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| **SUBMISSION TO THE COMMITTEE ON YOUTH, SPORT AND CHILDREN MATTERS- THE PLIGHT OF CIRCUMSTANTIAL CHILDREN IN ZAMBIA.****18th November, 2022****Contact:** Country Director P.O Box 51407LusakaCell: 0977616899 |

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# **1.0 LEGAL PROVISIONS ON CIRCUMSTANTIAL CHILDREN**

The Zambia Correctional Services Act No 37 of 2021 repealed the Prisons Act, 1965. Section 2 of the Zambia Correctional Services Act defines a circumstantial child as follows: “ “circumstantial child” means a child under the age of four years who is born in a prison or brought in a prison or correctional center, by virtue of the mother’s incarceration.”

Section 30 governs the reception and welfare of such children while in prison and reads:

30. (1) An expectant mother admitted to a prison or correctional center may be provided with necessaries and care at the public expense as prescribed.

(2) A circumstantial child of a female inmate may be received into the prison or correctional center with its mother and shall be supplied with clothing and necessaries at the public expense, except that when the child is weaned and is capable of being cared for by a person other than the female inmate, the officer-in-charge shall—

(a) on being satisfied that there is a relative or friend of the female inmate who is able and willing to support the child, cause the child to be handed over to the relative or friend; or

(b) where there is no relative or friend of the female inmate who is able and willing to support the child, subject to any other written law, hand the child over to the care of the Commissioner of Social Welfare.

# **2.0 Assessment of Zambian Legal Provisions in Light of International Human Rights Norms**

Often times women go to prison pregnant, breastfeeding or caring for very young and dependent children. Pregnant and breastfeeding mothers are entitled to receive advice on their health and diet. They should receive adequate and timely food, regular exercise opportunities and a healthy environment.[[1]](#footnote-1)

The issue of mothers living with their children in prison is, however, very complex as it often involves both the rights and interests of the mother and the child, which may not always align. A woman may, for example, wish to continue living with her child in prison and continue to have an active role in the child’s upbringing. However, the health, education and moral development needs of the child may dictate otherwise. In dealing with mothers with very young children, the state is required to first consider imposing non-custodial sentences and promote alternative forms of punishment other than institutional confinement.[[2]](#footnote-2)

Where a decision has to be made as to whether to allow children to stay with their mothers in prison or not, such a decision shall be based on the welfare and best interest of the child, based on individual needs assessment of the concerned child.[[3]](#footnote-3) The removal of children from imprisoned mothers should only be carried out when alternative care arrangements for the child have been made.[[4]](#footnote-4) Where children have been separated from their imprisoned mothers, then affected women prisoners shall be given the maximum possible opportunity and facilities to meet with their children.[[5]](#footnote-5)

Where children remain with their mother in prison, they are not to be treated as prisoners. Instead, they are to be provided with appropriate health care services and their development should be monitored by specialists.[[6]](#footnote-6)The environment provided for children in such a situation should be as close as possible to that of a child outside prison.[[7]](#footnote-7) In the words of Med Kagwaa, the African Special Rapporteur on Prisons and Conditions of Detention in Africa, “the goal should be to produce a child-centered environment, free from the visible trappings of incarceration, such as uniforms and jangling keys.”[[8]](#footnote-8)

# 3.0 NUMBER OF CIRCUMSTANTIAL CHILDREN

Though ActionAid Zambia has not done any comprehensive study to determine the number circumstantial children in Zambia. Engagement with the key relevant institution such as ZCS Headquarters and NGOs that work with circumstantial children such as Ubumi Prisons Initiative and Kid Alive Zambia, has reviewed that, Zambia currently has 75 (35boys 40girls) circumstantial children in correctional facilities across the 12 female correction facilities within Zambia.

According to the Prison Act No. 37 of 2002, which provides that every woman who gives birth while in prison or coming with a small child below the age 5, should be allowed to leave with her children until that child is 5 years and above. During this period, Government is mandated to provide basic services needed to ensure the child lives a decent life.

# 4.0 MEASURES THAT HAS BEEN PUT FORTH BY GOVERNMENT TO ADDRESS THE PLIGHT OF CIRCUMSTATIAL CHILDREN IN ZAMBIA.

As an institution we recognize the efforts which the government is making in addressing the challenges facing the circumstantial community, we have noted that the government has made score in the following areas.

Through the Open-Door Policy, various institutions have to able to engage

1. Partners to supplement government efforts
2. Family ties. They try and help the women keep in touch with their families
3. Social welfare is involved
4. Health care services have improved especially with the deployment of more health staff nationwide in the Correctional Facilities
5. Mothers with Circumstantial Children have been pardoned more regularly

A specific strategic point has been incorporated for circumstantial children in the new ZCS Health Strategic Plan 2022 – 2026.

# 5.0 CHALLENGES FACED IN THE PROVISION OF THE SUPPORT OF CIRCUMSTANTIAL CHILDREN

In Zambia, there are a number of challenges facing circumstantial children, this is largely due to various factors that need to be addressed by the Government and other key stakeholders.

ActionAid Zambia is of the view that, Government needs to put in place mechanisms that will ensure effective coordination of partners by Zambia Correctional Services (ZCS) leading to minimize duplication of efforts aimed at helping these children.

As an institution, we have noted that currently, many facilities are being left out because all partners support the same facilities.

* The lack of ownership of partner-initiated activities which means there is no sustainability and complete dependency on partners.
* Currently the Government of Zambia has no specific budget for circumstantial children making it difficult for ZCS to live up to their mandate of providing the basics for the children as promised in the Zambia Corrections Act and the new Health strategic Plan.
* The children on the other hand, lack access to good nutrition, leading to deficiency diseases. Furthermore, there is lack of necessities for pregnant women especially in connection with birth and new-born needs
* Lack of educational and social activities for the children is another major challenge which has led to children’s cognitive development and mental health as the children are deeply affected by the stressful and rough environment of prison.
* ***One of the notable major effects is that these children have now started picking up on the bad language and other vices in prison. For example, they even started calling the officers Bwana and adopt the prison lingo (a foreign language or local dialect)***
* Unconducive sleeping conditions. Some facilities have very small cells and are overcrowded. The children sleep with their mother on a mattress or a bed and at times they do not even have a whole bed to themselves. Some female wings might only have 1 small cell for all females and in that cell, there may be inmates with serious mental health disorders. This may jeopardise the safety of the children. This situation sometimes leads to mothers’ mental health problems, including developing postpartum depression
* In some cases, these Children are being treated like inmates. They stay confined within the prison day in and day out even when the mothers go outside to work.
* As an institution we have also noted that, Pre-trail detention takes quite very long period even for mothers leading to circumstantial children spending a long time inside the prisons and during the period there is very little focus on children’s rights welfare.

ActionAid Zambia however, is of the view that, government need to find ways to address and prioritize the plight of these children as can be observed that there is no specific budget line that speaks to the plight of the children. For example, as highlighted above, children do not have access to basic needs, this is clearly a violation of the children’s right according to the ***Convention of the Rights of the Child (CRC) of 1983*** of which Zambia adopted and is a member.

We have noted that Government has left most the major works to CSO, a case of Ubumi who has been specifically working with circumstantial children since 2006. Ubumi is specifically working with these children in the following areas: ***Lusaka Central Female (since 2006); Kabwe Maximum female (since 2008) and Chipata Central Female (since 2019).***

Ubumi, in trying to complement Government’s efforts has since provided several services which include but not limited to;

* Provision of basic food items for children, pregnant and lactating mothers.
* Monthly food packs provided to each of these target groups containing soya porridge, powdered groundnuts, cooking oil, eggs, soya pieces, dried vegetables, and brown sugar.
* The package of course depends on how old the baby is and if they have any special dietary needs but that is the standard monthly package. The same applies to the mothers if they have special dietary needs this is adjusted.
* For small babies who are not breastfeeding, Ubumi provides formula.

ActionAid Zambia on the other hand has indirectly supported through its Child Sponsorship Programme by constructing schools in various provinces where these children are and once their mothers are discharged, they are integrated into the community as such, have ended up benefiting from these efforts.

# 6.0 Recommendation

The Prisons Act allows for an infant child to be admitted into prison with its mother.[[9]](#footnote-9) When the child attains the age of four years, the officer in charge is required to remove the child and give it over to willing relatives or if not available, to the care of a social welfare authority.[[10]](#footnote-10)

* It is recommended that the provisions on circumstantial children should be amended. In dealing with mothers with very young children, the court should be required to first consider imposing non-custodial sentences and promote alternative forms of punishment other than institutional confinement.[[11]](#footnote-11)
* Where a decision has to be made as to whether to allow children to stay with their mothers in prison or not, such a decision shall be based on the welfare and best interest of the child, based on individual needs assessment of the concerned child.[[12]](#footnote-12) The removal of children from imprisoned mothers should only be carried out when alternative care arrangements for the child have been made.[[13]](#footnote-13) Where children have been separated from their imprisoned mothers, then affected women prisoners shall be given the maximum possible opportunity and facilities to meet with their children.
* Where children remain with their mother in prison, they are not to be treated as prisoners. Instead, they are to be provided with appropriate health care services and their development should be monitored by specialists. The environment provided for children in such a situation should be as close as possible to that of a child outside prison. Facilities such as kindergarten should be provided for the appropriate development of children.
* ActionAid Zambia wishes to recommend that ZCS do a proper mapping of partners working with circumstantial children and openly disclose it to partners for proper coordination and to reach more children in the plight of the circumstantial children living with disabilities for effective service and gender response service delivery.
* There is also need for government to create a data base with the view to link partners for more coordinated efforts with regards to facilitating the effective work aimed at enhancing the plight of children.
* Through this committee, ActionAid wishes to request and recommend that Government ensures creating a specific budget allocated for the upkeep of circumstantial children.
* There is need to ensure Government builds some small kindergartens or make play areas in all female facilities and employ officers who have studied early childhood education or identify female inmates with this background in Early Childhood teachers and Child Psychologists.
* The recruitment of ZCS should be amplified to include aspects around clinical, child health including postpartum depression or alternatively current ZCS officers be trained on these aspects.
* There is need for Government to look at structures and determine if there is enough space and if it is conducive for keeping circumstantial children considering health issues.
* There is need for the two institutions Social welfare and ZCS to come up with a plan for children to be taken out of prison at during a certain period of time to help them interact with other children and adults and experience the outside world.
1. Rule 48 Rule 6 United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) [↑](#footnote-ref-1)
2. Article 30(1)(a)(b) African Charter on th Rights and Welfare of the Child [↑](#footnote-ref-2)
3. Rule 49 and Rule 52(1) United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) [↑](#footnote-ref-3)
4. Ibid, Rule 52(2). See also Article 25(2) African Charter on the Rights and Welfare of the Child [↑](#footnote-ref-4)
5. Ibid, Rule 52(3) [↑](#footnote-ref-5)
6. Ibid, Rules 49 and 51(1) and rule 29 Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules) 2015 [↑](#footnote-ref-6)
7. Rule 51(2) United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) [↑](#footnote-ref-7)
8. Med Kaggwa, “Report of the Special Rapporteur on Prisons and Prison Conditions in Africa” (2012), 15 [↑](#footnote-ref-8)
9. Section 56 Prisons Act Chapter 97 of the Laws of Zambia [↑](#footnote-ref-9)
10. Ibid [↑](#footnote-ref-10)
11. Article 30(1)(a)(b) African Charter on the Rights and Welfare of the Child [↑](#footnote-ref-11)
12. Rule 49 and Rule 52(1) United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) [↑](#footnote-ref-12)
13. Ibid, Rule 52(2). See also Article 25(2) African Charter on the Rights and Welfare of the Child [↑](#footnote-ref-13)