant bail were discussed in the case of *Oliver John Irwin*¹² v the People and were listed as follows;

- The severity of punishment such an accusation, if established, as well as whether the applicant is capable of providing credible sureties of fixed abode and being in gainful employment

9 Chapter 106 of the Laws of Zambia

10 Chapter 112 of the Laws of Zambia

11 Chapter 25 of the Laws of Zambia

12 (1993 - 1994) Z.R. 7 (S.C.)

- Whether there is a possibility of the applicant failing to attend Court to avoid trial thereby prejudicing the state
- The independence of sureties if bail were to be granted
- The continued incarceration of the applicant shall be prejudicial to the applicant in many respects: e.g. if he is not admitted to bail he may lose employment
- Finally whether the State may suffer prejudice as a result of the accused interfering with witnesses

The principle is not to give such stringent conditions as to prevent an accused person from accessing it.

2.3 THE LAW RELATING TO COMMITTALS

Committal proceedings in Zambia refer to the process through which it is determined whether a person charged with an offence which can only be tried by the High Court should be committed to the High Court for trial. These offences are found in the subsidiary legislation in the CPC as amended by Statutory instruments numbers 137 of 1973 and 186 of 1973 and include offences such as murder, treason, aggravated robbery and infanticide.

Section 11 of the CPC provides that the Chief Justice may by order declare certain offences only to be tried by the High Court.

Under Zambian law, there are two ways through which an accused person may be committed for trial to the High Court as follows.

2.4 PRELIMINARY INQUIRY (PI)

This provided for under Part VII of the CPC. A PI is conducted whenever a charge is brought against an offence not triable by a subordinate Court, and the DPP has not issued a certificate in terms of Section 254 of the CPC. A Subordinate Court may also hold a PI where it considers that a case is not suitable for summary trial¹³. In holding such a PI the Court must consider the following

- The gravity of the offence
- The maximum punishment to be imposed
- Any serious racial complications
- The complexity of the facts of the case
- Complexity of the law.

¹³ As guided by Judicial Circular No. 3 of 1962

The PI is a long process which involves examining of evidence and witnesses before the Court and then making a finding as to whether there is sufficient evidence to commit for trial. This process can be cumbersome and thus in Zambia it is rarely used and what is usually employed is the summary procedure below,

2.5 SUMMARY PROCEDURE

This is provided for under Part VIII of the CPC. Section 254 provides for the procedure as follows;

Notwithstanding anything contained in Part VII, in any case where a person is charged with an offence not triable by a subordinate court, the Director of Public Prosecutions may issue a certificate in writing that the case is a proper one for trial by the High Court as a summary procedure case and such case shall, upon production to a subordinate court of such certificate, be dealt with by the subordinate court in accordance with the provisions of this Part.

What happens in practice is that once the police have completed their investigations, they transmit records of the case to the DPP's office, which then studies it. If the DPP is satisfied that there is sufficient evidence to commit the matter to the High Court for trial, then a Certificate of Committal is issued to the Court to commit the case to the High Court. Thus once the DPP has issued a Committal Certificate, the Subordinate Court then commits the case.

2.6 COMMITTAL FOR SENTENCING

Section 217 provides for Committal of cases to the High Court for Sentencing. These are cases which are triable in the Subordinate Courts but whose sentences cannot be imposed by the Subordinate Courts.

CHAPTER 3:

FINDINGS

3.1 INTRODUCTION

This Chapter gives the findings of the survey conducted by the HRC. Overall there was a general lack of understanding by detainees of their rights and how to have them enforced. Detainees and prisoners in general usually have to wait until they are visited by the HRC and other organizations for them to be able to voice their concerns over the pace of their cases or conditions in general.

There was also a general assertion by all criminal justice stakeholders engaged in the project that their work is hindered by a lack of resources in terms of manpower, transportation and other resources which has had a bearing on their efficiency and which has in turn affected the conduct of criminal cases. For example, lack of transportation sometimes, means that detainees cannot be taken before court. As a result of this cases take long as there is a back log and suspects are denied bail because of fear of their absconding

Below are the specific findings of the survey conducted.

3.2 DEMOGRAPHIC CHARACTERISTIC OF RESPONDENTS

This section presents information relating to background characteristics of inmates. Among the background characteristics captured in this section include sex, age, education level and economic status. The demographic data revealed that detainees in prisons are mostly male, between the ages of 20 -40 years, self-employed (in the informal sector) with education levels ranging from primary to lower secondary education.

The type of self-employment included market stalls, small holdings for agriculture and carpentry and most of them were in the lower income bracket. This indicated that persons who are more susceptible to pre-trial detention are those who are less educated and in the lower income earning bracket. Below are the demographics of the prisoners found in the prisons visited.

Table 1: Percent and counts of remandees and convicts by sex

| Sex | Remandees | | Convicts | |
|--------|-----------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent |
| Male | 1247 | 92.6 | 714 | 87.0 |
| Female | 100 | 7.4 | 107 | 13.0 |
| Total | 1347 | 100 | 821 | 100 |

Table 1 shows the distribution of inmates by sex. Almost 93% of the remandees interviewed in this survey were male while 7% were female. The proportion of male convicts who were captured in the survey were 87% and only 13% were female convicts.

This is because the numbers of females found in the prisons was very low with some prisons not having any women at all; and thus the teams captured as many as they could. In areas such as Mwinilunga for example, the Commission was informed that women are rarely detained in the prison as there are no prison cells for women. This is helped by the fact that; according to the Resident Magistrate, women in that area rarely commit serious offences and thus tend to just be cautioned at the police office and sent home. This illustrates that men are more susceptible to pre-trial detention than women.

Table 2: Percent and counts of remandees and convicts by education level

| Level | Remandees | | Convicts | |
|---------------------|-----------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent |
| None | 159 | 11.9 | 79 | 9.6 |
| Primary | 515 | 39.0 | 328 | 40.0 |
| Lower secondary | 391 | 29.6 | 240 | 29.2 |
| U p p e r secondary | 238 | 18.0 | 145 | 17.7 |
| Tertiary | 44 | 3.3 | 29 | 3.5 |
| Total | 1347 | 100 | 821 | 100 |

Table 2 shows the distribution of inmates by education level. The findings reveal that most the remandees and convicts had attained primary level of education (39% and 40% respectively). This was followed by those who attained lower secondary level of education (29.6% and 29.2%) respectively. Only 3.3% and 3.5% of remandees and convicts reported having attained tertiary education.

Table 3: Percent and count of remandees and convicts by employment status

| Status | Remandees | | Convicts | |
|---------------|-----------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent |
| Employed | 363 | 26.9 | 226 | 27.5 |
| Self-employed | 437 | 32.4 | 275 | 33.5 |
| Farming | 311 | 23.1 | 210 | 25.6 |
| Other | 96 | 7.1 | 61 | 7.4 |
| Not employed | 140 | 10.4 | 49 | 6.0 |
| Total | 1347 | 100 | 821 | 100 |

The findings reveal that most of the remandees and convicts had reported that they were in self-employment before (32.4% and 33.5%). This was followed by those who reported being employed (26.9% and 27.5%) respectively. Only 10.4% and 6.0% of remandees and convicts reported that they were not employed.

Table 4: Percent and counts of remandees and convicts by Age

| Age | Remandees | | Convicts | |
|--------------|-----------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent |
| Less than 20 | 167 | 12.6 | 43 | 5.3 |
| 20 – 29 | 505 | 38.1 | 310 | 38.0 |
| 30 – 39 | 417 | 31.5 | 279 | 34.2 |
| 40 – 49 | 153 | 11.5 | 131 | 16.1 |
| 50 – 59 | 49 | 3.7 | 34 | 4.2 |
| 60+ | 34 | 2.6 | 18 | 2.2 |
| Total | 1325 | 100 | 815 | 100 |

Table 4 shows the distribution of inmates by age. The findings reveal that most the remandees and convicts were in the age group 20 – 29 (38.1% and 38.0% respectively). This was followed by those in the age range 30 -39 (31.5% and 34.2%) respectively. Only 2.6% and 2.2% of remandees and convicts reported being aged 60 and above.

3.3 ARBITRARY AND OVER DETENTION OF SUSPECTS

The field work conducted revealed that police took an average of five days before informing suspects of the charge against them and suspects were kept an average of 14 days before being released or taken before a court. All the while the suspect is in police cells and thus nullifying the provisions of Section 33 of the CPC which provides that a person shall be released on bail if it is not possible to take them to court within 24 hours. Police have no powers to detain a person without arresting them and where a person is detained without being arrested or charged, his relatives can move for his release on habeas corpus¹⁴

Further Article 9 of the ICCPR gives protections against arbitrary arrest and detention as follows;

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

The Constitution goes further and provides that any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefrom that other person. Thus the figures below clearly illustrate that these protections are not being adhered to.

¹⁴ Ibid, Chanda at p210.

Table 5. Average number of days taken to charge suspects

| Province | Average number of days it took to be charged at police station |
|-----------------|---|
| Central | 5 |
| Copperbelt | 4 |
| Eastern | 4 |
| Luapula | 7 |
| Lusaka | 5 |
| Northern | 6 |
| North-Western | 6 |
| Southern | 4 |
| Western | 8 |
| Zambia | 5 |

Table 5 present data on the average number of days it took for suspect to be charged while at the police station. The findings reveal that on average it took five (5) days for a suspect to be charged at the police station in Zambia. Western province had the highest number of detention days followed by Luapula province with suspects being detained for 8 and 7 days respectively.

Table 6. Average number of days kept in police custody

| Province | Average number of days kept in police custody |
|-----------------|--|
| Central | 13 |
| Copperbelt | 13 |
| Eastern | 12 |
| Luapula | 6 |
| Lusaka | 22 |
| Northern | 7 |
| North-Western | 9 |
| Southern | 11 |
| Western | 14 |
| Zambia | 14 |

Table 6 presents data on the average number of days suspects were kept in police custody.

The findings reveal that on average suspects in Zambia are kept in police custody for fourteen days before they are made to appear before the court. The survey showed that in Lusaka suspects were kept in police custody for about 22 days. Eastern province had the least detention days at 6 days.

The major reason for these lengthy stays in police cells have included that the suspect is still helping the police with their investigations and that the suspect may run away should they release him while they are still conducting their investigations

However, the Magistrates interviewed indicated that this tendency by police to detain suspects for lengthy periods as one of the reasons why cases are taking so long to dispose of; stating that once the suspect is in custody, police officers have no reason to treat the matter with urgency and thus it drags on. This showed that keeping people in prisons is a matter of convenience, rather than it being rooted in law. Section 34 of the CPC provides that officers in charge of police stations shall report to the nearest magistrate the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or not. However magistrates interviewed stated that police officers do not always comply with this requirement and have to be reminded to deliver the Arrested Persons Property Book (APPB) or the Occurrence Book (OB) before the Court. This sometimes leads to over detention.

In their own defense, police officers stated that they work under strenuous conditions with limited resources. For instance, officers pointed out that in rural areas they cover large areas in terms of mileage and that they often do not have transport. Further, some of the areas are inaccessible by motor vehicles and they have to use other means of transport such as banana boats or canoes. These challenges then mean that once they apprehend a subject, they have no option but to detain him or her until they can present them before the court which is often in town and may be far away.

An example was given of Maheba which is 80km away from Solwezi where the Court is situated. It was stated that the few officer at the police station must service the entire refugee camp and beyond towards the Congo border on one side, towards Kalumbilo mine on the other which is another 50km or so and towards Mwinilunga road on another. These officers do not have transport and must often rely on the United Nations High Commission for Refugees (UNHCR) for assistance.

3.4 LEGAL REPRESENTATION

Article 14 (3) (d) of the ICCPR provides as follows;

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

The Constitution also provides in Article 18(2) (d) as follows;

Every person who is charged with a criminal offence-

shall unless legal aid is granted to him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice;

The Legal Aid Act¹⁵ as amended by the Legal Aid (Amendment) Act No. 19 of 2005 provides for the establishment and mandate of the legal Aid Board (LAB) and the establishment of a legal aid fund. The Act provides for the representation by State lawyers of accused persons who cannot afford legal representation. However, despite its establishment, the Board has inadequate numbers of staff to be able to cater for the numbers of accused persons in need of legal representation.

Although the LAB has decentralized to all provincial centers, the numbers of advocates are not adequate enough to cover the entire province. As a result, most remandees; especially in towns where there is no LAB presence; go through the entire criminal process without the aid of counsel. In Solwezi for example, HRC was informed by the Prison Service that accused persons will only be represented by a lawyer once their case has been committed to the High Court as the Court insists on representation for them.

Those whose cases are tried in the Subordinate Court do not normally have legal representation unless they have retained them at their own expense.

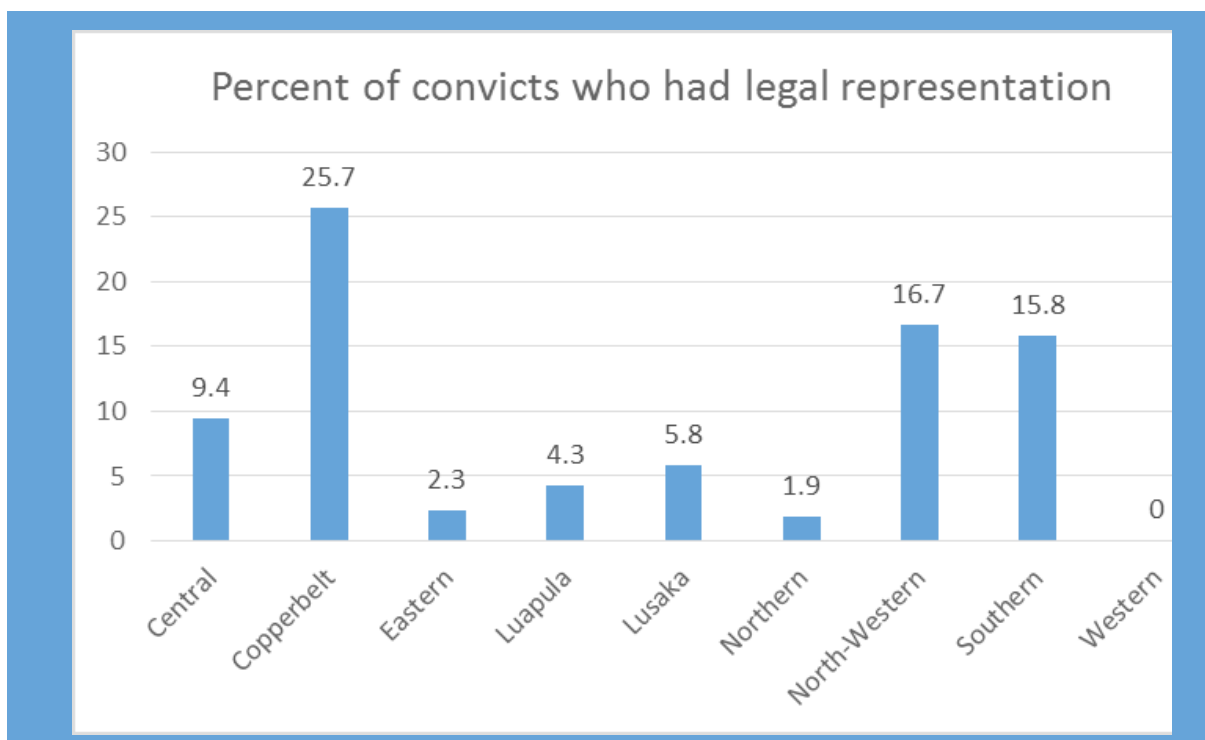
¹⁵ Chapter 34 of the laws of Zambia



The figure above shows the percentage of remandees who reported having a legal representative for their case. The findings reveal that copperbelt province had the highest proportion of remandees with legal representation (29%).

Northern province reported having the least proportion of remandees with legal representation (3.6%).

This was attributed to knowledge on bond and bail by the remandees.



The figure above shows the percentage of convicts who reported having a legal representative for their case. The findings reveal that Copperbelt province had the highest proportion of convicts who with legal representation (29%). Northern province reported having the least proportion of convicts with legal representation (1.9%).

3.5 JUDGMENT

Article 14 of the ICCPR provides that in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Further, Article 18(1) of the Constitution provides as follows; If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

The right to a fair hearing within reasonable time includes determination of the matter to its conclusion, which includes judgment. Thus delaying the judgment of a case abrogates the right to a fair hearing.

Table 7: Time taken by remandees' waiting for judgment

| Time | Frequency | Percent |
|-------------------|------------------|----------------|
| Less than 1 month | 67 | 32.5 |
| 1 - 3 months | 30 | 14.6 |
| 4 - 6 months | 25 | 12.1 |
| 7 - 9 months | 12 | 5.8 |
| 10 - 12 months | 11 | 5.3 |
| Over 1 year | 61 | 29.6 |
| Total | 206 | 100 |

Table 7 depicts the waiting time for judgment by remandees. About 30% of the remandees indicated that they have been waiting for judgment for a period of over one year. Two-thirds said they have been waiting for judgment for a period of less than one month. Nearly 6% have been waiting for judgment for at least 9 months.

Reasons for delayed judgment included cited by remandees included Court waiting for instruction from DPP. It was unclear why the Court was waiting for instructions from the DPP in order to write the judgment; Lack of interpreter; The judge/magistrate has been transferred or has gone on leave and; Documents went missing

Reasons cited for the delayed judgments by the Judiciary were the backlog of cases due to insufficient human resource.

3.6 BAIL AND BOND CONDITIONS

Despite the provisions in Zambian legislation on bail, findings from the survey revealed that less than half the remandees and convicts interviewed accessed bail.

The fact that bail has not been provided for as a right under the Zambian Constitution means that there is no presumption as to bail. This means that most magistrates do not inform accused persons that they can apply for bail but rather leave it for the accused to address the issue. Most magistrates who responded to questionnaires or were interviewed stated that the question of bail is left to the accused to address, although a few stated that they informed the accused that they had a right to apply for bail. Responses from officers from LAB indicated that Magistrates rarely inform accused persons that they may apply for bail. As a result many accused persons do not apply simply because they do not know any better.

This is further compounded by the fact that most accused persons may endure the entire process without having representation by counsel who can advise them on issues relating to bail/bond.

Table 8: Statistics from police stations on Actions taken on Arrested persons (2013)

| Action | Frequency | Percent |
|---------------------------------------|-------------|------------|
| Taken to remand prison | 332 | 25.4 |
| Released on police bond | 266 | 20.4 |
| Case closed/Released | 260 | 19.9 |
| Paid admission of guilt fine | 368 | 28.2 |
| Transferred to another police station | 79 | 6.1 |
| Total | 1305 | 100 |

The table above shows the actions taken on arrested persons at the police stations. Statistics revealed that 68.5% of arrested persons were released from police stations and 25.4 were taken to remand prison. The statistics also showed that 28.2% paid Admission of Guilt Fine, indicating that these are minor offences.

Table 9: Percent of inmates who applied for police bond at police stations

| Province | Convicts | Remandees |
|---------------|----------|-----------|
| Central | 37.2 | 34.4 |
| Copperbelt | 55.3 | 35.3 |
| Eastern | 42.9 | 24.6 |
| Luapula | 32.4 | 39.3 |
| Lusaka | 32.4 | 37.6 |
| Northern | 41.8 | 30.4 |
| North-Western | 54.2 | 36.2 |
| Southern | 31.1 | 34.4 |
| Western | 50.0 | 47.7 |

Percent distribution of inmates by reason for not applying for police bond

Table 10: Reasons for not applying for bail

| Reason for Not applying for bail | Men | Women | Juveniles |
|----------------------------------|------|-------|-----------|
| Had no working sureties | 26.8 | 30.2 | 33.3 |
| Informed case was not bondable | 33.5 | 16.3 | 12.3 |
| Had no knowledge of bail | 21.9 | 36.6 | 19.7 |
| Was afraid to apply | 17.8 | 16.9 | 34.7 |
| Total | 100 | 100 | 100 |

Findings revealed that 34.7% of juveniles were too afraid to apply showing that a high percentage of children are intimidated by the situation and thus highlighting the importance of ensuring that children have someone to act in their best interest. Statistics also revealed that the highest percentage of women that did not apply, failed to do so out of ignorance whereas for men, it was because they had committed a non-bailable offence.

Table 11: Percent of inmates whose bond application was granted

| Province | Convicts | Remandees |
|---------------|----------|-----------|
| Central | 37.7 | 27.8 |
| Copperbelt | 42.7 | 30.0 |
| Eastern | 25.7 | 18.4 |
| Luapula | 21.7 | 38.1 |
| Lusaka | 27.8 | 31.6 |
| Northern | 35.0 | 13.3 |
| North-Western | 35.1 | 2.4 |
| Southern | 25.0 | 36.0 |
| Western | 33.3 | 24.2 |

Table 12: Percent of inmates reporting type of bond conditions set by the police

| Conditions | Convicts | Remandees |
|---------------------------------|----------|-----------|
| Own recognizance | 15.3 | 38.2 |
| Cash bail | 19.4 | 17.3 |
| Two working sureties | 68.4 | 49.1 |
| Sureties employed by government | 15.3 | 18.2 |
| Unconditional bail | 3.1 | 7.3 |

Inmates who indicated having applied for police bond were asked to mention the bond conditions set for them. The findings reveal that two working sureties was the most common bond requirement by convicts and remandees (68.4% and 49.1%). Slightly over 15% of the convicts and 38.2% of the remandees indicated “own recognizance” as the bond condition set for them.

As regards the issue of sureties, the Commission discovered that in many areas of Zambia, women are not allowed to act as sureties and thus some police office do not entertain them when they present themselves as such. The reason given was that women are not strong enough to compel men to appear in court.

Table 13: Percent of inmates who managed to meet the bond conditions

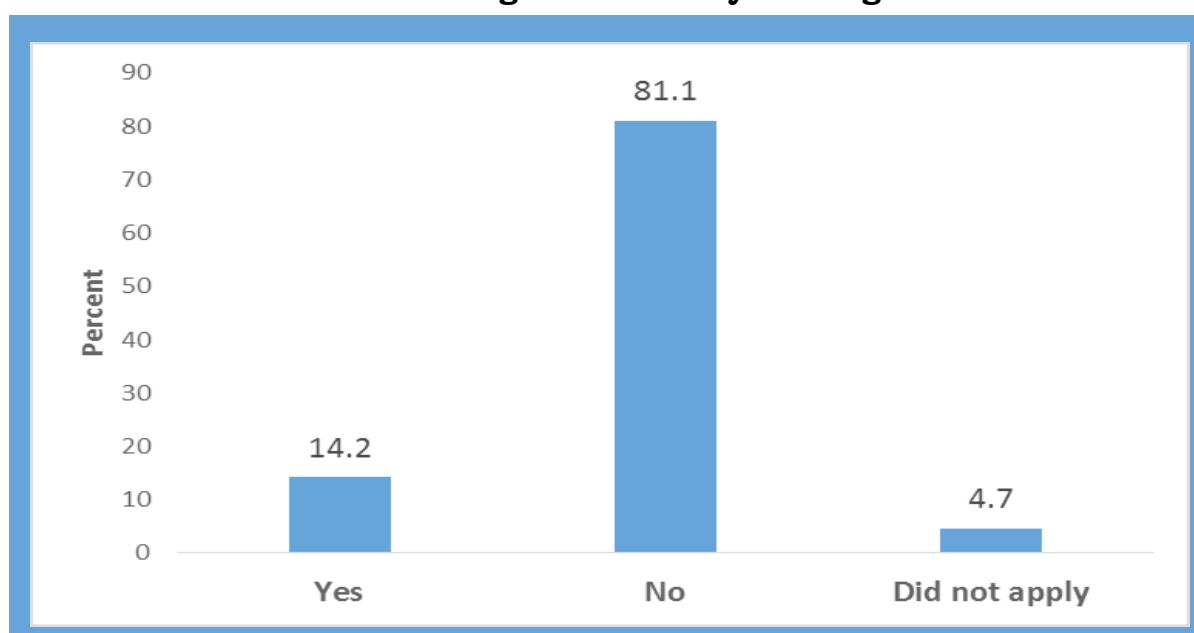
| Province | Convicts | Remandees |
|---------------|----------|-----------|
| Central | 25.0 | 13.0 |
| Copperbelt | 18.4 | 26.3 |
| Eastern | 28.0 | 0.0 |
| Luapula | 16.7 | 16.7 |
| Lusaka | 88.3 | 36.4 |
| Northern | 25.0 | 25.0 |
| North-Western | 71.4 | 25.0 |
| Southern | 29.0 | 29.9 |
| Western | 24.7 | 36.4 |

The findings in the table above indicate the proportions of inmates who indicated that they had met the police bond conditions. The findings reveal that inmates from Lusaka and North Western province were more likely to meet the bail conditions.

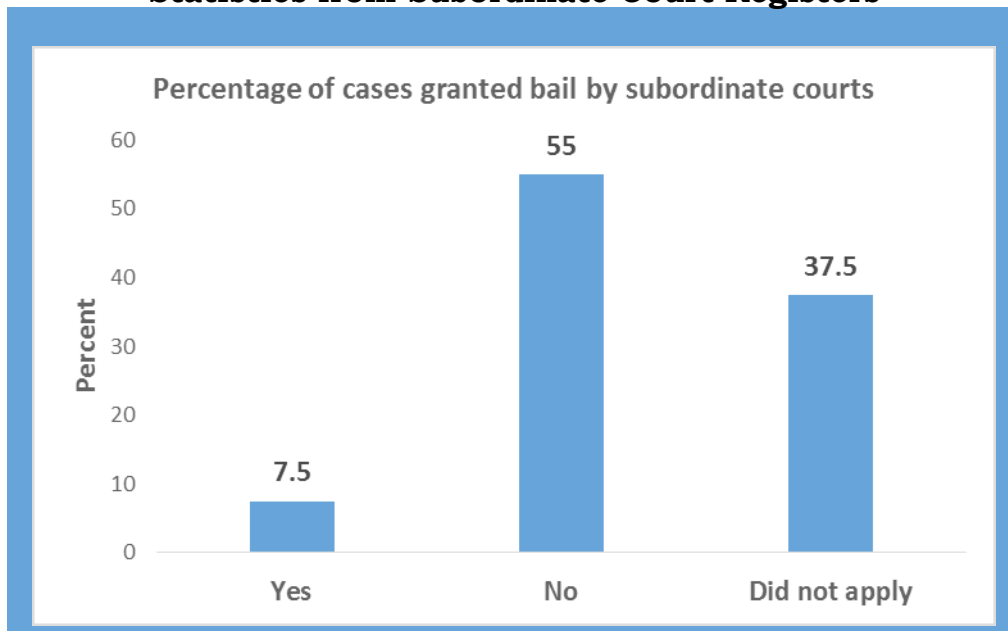
This may be because the bond conditions imposed in these two provinces may be more reasonable. This is in contrast to Copperbelt which had for example, the highest percentage of convicts applying for bail at 55.3% and the highest percentage whose bond applications were granted at 42.7% but the lowest numbers meeting the bond conditions at 16.7%. This indicated that people on the Copperbelt know of the right to apply for bail but do not manage to meet the conditions imposed.

The survey also involved a review of bail and bond records from the High Court and Subordinate courts. The findings are presented in the tables below.

**Statistics on bail from High Court and Subordinate Court registers Registers
Percent of cases granted bail by the High court**



Statistics from Subordinate Court Registers



The High Court Registers and Subordinate Court Registers revealed that only 14.2% and 7.5% respectively, were granted bail. Members of the Judiciary felt that this is mostly because suspects fail to meet the bail conditions that are given by the court and hence are remanded in custody. Officers from LAB felt that the conditions given are sometimes too harsh and thus ensuring that the accused person fails to meet them.

3.7 BAIL PENDING TRIAL

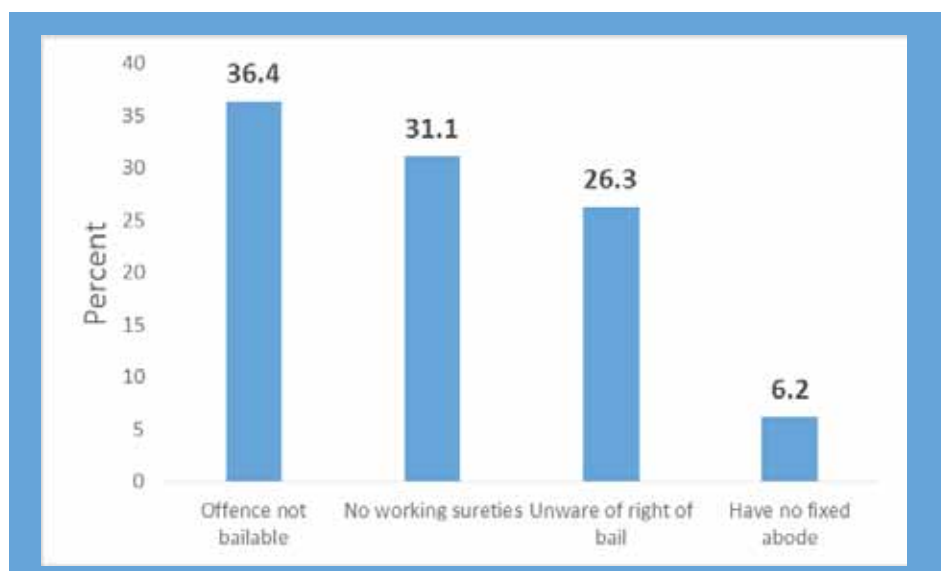
Table 14: Percent of inmates who applied for bail on first appearance in court

| Province | Convicts | Remandees |
|---------------|----------|-----------|
| Central | 27.4 | 13.0 |
| Copperbelt | 5.0 | 26.3 |
| Eastern | 23.9 | 0.0 |
| Luapula | 27.8 | 16.7 |
| Lusaka | 22.4 | 36.4 |
| Northern | 34.6 | 25.0 |
| North-Western | 37.1 | 25.0 |
| Southern | 34.3 | 29.9 |
| Western | 45.3 | 36.4 |

Table 15: Percent of inmates whose bail application was granted

| Province | Convicts | Remandees |
|---------------|----------|-----------|
| Central | 51.2 | 55.3 |
| Copperbelt | 10.2 | 0.0 |
| Eastern | 27.3 | 0.0 |
| Luapula | 38.9 | 57.1 |
| Lusaka | 40.0 | 48.0 |
| Northern | 38.5 | 0.0 |
| North-Western | 34.5 | 50.0 |
| Southern | 24.2 | 53.1 |
| Western | 80.0 | 47.2 |

Percent distribution of inmates by reason for not applying for bail pending trial



The chart above highlights the main reasons some suspects did not attempt applying for bail pending trial. The findings indicate that the most common reason was that the offence was not bailable followed by lack of working sureties. Slightly over 26% of the inmates said they were not aware of the right to bail.

All advocates from LAB who were interviewed during the exercise stated that most of their clients did not know that that they could apply for bail.

Table 16: Percent of inmates reporting type of bond conditions set by the court for bail pending trial

| Conditions | Convicts | Remandees |
|---------------------------|----------|-----------|
| Own recognizance | 10.0 | 14.6 |
| Cash bail | 24.5 | 34.1 |
| Two working sureties | 62.0 | 59.3 |
| Sureties employed by govt | 21.0 | 24.4 |
| Unconditional bail | 19.0 | 1.6 |

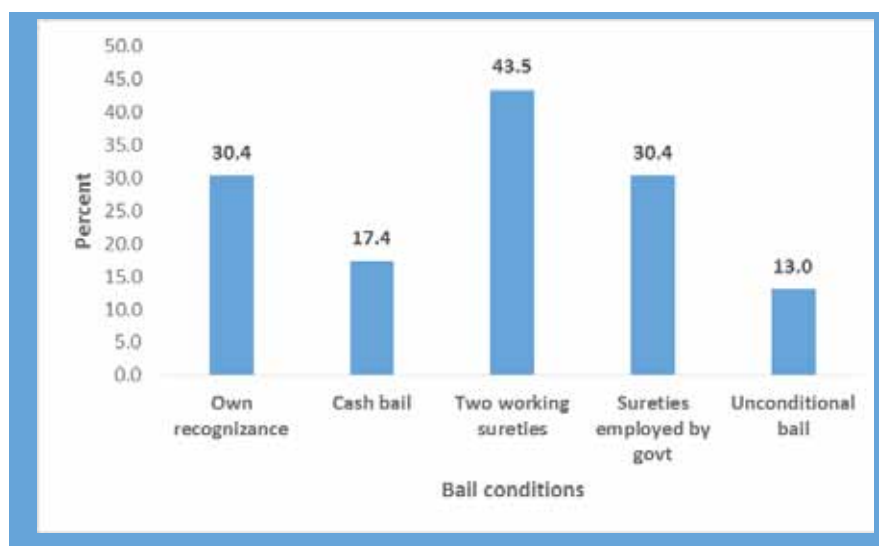
Inmates who indicated having applied for bail pending trial were asked to mention the bail conditions set for them by the court.

The findings reveal that two working sureties was the most common bail requirement mentioned by convicts and remandees (62% and 59.3% respectively). About 25% of the convicts and 34.1% of the remandees indicated “Cash bail” as the bond condition set for them.

3.8 BAIL DURING TRIAL

The inmates who indicated having applied for bail during trial were asked to mention the bail conditions set for them by the court. The findings reveal that two working sureties was the most common bail requirement mentioned by remandees (43.5%) followed by sureties employed by government and own recognizance both at 30.4%. See the figure below.

Percent of inmates reporting type of bond conditions set by the court for bail during trial



3.9 REASONS FOR COURT NOT GRANTING BAIL

The following are among the reasons why courts do not grant bail to some suspects as identified by inmates.

- There is fear that the suspects may interfere with the witnesses
- When the offence committed is non bailable
- When suspects have no proper residential address
- When Suspects do not meet the bail conditions
- When suspects have no working sureties

3.10 TRANSFER OF CASES AND COMMITTAL TO THE HIGH COURT

The fieldwork revealed that there did not seem to be a problem as regards transfers as inmates to whom the questionnaires were administered generally stated that their cases had not needed any transfer to another Court and were either concluded in the same court or the inmates were only transferred after they were committed to the High Court.

Issues however arose with regard to the Committal process and the time taken for cases to be committed to the High Court which included the following;

- Many inmates spoken to complained of their matters taking too long to be committed
- Others complained about the time taken for cause listing of matters in the High Court
- The HRC also observed while examining committal certificates that sometimes there a large time lapse between the time the DPP's office issues the certificate and the time that it is remitted to the Subordinate courts.

The tables below show statistics on committals.

Table 17: Percent of inmates whose cases required committal to high court

| Province | Convicts | Remadees |
|-----------------|-----------------|-----------------|
| Central | 12.8 | 31.2 |
| Copperbelt | 41.0 | 47.9 |
| Eastern | 4.4 | 37.3 |
| Luapula | 22.6 | 56.9 |
| Lusaka | 4.2 | 49.8 |
| Northern | 20.4 | 38.5 |
| North-Western | 13.5 | 55.0 |
| Southern | 16.5 | 30.0 |
| Western | 0.0 | 68.7 |

Table 18: Percent of inmates reporting type of committal to high court

| Province | Trial | Sentencing |
|-----------------|--------------|-------------------|
| Central | 69.2 | 30.8 |
| Copperbelt | 62.5 | 37.5 |
| Eastern | 88 | 12.0 |
| Luapula | 69.2 | 30.8 |
| Lusaka | 71.7 | 28.3 |
| Northern | 66.7 | 33.3 |
| North-Western | 75 | 25.0 |
| Southern | 59 | 41.0 |
| Western | 89.1 | 10.9 |

Table 19: Time waited by suspect before their case was committed to the high court

| Time | Frequency | Percent |
|-------------------|------------------|----------------|
| Less than 1 month | 51 | 14.2 |
| 1 - 3 months | 86 | 24.0 |
| 4 - 6 months | 86 | 24.0 |
| 7 - 9 months | 51 | 14.2 |
| 10 -12 months | 27 | 7.5 |
| Over one year | 57 | 15.9 |
| Total | 358 | 100 |

Table 19 depicts the waiting time by remandees before their case was committed to high court. About 16% of the remandees indicated that they have been waiting for committal for a period of over one year. Twenty four percent said they have been waiting for committal for a period of about four to six months.

Statistics revealed that those areas with high numbers of cases that needed to be committed to the High Court such as Western Province tended to be the ones where suspects spent the longest periods awaiting Committals.

Below is a table that shows the most common offences by province.

Table: 20: Most Common Offences

| Province | Most Common offences | | |
|---------------|--|---|---|
| Eastern | Conduct likely to cause breach of peace | Theft | Assault |
| Copperbelt | Theft | Criminal trespass | Assault |
| Lusaka | House breaking | Assault | Aggravated Robbery |
| Luapula | Assault | Theft | Conduct likely to cause breach of peace |
| Muchinga | Idle & disorderly | Assault | Theft |
| Northern | Assault | Conduct likely to cause breach of peace | Burglary |
| North Western | Unlawful possession of government trophy | Theft | Assault |
| Southern | Stock theft | Theft by agent | Affray |
| Western | Murder/Attempted murder | Theft | Criminal trespass |

Several factors were attributed to this as articulated below;

Firstly it was felt that committals took long in places such as Western Province because the numbers of nonailable offences are too high and as such putting a strain on the authorities to have the cases committed to the high Court.

Secondly, it was felt by the judiciary that the committal process is really the purview of the DPP who drives the process. Delays are encountered when prosecutors have to wait for instructions from DPPs office. Sometimes the NPA takes too long to send instructions and thus the Court has on occasion threatened to conduct a PI in order for the DPP to send instructions. Asked why the PI is not used more often, most respondents felt that it was cumbersome and the summary procedure was easier.

However, on the other hand DPP has to ensure that all relevant or pertinent details or evidence necessary for a successful prosecution are present before a they can give the go ahead for the committal of a case to trial. Thus they blame the investigators as they will keep sending files back to the police for more information, such as missing pathology reports and incomplete investigations.

The NPA also pointed to the fact that there is insufficient human resource especially in terms of pathologists. It was stated that pathologists reports and other forensic reports tend to take long as they sometimes have to come from outside the country. The police were also blamed in murder cases as they often times do not request for pathologists reports and have to be sent back for post mortems.

As a judiciary, they did acknowledge the problem with the slow rate at which cases are committed. As a result of this, the judiciary in 2013 had extra criminal sessions in order to help clear the backlog of cases that had not been committed. This was especially so in areas where there is no High Court and judges merely go for criminal sessions.

The situation has led to further delays in that cases that have been committed must now wait to be cause listed when there are sessions. Sometimes there is a backlog and remandees must then wait to be cause listed. In some areas visited, such as Western Province, it could take up to two years for cases to be cause listed.

It terms of committal for sentencing, it was pointed out that the warrant of committal is not time barred like the remand warrant. So if a person's records are lost while awaiting sentencing, he can easily be forgotten especially if he does not have a lawyer to represent. Unfortunately, there is no tracking system in place to ensure that that such instances do not occur.

CHAPTER 4:

RECOMMENDATIONS

The following recommendations emanate from the findings of the survey as well as the from the interactions with criminal justice institutions.

4.1 REFORM IN THE LEGAL AND JUSTICE SYSTEM

Reforms in the whole Justice system are long over-due. The Commission is therefore alive to the fact that reform in one area of the criminal justice system will not achieve the intended goal. There is need for reform in the legal and justice system in Zambia.

The report recognizes the appointment by Government of the Legal and Justice Sector Reform Commission as a vehicle to facilitate the process of bringing above reform in the Sector. The Commission is aware that institutions in the criminal justice system are specifically included in the terms of reference. The Commission will therefore make a written submission to the Commission, which will include recommendations in bail and bond.

4.2 BAIL AND POLICE BOND

4.2.1 Review of Bail Legislation

Most participants from the criminal justice institutions felt that the law relating to bail is adequate. They felt that the problem was in implementation. Participants did feel however, that all offences should beailable especially those under the Narcotics and Psychotropic Substances Act. The reasoning was that that the expression of 'non-bailable' offences impliedly condemns the accused even though he is still regarded as innocent until proven guilty.

However the exception was participants from Zambia Police who felt that there was need to clarify the law.

Although most participants felt that the law is adequate, the issues raised indicate that there are areas that participants would like to see changed and thus necessitating some sort of review. Further the findings of the survey have shown that many of the accused due process rights are being violated and thus necessitating a need for dialogue and review of the processes.

The Commission recommends that the law and procedure on bail be reviewed with a view of amending it. There must be a law that governs bail and bond decision making by the courts and police officers. The law should include definitions and categories of bail and bond.

It should also have specific provisions relating to young children and juveniles bearing in the provisions of the United Nations Conventions on the Rights of the Child under Article 37 and the provisions of the Beijing Rules.

The law should encourage children's release on bail and offer alternatives to children's bail when the conditions for bail cannot be met.

The Law must state the conditions under which bail can be granted and due regard being given to the circumstances of the case, bail conditions should not be excessive as to deny bail for the majority of persons that would apply for it.

4.2.2 Young Children and Juveniles

There is need to have the best interest of young children and juveniles that find themselves in conflict with the law as they are clearly a vulnerable group. Arrest should be used only as a measure of last resort.

The Commission recommends that serious consideration and an action plan developed to provide for detention facilities that separate children from adults at all times.

In addition to this is the need to develop binding protocols and handbooks for police, prosecutors and judges relating to the arrest and detention of juveniles.

4.2.3 Right to Legal Representation and Bail and Bond

From the survey, there is a close link between legal representation and the likelihood for one to request for bail or bond. Persons in detention that did not know about bail and bond or were aware but due to various reasons did not request for it, equally did not have access to legal representation at the time of arrest. It is therefore recommended that there be reforms across the whole criminal justice system including ensuring availability of legal representation provided by the State for those that cannot afford it.

4.3.5 Enhancing the Capacity of the Legal Aid Board

Various reports, including the findings in this report have highlighted the inability of the State through the Legal Aid Board to make legal representation available for all citizens that are unable to afford it.

It is therefore recommended that Government reviews the structure and capacity of the Board and transforms it into a board that can reach the majority of the Zambian people.

The Commission believes that legal representation will increase the number of people requesting for bail and bond and inevitably have more persons being granted bail and bond.

This recommendation is made recognizing the need to review the law and ensure that bail conditions are not excessive.

4.2.4 Capacity Building of Law Enforcement Officer

The problems assorted with bail and bond boarders on lack of familiarity with the law and or a deliberate abuse of power. There is therefore need for more training and sensitization on police officers on legislation and good practices regarding bail, especially on consideration for sureties.

Asides the need for more training and sensitization resulting in police officers being aware of the provisions of the law; it is likely that increased knowledge and skills is more likely to result in change in attitude, which is most cases has been a major stumbling block to the problem of non granting of Police bond to the majority of persons that find themselves in police detention.

4.2.5 Oversight over Law Enforcement Officers

The survey findings indicate that over-detention remains a major challenge, with reports of persons being in detention for over 10days.

In dealing with the problem of over-detention, the Commission therefore recommends that the police command vigilantly monitors police conduct and takes punitive action against police officers that are found wanting. Equally Magistrates must combine requests for the Arrest and Property Book with unannounced visits to police stations to monitor the status vis a viz persons in detention. Where it has presence the Commission will intensify its unannounced visits to police stations as a strategy to reducing the number of over-detention cases.

4.2.6 Community Sensitisation

There is also need to sensitize the general public on a suspect's right to bail. This is to increase the number of persons aware of this provision and the conditions attached.

This should be coupled with lobbying the various stakeholders including Community members, policy makers, Parliamentarians, law enforcement officers and the National Prosecution Authority on the need for review of bail and bond legislation.

4.2.7 Relationship between Law Enforcement Officers and the Community

There is also need for dialogue between the police and the community, for them to build a relationship based on trust. The ethos of being a police service must be emphasized as opposed to a police force.

4.2.8 The Role of Magistrates in Bail and Bond

The Commission recognizes that on one hand there is a requirement to protect society from the misadventures of a person alleged to have committed a crime and on the other hand the presumption of innocence of an accused person until proven otherwise. The enactment of a specific law on bail and bond would take care of the need to protect society, however in upholding the fundamental principle of the presumption of innocence, the call is to Magistrates to be obligated to address the issue of bail whenever a suspect appears before them.

4.3 COMMITTAL PROCESS

Committal process is driven by the office of the Director of Public Prosecutions under the National Prosecutions Authority.

As a result any project purporting to design and/or review the process would be meaningless without the buy in of the Office of the Director of Public Prosecution. With the foregoing in mind, the following are recommended.

4.3.1 Decentralisation of the National Prosecution Authority

Government must be commended for having began the process of decentralising the National Prosecution Authority. However the system of a centralised committal system where certificates are issued from Lusaka delays the process.

It is therefore recommended that the decentralisation process be fact tracked. Having State Advocates in all the Districts of Zambia will greatly improve the process of committal.

4.3.2 Review of Committal Process

There is need to lobby the Office of the Director of Public Prosecution, the Judiciary and the Police to review the committal process with a view of reducing time frames on cases being committed.

4.3.3 Powers of the Magistrate

One of the findings in the survey was a disconnect between the lower court discharging its investigatory role and ensuring that only those cases where prima facie evidence is disclosed proceed to the High Court and committing the accused to stand trial in the High Court. It is therefore recommended that a review of powers of the Magistrate be undertaken and specifically that powers relating to the jurisdiction of the Magistrate court be increased to reduce on the number of cases committed to the higher court. This recommendation is made in light of the fact that more and more the Magistrates being employed by the Judiciary are qualified Legal Practitioners as opposed to a time when the majority were lay-magistrates. In any event the High Court being a Court of original jurisdiction is inundated with pending cases and this would contribute to reducing the heavy burden on the High Court.

4.3.6 Relationship amongst Different Players in the Committal Process

There is need for “better interface between the committing court and the High court to enable matters to be determined more efficiently.

There is need for dialogue between police officers, prosecutors and magistrates so that they are on the same page as regards granting of bail and committals to the High Court. The failure by criminal justice agencies to work effectively and efficiently greatly affects the committal process in Zambia.

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Criminal Procedure Code, Chapter 88 of the Laws of Zambia

Supreme Court Act, Chapter 1 of the Laws of Zambia

Juveniles Act, Chapter 1 of the Laws of Zambia

Defence Act, Chapter 1 of the Laws of Zambia

Preservation of Public Security Act, Chapter 1 of the Laws of Zambia

Narcotics and Psychotropic Substances Act, Chapter 1 of the Laws of Zambia

International Instruments

1. The 1989 United Nations Convention on the Rights of the Child (UNCRC)
2. The 1948 United Declaration of Human Rights (UDHR)
3. The 1985 United Nations Minimum Rules of the Administration of Juvenile Justice (Beijing Rules)
4. The 1955 United Nations Standard Minimum Rules for Treatment of Prisoners (SMR)
5. The 1966 International Covenant on Civil and Political Rights (ICCPR)
6. The 1987 Convention Against Torture and other Cruel Inhuman and Degrading treatment and punishment (CAT).



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