



Input to the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

6 March 2023

1) Introduction

- a. Reprieve submits this input on deaths in custody of persons deprived of liberty in the criminal justice context based on information obtained during the course of their work in Malawi.

2) Measures for investigating, document and preventing

a. Legal requirements

- i. The Prisons Act requires that a medical officer must record the death of a prisoner with details such as the cause of death and information on the illness suffered, if applicable.¹
- ii. The Police Act requires that the officer-in-charge of police immediately inform the Independent Police Complaints Commission (IPCC) of all cases involving death of people in police custody or as a result of police action.²

b. Investigation procedures and accountability

- i. The number of deaths in custody is not regularly reported by the police or prison services. In its 2021 report, the Inspectorate of Prisons stated that people in prisons informed them that there were two deaths due to Covid-19 in the prison system from April to September 2020.³ Outside of ad hoc enquiries, deaths are not usually reported.
- ii. The IPCC has the power to investigate complaints against police officers and deaths that occur in police custody.⁴ The IPCC was created as an investigative body that is independent from the Malawi Police Service (MPS).⁵
 1. The IPCC is limited by resource constraints. The Commissioner stated in September 2021 that the Commission had received 99 complaints but were only handling 14 complaints, due to resource constraints. He stated that while the work of the Commission demands 30 people, he can only recruit 15 full-time staff due to budget constraints.⁶
 2. The office has a backlog of complaints and reported that it is actively investigating only cases of death by police.⁷ To date, no official reports have been shared with the public.

c. Deaths under police custody

- i. Torture is a pervasive problem in Malawi's criminal system. Malawi is one of few countries in the world that still retains a permissive legal framework on forced confessions. A forced

¹ Prisons Act, sec. 31.

² Police Act, sec. 145.

³ Malawi, Inspectorate of Prisons, *The Report of the Inspection of Prisons and Police Cells Conducted by the Malawi Inspectorate of Prisons in February, May, August 2020 and February 2021* (February 2021), p. 41, 45 [Annex A].

⁴ Police Act, sec. 129.

⁵ *Ibid.*, sec. 131.

⁶ The Daily Times, "Msundwe Investigation October 1", 17 September 2021. Available at

<https://www.africannewsagency.com/times-group-malawi/msundwe-investigation-october-1-704b63af-0a90-5358-b24a-73c28f7f0dd6/>.

⁷ "Policing the Malawi Police", *MW Nation*, 28 September 2021. Available at <https://mwnation.com/policing-the-malawi-police/>.

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confession is admissible and can be given weight if there is corroborating evidence to find that the confession is “materially true”.⁸ Courts routinely admit torture-tainted evidence, and investigations are rarely carried out into whether torture or ill-treatment occurred.

- ii. While the prohibition of torture is included in the Constitution, torture and other forms of cruel, inhuman or degrading treatment or punishment is not criminalised in the Penal Code.
- iii. Emboldened by a permissive legal environment, police officers routinely resort to torture to elicit confessions out of suspects during interrogations, increasing the risk of death of people in custody. Several cases in which police torture led to death are described below.

iv. Buleya Lule

1. In 2019, the Malawi Human Rights Commission (MHRC) investigated the torture and murder of Buleya Lule by police officers in Dedza and Lilongwe.⁹ Mr. Lule was a 44-year-old man who was found dead in a police cell on 21 February 2019, having been arrested in the early hours of 18 February 2019. The MHRC concluded that “it is an undeniable fact that the Victim was tortured in police custody” and that police torture caused his death.¹⁰ The post-mortem examination concluded that the cause of death was electrocution.
2. The MHRC recommended criminal proceedings against all police officers and other persons suspected to have been involved in the torture. In July 2020, 13 police officers, including the Commissioner of Police for the Central Region, were arrested and charged. All 13 police officers were granted bail in July 2020.
3. The family of Mr. Lule have waited years for justice. On 14 September 2022, the High Court of Malawi ruled that 10 of the 13 police officers have a case to answer on the charge of murder.¹¹ Three police officers were acquitted of murder and causing grievous harm, and the remaining officers are released on bail awaiting trial.
4. Despite agreeing to compensate Mr. Lule’s widow K331 million in damages in June 2021,¹² the Government failed to compensate her until November 2021 and ultimately reduced final compensation to K44 million.¹³

v. Donald Msafiri

1. On 1 February 2019, it was reported that Donald Msafiri, aged 61, a suspect in the abduction of an 18-month-old baby with albinism in Karonga district, had committed suicide the day after he was interrogated.¹⁴
2. No further investigation into his death has been reported.

⁸ *Thomson Fulaye Bokhobokho and Another v The Republic* (Criminal Appeal No. 10 of 2000) [2001] MWSC 5 (17 October 2001).

⁹ Malawi Human Rights Commission, A REPORT OF AN INVESTIGATION INTO THE DEATH OF MR. BULEYA LULE IN POLICE CUSTODY, HRC/05/03/234, May 2019. Available at <https://malawilii.org/system/files/MHRC%20Buleya%20Report.pdf>.

¹⁰ *Ibid.*, p. 6.

¹¹ “Buleya Lule murder: Chisale’s wife, nine others found with case to answer”, *Malawi 24*, 14 September 2022. Available at <https://malawi24.com/2022/09/14/buleya-lule-murder-chisales-wife-nine-others-and-found-with-case-to-answer/>.

¹² “Pius Nyondo, Lule’s widow to get K331m from govt over husband’s death in police custody”, *Nyasa Times*, 14 June 2021. Available at <https://www.nyasatimes.com/lules-widow-to-get-k331m-from-govt-over-husbands-death-in-police-custody/>.

¹³ Gary Samati, “Lule’s widow finally compensated”, *The Times Group*, 14 November 2021. Available at <https://times.mw/lules-widow-finally-compensated/>.

¹⁴ Nyasa Times, “Suspect in Karonga Albino Child Abduction Commits Suicide as Police Arrest Three More”, 1 February 2019. Available at <https://www.nyasatimes.com/suspect-in-karonga-albino-child-abduction-commits-suicide-as-police-arrest-threemore/?fbclid=IwAR2m35FLRqoqIRwiXD44wnqRA0QnSSc1hUvHTvSiOXZ4qEKVMC1bTsrTf48>.

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vi. Herbert Maloni

1. On 27 October 2020, it was reported that Herbert Maloni, a man imprisoned in Ntcheu Prison awaiting sentence following his conviction for the murder of a person with albinism, had been killed outside the prison building.¹⁵ Leading figures in the albinism community have expressed their concern that he was deliberately killed by the authorities.¹⁶
2. Police are said to be “probing” the matter but no cause of death has been made public to date.¹⁷ It appears that no further action has been taken by the authorities.

vii. Boniface Phika

1. On 21 August 2021, Boniface Phika, a 30-year-old man, died in police custody in Chikwawa. It was reported that he was severely assaulted by police. However, the police dismissed the allegation and stated that Mr. Phika died while receiving treatment for pain at the district hospital.¹⁸
2. No further investigation into his death has been reported.

d. Extrajudicial killings

- i. Extrajudicial killings are a pervasive problem. Police respond to rising crime rates with increasing brutality, rather than addressing community safety and social issues at the root of crime. Last month, police announced that it will shoot all suspected criminals on sight if they resist or “depending on the circumstances.”¹⁹
- ii. In a 2019 Prison Inspectorate report, people in custody reported that police are known to kill suspects who are considered “repeat offenders” of robbery and burglary before they are taken to court.²⁰
- iii. An investigation by CHREAA led to a list of 43 people who died under suspicious circumstances in custody or involving police officers from 2009 to 2018.²¹ One police officer disclosed that under “Operation Elimination”, police officers took people in custody or from their homes—often people with criminal records—to an undisclosed location and shot them.²² Not a single inquest was conducted into any of those deaths.²³

e. Deaths in prison

- i. The number of deaths in prison is not regularly reported. In our experience, deaths in the prison system occur due to neglect and lack of access to medical resources.
- ii. **Nedson Mailosi**
 1. Nedson Mailosi suffered on death row for 12 years and was medically vulnerable with HIV. During his incarceration, he suffered from tuberculosis twice and required

¹⁵ Malawi Voice, “Albino Murder Suspect Found Dead Outside Ntcheu Prison”, 27 October 2020. Available at <http://www.malawivoice.com/2020/10/27/albino-murder-suspect-found-dead-outside-ntcheu-prison/>.

¹⁶ <https://twitter.com/bonmassah/status/1320415781402923010/photo/1>.

¹⁷ Centre for Human Rights Education (CHREAA), *A Preliminary Report into Police Extrajudicial Killings in Malawi* (2019).

¹⁸ Tiwonge Kumwenda Mhango, “Suspected thief dies in police custody in Chikwawa”, *Nyasa Times*, 23 August 2021. Available at <https://www.nyasatimes.com/suspected-thief-dies-in-police-custody-in-chikwawa/>.

¹⁹ Jonathan Pasungwi, “We’ll shoot you, police declare”, *The Nation*, 28 February 2023. Available at <https://mwnation.com/well-shoot-you-police-declare/>.

²⁰ Malawi, Inspectorate of Prisons, *The Report of the Inspection of Prisons and Police Service Cells Conducted by the Malawi Inspectorate of Prisons in March 2018* (September 2019), p. 25 [Annex B].

²¹ Centre for Human Rights Education (CHREAA), *A Preliminary Report into Police Extrajudicial Killings in Malawi* (2019), p. 21.

²² See Police Act, sec. 145.

²³ Centre for Human Rights Education (CHREAA), *A Preliminary Report into Police Extrajudicial Killings in Malawi* (2019), p. 17.

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treatment for as long as 8 months each time. During the Covid-19 crisis, he was not released or transferred out of prison, despite his weak immune system.

2. Although Mr. Mailosi suffered from long-term illnesses, he did not receive appropriate medical attention until his health suddenly declined in the fall of 2021. When his health suddenly declined, the prison doctor transferred him to a public hospital, where he was further examined and tested. At the hospital, Mr. Mailosi was in a segregated ward, apart from the general population, and had to rely on private support to receive nursing care and buy medicine and supplies. Because his illness was not addressed until its advanced stage, Mr. Mailosi's family had little notice to arrange travel before he died.
3. While Mr. Mailosi's counsel stayed in touch with the prison welfare officer during his hospital stay, there is no indication that the prison took any administrative or investigative steps after his death.

f. Forensic involvement

- i. In some instances, post-mortem reports are completed in cases of shootings by police. However, family members of the deceased have been denied access to such reports, preventing them from seeking remedies.²⁴

g. Procedures for participation of victims' families

i. Criminal proceedings

1. In the absence of express criminalisation of torture, compensation in criminal proceedings for torture victims or their families is rare if not non-existent in Malawi.
2. The family of Buleya Lule, who died as a result of police torture in 2020, have waited years for justice. On 14 September 2022, the High Court of Malawi ruled that 10 of the 13 police officers have a case to answer on the charge of murder.²⁵ Three police officers were acquitted of murder and causing grievous harm.

ii. Civil proceedings

1. In civil proceedings, compensation has been ordered in cases involving police brutality against suspects.²⁶ However, it is a very costly avenue that the majority of torture victims cannot afford. In light of the difficulty that lies in pursuing a civil remedy against state agents for torture by indigent torture victims, most of them suffer injustice without any remedy by way of compensation.
2. Despite agreeing to compensate Mr. Lule's widow K331 million in damages in June 2021,²⁷ the Government failed to compensate Charity Lule until November 2021 and ultimately reduced final compensation to K44 million.²⁸

²⁴ *Ibid.*, p. 24, 27, 32.

²⁵ "Buleya Lule murder: Chisale's wife, nine others found with case to answer", *Malawi 24*, 14 September 2022. Available at <https://malawi24.com/2022/09/14/buleya-lule-murder-chisales-wife-nine-others-and-found-with-case-to-answer/>.

²⁶ *E.g.*, *Magombo v the Attorney General (Malawi Police Service)* (Assessment of Damages) (Personal Injury Cause 282 of 2018) [2021] MWHC 51 (05 August 2021).

²⁷ "Pius Nyondo, Lule's widow to get K331m from govt over husband's death in police custody", *Nyasa Times*, 14 June 2021. Available at <https://www.nyasatimes.com/lules-widow-to-get-k331m-from-govt-over-husbands-death-in-police-custody/>.

²⁸ Gary Samati, "Lule's widow finally compensated", *The Times Group*, 14 November 2021. Available at <https://times.mw/lules-widow-finally-compensated/>.



MALAWI INSPECTORATE OF PRISONS



**THE REPORT OF THE INSPECTION OF
PRISONS AND POLICE CELLS CONDUCTED
BY THE MALAWI INSPECTORATE OF
PRISONS IN FEBRUARY, MAY, AUGUST 2020
AND FEBRUARY 2021**

FEBRUARY 2021

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ABBREVIATIONS AND ACRONYMS

ART	Anti-retroviral therapy
ARV	Anti-retroviral
BMI	Body Mass Index
CCTV	Closed-circuit television
CP & EC	Criminal Procedure and Evidence Code
DHO	District Health Office
ICCPR	International Covenant on Civil and Political Rights
IoP	Inspectorate of Prisons
MANEB	Malawi National Examinations Board
MSCE	Malawi School Certificate of Education
N/A	Not Applicable
NAC	National AIDS Commission
NGO	Non-governmental organization
PSISP	Public Sector Investment Programme
PREP	Pre-exposure prophylaxis
PSC	Prisons Service Commission
RUTF	Ready-to-use therapeutic food
TB	Tuberculosis
VCT	Voluntary counselling and testing
YORC	Young Offenders Rehabilitation Centre

EXECUTIVE SUMMARY

1. This is the report of the Inspectorate of Prisons following the inspection of all the prison facilities and police cells across the country, which the Inspectorate conducted in February, May, August 2020 and February 2021
2. The inspection was conducted in terms of section 169 of the Constitution of the Republic of Malawi which mandates the Inspectorate to:
 - a) Monitor the conditions, administration, and general functioning of penal institutions;
 - b) Investigate any matters connected to penal institutions;
 - c) Visit all institutions within the Malawi Prisons Service with or without notice; and
 - d) Propose legal reforms to the Minister responsible for prisons.
3. During the inspection, members of the Inspectorate, who were assisted by the Secretariat based at the Ministry of Home Affairs, inspected the physical structures of the prisons including staff houses, had interviews with the prisoners, reviewed custody records and court records and also conducted staff meetings with prison staff.
4. After the inspection tour the Inspectorate made the following findings:
 - a) **Poor Infrastructure:** The physical structures of most of the prisons are in dilapidated state posing a serious danger to the lives of the prisoners and the prison officers themselves.
 - b) **The prisons holding capacity was found to be overcrowded by 278% beyond the designed capacity during the period of inspection of the official capacity.** This amounts to a violation of the right to freedom from torture, cruel and inhuman treatment.
5. **To address these problems, the Inspectorate makes the following recommendations:**
 - c) The failure to provide adequate food and medical care is a serious breach of national and international legal and policy instruments and amounts to a breach of human rights.
 - d) The failure to provide rehabilitation facilities amounts to a breach of article 10 International Covenant on Civil and Political Rights (ICCPR).
 - e) The educational system in all the prisons leaves a lot to be desired and amounts to a serious breach of the right to education.
 - f) There are serious human rights breaches in the manner in which the criminal justice processes are being applied to the prisoners. The way the system is being operated by the courts, police and the legal practitioners is almost criminal in its own and further exacerbates the vulnerable position of the prisoners.
 - g) The work environment and conditions of the prison officers is so poor leaving one with the impression that they are prisoners themselves. This is a serious breach of right to fair labour practices.

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- consider constructing prisons in all districts where there are no prisons. Where some prison structures can be salvaged, government should rehabilitate them making sure that ventilation is improved.
- iii. Government to re-operationalise the penal public work programme using the current district structure that implements the social cash structure public works programme. Using the same local government structure or with special staff recruited, government may place convicted persons serving such punishments under the low-level supervision system where applicable camp systems may be re-operationalised.
- b) To counter the health problems more especially with the issue of the COVID-19 and to ensure consistency and certainty in the provision of health services in prisons, the Inspectorate recommends all Officers in Charge of various prisons to enter into formal Memorandums of Understanding with respective District Health Offices (DHOs) to enhance collaboration and coordination between prisons and the DHO in the course of service delivery.
 - c) The agreement should, amongst other things, provide for issues to deal with:
 - i. Timely replenishment and availability of drug stocks in all prison clinics;
 - ii. Improvement of health screening services; and
 - iii. Enhancement of HIV preventive services.
 - d) In addition, government should construct more prison clinics and rehabilitate the infirmaries where these exist.
 - e) All Officers in Charge should enter into agreement with NGOs providing health services to government so as to improve service delivery.
 - f) Government should provide adequate qualified health workers with at least a minimum qualification grade of clinical officers and nursing technicians in all prisons.
 - g) Due to the COVID-19 pandemic, the Inspectorate recommended the release of some prisoners with less than six months of their sentence remaining to reduce congestion in prisons which is making it difficult for physical distancing to be observed. The Inspectorate also recommended for the supply of face masks, buckets and sanitizers in all prisons to prevent the spread of the corona virus. They encouraged prison officers to always remember to wash their hands as often as they can to protect themselves and the inmates.
 - h) Malawi Prison Service should put up a system that ensures that upon release, there is a proper transfer of records for ex-prisoners to hospitals or clinics for continuity of care for HIV and TB treatment. Prisoners should also be given a medical package for chronic diseases so that there is continuity.
 - i) To deal with various environmental health issues observed in some prisons, we recommend that at Mwanza prison, Malawi Prison Service should construct an appropriate sewage system to dispose of human waste. In Nkhotakota, management should seriously take up their responsibility of supervising and inspecting the prison environment to

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ensure that there is good sanitation. Most importantly, the Inspectorate recommends that the Malawi Prison Service should uniformly diversify into bio-energy manufacturing using human faecal waste as is happening at Mangochi Prison.

- j) To curtail the food problem, there is a need to provide uniform nutritional support to all prisons. Moreover, the Malawi Prison Service is encouraged to use locally available food types for example bananas in Karonga and Nkhata Bay instead of relying on maize all the time.
- k) The Inspectorate further recommends that Malawi Prison Service should discuss with Secretary for Treasury for a waiver that all revenue from the sale of soya beans, vegetables and meat or pork should not be deposited into Account Number 1 but should be reinvested in the farms and used to supplement the food budget for the prisons.
- l) All Officers in Charge of Malawi Prison Service should enter into Memorandums of Understanding with the District Education Managers of their respective districts to ensure further collaboration and cooperation in the provision of education services in prison. Moreover, over and above increasing the education budget to increase tertiary education, there should further be partnerships formed or enhanced with relevant education providers to extend education to tertiary level.
- m) Government should commence funding the prisons development project called revitalization of industrial workshops in order to improve standards of rehabilitation and reformation.
- n) To sort out the problems with the criminal justice processes, the Inspectorate recommends that all the Officers in Charge with the guidance of the legal section of the Malawi Police Service should put in place a system that ensures that all the paperwork of the prisoners is in place and that it is at least reviewed monthly to ensure adherence to the law.
- o) In the long-term, the Inspectorate recommends the Malawi Human Rights Commission with the blessing of the Chief Justice to undertake an inquiry into various human rights abuses within the criminal justice system and make substantive recommendations on how the same can be remedied.
- p) To address the administrative issues involving staff, the Inspectorate recommends that:
 - i. The Malawi Prison Service should negotiate for a better portion of the houses that government undertook to build for the security officers.
 - ii. The Malawi Prison Service should recruit more prison officers to have the warder prison ratio within the required ratio of 1:5.
 - iii. An increase in funding should be negotiated with Treasury in the next financial year.
 - iv. Modern technological equipment such as CCTV should be installed.

PART ONE: INTRODUCTION

1.1. MALAWI PRISONS SERVICE

1. The Malawi Prisons Service is a department of the Ministry of Homeland Security which contributes towards public safety and security by providing custodial services to those removed from the rest of the society by consequences of or in pursuit of the law. It achieves this by working together with other stakeholders in the criminal justice system and the community as a whole.
2. The department has four administrative regions: Central, East, North and South and they each have regional prison headquarters. There are 31 prison stations across the country holding a total prison population of around 14,500 inmates. These prisons are categorised into two main classes: Maximum Security Prisons and Medium Security Prisons. They are manned by 2,491 prison staff across the country.

1.2. THE INSPECTORATE OF PRISONS

3. The Inspectorate of Prisons is created under section 169 of the 1994 Republican Constitution to:
 - a) Monitor the conditions, administration, and general functioning of penal institutions;
 - b) Investigate any matters connected with penal institutions;
 - c) Visit any and all institutions within the Malawi Prisons Service with or without notice; and
 - d) Propose legal reforms to the Minister responsible for prisons.
4. Currently, the membership of Inspectorate of Prisons is comprised of:
 - a) His Lordship Kenan Manda, Judge of the High Court of Malawi;
 - b) Mr. Clement Kainja, Commissioner of Prisons, representing the Chief

Commissioner for Prisons;

- c) Hon. Martha Chizuma, Ombudsman of the Republic of Malawi;
- d) Mrs Bessie Kumangirana, Commissioner at the Prisons Service Commission;
- e) Her Ladyship Violet Chipao, Judge of the High Court by then Chief Resident Magistrate, Central Region Magistracy;
- f) Fr. Piergiorgio Gamba a Catholic Priest, Representing Prison Fellowship-Malawi, a non- governmental organisation interested in prisoners' welfare; and
- g) Victor Chagunyuka Mhango, Executive Director, Centre for Human Rights, Education, Advice and Assistance (CHREAA), a non-governmental organisation interested in monitoring of human rights in prisons.

1.3 PREVIOUS INSPECTIONS AND THEIR MAIN RECOMMENDATIONS

5. This is the 8th report of the Malawi Inspectorate of Prisons. The last immediate past report was for the year 2018. This was preceded by the 2016 report. All these reports reveal common recurrent general problems of overcrowding, poor sanitation, poor diet, poor ventilation, breach of a 48 hour rule, lack of proper measures to inhibit the spread of the corona virus; abuse of prisoners by either their fellow inmates and or some members of staff, corruption among officers, low staffing levels, inadequate provision of some life supporting services such as medical services and utilities, failure by the department to execute its rehabilitative role, failure by the courts to exercise their sentence review powers in time and lack of measures to prevent the spread of communicable diseases which has been exacerbated by corona virus pandemic.

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6. In general, all the previous reports recommended government to provide more resources to the Malawi Prisons Service in order for it to execute its mandate and functions properly.

1.4. METHODOLOGY

7. Physical visits and inspection of prison and

police cells, kitchens, bathrooms, toilets and clinics to appreciate their state.

8. Interviews. As depicted below, members of the Inspectorate interviewed inmates (both convicted and those awaiting trial on remand). The Inspectorate also interviewed Prison Officers on their welfare.



Figure 1a: Prisoners at Luwani Prison interacting with the Inspectorate.



Figure 1b: Chairperson of Prison Inspectorate, Justice Kenan Manda addressing prisoners at Kasungu Prison

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9. Review of prisoners' records, registers and other paperwork. As part of the inspection procedures, members of the Inspectorate also reviewed custody documents such as Warrants of Commitment and remand warrants issued by the courts to prisons Officers in Charge, and prisoners' records.



Figure 2: Prison Inspectorate team reviewing the prisoners' records.

10. Meetings with Prison Officers. The Inspectorate also conducted staff meetings at the prisons visited to find out more about their welfare and issues affecting the effective running of the prisons.



Figure 3a: The Prison Inspectorate team addressing Prison Officers at Ntchisi Prison during the 1st wave of COVID-19

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Figure 3b: Prison Inspectorate addressing Prison Officers at Dedza Prison



Figure 3c: Inspectors interacting with Senior Officers at Chichiri Prison.

PART TWO: FINDINGS

2.1. PRISON SECURITY AND INFRASTRUCTURE

11. The Inspectorate visited all the 30 prisons and police formations in the country particularly those districts which had no prisons and where crime rates are high. Tabulated below are prison stations and police formations visited during the inspection..

TABLE 1: LIST OF PRISONS VISITED AND INSPECTED

NORTHERN REGION	CENTRAL REGION	EASTERN REGION	SOUTHERN REGION
Chitipa Prison	Kasungu Prison	Ntcheu Prison	Mwanza Prison
Karonga Prison	Ntchisi Prison	Mangochi Prison	Luwani Prison
Mzuzu Prison	Bzyanzi YORC	Domasi Prison	Chikhwawa Prison
Nkhata Bay Prison	Lilongwe Prison	Zomba Central Prison	Mulanje Prison
Mzimba Prison	Dedza Prison	Mikuyu Prison	Thyolo Prison
Rumphu Prison	Nkhotakota Prison	Mikuyu YORC	Bvumwe YORC
	Kachere YORC	Mpyupyu Prison	Blantyre Prison
			Bangula Prison
			Nsanje Prison
			Makande

12. Security in prison is provided through both structural and human power. During the inspection exercises, it was observed that most of the prisons such as Chitipa, Zomba, Nkhata Bay and Nkhotakota were old and in a dilapidated state.



Figure 4: Dilapidated B Block at Zomba Central prison with no handrails to protect falling down from upper storey.

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13. However, it was pleasing that there are some improvements of prison infrastructure compared to the previous inspection exercise.
14. The Inspectorate exercises noted a fence at Ntcheu prison is still shorter and poses security risk but also commended the construction of a brick wall perimeter fence at Chitipa prison replacing a grass security enclosure that served the prison for many years.



Figure 5: Short fence at Ntcheu Prison that poses security threat of easing escape from prison of inmates.

15. The Inspectorate also observed that there are some notable infrastructural developments that have taken place since its last inspection exercise in 2018. It was noted that Nkhotakota prison has an additional cell block that has been constructed to accommodate 120 prisoners in an effort to address the previous challenge of overcrowding at the prison.

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Figure 6a: Inspectors inspecting new cell block at Nkhotakota prison in May 2020.

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Figure 6b: Inspectors inspecting a newly constructed cell block at Nkhotakota prison during the 2nd wave of COVID-19 in February 2021..

16. Similarly, it was observed that a new brick wall perimeter fence was constructed at Chitipa prison that has replaced the previous one made of grass.



Figure 7: Picture of a new fence constructed at Chitipa Prison replacing a grass enclosure.

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17. The Inspectorate further observed that prisons have started addressing the challenge of poor ventilation and sanitation as articulated in the previous report. At Nkhata Bay, Mangochi, Nkhotakota and Chikhwawa prisons, the windows of the cells for prisoners have been extended to provide enough ventilation and whirly birds have been installed to improve circulation of fresh air in the cells with support from UNODC.



Figure 8a: Chikhwawa prison showing larger windows fitted to improve ventilation. The cells had initially had only the small windows appearing above the large windows.



Figure 8b: Whirly birds installed at Chikhwawa prison.

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18. As the fence for Ntcheu prison poses the greater security risk it is recommended that the fence should be elevated. The general observation was that most of the prison structures were built during the colonial era.
19. Because of this old state, they have many structural challenges which impede the provision of standard custodial services.
20. The Inspectorate noted that there are few open prisons such as Bzyanzi, Mpyupyu, Luwani, Bangula and Karonga prisons. It is, therefore, recommended that the Malawi Prison Service should endeavor to construct additional open prisons in the country to create an environment which facilitates social adjustment to community reintegration of the offenders.



Figure 6b: Inspectors inspecting a newly constructed cell block at Nkhotakota prison during the 2nd wave of COVID-19 in February 2021..

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SERIAL	STATION	FLOOR SPACE (SQ.M)	DESIGNED MINIMUM PRISONER FLOOR SPACE (2SQ.M)	UPDATED PRISON HOLDING CAPACITY	PRISON POPULATION	CONGESTION RATE (%)
1	Thyolo	120.8	2	60	252	317.3913043
2	Rumphi	153.8	2	77	211	174.3823147
3	Chitipa	106.7	2	53	135	153.0459231
4	Blantyre	1267.7	2	634	1582	149.587833
5	Mzimba	424.7	2	212	519	144.4078173
6	Mzuzu	658.4	2	329	718	118.1044957
7	Karonga	31.5	2	16	34	115.8045065
8	Zomba Central	2093.3	2	1047	2219	112.011771
9	Mpyupyu	303.5	2	152	319	110.214168
10	Kachere	163.2	2	82	148	81.37254902
11	Lilongwe	2821.8	2	1411	2350	66.56153208
12	Kasungu	446.4	2	223	361	61.73110524
13	Ntchisi	295.8	2	148	230	55.51048005
14	Dedza	257.2	2	129	186	44.65814791
15	Mikuyu 1	453.4	2	227	311	37.18570798
16	Chikhwawa	461.0	2	230	309	34.06803193
17	Nkhotakota	516.1	2	258	327	26.71962798
18	Mulanje	445.5	2	223	264	18.5265001
19	Bvumbwe	282.8	2	141	166	17.38915211
20	Mikuyu 2	453.3	2	227	246	8.546970834
21	Nsanje	221.3	2	111	112	1.220063263
22	Mwanza	294.0	2	147	142	-3.391502534
23	Byanzi	119.7	2	60	48	-19.79949875
24	Domasi	478.9	2	239	177	-26.08060138
25	Luwani	120.0	2	60	43	-28.33333333
26	Mangochi	209.7	2	105	72	-31.3304721
27	Ntcheu	308.7	2	154	84	-45.57823129
28	Makande	527.0	2	264	141	-46.48956357
29	Nkhata Bay	473.9	2	237	119	-49.77313496
30	Bangula	133.9	2	67	23	-65.64856994
TOTAL		14643.7	2	7322	11848	61.8

Source: Malawi Prisons Research & Development 2020.

NOTE: This data was collected on a date during the 2nd visit to prisons in May 2020 after some prisoners were released under the 1st visit in February 2020 14,778 population.

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21. Despite undertakings to construct a new prison at Karonga more than five years ago, the situation has not changed. It must be observed that Karonga being a border district, has a high crime rate, including illegal immigrants and general local offenders. Therefore, the Inspectorate strongly urges the government to consider construction of Karonga Prison as a priority.

TABLE 3: PRISON POPULATION TREND BETWEEN 2018 AND 2020

PRISON STATION	POPULATION 2018	POPULATION 2018	TREND %
Kasungu Prison	359	359	143
Ntchisi Prison	280	280	114
Bzyanzi YORC	95	95	47
Lilongwe Prison	3026	3026	93
Dedza Prison	353	353	103
Nkhotakota	547	547	77
Kachere YORC	203	203	111
Chitipa Prison	204	204	90
Rumphi	227	227	108
Karonga Prison	81	81	77
Mzuzu Prison	836	836	106
Nkhata Bay Prison	240	240	90
Mzimba Prison	572	572	102
Ntcheu Prison	323	323	89
Mangochi Prison	278	278	90
Domasi Prison	283	283	108
Zomba Central Prison	2166	2166	107
Mikuyu Prison	312	312	91
Mikuyu YORC	207	207	119
Mpyupyu prison	273	273	92
Mwanza Prison	232	232	100
Luwani Prison	98	98	81
Chikhwawa Prison	464	464	103
Mulanje Prison	453	453	99
Thyolo Prison	168	168	96
Bvumwe YORC	295	295	74
Blantyre Prison	1866	1866	102
Bangula Prison	18	18	122
TOTAL	14,459	14,459	96

2.3. CURATIVE AND PREVENTIVE HEALTH SERVICES

22. During the 2018 inspection it was found that 25 prisons stations had no clinics. After the visit, the department in partnership with UNODC has constructed clinics at Chikhwawa, Mwanza, Kasungu and Nkhotakota prisons.

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Figure 9: Clinic constructed at Mwanza Prison with support from UNODC.

23. In the previous report, it was reported that prison clinics had insufficient drug supplies. In response to the previous findings there has been an improvement in the supply of drugs in the prison clinics.



Figure 10: Internal view of a drug store at Zomba Central Prison.

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24. Prison clinics are currently supported with drugs by DHOs in all districts after the department engaged the Ministry of Health on the same. However, to facilitate this, drug stores have been provided at Zomba Central Prison and Blantyre Prison but the problem still exists. The department has deployed qualified medical personnel in various prison stations such as Mulanje where during the last visit by the Inspectorate had no qualified health personnel.
25. Another improvement noted during this inspection exercise was on emergency response where in the previous exercise it was found that only Blantyre, Lilongwe, Mzuzu and Zomba Central prisons had ambulances to facilitate the transportation of inmates and staff to public hospital in case of a medical emergency.
26. The current inspection exercise observed that some district prisons had operational vehicles which also serve as ambulances when an officer or inmate is referred to a referral hospital. However, the challenge is not fully addressed as 15 prisons have no vehicles to help during emergencies.
27. Generally, shortage of motor vehicles in prisons has been improved since government has procured motor vehicles which most of the stations have benefited from. It is recommended that all the prison stations which do not have, should be provided with vehicles in order to ease mobility.

2.4. HANDLING OF TB AND HIV CASES

28. During the inspection the Inspectorate found a number of prisoners living with HIV across the prisons. Additionally, it was not possible to actually discern the rate of prevalence in the prisons. There was no evidence that suggests that there is systematic monitoring of HIV prevalence in the prisons either at admission or on a regular basis.
29. In almost all the prisons, inmates living with HIV had access to antiretroviral treatment (ART) and there was always enough in stock at their clinic's pharmacies.

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TABLE 4: HIV AND TB CASES IN MALAWI PRISONS

No	STATION	TYPE OF CASE											
		HIV						TB					
		HIV Total Tests			HIV Positive on ART			TB total tests			TB Positive on Treatment		
		Year 2018	Year 2019	Year 2020	Year 2018	Year 2019	Year 2020	Year 2018	Year 2019	Year 2020	Year 2018	Year 2019	Year 2020
1	Bangula	0	0	0	0	0	0	0	0	12	0	0	0
2	Bvumbwe	16	23	14	16	0	14	4	4	13	0	0	0
3	Byanzi	0	0	1	0	0	1	9	9	7	0	0	0
4	Chichiri	407	358	331	407	358	331	40	40	35	0	0	2
5	Chikhwawa	68	68	95	68	68	95	35	35	30	0	0	0
6	Chitipa	21	12	9	21	12	9	20	20	4	0	0	0
7	Dedza	25	25	21	25	25	21	44	44	1	0	0	1
8	Domasi	50	40	40	50	40	40	31	31	37	0	0	0
9	Kachere	6	6	4	6	6	4	18	18	17	0	0	1
10	Karonga	8	6	3	8	6	3	0	0	11	0	0	0
11	Kasungu	39	37	24	39	37	24	22	22	21	0	0	1
12	Luwani	21	1	6	21	1	6	3	3	7	0	0	0
13	Makhanga	0	0	0	0	0	0	0	0	0	0	0	0
14	Makande	9	9	35	9	9	35	0	0	38	0	0	0
15	Mangochi	32	43	20	32	43	20	9	9	35	0	0	0
16	Lilongwe	450	450	415	450	450	415	497	497	300	30	30	4
17	Mikuyu 1	54	54	30	54	54	30	10	10	36	0	0	0
18	Mikuyu 2	11	7	20	11	7	20	15	15	47	0	0	0
19	Mpyupyu	29	26	60	29	26	60	0	0	46	0	0	0
20	Mulanje	97	70	95	97	70	95	11	11	22	0	0	
21	Mwanza	27	38	25	27	38	25	69	69	27	0	0	0
22	Mzimba	60	65	63	60	65	63	12	12	81	2	2	0
23	Mzuzu	108	87	134	108	87	134	36	36	47	10	10	4
24	Nkhata Bay	24	65	19	24	65	19	0	0	40	1	1	0
25	Nkhotakota	32	40	41	32	40	41	6	6	26	6	6	4
26	Nsanje	23	26	28	23	26	28	22	22	21	0	0	0
27	Ntcheu	28	25	23	28	25	23	39	39	5	0	0	0
28	Ntchisi	18	18	17	18	18	17	23	23	85	0	0	0
29	Rumphi	15	20	23	15	20	23	98	98	36	5	5	0
30	Thyolo	28	21	23	28	21	23	5	5	21	0	0	0
31	Zomba Central	538	540	664	538	540	664	108	108	170	0	0	10
	TOTAL	2244	2180	2283	2244	2157	2283	1186	1186	1278	54	54	27

30. The provision of nutritional support varies in availability, criteria for distribution and content. Some prisoners on ART receive nutritional support. However, whilst at Lilongwe prison nutritional support was provided on the basis of malnutrition/BMI based criteria, in other prisons like Mulanje and Zomba it was provided to patients living with HIV but mainly donated by NGO's or well-

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wishers. The content of supplementation varies from ready-to-use therapeutic food (RUTF) to plumpy nuts or cooking oil, fortified rice, soya and flour. Otherwise in the majority of the prisons, inmates complained of not having any nutritional supplements.

31. The practice in prison shows that no consistent pattern of HIV-prevention is discernible. No condoms are given to inmates in any prison. Zomba central prison stated that HIV screening, counselling and sensitisation initiatives through drama groups were used for HIV prevention.
32. While some prisons implement HIV screening or testing on entry and at regular intervals in the year, others do not offer such services. There is no evidence of a practice of consistent screening or offering of voluntary testing of prisoners for HIV on entry or at regular intervals across the prison system.
33. On inspection, there was little evidence of any consistent practice in the prisons to ensure adherence and continuity of care for inmates on ART. There is no evidence of any practice of releasing or transferring inmates with any standard quantity of additional medications to enable continuity of access to treatment after being released or transferred to police custody or a different prison. A number of prisons do report that inmates are released with their health passports or master cards and referred to a particular point of care to ensure that inmates continue with their treatment but this is not a standard practice.
34. In as far as Tuberculosis (TB) is concerned; there was TB prevalence in the prisons. Almost all prisons had numbers of inmates receiving TB treatment at the time of the inspections.
35. In most of the prisons there is admittedly no consistent screening of TB on admission. On the other hand, the maximum prisons of Lilongwe, Zomba and Blantyre do systematic screenings of all inmates on entry and have access to Gene Expert testing facilities to test symptomatic inmates.
36. Regular screenings are only reported at Zomba, Blantyre, Lilongwe, Mzimba and Mulanje prisons after admission when resources are available. The rest of the prisons did not have a number of the prisoners screened for TB.
37. There is no consistent pattern of TB-infection or disease prevention efforts across the prisons. There were generally no infection control or TB disease prevention measures reported at a number of prisons including Nkhata Bay, Mzuzu, Mulanje and Ntcheu. At Zomba Central prison, inmate screening and rules against smoking in cells were stated as infection control and prevention methods. In Lilongwe isoniazid is provided to HIV-positive inmates to prevent TB disease. Whilst in Chikhwawa the use of face masks, inmate screenings and sensitisation were identified as TB control measures.
38. At Lilongwe prison serious coughers use masks. The same is the case at Blantyre prison, which in addition to the masks they also use isolation practices to prevent infection and stated that all HIV positive inmates on ART receive isoniazid to prevent TB disease.
39. Since there are no isolation facilities at almost all the prisons, Nkhata Bay, Mzuzu, Mulanje, Ntcheu and Chikhwawa prisons do, where resources permit, transfer inmates with serious cases of TB to hospital.
40. It has been noted that most stations have no isolation blocks for communicable diseases like multi-drug resistant TB, except Blantyre and Mzimba Prisons which department was constructed

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isolation blocks in response to the previous reports.

41. Through the Ministry of Health there is continuous TB mass screening in all prisons. The Mobile TB and HIV testing van has also been going through the prisons which results into a good number of inmates being tested.

2.5. ENVIRONMENTAL HEALTH

42. Ntchisi Prison was observed to be the cleanest prison.
43. At Nkhotakota prison cells there is an improvement as a new cellblock has been constructed. The construction of the clinic and new cellblock has resulted into the sewer system being constructed too which improved sanitation.
44. An open ditch containing human excreta behind a cell at Mpyupyu has been covered. While Mwanza at the last visit had a poor sewer system which to date has not been addressed.



Figure 11: Septic tank at Mwanza Prison

45. Septic tanks at Chitipa, Ntcheu and Makande prisons have been constructed while at Kasungu Prison sewer ponds have also been constructed both through government intervention.
46. There is Biogas technology at Mulanje, Dedza and Mangochi prisons in response to unnecessary disposal of waste.
47. At Mpyupyu prison it was observed that human excreta was disposed of in an open gutter too close to the cells, creating a bad smell and health hazard.

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2.6 NUTRITION IN PRISON

48. There has not been any notable improvement regarding food and nutrition. Stations were affected by the increasing cost of maize which was higher than the bid price. As a result, the supplier was reluctant to supply at lower prices which made some stations to reduce daily ration distribution.



Figure 12: Inmates displaying food ration to Inspectorate of Prison at Kasungu Prison

49. With the exception of Ntchisi Prison and Bzyanzi YORC where inmates generally receive two meals per day, almost all prisons inspected, were found not compliant with the Third Schedule to the Prisons Act as well as Regulation 53 of the same on ration provision. Most prisons were found to be serving only one meal a day.
50. Worse still, inmates are fed only nsima with beans or pigeon peas. In all prisons, meat is seldom, if ever, provided. Exceptionally, in Ntcheu vegetables are provided; at Ntchisi prison, it was reported by prisoners that vegetables and meat were routinely provided.
51. Only some prisons weigh inmates on admission and only one prison (Blantyre) is reported to weigh inmates at regular monthly intervals thereafter as provided for under Regulation 57 of the Prisons Act.

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52. The criteria, availability and content of nutritional supplementation for malnourished prisoners vary across prisons. Where provided, it is predominantly through donations and NGOs. In Chikhwawa prison, however, nutritional supplementation is partially government funded.

2.7. PRISONERS' REHABILITATION, REFORMATION AND REINTEGRATION

53. In terms of offenders' skills acquisition and development, members of the Inspectorate came across several rehabilitative activities taking place in prisons but with limited resource input from government.



Figure 13: Construction of a cell block at Nkhotakota prison by inmates

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54. The Inspectorate noted that most of the rehabilitative activities are continuing but with challenges of operating working capital due to the fact that the money generated from this initiative are deposited into Government Account No 1 thereby depriving the prison of the resources to sustain the operations.
55. There is construction of a workshop at Mulanje prison which is helping to impart knowledge and skills in carpentry and joinery.
56. All construction activities carried by the department involved inmates equipping them with skills. For example the construction of staff houses at Nkhotakota prison.
57. At Mzuzu prison the Inspectorate noted that female inmates were sewing face masks in response to COVID-19 pandemic.
58. Due to COVID-19 pandemic, prison education was affected same as other schools.

2.8. CRIMINAL JUSTICE PROCESSES

59. The Inspectorate noted issues raised by suspects on remand and prisoners on shortfalls in the criminal justice processes from the point of arrest to the point of sentencing as presented below.

2.8.1. BAIL AND LONG PERIODS OF REMAND

60. The Inspectorate observed that the issue of long stay of suspects on remand without trial was still continuing.
61. It was further observed that there were some inmates who were incarcerated in prison on homicide charges since 2013.
62. There is no improvement in police bail since the last inspection. Some inmates complained that police demanded money in order to be given bail while the police claim that bail is free. This information was confirmed by the remanded inmates in the prison and police cells being visited.
63. At Thyolo prison the Inspectorate found that inmates were spending 6 to 9 months on remand before the conclusion of their cases.

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TABLE 5: SUMMARY OF REMANDED PRISONERS IN HOMICIDE CASES IN MALAWI PRISONS

SR#	PRISON STATION	TOTAL NUMBER OF HOMICIDE PRISONERS	RANGE OF YEARS ADMITTED INTO PRISONS
1	Chitipa	11	2012-2014
2	Rumphi	15	2011-2015
3	Mzimba	40	2010-2015
4	Mzuzu	69	2008-2016
5	Nkhata Bay	11	2014-2018
6	Lilongwe/Lilongwe	174	2010-2015
7	Kachere	11	2013-2015
8	Kasungu	16	2011-2017
9	Ntchisi	26	2012-2016
10	Nkhotakota	28	2010-2015
11	Dedza	61	2010-2015
12	Zomba Central	146	2007-2019
13	Mikuyu 2	17	2006-2012
14	Domasi	62	2005- 2016
15	Ntcheu	29	2006-2017
16	Mangochi	11	2017-2018
17	Blantyre	338	2005-2015
18	Bvumbwe	14	2010-2013
19	Chikhwawa	28	2012-2015
20	Mulanje	65	2006-2016
21	Thyolo	8	2015-2020
22	Nsanje	14	2014-2016
	GRAND TOTAL	1194	2005-2020

64. On the point of suspects overstaying their remand period, two cases illuminate the point. Maulidi James was arrested in Kasungu in 2010 and was remanded to prison on 29 September 2010 for murder charges. He appeared before the Magistrate Court and his case got committed to the High Court. He attended a High Court Trial at Kasungu once and was represented by a Legal Aid Advocate. Six months later, the same prison received another Maulidi James on 31 March 2011 for murder charges as well. The Court heard the case of Maulidi James of 2011 who pleaded guilty and was sentenced on the same date to 20 years imprisonment. The High Court mistakenly assumed that it disposed of the case of Maulidi James of 2010. When this case was followed through, the DPP Chamber, Legal Aid Bureau and High Court could not trace his case files. The only case record is the Magistrate Court Remand Warrant. This case demonstrates flaws in record keeping in the criminal justice system which prejudice suspects. Another case was about Harry Kacheya from Balaka who has been on remand at Zomba Central prison on suspicion of murder since 2007.
65. Inmates at Mzimba, Chichiri and Bvumbwe prisons complained that determination of age is still a challenge during the collection of offenders' personal details by the police.

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66. Some offenders still complained that they were tried in wrong courts because of wrong determination of age by the police. This trend mostly affecting offenders who are on defilement cases.

2.8.2. SENTENCING

67. The Inspectorate noted that the sentencing by Magistrates continue to be harsh and in some instances unlawful. In the case of Republic Vs. Yolamu Nkumbira Criminal Case No. 37 of 2020 where he was sentenced of being found in possession of property stolen or unlawfully obtained contrary to Section 329 of the Penal Code, the Karonga Magistrate Court sentenced the offender to three years imprisonment instead of a two year-maximum sentence, which was unlawful.

68. It had been observed that young offenders for example of 18 years were charged in the wrong court. The Inspectorate observed that there are challenges with fine sentences. The laws indicate that any sentence of a fine greater than 1000 kwacha should be served after confirmation by the High Court. But at Ntcheu and Nkhotakota prison records indicated that inmates were sentenced to a fine and if in default they should serve the custodial sentences.

69. At Ntcheu prison an inmate served part of his sentence and later the relatives of the offender paid the fine at court and got the receipt. This receipt was evidence that the fine has been paid. When the receipt was submitted to prison as evidence that the fine was paid, the prison refused to release the inmate as the committal warrant did not indicate that the offender was given an option of a fine.

70. Suspects complained of sexual offences such as defilement, where cases were between youth in their adolescence stage in a consensual relationship. The most affected tend to be the boy child. The purpose of the sexual offence of defilement was to protect girl children from sexual conduct by older persons.

71. The Inspectorate recommends that the law regarding defilement cases be revised to not criminalise suspects who have the same age range such as youths below 20 years.

72. The Inspectorate recommends that the Chief Justice should reprimand magistrates involved in such practices.

2.8.3. CONFIRMATION

73. The Inspectorate also observed that inmates still serve unconfirmed sentences. At Mzuzu prison most new cases were found to have been confirmed, while a large number of old cases were not confirmed.

74. The Inspectorate recommended that the High Court should ensure that all sentenced inmates serve confirmed sentences. Additionally, the Malawi Prison Service should provide monthly returns of both confirmed and non-confirmed sentences.

2.8.4. WARRANTS OF COMMITMENT AND REMAND WARRANTS

75. There was a general complaint from the offenders that remand warrants are being extended without the suspects' appearance before the courts.

76. The Inspectorate observed that there is no improvement as some warrants are not being

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signed by Responsible Officers.

77. During the inspection, 254 warrants were found expired at Lilongwe prison because the court attended to an electoral case, and police said they were providing the security during the electoral case period.
78. This happened since the magistrate premises were cordoned off and occupied by the High Court.
79. Because of such action the suspects were staying in the prisons on remand illegally as their custodial time limit had expired.
80. The Inspectorate recommends that the magistrate and High Court premises should be separated.
81. The Inspectorate recommends that police should plan better for their operations so that their deployment should not affect other activities such as court proceedings.
82. The Inspectorate recommends disciplinary action against magistrates and police officers who extend the remand warrants in the absence of suspects.

2.8.5. CHILDREN IN PRISONS

83. The Inspectorate came across inmates who looked to be underage (below 18 years). Following further inquiries, it was discovered that most of the children were forced to lie that they are above 18 years in order to expedite their case disposal and sign for wrong statements at the police station so that the suspect can be tried at the wrong court and be convicted.
84. The Inspectorate recommends that the courts should establish a proper age assessment mechanism for young offenders before trial.

2.8.7. COMPLAINTS AGAINST POLICE

85. Long period of remand without trial: In this regard, the Inspectorate found that some suspects stayed on remand longer.
86. Inmates complained that the police extend their remand warrants without their physical appearance in courts: They are taken to police cells and later in the day returned to prison with an extended warrant.
87. The Inspectorate observed that in almost all police formations there are no special cells for female suspects. As a result, some were found to be kept in corridors, which puts them at risk of being abused by officers.
88. The suspects complained that they stay for more days without being provided with food in police custody. Therefore, the police is urged to provide a budget allocation for food for suspects in police cells.
89. In districts where there are no prisons, convicted offenders were mixed with suspects at the police cells while waiting for logistics to be taken to prison.

2.9. Management and General Administrative Support Services

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2.9.1. WARDER-PRISONER RATIO

90. The Prison Standing Orders require that for every five inmates, there must be one officer (1:5).

91. During the inspection, there were 2,271 prison officers against 14,778 inmates translating into a ratio of 1 staff member to 7 inmates (1:7).

92. Generally, Lilongwe has the highest ratio of inmates to staff.

TABLE 6: WARDER TO PRISONERS POPULATION RATIO

PRISON STATION	ACTUAL POPULATION	NO. OF STAFF	STAFF-INMATES RATIO
Kasungu Prison	519	98	5
Ntchisi Prison	426	57	7
Bzyanzi YORC	47	46	1
Lilongwe Prison	2989	214	14
Dedza Prison	404	85	5
Nkhotakota	492	55	9
Kachere YORC	288	57	5
Chitipa Prison	198	47	4
Karonga Prison	93	27	3
Rumphi	294	32	9
Mzuzu Prison	897	103	9
Nkhata Bay Prison	275	40	7
Mzimba Prison	598	94	6
Ntcheu Prison	293	59	5
Mangochi Prison	270	53	5
Domasi Prison	398	88	5
Zomba Central Prison	2698	256	11
Mikuyu Prison	285	42	7
Mikuyu YORC	247	52	5
Mpyupyu prison	250	41	6
Mwanza Prison	257	81	3
Luwani Prison	97	27	4
Chikhwawa Prison	476	50	10
Mulanje Prison	450	56	8
Thyolo Prison	192	47	4
Bvumwe YORC	286	65	4
Blantyre Prison	1997	203	10
Bangula Prison	47	13	4
TOTAL	14778	1750	8

NOTE: The difference between 2,491 and 1,750 is for prison staff who are at Prison Headquarters, Regional Headquarters, and Staff Training School

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2.9.2. SECURITY EQUIPMENT

93. During the period under review, it was observed that modern security equipment has been provided to prison warders to assist them in their daily endeavors.
94. However, the Inspectors noted with concern that the CCTVs which were installed in Mzimba and Blantyre Prisons are still not operational. Of late the Inspectorate have observed escalating trends of fraud by inmates through mobile money facilities particularly in Zomba and Blantyre prisons.
95. It is also recommended that the Malawi Prison Service should procure x-ray scanning devices. Despite having one machine at Blantyre Prison, it was not being utilized at the time of inspection.



Figure 14: Inspectors appreciating the x-ray machine which had been idle since its installation at the prison.

2.9.3. MOBILITY

96. Almost all prisons reported having insufficient or no vehicles to assist in transferring of inmates from one prison station to another; taking inmates to and from courts and the hospitals; ferrying of firewood from the forests to prisons; and transporting maize meal from the maize mill to the prisons, among others.
97. At the time of visiting, only Rumphi, Mzuzu, Mzimba, Nkhotakota, Lilongwe, Zomba, Mpyupyu,

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Mikuyu YORC, Blantyre, Chikhwawa, Nsanje, Bvumbwe, and Makande prisons had vehicle transport out of the total 31 prisons. Thanks to other individuals interested in prisoners' welfare like Mr. Anadkat of Capital Development Investments and Dr. Kim of Crops of Love who donated vehicles to the Department which were allocated to Blantyre, Bvumbwe and Makande prisons.

2.9.4. HOUSING

98. During the period under review, there has been positive developments regarding the issue of staff houses for example, the Malawi Prison Service has finished the construction of twenty staff houses at Mpyupyu Prison and some houses are under construction at Rumphi Prison using Other Recurrent Transaction (ORT).



Figure 15: Newly constructed staff houses at Mpyupyu prison.

99. Presented below are pictures of some of the staff houses showing the dilapidated state they are in.

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Figure 16: Tin staff house at Mzuzu prison

2.9.5. PROMOTIONS

100. Members of staff lamented the lack of promotions in the service as compared to their counterparts in the Malawi Police Service. They stated that their progression seemed to have stagnated due to lack of promotions.
101. In order to address the problem of staff promotion, the Malawi Prison Service conducted a functional review which has since been approved by OPC and DHRMD to create more positions for career progression.

2.9.6. UNIFORMS

102. During inspection, it was noted that Malawi Prison Service has procured adequate staff uniforms for all prison staff. However, the status remains the same for Chikhwawa, Bangula and Nsanje which requested special uniforms because they are in hot areas. However, this procurement has not addressed concerns raised by stations in hot areas of Nsanje, Chikhwawa, Mangochi, Balaka Nkhotakota and Karonga who require a uniform of lighter clothing material.
103. This request has not been addressed because it requires an amendment of the Prison Act. Additionally, the Malawi Prison Service has procured durable boots which have been distributed to all staff.

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2.9.7. INADEQUATE FINANCIAL RESOURCES

104. In almost all the stations inspected, inadequate financial resources emerged as one of the challenges that is negatively affecting the operational and administrative functions of the department. This resulted in the department's failure to provide necessary amenities both to the inmates and members of staff including educational advances to staff and provision of vocational Training to inmates.
105. The problem was also leading to the department's failure to service its outstanding debt arrears to its suppliers. In order to address the financial hardship which, the Malawi Prison Service is facing, the Inspectorate recommends the following:
- a) Recapitalise the Prison Service industry by starting to fund the revitalization of prison industrial workshops;
 - b) Procure a Motor Vehicle Number Plate Printer to generate more income through issuing of number plates to all government vehicles;
 - c) Establish a project account to manage all Prison Projects;
 - d) Obtain a funding order from Treasury so that the department should be able to retain and use part of its income generated from the prison project for inmates' re-integration and logistics for inmates when they are pardoned;
 - e) In line with the Public Sector Reforms, government should make a deliberate policy to reassign production and supply of some government services to be provided by the Malawi Prison Services, among others, procurement of furniture for government offices and issuing of motor vehicle number plates.

2.9.8. STAFF ROTATION / TRANSFERS

106. The Inspectorate observed that the issue of staff staying for a long period at the same station was still continuing.
107. The Inspectorate recommended that in order to address the above highlighted challenge, the Malawi Prison Service should develop a Transfer Policy for its staff.

2.9.9 COVID-19 PANDEMIC

108. The second phase of the inspection exercise conducted in August 2020, was necessitated by the COVID-19 pandemic. During this inspection exercise the following were observed regarding the Malawi Prison Service's state of preparedness as well as its response to the pandemic:
- a) There was lack of a proactive approach to respond to emerging issues such as the COVID-19 pandemic;
 - b) Some Prison stations had no Personal Protective Equipment (PPEs), while others had inadequate PPEs;
 - c) Inadequate sanitary utensils;
 - d) No Isolation centres for potential COVID-19 cases;
 - e) Lack of coordination of the Criminal Justice System;

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- f) The suspension of relational visits by Malawi Prisons Service continues to create panic and suffering among inmates;
- g) Lack of training for Prison Health Personnel on how to handle COVID-19 cases.

109. Nevertheless, during the third phase of inspection, some positive developments were noted, for example, the department designated regional isolation centres for COVID-19 cases. Additionally, PPEs and training on COVID-19 were provided to staff as well as Prison Health personnel respectively.



Figure 17: Hon. Martha Chizuma interacting with prisoners in an isolation facility at Lilongwe Prison who were tested positive for COVID-19

- 110. It was also observed that the swift response by the Judiciary through camp courts which resulted in granting of bail to accused was one way of reducing congestion in prison cells.
- 111. The Inspectorate, however, recommends that the government should construct isolation facilities for COVID-19 and other communicable diseases.

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Figure 17: Mzuzu Prison Officer demonstrating how to treat COVID-19 case.



Figure 18: Prison Health worker at Mzuzu prison explaining to members of the Inspectorate how they are working while dressed in PPEs to mitigate COVID-19 pandemic.

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Figure 19: COVID-19 Isolation facility at Lilongwe Prison as the Prison Officer interacts with patients.



Figure 20: Prison Health Officer disinfects the door to the entrance of quarantine centre at Lilongwe Prison

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Figure 20: A Health Worker in full gear disinfecting a cell at Zomba Central prison

112. All these efforts consolidated the gains of preventing more deaths in prisons as can be seen from the following table.

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TABLE 7: COVID-19 CASES IN PRISON SETTINGS DURING THE 1ST WAVE OF THE PANDEMIC

PRISON STATION	TOTAL INMATES	NUMBER TESTED		POSITIVE		TOTAL POSITIVE CASES	ACTIVE CASES	DEATHS	RECOVERIES AND RELEASES
		Staff	Inmates	Staff	Inmates				
Blantyre	1687	48	1803	4	253	257	138	0	70
Chikhwawa	429	0	77	0	0	0	0	0	0
Chitipa	163	0	24	0	11	11	0	0	0
Dedza	292	11	56	0	15	10	0	0	0
Lilongwe	2272	1	127	0	21	48	0	0	11
Mwanza	208	17	26	0	0	0	0	0	0
Mzimba	548	1	41	1	18	19	0	0	1
Mzuzu	831	0	69	0	18	22	4	0	16
Nkhata Bay	175	27	143	17	45	62	0	0	65
Nkhotakota	495	19	248	4	24	18	0	2	26
Nsanje	182	0	31	0	0	0	0	0	0
Rumphi		0	11	0	3	3	3	0	0
Total	7282	124	2656	26	408	450	145	2	189

The above tabulated data can be graphically presented as follows:

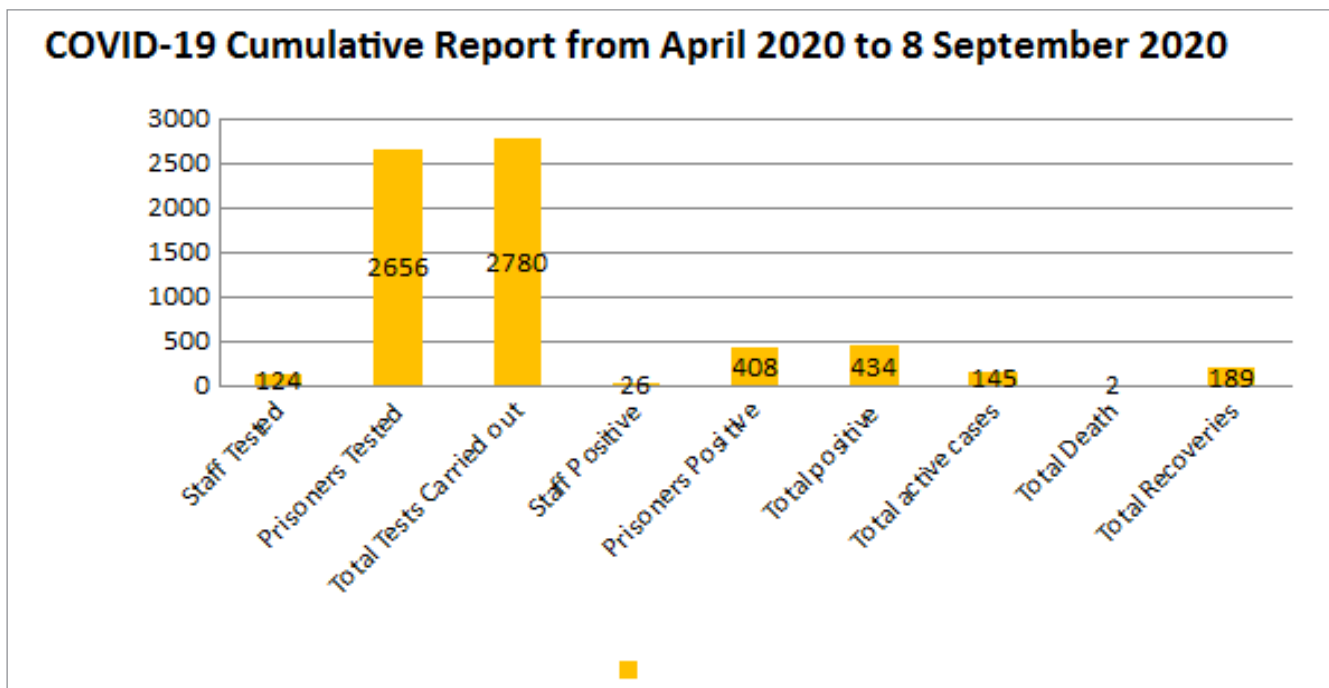


Figure 20: Graphical presentation of COVID-19 infections in Malawi prisons

113. During the second wave of the pandemic (February 2021), the Inspectorate sampled six prison stations, two in each administration region in the country principally those stations which had registered positive cases during the first wave of the pandemic. Tabulated data below are prison stations visited during the inspection.

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TABLE 8: LIST OF PRISONS VISITED AND INSPECTED DURING THE 2ND WAVE OF COVID-19

NORTHERN REGION	CENTRAL REGION	SOUTHERN REGION
Mzuzu Prison	Nkhotakota Prison	Blantyre Prison
Mzimba Prison	Lilongwe Prison	Zomba Prison

TABLE 9: COVID-19 PREVALENCE RATE

PRISON STATION	REVISED CAPACITY	ACTUAL POPULATION	NUMBER OF TESTS CONDUCTED	NUMBER OF POSITIVE CASES	POSITIVITY RATE (%)
Mzuzu Prison	360	615	0	0	0
Mzimba Prison	400	473	0	0	0
Nkhotakota Prison	200	273	0	0	0
Lilongwe Prison	860	2442	283	30	10.6
Blantyre Prison	960	1973	0	0	0
Zomba Prison	756	2324	1324	80	6.4

114. During the first wave of the pandemic there were no clear procedures in all prisons on how to manage and control the spread of corona virus. However, during the second wave of the pandemic, significant improvement was observed in management of COVID-19. Lilongwe prison had better practices compared to the rest.

115. During this inspection exercise the following were observed regarding the state of preparedness to mitigate the spread of COVID-19 as well as its response to the pandemic:

- a) All remandees at Lilongwe prison were being tested for COVID-19 by Lilongwe DHO and only those with negative results were integrated with the existing prison community;
- b) Lilongwe prison had a designated isolation centre for COVID-19 with a total capacity of 100 and rehabilitation works were underway to increase the capacity to 200 as depicted in figure below.
- c) The prison management in partnership with Light House were conducting COVID-19 mass testing due to escalating numbers of positive cases registered as depicted in figure 20 a & b. The exercise was estimated to take 10 days with a projected positivity rate of 10%;

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Figure 5a: Inmates queuing in line waiting for their turn to be tested for COVID-19 at Lilongwe Prison



Figure 20b: Inmates queuing in line waiting for their turn to be tested for COVID-19 at Lilongwe Prison

116. Despite the positive strides in management of the pandemic, Lilongwe has acute shortage of Health Personnel. At the time of inspection, the prison had two medical staff, one Clinical Officer and one Nurse. These medical personnel were being assisted by two prisoners from the health profession in order to reduce the workload as depicted in **figure 21 a & b** below.

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- a) There was no oxygen cylinder to assist those with breathing difficulties;
- b) There was need for prefabs with 100 capacity to be used as isolation centres;
- c) Management had designated a new cell block at Nkhotakota prison with the capacity of 200 as an isolation centre in the event of a COVID-19 case;



Figure 22: Inspectors inspecting a new cell block designated as an isolation facility at Nkhotakota prison.

- d) Despite not registering any case of COVID-19, during interface meetings with inmates, it was pointed out that some prisoners were experiencing some COVID-19 symptoms;
- e) Inmates further said that during the 1st wave of the pandemic, two of their colleagues died and only half of the population were tested for COVID-19 hence there was high likelihood of COVID-19 amongst them.



Figure 23: Inspectors interfacing with prisoners at Nkhotakota prison.

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- f) It was reported that during the first wave of the pandemic, Blantyre prison registered 257 cases of COVID-19 with no fatality. However, there was no positivity rate during the second wave of the pandemic;
- g) Screening for COVID-19 symptoms was conducted for everyone accessing the premises;
- h) Face masks were provided to staff as well as inmates;
- i) Secured one oxygen cylinder to assist those with breathing difficulties;
- j) Designated the cell block for young offenders as an isolation facility and one rehabilitation block see **figure 24**.



Figure 24: Inspectors inspecting a designated isolation facility at Blantyre prison.

- k) Blantyre prison like Lilongwe prison, faces a similar challenge of inadequate health personnel such as a Laboratory Technician, which derails the process of conducting tests;
- l) Furthermore, lack of skilled health personnel (Radiographer) to operate the x-ray machine which resulted in underutilization of the equipment as portrayed in **figure 25** below.

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Figure 25: Inspectors appreciating the x-ray machine which had been idle since its installation at the prison.

117. In order to enhance the COVID-19 response and case management in prisons, the Inspectors recommended the following:
- a) Inspectors recommended that mass testing be conducted at Nkhotakota prison as a matter of urgency in collaboration with Nkhotakota DHO considering that not all prisoners were tested for COVID-19 during the first wave which saw prisoners dying due to the pandemic;
 - b) Blantyre Prison Station was directed to establish clear guidance on COVID-19 response;
 - c) It was also recommended that the Officer in Charge of Blantyre prison should liaise with Blantyre DHO to conduct mass testing at the prison as soon as possible or assign a Laboratory Technician to the prison;
 - d) The Inspectors further advised all Officers in Charge to liaise with donor partners such as Light House, MSF and others to assist in provision of food, staff and mass testing for COVID-19;
 - e) It was recommended that to address mobility challenges at Blantyre prison, management should liaise with Ministry of Health through Blantyre DHO to be allocated an ambulance in view of the large community at the prison.
 - f) The Inspectorate of Prisons also directed that all offices and prison cells should be disinfected at least once a week in compliance with the new COVID-19 regulations.

PART TWO: FINDINGS

DECONGESTION MEASURES CARRIED OUT

118. The government of Malawi adopted a number of approaches in trying to reduce prison overcrowding to prevent the spread of the disease within the prisons and also the prisons catchment areas. These include presidential pardons, camp courts and granting of bail to a good number of suspects.

119. Presented below is a table showing the number of prisoners who were released pursuant to these interventions.

TABLE 10: NUMBER OF PRISONERS RELEASED FROM PRISON IN 2020 IN RESPONSE TO COVID-19 PANDEMIC.

RELEASING AUTHORITY	TYPE OF RELEASE	NUMBER	DESCRIPTION OF RELEASE
H. E. Professor Arthur Peter Mutharika	Easter Holiday Pardon, 2020	2224	Normal pardon plus Presidential General Amnesty targeting those convicted of misdemeanors (petty offences) and released those remaining with 3 months
Judge K. Manda	Inspectorate of Prisons, of 5 - 21 February 2020	311	Reviewed sentences for those remaining with 3 months
H. E. Dr Lazarus M. Chakwera	6 July 2020 Republic Holiday, Presidential General Amnesty 2020	1667	Normal Pardon plus the President granted a 6 month reduction of custodial sentence to every convicted prisoner
Judge K. Manda	May 2020 Inspection	1418	Reduced sentences of prisoners remaining with 6 months under the sentence review exercise
Judge K. Manda	August 2020 Inspection	321	Released prisoners by commuting their custodial sentences to suspended sentences
H. E. Dr Lazarus M. Chakwera	Christmas 2020 Holiday Pardon	787	Normal Pardon plus reduction of 3 months sentence to every convicted prisoner
TOTAL NUMBER OF PRISONERS RELEASED		6727	

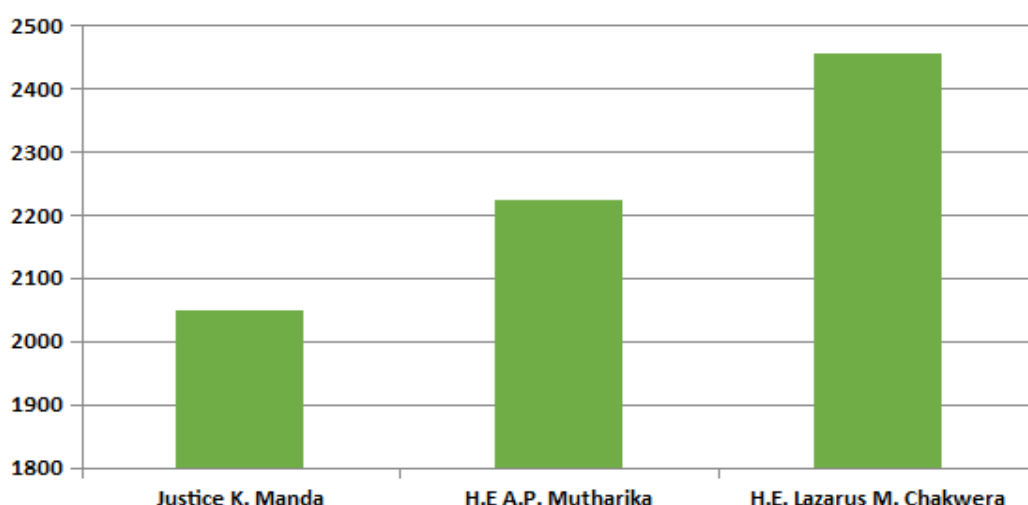


Figure 21: Graphic representation of number of prisoners released in mitigation of COVID-19 pandemic.

PART THREE: DISCUSSION AND ANALYSIS

120. In order to comply with human rights standards and the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Office for Project Services observed that a prison "should provide safe and secure conditions for prisoners and staff, and a decent quality of life."² Any reasonable person would observe very few decent and modern structures especially in Mzimba and Blantyre. Except for these two, the structural quality of the rest of the prisons in Malawi leave a lot to be desired and pose a real danger to lives of prisoners and prison warders themselves, in addition to presenting a possible flight risk for the prisoners. The situation should be a concern to all reasonable Malawians.
121. Section 19(3) of the Constitution prohibits torture, cruel, inhuman or degrading treatment. Section 42(2) of the Constitution further provides that every detained person or sentenced person shall have the right to be kept in conditions consistent with human dignity. Further Article 10(1) of the International Convention on Civil and Political Rights (ICCPR) provides that all persons deprived of their liberty must be treated with humanity and respect for the inherent dignity.
122. The levels of overcrowding in all the prison cells on bare floor with no mats and insufficient beddings for almost 15 hours a day debases the prisoners as lesser beings compared to the population at large and violates the prohibition against torture, cruel and inhuman treatment.
123. The poor detention conditions exacerbate indirect violation of the other interdependent rights. According to Rule 30 of the Revised Standard Minimum Rules for the Treatment of Prisoners, 2015 (the Mandela Rules), "All prison authorities shall ensure prompt access to medical attention in urgent cases" The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment has indicated that an inmate's loss of life without urgent medical care may violate the prohibition against ill-treatment and may even amount to torture.
124. The Nelson Mandela Rules require in Rule 24 that at a minimum, prisoners must be provided the same standard of healthcare that is available in the community. In relation to HIV prevention services, in particular, it appears that prisoners are not receiving the same standard of services provided in the community or at least those envisioned in policy.
125. The Malawi government's National HIV/AIDS Policy, 2003, commits to ensuring "that all prisoners (and prison staff, as appropriate) have access to HIV-related prevention, information, education, (voluntary counselling and testing), means of prevention (including condoms), treatment (including ART), care and support. It further provides that government through the National AIDS Commission (NAC) undertakes to ensure that affordable male and female condoms and other barrier methods of good quality are made available to all those who need them, in particular, the prisoners.
126. Rule 24 of the Nelson Mandela Rules further states that healthcare services in the prisons must be organised in a way that they "ensure continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases". The World Health Organisation states that for ART, a high level of sustained adherence is necessary to suppress HIV viral replication and improve immunological and clinical outcomes; decrease the risk of developing antiretroviral (AR) drug resistance and to reduce the risk of transmitting HIV. A lack of continuity of care is

PART THREE: DISCUSSION AND ANALYSIS

a strong predictor of non-adherence in the longer term. The Inspector's observation of the inadequacy and inconsistency during transfers is noted in this regard.

127. The inadequacy of other general health facilities and services and their inconsistent provision across all facilities further violates human rights. The failure to provide for access to adequate healthcare in detention has been found under international law to violate detainees' rights to humane treatment in detention, the prohibition against cruel, inhuman and degrading treatment and fair trial rights in the context of remand or pre-trial detention amongst others.
128. In relation to the Inspectorate's findings on access to food, it is noted that Rule 22 of the Nelson Mandela Rules requires that every prisoner shall be provided with wholesome quality and well prepared and served food of nutritional value adequate for health and strength by the prison administration at the usual hours of feeding. The United Nations Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment has stated, "This particular obligation to fulfil and protect the various human rights of detainees, above all their rights to food, water, health, privacy, equal access to justice and an effective remedy against torture and other human rights violation, derives from the simple fact that detainees are powerless and can no longer protect these rights through their own initiatives."
129. In terms of Article 10(3) of the ICCPR the essential aim of any prison system shall be "reformation and social rehabilitation" of offenders. The duty to treat all detained persons with dignity and humanity in a manner to reform and rehabilitate them, entails positive obligations on States that is not dependent on available resources.
130. Except for very few rehabilitation facilities in the few prisons, there are practically none in most prisons. Accordingly, the situation falls below the standards by all measures.
131. Section 30 of the Constitution recognizes the right to education for all persons. Article 26 of the Universal Declaration on Human Rights provides "everyone has a right to education". Article 13 of International Covenant of Economic and Social, Cultural Rights recognizes everyone's right to education. This means that the right to education applies to all persons including those in prison.
132. The Nelson Mandela Rules underlines the importance of education and training for all prisoners who are able to benefit and states that prison education and training should be integrated with the mainstream educational system. Access to education is also closely linked to offenders' rehabilitation.
133. Whilst there have been some success stories with the prison education programme with one of the inmate scoring 17 points at MSCE in 2019 and selected to study at Mzuzu University, the fact is that the education system is marred by so many challenges, major ones being lack of professional teachers and a lack of books and other resources. Due to the meagre funding the prison gets, prioritization is given to feeding the prisoners above anything else. Accordingly, the right to education of prisoners is heavily compromised ultimately breaching the right to education.
134. The criminal justice system is generally fashioned to ensure fairness in the manner in which those suspected or convicted of offences are treated without in any way compromising the need to punish offenders. However, it is clear that most of the safeguards meant to ensure

PART THREE: DISCUSSION AND ANALYSIS

fairness in the treatment of detained and convicted prisoners are not respected.

135. The right to be released from detention, with or without bail, unless the interest of justice requires otherwise, is a right for every arrested or accused person as per section 42(2)(e) of the Constitution. Furthermore, section 42(2)(b) provides for the right to be brought before court and charged within 48 hours of arrest. Across the prisons, there are so many suspects whose offences are bailable but have not been granted the same thereby increasing the prison congestion. Related to this is also the long time that suspects spend waiting for conclusion of their trial itself such that the period spent on remand is equal to the maximum sentence available for the offence charged. This goes against the spirit of fair trial, which includes under section 42(2)(f)(i) of the Constitution, the right to be tried within reasonable time and to be presumed innocent until proven guilty.
136. Despite the availability of legal guidance to facilitate the exercise of judicial discretion on sentencing (including extensive High Court and Supreme Court jurisprudence, the Courts Act, the CP & EC and the Magistrate's Court sentencing Guidelines) across the prison there are a number of irregularities in as far as sentencing of convicts is concerned. Some sentences are longer than the maximum set by the law and/or excessive in relation to the offence committed. Some sentences exceed the jurisdictional limit of magistrates. Furthermore, some magistrates are failing or forgetting to indicate whether sentences are to run concurrently, which effectively means that in accordance with section 17(1) of the CP & EC, prison authorities would always consider the sentences to run consecutively with the undesirable effect of having sentences that exceed the sentencing limit of the magistrate. Lastly some sentences exceed the sentencing limit of the magistrate.
137. Section 15 of the CP & EC requires automatic review by the High Court of every case where a subordinate court imposes a fine exceeding K1, 000, two years' imprisonment in the case of resident magistrate, one year imprisonment in the case of a first-grade magistrate, or six months imprisonment in the case of third or fourth grade magistrate. As stated by the High Court, "The section imposes a duty on the lower court to transmit the record to this court expeditiously for this court to review the sentence under the powers in the CP & EC and the Courts Act. Equally, there is a duty on this Court to review the sentences as soon as possible. To re-enforce the policy the CP & EC provides that, if this court does not exercise the powers, prison authorities can only keep the prisoner for up to two years, one year, or six months respectively. Speed, therefore, is important." Contrary to these requirements, the Inspectorate observed some sentences having not been confirmed for 5 years. Additionally, in trying to bypass the prisons' stance of refusing to take in prisoners in cases of sentences of imprisonment in lieu of fines without such sentences being confirmed, the police are sending such prisoners to prison with remand warrants resulting in the systems completely forgetting such prisoners and with others still finding themselves in prison even after finishing serving the default term.
138. There are so many irregularities and illegalities in the manner in which remand warrants are being handled. Section 329, read with section 336, of the CP & EC require warrants for imprisonment in execution of a sentence to be signed by the sentencing judge or magistrate. In terms of section 267 of the CP & EC remand warrants are granted by the court, with Form

PART THREE: DISCUSSION AND ANALYSIS

XX of the Criminal Procedure (Forms) Notice (Committal for Adjourment or Remand) clearly requiring the signature of resident magistrate. The Inspectorate found, however, that most warrants were signed by someone else on behalf of magistrate. Furthermore, contrary to the principles of natural justice which mandate that a person affected by the decision be allowed an opportunity to make representations, so many warrants were found to have been extended in the prisoners' absence. This practice is very common at Mulanje police and Mulanje Court.

139. In as far as children in conflict with the law are concerned, there are a number of illegalities in the manner in which these children are being handled. Contrary to section 86 of the Child Care, Protection and Justice Act, the High Court decision of *The Republic v Children in Detention at Bumbwe and Kachere Prisons* (Review case No 21 of 2017). Moreover, the committal to these centres is being done in an open ended fashion by simply stating "subject to review by Board of visitors". Such Board does not meet regularly resulting in such children staying there longer and unlawfully.
140. Section 15 of the Courts Act prohibits a person's arrest or imprisonment for defaulting in payment of a sum of money, noting certain exceptions. Article 11 of the ICCPR provides that "No one shall be imprisoned merely on ground of inability to fulfil a contractual obligation". Section 16 of the Courts Act provides that (notwithstanding section 15), "any court" may commit a person to prison for up to 6 weeks or until the payment of a sum due, in respect of a person "who makes default of any debt or installment of any debt due from him in pursuance of any order or judgment of a court". The Inspectorate has observed that contrary to these provisions, there appears to be a practice of persons being illegally incarcerated for failure to pay judgement debt under the guise of contempt of court when in fact there were no such proceeding in the court file. To the extent that any order for a person to be committed is made lawfully in terms of section 16 of the Courts Act, the Inspectorate observes that in terms of Rule 94 of the Nelson Mandela Rules, persons imprisoned for debt or civil process "shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order" and that their "treatment shall not be less favorable than that of untried prisoners, with the reservation, however, that they may possibly be required to work".
141. Lastly, there are a myriad of administration and management problems within the Malawi Prison Service that infringe on the officers' rights to fair labour practices provided under section 31 of the Constitution. The Inspectorate observed serious problems including:
 - a) Excessive workload as a result of insufficient numbers of warders resulting in a disproportionate warder-prisoner ratio, contrary to the Standing Orders recommended of 1:5;
 - b) Shortage and dilapidated staff housing which leaves an impression that staff are equally prisoners themselves;
 - c) Inadequate uniforms where most officers have one uniform and they are expected to be in uniform every day for work;
 - d) Poor system promotion in prison service such that it is normal for an officer to be on the same position for two decades, entire employment period; and

PART FOUR: SUMMARY OF FINDINGS

- e) Inadequate funding which affects smooth operations of the Department and makes administration function dysfunctional such as provision of education advance loans to the officers.
- 142. The infrastructure of most prisons and staff houses are in an extremely dilapidated state posing serious danger to the lives of prisoners and staff.
- 143. Overpopulation in prisons was at 278% of the official holding capacity at the time of the inspection. This debases the prisoners as human beings and amounts to a violation of the prohibition of torture, cruel and inhuman treatment.
- 144. There was no proactive approach to respond to emerging issues such as the COVID-19 pandemic which exposed both staff and prisoner vulnerable to contacting the virus.
- 145. The failure to provide adequate food and medical care is a serious breach of national and international legal and policy instruments and amount to a breach of human rights.
- 146. Failure to provide rehabilitation facilities amounts to a breach of article 10 of ICCPR.
- 147. The educational system in all the prisons leaves a lot to be desired and amounts to a serious breach of the right to education.
- 148. The work environment and condition of the prison officers still remains poor. This is a serious breach of right to fair labour practices.
- 149. Finally, there are serious human rights breaches in the manner in which the criminal justice processes are being applied to the prisoners. The way the system is being operated by the courts, police, the legal practitioners and police is almost criminal in its own and further exacerbates the vulnerable position of the prisoners.

PART FIVE: RECOMMENDATIONS

150. For each of the findings the Inspectorate hereby makes the following recommendations:

PRISONS

151. Where some prison structures can be salvaged, government should consider rehabilitating them to modern prison standards.
152. In the long-term government should consider constructing prisons in all districts where there are no prisons.
153. As a short-term solution, government should identify buildings that can be used as temporary prisons and establish community corrections offices whose officers have to be supervising various community correction sanctions.
154. The Malawi government to expedite the transformation of the Prisons Service into Correctional Service by passing a new Bill which among others entrenches community corrections functions such as penal public works, probation services, community service, open prisons, halfway houses and other aftercare services within one organizational structure.
155. To counter the general health problems, the Inspectorate recommends that: All Officers in Charge of prisons should strengthen collaboration and coordination with the District Health Offices (DHOs) to ensure that DHOs take charge of health issues within the prisons as part of their core and routine work because they fall within and form part of their catchment areas population.
156. Officers in charge of the concerned prisons must enter into agreements with NGOs providing health services to support to the government to improve service delivery.
157. Government should construct more prison clinics and rehabilitate the infirmaries where they exist and provide adequate qualified health workers with at least a minimum qualification grade of clinical officers and nursing technicians in all prisons, and adequate medical equipment. As a matter of urgency, government should procure ambulances for Makande, Luwani, Bzyanzi, Kasungu, Nkhata Bay, and Mzimba prisons to facilitate quick emergency response as these facilities are not close to hospitals.
158. Malawi Prisons Service should put up a system that ensures that upon release, there is a proper transfer of records for ex-prisoners to hospitals or clinics within the community of residence for continuity of care for HIV and TB treatment. Prisoners should also be given a medical package on discharge for chronic diseases so that there is continuity.
159. On the COVID-19 pandemic in prisons, the Inspectorate noted that the Malawi Prisons service were adhering to COVID-19 preventive measures by among other things wearing face masks and observing hand hygiene like hand washing and sanitising frequently. However, masks, buckets and sanitizers were in short supply. The Inspectorate therefore recommends the acquisition of buckets, face masks, and sanitisers for use in all prisons in order to control the spread of corona virus. It further recommends construction of isolation facilities for COVID-19 and other communicable diseases within the communities and designate some for prisons sake.

PART FIVE: RECOMMENDATIONS

160. It further recommends the release of some prisoners with less than six months of their remaining sentence in order to reduce congestion in prisons.
161. The Inspectorate recommends that prison management should be supervising and inspecting the prison environment often to ensure that there is good sanitation. Government should construct appropriate sewage system at Mpyupyu prison as well as at Nkhotakota prison for human waste disposal. Most importantly, the Inspectorate recommends that the Malawi Prisons Service should uniformly diversify into bio-energy manufacturing using human faecal waste as it is happening at Mangochi, Mulanje and Dedza Prisons.
162. To curtail the food problem, prisons should diversify food at all stages ranging from production, procurement and consumption. At production, the Malawi Prisons Service must strive to establish farms of other crops like bananas and animal ranches. At procurement stage, government should allow prisons to procure food stuffs direct from local producers and cooperative societies when they are in abundance. At consumption, the Malawi Prisons Service is encouraged to use locally available food types for example bananas in Karonga and Nkhata Bay, groundnuts in some districts of central region instead of relying on maize and beans all the time.
163. Government should expedite promulgation of the Revolving Fund Order where all revenue from the sale of industrial workshop products, farm produces should be deposited and reinvested to sustain production instead of depositing all revenues into Account Number 1.
164. Government should commence funding the prisons development project, called revitalisation of industrial workshops, in order to improve standards of rehabilitation and reformation. Further, all Officers in Charge of Malawi Prisons Service should enter into Memoranda of Understanding with the District Education Managers of their respective districts and other stake holders to ensure further collaboration and cooperation in the provision of education services in prisons. Moreover, the government should consider increasing budgetary allocation towards education in prisons to expand prison education to tertiary level.
165. To sort out the problems with the criminal justice processes, the Malawi Prisons Service under the guidance of its Legal Section, should put up a system that ensures that all the paperwork of the prisoners is in place and also one that it is at least reviewed monthly to ensure adherence to the law as to all the Officers in Charge. The Criminal Justice Coordinating Committee (CJCC) should strengthen its oversight role over the criminal justice institutions that are under their membership to ensure that they work according to the law.
166. On poor work environment and conditions of service for prison officers, government should expedite implementation of the correctional service functional review. The Malawi Prison Service should recruit more prison officers to have the warder-prisoners' ratio within the required international standards of 1:5.
167. The Malawi Prisons Service should lobby for a better portion of the houses that government undertook to build for the security officers. It has to further negotiate with the Treasury for increased funding in the next financial year.
168. The government must also modernise the prisons security apparatus by computerising and digitising its security system with modern technological equipment such as CCTV and security

PART FIVE: RECOMMENDATIONS

x-ray scanning devices for easy and thorough searching and detection of contrabands at the gates.

169. In relation to few open prisons, the Malawi Prisons Service should endeavor to construct additional open prisons in the country in order to create an environment which facilitates offenders' community reintegration.
170. The Malawi Prisons Service should continue with the practice of providing monthly return of both confirmed and non-confirmed sentences to the High Court.
171. It is recommended that all the prison stations which do not have operational vehicles should be provided with vehicles in order to ease mobility. The problem was also leading to the Department's failure to service its outstanding debt arrears to its suppliers. In order to address the financial hardship, the Inspectorate recommends the following:
 - a) Recapitalise the revitalisation of the workshops of the Prisons Service. By extension, operationalise a separate revolving funding order to retain and use part of its income generated from the prison industrial workshops and rehabilitation activities for sustainability and re-integration programme.
 - b) Establish the Motor Vehicle Number Plate embossing (printing) factory in the prisons to generate more income through issuing of number plates for all vehicles;
 - c) In line with the Public Sector Reforms, government should make a deliberate policy to reassign production and supply of some government services to be provided by the Malawi Prison Services, among others furniture, coffins and caskets for government offices.
 - d) The Inspectorate recommends that the Malawi Prisons Service should develop a Transfer Policy for its staff in order to avoid problems associated with overstaying at the same workplace.

JUDICIARY

172. The Chief Justice should reprimand all magistrates involved in the malpractice of committing the convicted person to prison on a remand warrant in order to force the relatives of the sentenced person to pay the fine. This practice is turning the prisons into institutions for extortion of fines.
173. The Inspectorate recommends that the Judiciary should develop a step-by-step manual or handbook for magistrates to be used in sentencing offenders to fines, with regard being had to sections 93, 330 to 335 of the Criminal Procedure and Evidence Code which outline steps to be taken before the offender is deemed the defaulter of fine.
174. Judiciary must establish a proper prisoners records tracking system in the High Court to track all records for all prisoners admitted to prisons to help it to confirm sentences.
175. In light of cordoning off of the Lilongwe court premises which took place during the Constitutional Court sitting, the Inspectorate recommends that there must be a separation of magistrate and high court premises in Lilongwe and Mzuzu cities. Furthermore, the Judiciary must consider establishing High Court District Registries in all Municipalities in Malawi.

PART FIVE: RECOMMENDATIONS

176. Government must also speed up the construction of Judiciary Complex as such a structure might lead to vacating of the current High Court buildings for magistracy operations.
177. The Inspectorate recommends that the courts should establish a proper age assessment mechanism for the young offenders as well as victims so that there is no biased conviction of males.
178. The Judicial Service Commission and Police Service Commission must take disciplinary action against magistrates and police officers who extend the remand warrants in the absence of suspects.

POLICE

179. The Inspectorate recommends that police should plan better for their operations so that their deployment should not affect other activities such as court proceedings.
180. Regarding the complaint that suspects stay for days without food in police custody, this body recommends that the Police Service must lobby Treasury to introduce a budget item within the police budget to be used for remand prisoners' ration.

MALAWI HUMAN RIGHTS COMMISSION

181. In the long-term, the Inspectorate recommends the Malawi Human Rights Commission to undertake an inquiry into various human rights abuses within the criminal justice system and make substantive recommendations on how the same can be remedied.



MALAWI INSPECTORATE OF PRISONS



THE REPORT OF THE INSPECTION OF PRISONS AND POLICE SERVICE CELLS CONDUCTED BY THE MALAWI INSPECTORATE OF PRISONS IN MARCH 2018



MALAWI INSPECTORATE OF PRISONS



THE REPORT OF THE INSPECTION OF PRISONS AND POLICE SERVICE CELLS CONDUCTED BY THE MALAWI INSPECTORATE OF PRISONS IN MARCH 2018

September, 2019

EXECUTIVE SUMMARY

1. This is the report of the Inspectorate of Prisons following the inspection of all the prison facilities and police cells across the country, which the Inspectorate conducted in March 2018.
2. The inspection was conducted in terms of section 169 of the Constitution of the Republic of Malawi which mandates the Inspectorate to:
 - a. monitor the conditions, administration, and general functioning of penal institutions;
 - b. investigate any matters connected to penal institutions;
 - c. visit any and all institutions within the Malawi Prisons Service with or without notice; and
 - d. propose legal reforms to the Minister responsible for prisons.
3. During the inspection, members of the Inspectorate, who were assisted by the Secretariat based at the Ministry of Home Affairs, inspected the physical structures of the prisons including staff houses, had interviews with the prisoners, reviewed custody records and court records and also conducted staff meetings with prison staff.
4. After the inspection tour the Inspectorate made the following findings:
 - a. The physical structures of most of the prisons are in an extremely bad shape posing a serious danger to the lives of the prisoners and the prison officers themselves.
 - b. The overpopulation of the prisons at 260% of the official capacity as at the time of the inspection debases the prisoners as human beings and amounts to a violation of the right against prohibition of torture, cruel and inhuman treatment.
 - c. The failure to provide adequate food and medical care is a serious breach of national and international legal and policy instruments and amounts to a breach of human rights.
 - d. The failure to provide rehabilitation facilities amounts to a breach of article 10 International Covenant on Civil and Political Rights (ICCPR).
 - e. The educational system in all the prisons leaves a lot to be desired and amounts to a serious breach of the right to education.
 - f. There are serious human rights breaches in the manner in which the criminal justice processes are being applied to the prisoners. The way the system is being operated by the courts, police, the legal practitioners and police is almost criminal in its own and further exacerbates the vulnerable position of the prisoners.
 - g. The work environment and conditions of the prison officers is so poor leaving one with the impression that they are prisoners themselves. This is a serious breach of right to fair labour practices.
5. To address these problems, the Inspectorate makes the following recommendations:

- a. To deal with the problem of poor infrastructure and prison congestion we recommend the following:
 - i. As a medium-term solution, Government should identify buildings that can be used as makeshift prisons.
 - ii. In the long-term government should consider constructing prisons in all districts where there are no prisons. Where some prison structures can be salvaged, Government should rehabilitate them making sure that ventilation is improved.
 - iii. Government to re-operationalise the penal public work programme using District Council directorates of public works programme. Using the same local government structure or with special staff recruited, Government may place convicted persons serving such punishments under the low level supervision system where applicable camp systems may be reoperationalised
- b. To counter the health problems and to ensure consistency and certainty in the provision of health services in prisons, the Inspectorate recommends all Officers in Charge of various prisons to enter into formal Memorandums of Understanding with respective District Health Offices (DHOs) to enhance collaboration and coordination between prisons and the DHO in the course of service delivery. The agreement should, amongst other things, provide for issues to deal with:
 - i. timely replenishment and availability of drug stocks in all prison clinics;
 - ii. improvement of health screening services; and
 - iii. enhancement of HIV preventive services.
- c. In addition, Government should construct more prison clinics and rehabilitate the infirmaries where these exist. Along with this, Government should provide sufficient health workers with minimum qualification of clinical officers and nursing technicians in all prisons and provide adequate medical equipment, including ambulances. As a matter of urgency, Government should procure ambulances for Thyolo, Luwani, Byanzi, Kasungu, Nkhata Bay, and Mzimba to facilitate quick emergency response as these facilities are not close to hospitals.
- d. Malawi Prisons Service should put up a system that ensures that upon release, there is a proper transfer of records for ex-prisoners to hospitals or clinics for continuity of care for HIV and TB treatment. Prisoners should also be given a medical package for chronic diseases so that there is continuity.
- e. To deal with various environmental health issues observed in some prisons, we recommend that at Mpyupyu prison, Malawi Prisons Service should construct appropriate sewage system to dispose of human waste. In Nkhotakota, management should seriously take up their responsibility of supervising and inspecting the prison environment to ensure that there is good sanitation. Most importantly, the Inspectorate

recommends that the Malawi Prison Service should uniformly diversify into bio-energy manufacturing using human faecal waste as is happening at Mangochi Prison.

- f. To curtail the food problem, there is a need to provide uniform nutritional support to all prisons. Moreover the Malawi Prison Service is encouraged to use locally available food types for example Banana in Karonga and Nkhata Bay instead of relying on maize all the time.
- g. The Inspectorate further recommends that Malawi Prison Service should discuss with Secretary for Treasury for a waiver that all revenue from the sale of vegetables and meat or pork should not be deposited into Account Number 1 but should be reinvested in the farms and used to supplement the food budget for the prisons.
- h. All Officers in Charge of Malawi Prison Service should enter into Memorandums of Understanding with the District Education Managers of their respective districts to ensure further collaboration and cooperation in the provision of education services in prison. Moreover, over and above increasing the education budget to increase tertiary education, there should further be partnerships formed or enhanced with relevant education providers to extend education to tertiary level.
- i. To sort out the problems with the criminal justice processes, the Inspectorate recommends that all the Officers in Charge with the guidance of the legal section of the Malawi Prisons Service should put up a system that ensures that all the paper work of the prisoners is in place and also one that it is at least reviewed monthly to ensure adherence to the law.
- j. In the long-term, the Inspectorate recommends the Malawi Human Rights Commission with the blessing of the Chief Justice to undertake an inquiry into various human rights abuses within the criminal justice system and make substantive recommendations on how the same can be remedied.
- k. To address the administrative issues involving staff, the Inspectorate recommends that:
 - i. The Malawi Prisons Service should negotiate for a better portion of the houses that Government undertook to build for the security officers.
 - ii. The Malawi Prisons Service should recruit more prison officers to have the warder prison ratio within the required ratio.
 - iii. An increase in funding should be negotiated with Treasury in the next financial year
 - iv. Modern technological equipment such as CCTV should be installed in all prisons.

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ABBREVIATIONS AND ACRONYMS

ART	-	Antiretroviral Therapy
ARV	-	Antiretroviral
BMI	-	Body Mass Index
CCTV	-	Closed-Circuit Television
CP & EC	-	Criminal Procedure and Evidence Code
DHO	-	District Health Office
ICCPR	-	International Covenant on Civil and Political Rights
IoP	-	Inspectorate of Prisons
MANEB	-	Malawi National Examinations Board
MSCE	-	Malawi School Certificate of Education
N/A	-	Not Applicable
NAC	-	National AIDS Commission
NGO	-	Non-Governmental Organisation
PSISP	-	Public Sector Investment Programme
PREP	-	Pre-exposure Prophylaxis
PSC	-	Prisons Service Commission
RUTF	-	Ready-to Use Therapeutic Food
TB	-	Tuberculosis
VCT	-	Voluntary Counselling and Testing
YORC	-	Young Offenders Rehabilitation Centre

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The Inspectorate of Prisons
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The Minister of Homeland Security
Ministry of Homeland Security
P.O. Box 331
LILONGWE

Attention: Honourable Nicholas Dausi (MP)

Dear Honourable Minister

LETTER OF TRANSIMITTAL

I am greatly humbled to once again to present to you, and through you, to the National Assembly, the seventh Malawi Inspectorate of Prisons Report. The report covers inspections conducted early and mid 2018.

In carrying out its mandate, under the Constitution of the Republic of Malawi, The Inspectorate undertook visits of the inspection and almost 90 percent of prisons and some police holding cells and reformatory centres countrywide. During the visits, the Inspectorate conducted physical checks, interviews and discussions with inmates and staff in areas of prison conditions focusing on prison health, administration and functioning of the penal institutions. This is in line with the mandate to monitor prisons and police cells.

The findings of the inspections reveal recurrent general problems including poor sanitation, poor diet, overcrowding, abuse of prisoners, poor ventilation, low stuffing, abuse of pre-trial custody time limit, inadequate uniforms and rehabilitation.

The Inspectorate is also grateful to members of staff from the Ministry of Homeland Security, Prisons Chilungamo Coordinating Team who offered their technical support to the Inspectorate wherever it went. They offered best services throughout. We thank all prison and police officers and inmates found under their custody for their genuine and open interaction with the Inspectorate.

The Inspectorate is also thankful to Hon Martha Chizuma, Victor Mhango and Mr. Bazirial Chapuwala, Assistant Commissioner of Prisons responsible for Legal Affairs, for their layout and editorial functions to this Report and to all members of the Inspectorate for their time.

This mission was made possible with funding from European Union Chilungamo (Justice and Accountability) Programme for their financial support.

Justice Kennan Manda
Chairperson, Malawi Inspectorate of Prisons

PART ONE: INTRODUCTION

1.1. Malawi Prisons Service

1. The Malawi Prisons Service is a department of the Ministry of Internal Affairs which contributes towards public safety and security by providing custodial services to those removed from the rest of the society by consequences of or in pursuit of the law. It achieves this by working together with other stakeholders in the criminal justice system and the community as a whole.
2. The Department has four administrative regions: Central, East, North and South and they each have regional prison headquarters. There are 31 prison stations across the country holding a total prison population of around 14,500 inmates.¹ These prisons are categorised into two main classes: Maximum Security Prisons and Medium Security Prisons. They are manned by 2,786 prison staff across the country.

1.2. The Inspectorate of Prisons

3. The Inspectorate of Prisons is created under section 169 of the 1994 Republican Constitution to:
 - a. monitor the conditions, administration, and general functioning of penal institutions;
 - b. investigate any matters connected with penal institutions;
 - c. visit any and all institutions within the Malawi Prisons Service with or without notice; and
 - d. visit holding cells in police stations
 - e. propose legal reforms to the Minister responsible for prisons.
4. Currently, the membership of Inspectorate of Prisons is comprised of:
 - a. His Lordship Kennan Manda, Judge of the High Court of Malawi;
 - b. Mr. Clement Kainja, Commissioner of Prisons.
 - c. Hon. Martha Chizuma, Ombudsman of the Republic of Malawi;
 - d. Mrs Bessie Kumangirana, Commissioner at the Prisons Service Commission;
 - e. Her Worship Violet Chipao, Chief Resident Magistrate (Centre)
 - f. Fr. Piergiorgio Gamba a Catholic Priest, Representing Prison Fellowship-Malawi, a non-governmental organisation interested in prisoners' welfare; and
 - g. Victor Chagunyuka Mhango, Executive Director, Centre for Human Rights, Education, Advice and Assistance (CHREAA), a non-governmental organisation that is involved in the advocacy of human rights in prisons.

¹See Table 1 of this Report.

1.3. Previous Inspections and Their Main Recommendations

5. This is the seventh report compiled by the Inspectorate of Prisons. The last immediate past report was for the year 2014. This was preceded by the 2009 report. All these reports reveal common recurrent general problems of overcrowding, poor sanitation, poor diet, poor ventilation, breach of a 48 hour rule, abuse of prisoners by either their fellow inmates and or some members of staff, corruption among officers, low staffing level, inadequate provision of some life supporting services such as medical services and utilities, failure by the Department to execute its rehabilitative role, and failure by the courts to exercise their sentence review powers in time.
6. In general, all the previous reports recommended Government to provide more resources to the Malawi Prisons Service in order for it to execute its mandate and functions properly.

1.4. Methodology

7. **Physical visits and inspection** of prison and police cells, kitchens, bathrooms, toilets and clinics.



Figure 1a: Inspection of the prison cells at Mzuzu prison



Figure 1b: Inspection of the prison cells at Mzuzu prison

8. **Interviews.** As depicted below, members of the Inspectorate interviewed inmates (both convicted and those awaiting trial on remand). They asked questions to inmates as well as allowed them to ask questions to the Inspectorate. The interviews of inmates' welfare were also extended to prison officers.



Figure 2a: Prisoners explaining and questioning the Inspectorate



Figure 2b: Prisoners explaining and questioning the Inspectorate



Figure 3: Public consultations with the inmates



Figure 4: Inspectors interacting with senior officer at Mzuzu police station



Figure 5: Inspectors interviewing prison officers at Thyolo prison

9. Review of prisoners' records, registers and other paperwork. As part of the inspection procedures, members of the Inspectorate also reviewed custody documents such as Warrants of Commitment and remand warrants issued by the courts to prisons Officers in Charge, and prisoners' records.



Figure 6: Inspection of the prisoners' records by the Inspectorate of Prisons at work at Chichiri Prison

10. **Meetings with Prison Officers.** The Inspectorate also conducted staff meetings at the prisons visited to find out more about their welfare and issues affecting the effective running of the prisons.

PART TWO: FINDINGS

2.1. Prison Security and Infrastructure

11. The Inspectorate visited all the 30 prisons and 11 police formations in the country. Tabulated below are prison stations and police formations visited during the inspection.

Table 1: Prison stations in Malawi

Northern Region	Central Regions	Eastern Region	Southern Region
Chitipa prison	Kasungu prison	Ntcheu prison	Blantyre prison
Karonga prison	Ntchisi prison	Mangochi prison	Bvumbwe YORC
Rumphi prison	Bzyanzi YORC	Domasi prison	Thyolo prison
Mzuzu prison	Lilongwe prison	Mpyupyu prison	Makande prison

Northern Region	Central Regions	Eastern Region	Southern Region
Mzimba prison	Kachere YORC	Mukuyu YORC	Mulanje prison
Nkhatabay prison	Dedza prison	Mikuyu prison	Luwani prison
	Nkhotakota prison	Zomba Central prison	Chikhwawa prison
		Balaka Halfway House	Bangula Prison Ranch
			Mwanza prison

Table 2: Police stations visited and inspected

Northern Region	Central Regions	Eastern Region	Southern Region
	Lilongwe police	Zomba police	Chiradzulu police
Karonga police	Kanengo police		Limbe police
	Kawale police		Nsanje police
Mzuzu police	Lingadzi police		
	Mponela police		
	Salima police		

12. The general observation was that most of the prison structures were built during the colonial time. They are now very old and dilapidated as shown below.



Figure 7: An upstair Zomba Central prison showing the isle part of the cellblocks

13. Because of this old state, they have so many structural challenges which impede the provision of standard custodial services.



Figure 8: The Chairperson of Inspectorate of Prisons, Justice Kenan Manda, addressing inmates at Chitipa Prison

14. Generally, most of the prison cells have no windowpanes, nor inbuilt toilets and bathrooms.
15. Those which appeared modern were mostly built between the 1950s and 1970s save for Domasi, Chikhwawa and Mzimba prisons, which were constructed in the years between 1980 and 2006.



Figure 9: Inmates seated inside Mzimba model prison

16. The Inspectorate noted that there are a number of open prisons such as Bzyanzi, Mpyupyu, Luwani, Bangula and Karonga prisons which have no brick perimeter fence. Much as the purpose of having such open prisons is to create an environment which facilitates social adjustment to community reintegration of the offender, this presents a flight risk.
17. Of particular interest to mention is also the building currently housing prisoners at Karonga which is not a prison per se but an improvised structure made out of turning the only surviving administrative block into a detention building after the original prison was destroyed by the tremor that shook the country more than five years ago.
18. Despite undertakings to construct a new prison more than five years ago, this has not been done to date. This forces prisoners to be using poor structures for other basic necessities as Government has not approved construction of Karonga prison as a Public Sector Investment Programme (PSIP) project.



Figure 10: Inmates using a makeshift urinary at Karonga Prison

19. Nkhotakota prison again stood out in terms of structural deficiencies. It was built using mud which over the years has weakened and could lead to its collapse. The razor wire on the prison wall fell off with the floors of the cells sinking and the plasters on the wall peeled off.

2.2. Prison Population and Capacity



Figure 11: Lilongwe Prison inmates demonstrating how they sleep at night to the Prison Inspectorate team



Figure 12: An overcrowded cell at Blantyre Prison

20. Overall, the prison population stands at 260% of its official capacity, with 14,778 prisoners occupying spaces built for only 5,680 persons.

Table 3: Prison capacity versus the actual population

Prison Station	Capacity In 2009	No. of Cells added since 2009 -2018	New revised capacity	Actual Population	Occupancy %
Mzuzu	90	6	360	836	232
Lilongwe	480	9	860	3026	352
Ntchisi	60	2	150	280	186
Nkhotakota	120	2	200	547	274
Ntcheu	80	4	240	323	134
Kachere	54	0	N/A	203	376
Chitipa	60	0	N/A	204	340
Bangula	0	2	40	18	45
Bvumbwe	90	2	180	295	164
Blantyre	570	2	660	1866	283
Byanzi	30	2	110	95	86
Mangochi	90	0	N/A	278	309
Nkhatabay	80	0	N/A	240	300
Dedza	120	3	255	353	138
Zomba Central	756	0	N/A	2166	287
Rumphi	80	4	240	227	95
Chikwawa	240	0	N/A	464	193
Mulanje	240	2	320	453	142
Thyolo	90	0	N/A	168	187
Kasungu	240	0	N/A	359	150
Mwanza	160	2	240	232	97
Mzimba	400	0	N/A	572	143
Mpyupyu	200	0	N/A	273	137
Mikuyu I	240	0	N/A	312	130
Domasi	240	0	N/A	283	118
Nsanje	120	0	N/A	136	113
Karonga	80	0	N/A	81	101
Mikuyu II	210	0	N/A	207	99
Luwani	100	2	180	98	98
Makande	360	4	440	201	54

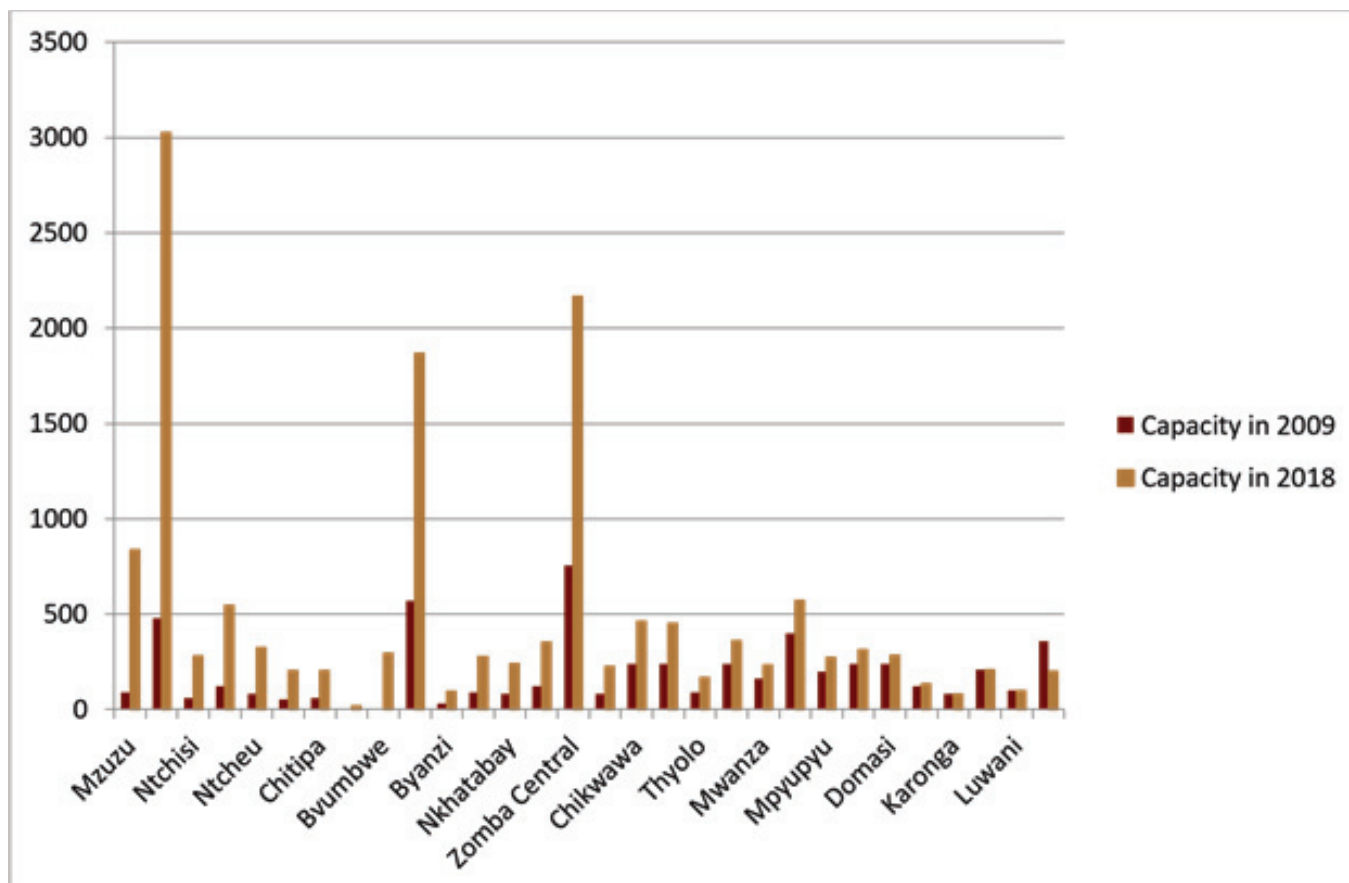


Figure 13: Graph showing the overcrowding level of 2009 and 2018

21. On the relevant dates of inspection, only three prisons were within their official population capacity: Makande at 56% occupancy, Luwani at 98% occupancy, and Mikuyu II at 99% occupancy. All the remaining twenty-seven prisons were above their official capacity, ranging from Karonga at the low end of 101% of its capacity to Mzuzu Prison at the highest at 929% capacity. The five prisons with the highest occupancy rates are Lilongwe at 630% of its capacity, Ntchisi at 467%, Nkhotakota at 456%, Ntcheu at 404%, Kachere at 376%.
22. The overall congestion in each prison, however, belies the realities of conditions for prisoners in particular cells. On inspecting the dimensions of individual cells and the occupancy in those cells in some of the prisons, inmates in some cells at Ntcheu prison were found to have as little as 0.17m² per person of floor space. In most cases prisoners are locked up in the cells for not less than fifteen (15) hours a day. In some cells in Zomba, inmates were recorded to have 0.23m² per person, 0.37m² per person in Blantyre 0.42m² in Mzuzu and 0.48m² in Lilongwe.

2.3. Curative and Preventive Health Services

23. During the inspection, it was found that 25 prisons stations had no clinics. Alternatively, these prison stations are largely served by the District Health Office (DHO) within their district. For example, Mulanje, Nkhata Bay and Kasungu prisons had visiting health workers from the DHO or non-governmental organisations (NGOs) which were providing healthcare services.

24. Where clinics were available, the clinical facilities were generally poor and the provision of screening and healthcare services across the prisons was usually substandard, which even made access to healthcare services more challenging.
25. In terms of healthcare workers, there existed great disparities in their availability. In the maximum security prisons; there were clinicians, nurses, medical assistants and where not available, they were benefitting from the services of visiting Doctors from DHOs or NGOs. On the other hand, most of the medium security prisons were using patient attendants as clinicians.



Figure 14: Pharmacy section at Zomba central prison showing drug stocks

26. Generally, all the prison clinics had insufficient drug supply. The classical example was Mulanje prison which at the material time reported a six months drug stock-out.
27. All the prisons complained about not having adequate facilities for them to house sick inmates. Indeed, our observation was that in other instances, prison cells were converted into infirmaries and in most prisons these were usually crowded.



Figure 15: A sick prisoner lying in the cell because he could not be admitted to prison clinic facility for special care and attention.

28. On inspection, in as far as availability of emergency services is concerned, only Blantyre, Lilongwe, Mzuzu, and Zomba Central Prison had ambulances to facilitate transportation of inmates or staff to public hospitals in case of medical emergencies. However, fuel is a challenge as it is not always readily available. At Lilongwe Prison the availability of transport is erratic and mostly they rely on a vehicle from the Malawi Police.
29. Otherwise, an acute shortage of motor vehicles was a general problem across the prisons and in some cases resulted in worsening of the health condition of the prisoners. As a mitigating action, most sick inmates are carried either at the back or on shoulders by fellow inmates to the hospital.

2.4. Handling of TB and HIV Cases

30. During the inspection the Inspectorate found a good number of prisoners living with HIV across the prisons. Additionally, it was not possible to actually discern the rate of prevalence in the prisons. There was no evidence that suggests that there is systematic monitoring of HIV Prevalence in the prisons either at admission or at any regular basis.
31. In almost all the prisons, inmates living with HIV had access to antiretroviral treatment (ART) and there was always enough in stock at their clinic's pharmacies.

32. The provision of nutritional support varies in availability, criteria for distribution and content. Some prisoners on ART receive nutritional support. However whilst at Lilongwe Prison nutritional support was provided on the basis of malnutrition/ BMI based criteria, in other prisons like Mulanje and Zomba central prisons it was provided to patients living with HIV but mainly donated by NGO's or well-wishers. The content of supplementation varies from ready-to-use therapeutic food (RUTF) to plumpy nuts or cooking oil, fortified rice, soya and flour. Otherwise in majority of the prisons, inmates complained of not having any nutritional supplements.
33. On the contrary, the practice in prison shows that no consistent pattern of HIV-prevention is discernible. No condoms are given to inmates in any prison. Zomba central prison stated that HIV screening, counselling and sensitisation initiatives through drama groups were used for HIV prevention.
34. While some prisons implement HIV screening or testing on entry and at regular intervals in the year, others do not offer such services. There is no evidence of a practice of consistent screening or offering of voluntary testing of prisoners for HIV on entry or at regular intervals across the prison system.
35. On inspection, there was little evidence of any consistent practice in the prisons to ensure adherence and continuity of care for inmates on ART. There is no evidence of any practice of releasing or transferring inmates with any standard quantity of additional medications to enable continuity of access to treatment after being released or transferred to police custody or a different prison. A number of prisons do report that inmates are released with their health passports or master cards and referred to a particular point of care to ensure that inmates continue with their treatment but this is not a standard practice.
36. In as far as Tuberculosis (TB) is concerned; there was TB prevalence in the prisons. Almost all prisons had numbers of inmates receiving TB treatment at the time of the inspections.
37. In most of the prisons there is admittedly no consistent screening of TB on admission. On the other hand, the maximum prisons of Lilongwe, Zomba and Blantyre do systematic screenings of all inmates on entry and have access to Gene Expert testing facilities to test symptomatic inmates.
38. Regular screenings are only reported at Zomba, Blantyre, Lilongwe, Mzimba and Mulanje after admission when resources are available. The rest of the prisons did not have a number of the prisoners screened for TB.
39. There is no consistent pattern of TB-infection or disease prevention efforts across the prisons. There were generally no infection control or TB disease prevention measures reported at a number of prisons including Nkhatabay, Mzuzu, Mulanje and Ntcheu prison. At Zomba Central prison, inmate screening and rules against smoking in cells were stated as infection control and prevention methods. In Lilongwe isoniazid is provided to HIV-positive

inmates to prevent TB disease. Whilst in Chikhwawa the use of face masks, inmate screenings and sensitisation were identified as TB control measures.

40. At Lilongwe prison serious coughers use masks. The same is the case at Blantyre prison, which in addition to the masks also uses isolation practices to prevent infection and stated that all HIV positive inmates on ART receive isoniazid to prevent TB disease.
41. Since there are no isolation facilities at almost all the prisons, Nkhata-Bay, Mzuzu, Mulanje, Ntcheu and Chikhwawa prison do, where resources permit, transfer inmates with serious cases of TB to hospital.

2.5. Environmental Health

42. During the inspection it was generally observed that there was good sanitation within the clinics with the one at Ntchisi prison being the cleanest.
43. However the general sanitation of the prisons was poor. Nkhotakota stood out as the poorest of all the prisons. Many places were not cleaned and waste materials were just heaped within the prison compound and the floor was filled with algae.
44. In all prisons, it was noted that toilets are generally blocked whilst the bathrooms and the kitchens are in bad state which poses a danger to the inmates. One of such prisons was Chitipa.



Figure 16: A toilet building at Chitipa Prison

45. While at Mpyupyu prison, it was observed that human excreta were being disposed of in open gutter too close to the cells creating a bad smell and health hazard.



Figure 17: An open ditch containing human excreta behind a cell at Mpyupyu Prison

2.6. Feeding and Nutrition



Figure 18: Inmates preparing food inside a kitchen at Thyolo Prison

46. With the exceptions of Ntchisi Prison and Bzyanzi YORC where inmates generally receive two meals per day, almost all prisons inspected, were found not compliant with the Third Schedule to the Prisons Act as well as Regulation 53 of the same on ration provision. Most prisons were found to be serving only one meal a day.

47. Worse still, inmates are fed only nsima with beans or pigeon peas. In all prisons, meat is seldom, if ever, provided. Exceptionally, in Ntcheu vegetables are provided; at Ntchisi prison, it was reported by prisoners that vegetables and meat were routinely provided.
48. Only some prisons weigh inmates on admission and only one prison (Blantyre) is reported to weigh inmates at regular monthly intervals thereafter as provided for under Regulation 57 of the Prisons Act.
49. The criteria, availability and content of nutritional supplementation for malnourished prisoners vary across prisons. Where provided, it is predominantly through donations and NGOs. In Chikwawa prison, however, nutritional supplementation is partially government-funded.

2.7. Prisoners' Rehabilitation, Reformation and Reintegration



Figure 19: Prison staff houses constructed by prisoners at Mpyupyu prison as a way of empowering prisoners with skills that would enable them reintegrate and settle in the community easily

50. In terms of offenders' skills acquisition and development, members of the Inspectorate came across a number of rehabilitative activities taking place in prisons but with limited resource input from Government. The picture (Figure 20 below) show some of the handworks products of female prisoners.



Figure 20: Inspectors admiring prisoners handcraft products that compelled others even to buy some items from prisoners at Zomba Central prison

51. At Zomba Prison for instance the prisoners have opportunities to gain tailoring skills and even motor vehicle repair skills. The Inspectorate observed the extensive tailoring room where the prisoners were sewing Prison uniforms and further observed the cars being repaired at the Prison Garage.
52. However, in most prison facilities, female prisoners complained of exclusion in most rehabilitation programmes even those traditionally believed to be women dominated outside prison. For example, Mzimba prison is supported in Tailoring, Fashion, Art and Beauty which include salon trainings. To the dismay of female prisoners at the facility, the training in the above fields is provided to the male prisoners only while women who yearn for such skills are excluded and they remain idle in the female section of the facility.
53. In the field of education, there are tremendous improvements though under tough conditions.
54. It was found that there are primary and secondary schools operating at Blantyre, Chikhwawa, Dedza, Lilongwe, Mangochi, Mulanje, Mwanza, Mzuzu, Ntcheu, Nsanje and Zomba Central prisons, Bvumbwe and Mikuyu YORCs. In the year reported the highest scoring prisoner student passed the 2017 Malawi School Certificate of Education (MSCE) examinations with 11 points. This was a big breakthrough for prisons school programme. However, the education section faces the following challenges:

- a) Lack of professional teachers to be teaching inmates.
- b) Closing of open schools by the Malawi National Examinations Board (MANEB) in prison centres curtailed their resource tap as some of the funds realised from learners were used to run the day by day activities of the schools.
- c) Officers in charge of managing these stations do not allocate funds to the education section when Government has funded them. They prioritise feeding of inmates at the expense of rehabilitation interventions.
- d) It has been observed that many inmates who have finished their secondary school education end up idling in their cells instead of making use of the knowledge gained because either they still remain with a longer sentence or they do not have tertiary education at the facility.

2.8. Criminal Justice Processes

55. The inspectorate also made observations on issues raised by remandees and prisoners through interviews on shortfalls of the criminal justice processes from the point of arrest to the point of sentencing as presented below.

2.8.1. Bail and Long Periods of Remand

56. In all prisons, the remand population contributed to the already congested prisons. Much as not every suspect can be released on bail, in some prisons, suspects accused of committing bailable offences were found in custody. For instance, the team found in custody suspects on offences of conduct likely to cause breach of peace and use of insulting language whose maximum sentences are three months and six months respectively.
57. Some inmates have stayed long periods on remand before conclusion of their cases. In some cases the length of the remand may be equal to the maximum sentence for the offence. For instance in one case, at the time of the visit, a remandee charged with the offence of conduct likely to cause breach of peace had been in custody for two months and his case was yet to be concluded.



Figure 21: Arrested people inside a cell at Mzuzu police

58. Convicts lamented that in some cases, some courts do not take into account the period of remand on sentencing, even where the convicts have been in custody for long before the conclusion of trial.

2.8.2. Sentencing

59. The inspectorate observed that some of the sentences imposed by magistrates are illegal as they exceed the maximum sentence set out by the law. For instance at Thyolo prison, the inspectorate found two prisoners with sentences which exceeded their maximum limits. A convict was sentenced to nine months' imprisonment with hard labour for the offence of conduct likely to cause breach of peace and yet the maximum sentence for the offence is a fine of K3,000 and imprisonment for three months. At the time of the visit, the convict was in the fourth month of his sentence.
60. In another case at the same prison, another convict was serving a sentence of 36 months for the offence of escaping from lawful custody, instead of been given a statutory maximum sentence of 24 months.
61. The inspectorate also observed that some sentences were irregular as they exceeded the sentencing jurisdictional limit of the magistrates. For instance in one case a convict was sentenced in one trial to an aggregate of 30 years' imprisonment for offences of theft by a court of a resident magistrate whose sentencing limit is 21 years. Under section 17(3)(a) of the Criminal

Procedure and Evidence Code (CP & EC) the aggregate term of imprisonment imposed by a resident magistrate cannot exceed 21 years.

62. In cases where a convict was convicted of two or more offences, the inspectorate observed that on sentencing in most cases, the court did not specify whether or not the sentences are to run consecutively or concurrently. The effect is that in accordance with section 17(1) of the CP & EC, the Prison is mandated to consider the sentences as running consecutively. Because the court may not have intended the sentences to run consecutively, the effect is that the sentences end up exceeding the sentencing limit of the magistrate which is prescribed in section 17(3) of the CP & EC.
63. It was established that offences which were committed during the same transaction like theft and burglary which were generally supposed to be ordered to run concurrently were being ordered to run consecutively.
64. At Ntchisi, some convicts lamented the excessive length of some sentences as compared to the offences committed as exemplified below:
 - a) Criminal Case No. 201 of 2017 Republic v. Justin Jeffrey where the convict who was the first offender was sentenced to 24 months' imprisonment without option of a fine for theft of a bag of maize which at the time of trial was recovered.
 - b) Criminal Case No. 278 of 2017 Republic v. William Mpenda where the convict was sentenced to 7 years' imprisonment for theft of a motor cycle.

2.8.3. Confirmation

65. In accordance with Section 15 of CP & EC some criminal cases from the magistrate courts are supposed to be confirmed by the High Court within a specified period. The inspectorate observed that there were a number of convicts whose sentences were not yet confirmed by the High Court beyond the period for which they were supposed to be confirmed. For instance the 30 years aggregate sentence for theft had not been confirmed by the High Court and by the time of the inspection the convict had served close to 8 years.
66. It was also observed that the issue of fines created challenges for convicts in that the prisons were refusing to accept convicts into prison who were sent to prison in default of payment of a fine unless the same was first confirmed by the High Court. The Prison authorities seem to rely on section 15(2) of the CP and EC which requires the prison not to execute sentence of imprisonment in default of a fine unless there is a notification of confirmation from the High Court. In view of the refusal by the prison, the police opted to send convicts to prison with remand warrants as they wait for the confirmation order. This would result in convicts being forgotten at prison. In one case at Ntcheu prison, the convict had even finished serving the default term but could not go out as he was still considered to be on remand.

67. When the inspectorate cross checked with some magistrate courts, it was found that files were not being forwarded to the High Court. For Instance at Ntchisi prison, when the inspectorate followed up with the court to cross check the information given by the prisoners, it was found that the court had in custody files whose cases were concluded the previous year from July when at law every month case files were supposed to have been transmitted to the High Court for confirmation.

2.8.4. Warrants of Commitment and Remand Warrants



Figure 22: A prisons service paralegal officer explaining some information to the chairperson of the Inspectorate

68. The inspectorate observed that some warrants were not being signed by Responsible Officers. In Mangochi for instance, some warrants were being signed by another person on behalf of the sentencing Magistrate, and such officers were indicating pp against their signature.
69. There was a general complaint from remandees that their warrants are usually extended in their absence and sometimes without even taking them to court.

2.8.5. Children in Prisons

70. Children in conflict with the law are being sent to Young Offenders Rehabilitation Centres (YORC) namely Kachere, Bzyanzi, Mikuyu II, Bvumbwe and Mzimba Prison Young Offenders wing and not reformatory centres.
71. It was also discovered that some children below the age of 18 years are

mistakenly sent to these young offenders' rehabilitation centres on orders which just remit them to the centres in an openended fashion that they should stay there subject to their case being reviewed by the Board of Visitors. As a result, they end up staying unnecessarily longer at the YORC because the Board is constrained by lack of resources.

72. The inspectorate also observed that some referral warrants for the children in conflict with the law indicated that they were convicted and sentenced to specific prison terms when under the Child Care, Protection and Justice Act, 2010 children cannot be convicted and cannot be sentenced to imprisonment.

2.8.6. Imprisonment for Civil Cases

73. The inspectorate found a number of people in prisons who had been incarcerated for failure to pay judgment debts under the guise of contempt of court. Mangochi and Mponela courts were visited and upon cross checking with the court records it was observed that there were no records of proceedings for the contempt of court apart from a summon to the incarcerated person.

2.8.7. Complaints against Police

74. Some suspects complained that they were dumped in prisons without taking them to court and where there is camp court to address the situation, accused persons are sometimes taken out of prison to court or a police station as a way of evading the camp court.
75. Some suspects complained that there is an indirect application of the section 184(c) of the Penal Code on rogue and vagabond which was declared unconstitutional under the guise of idle and disorderly persons.
76. Non return of property taken during investigations. Suspects complained that there is a practice amongst police officers whereby they do not return the suspect's property in cases where the property was found on, or with the suspect during the time of arrest but the same was not tendered in court as part of evidence.
77. Long period of remand without trial for offences of incest due to need for consent from the DPP.
78. Some districts like Likoma, Mchinji, Dowa, Salima, Machinga, Balaka, Chiradzulu and Phalombe do not have prisons, which mean that remandees are kept at police stations unnecessarily longer. This contributes to overcrowding in police cells as they are sometimes kept for weeks without taking them to prison where they would have been provided with food and water to bath.
79. There was also a general and common complaint from inmates that police fabricate evidence especially for accused persons with previous records of conviction to ensure that they get convictions.

80. They also alleged that Police kill suspects who are repeat offenders before they are taken to court when they are involved in robbery or burglary. They also allege that there is rampant use of torture to extract confessions from suspects.
81. Moreover, whilst an appeal and or review of conviction and sentence are a matter of right as provided for in section 42(f)(viii) of the Constitution, the general complaint from the prisoners was that most court clerks are demanding a bribe for them to process their files for review or appeal. There were also cases where lawyers have disappeared on the prisoners upon being given money to appeal but they do not actually appeal.
82. Complaints were noted on a lack of or limited access to phones for arrested persons to inform relatives about the arrest including where the accused had a phone at the time of arrest.
83. Suspects held in police custody who are sick complained of not being taken to hospital at all or on time.
84. Some suspects also complained that their adherence to treatment such as ART is usually disrupted by the arrest because most police officers take away their drugs under the pretext of contraband prohibited in the cell or objects of further investigation to link the accused to the offence under investigation.

2.9. Management and General Administrative Support Services

2.9.1. Warder-Prisoner Ratio

85. The Prison Standing Orders require that for every five inmates, there must be one officer (1:5).
86. During the inspection, there were 2,271 prison officers against 14,778 inmates translating into a ratio of 1 staff member to 7 inmates (1:7).
87. Generally, Lilongwe has the highest ratio of inmates to staff, with each officer being responsible for 13 inmates (1:13). Nkotakota is at 1:11, Chikwawa 1:9 and Zomba Central, Blantyre, Mulanje and Mikuyu I at 1:8 while Bzyanzi and Bangula have the lowest ratio of prisoners to staff with one staff member to every two prisoners (1:2). See the table below.

Table 4: Ratio of staff to inmates in each prison

No.	Prison Station	Actual Population	No. of Staff	Ratio of staff to inmates
1	Lilongwe	3026	226	1:13
2	Nkhotakota	547	50	1:11
3	Chikwawa	464	50	1:9
4	Zomba Central	2166	281	1:8
5	Blantyre	1866	220	1:8
6	Mulanje	453	56	1:8
7	Mikuyu I	312	37	1:8
8	Mzuzu	836	108	1:7
9	Mzimba	572	95	1:6
10	Nkhatabay	240	41	1:6
11	Chitipa	204	43	1:5
12	Ntchisi	280	55	1:5
13	Mangochi	278	52	1:5
14	Makande	201	38	1:5
15	Mpyupyu	273	56	1:5
16	Kasungu	359	94	1:4
17	Dedza	353	86	1:4
18	Ntcheu	323	78	1:4
19	Bvumbwe	295	68	1:4
20	Nsanje	136	36	1:4
21	Luwani	98	27	1:4
22	Kachere	203	50	1:4
23	Mikuyu II	207	55	1:4
24	Karonga	81	30	1:3
25	Rumphi	227	65	1:3
26	Domasi	283	83	1:3
27	Mwanza	232	84	1:3
28	Thyolo	168	51	1:3
29	Byanzi	95	56	1:2
	TOTAL	14778	2271	1:7

2.9.2. Security Equipment

88. Officers complained that they need modern and adequate equipment to assist them in their daily endeavours in order to enhance security at their respective stations as the available weapons are outdated and un-serviceable. They also emphasised that the provision of such equipment should be followed by training in the use of the equipment.

89. Only Mzimba and Blantyre prisons were installed with closed-circuit television (CCTV) gadgets but at the time of the inspection, they were not functioning. This is a worrisome development in this digital era when our prisons gates monitoring systems were supposed to be computerised.

2.9.3. Mobility

90. Almost all prisons reported having insufficient or no vehicles to assist in transferring of inmates from one prison station to another; taking inmates to and from courts and the hospitals; ferrying of firewood from the forests to prisons; and transporting maize meal from the maize mill to the prisons, among others.
91. At the time of visiting, only Rumphu, Mzuzu, Mzimba, Nkhosakota, Lilongwe, Zomba, Mpyupyu, Mikuyu YORC, Blantyre, Chikhwawa, Nsanje, Bvumbwe, and Makande prisons had vehicular transport out of the total 31 prisons. Thanks to other individuals interested in prisoners' welfare like Mr. Anadkat of Capital Development Investments and Dr. Kim of Crops of Love who donated some vehicles to the Department which were allocated to Blantyre, Bvumbwe and Makande prisons.

2.9.4. Housing

92. In all the stations visited, members of staff lamented the shortage of housing facilities which forces them to seek accommodation outside the prison campus/ station. This implies that in case of emergencies, members of staff are unable to respond to call in time.
93. In addition, there are also security concerns on the part of the officers as they commute between their respective duty stations and homes, especially during night hours. Presented below are pictures of some of the staff houses showing dilapidated state they are in.



Figure 23a: Institutional houses occupied by a staff member at Chitipa Prison



Figure 23b: Institutional houses occupied by a staff member at Chitipa Prison



Figure 24a: The housing problem does not spare urban centres as shown above at Mzuzu Prison



Figure 24b: The housing problem does not spare urban centres as shown above at Mzuzu Prison

2.9.5. Promotions

94. Members of staff lamented the lack of promotions in the service as compared to their counterparts in the Malawi Police Service. They stated that their progression seemed to have stagnated due to lack of promotions.
95. It was revealed that some members of staff had been at the same rank for as long as two decades as currently promotions seem to be limited to one's educational qualification. They argued that promotions should be based not only on education qualifications but also on experience and hard work.

2.9.6. Uniforms

96. Members of staff complained of inadequate staff uniforms with others having only one pair. They also requested their authorities to provide them with uniforms that befit their respective stations' climatic conditions. The case in point was of hot weathers in Chikhwawa, Bangula and Nsanje prisons that require uniforms of light material.
97. They also mentioned the need for the Department to purchase durable boots; and to stick to one colour and quality of uniforms instead of the current uniforms that come in various colours that eventually erode/confuse the identity of the officers/Department.

2.9.7. Inadequate Financial Resources

98. In almost all the stations inspected, inadequate financial resources emerged as one of the challenges that is negatively affecting the operational and administrative functions of the Department. This resulted in the Department's failure to provide necessary amenities both to the inmates and members of staff

including educational advances to staff and provision of vocational training to inmates.

99. The problem was also leading to the Department's failure to service its outstanding debt arrears to its suppliers.

2.9.8. Staff Rotation / Transfers

100. In some Prison stations like Nsanje, Chikhwawa and Bangula, prison staff members requested the Inspectorate to lobby Prison Management to start rotating or transferring them after they have worked in these stations for a period of about three years. This is because the hot weather condition makes it difficult for them to stay in these stations for many years.

PART THREE: DISCUSSION AND ANALYSIS

101. In order to comply with human rights standards and the Standards Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Office for Project Services observes that a prison "should provide safe and secure conditions for prisoners and staff, and a decent quality of life."² Any reasonable person would observe very few decent and modern structures especially in Mzimba. Except for Mzimba, the structural quality of the rest of the prisons in Malawi leave a lot to be desired and pose a real danger to the lives of the prisoners and prisoner warders themselves in addition to presenting a possible flight risk for the prisoners. This situation should be a concern to all reasonable Malawians.
102. Section 19(3) of the Constitution prohibits torture, cruel inhuman or degrading treatment. Moreover section 42(2) of the Constitution further provides that every detained person or sentenced person shall have a right to be kept in conditions consistent with human dignity. Further Article 10(1) of the International Convention on Civil and Political Rights (ICCPR), provides that all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of their human person.
103. The way the prisoners are stocked in all the prisons cells on bare floor with no mats or insufficient bedding for almost 15 hours a day debases the prisoners as lesser beings to the population at large and in violation of the prohibition against torture, cruel and inhuman degrading treatment.
104. The poor detentions condition exacerbates indirect violation of other interdependent rights. According to Rule 30 of the Revised Standard Minimum Rules for the Treatment of Prisoners, 2015 (the Nelson Mandela Rules) states, "All

² United Nations Office for Project Services (UNOPS) (2016) "Technical Guidance for Prison Planning: Technical and Operational Considerations Based on the Standards Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), available at: https://content.unops.org/publications/Technical-guidance-Prison-Planning2016_EN.pdf?mtime=20171215190045, p 18.

prisons authorities shall ensure prompt access to medical attention in urgent cases.”³ The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has stated that an inmate’s loss of life or deterioration in wellbeing as a result of unreasonable delays in the provision of urgent medical care may violate the prohibition against ill-treatment and may even amount to torture.⁴

105. The Nelson Mandela Rules require in rule 24 that at a minimum, prisoners must be provided the same standard of healthcare that is available in the community. In relation to HIV prevention services, in particular, it appears that prisoners are not receiving the same standard of services provided in the community or at least those envisioned in policy.
106. The Malawi Government National HIV/AIDS Policy, 2003 commits to ensuring “that all prisoners (and prison staff, as appropriate) have access to HIV-related prevention, information, education, [voluntary counselling and testing], means of prevention (including condoms), treatment (including ART), care and support.”⁵ It further provides that Government through the National AIDS Commission (NAC) undertakes to ensure that affordable male and female condoms and other barrier methods of good quality are made available to all those who need them, in particular, to prisoners.⁶
107. The Government’s National HIV Prevention Strategy 2015 - 2020, identifies prisoners as a priority population in its HIV prevention efforts and proposes a number of HIV prevention interventions to be implemented, including to review the Prison policy on HIV prevention to include condoms, pre-exposure prophylaxis (PrEP).⁷
108. Rule 24 of The Nelson Mandela Rules further states that healthcare services in the prisons must be organised in a way that “ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases”. The World Health Organisation states that for ART, a high level of sustained adherence is necessary to suppress HIV viral replication and improve immunological and clinical outcomes; to decrease the risk of developing antiretroviral (ARV) drug resistance; and to reduce the risk of transmitting HIV.⁸ A lack of continuity of care is a strong predictor of non-adherence in the longer term. The Inspectorate’s observations of the inadequacy and inconsistency during transfers is noted in this regard.

³ UN General Assembly, “United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)”: resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175, available at: <https://www.refworld.org/docid/5698a3a44.html>.

⁴ Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (a/68/295) UNODC/CCPCJ/EG.6/2013/INF/2 7 October 2013.

⁵ Government of Malawi, Office of the President and Cabinet and the National AIDS Commission (2003) “National HIV/AIDS Policy: A Call for Renewed Action”, p 18.

⁶ *ibid*, p 9.

⁷ National AIDS Commission (2014) “National HIV Prevention Strategy 2015-2020”, p 72.

⁸ World Health Organisation (2013) “Guidance on operations and service delivery: adherence to ART” in Consolidated ARV guidelines, June 2013, available at: <http://www.who.int/hiv/pub/guidelines/arv2013/operational/adherence/en/>.

109. The inadequacy of other general health facilities and services and their inconsistent provision across all facilities further violates human rights. The failure to provide for access to adequate healthcare in detention has been found under international law to violate detainees' rights to humane treatment in detention,⁹ the prohibition against cruel, inhuman and degrading treatment,¹⁰ and fair trial rights when in the context of remand or pre-trial detention,¹¹ amongst others.
110. In relation to the Inspectorate's findings on access to food, it is noted that Rule 22 of the Nelson Mandela Rules requires that every prisoner shall be provided with wholesome quality and well prepared and served food of nutritional value adequate for health and strength by the prison administration at the usual hours of feeding. The United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment has stated, "This particular obligation to fulfil and protect the various human rights of detainees, above all their rights to food, water, health, privacy, equal access to justice and an effective remedy against torture and other human rights violations, derives from the simple fact that detainees are powerless and can no longer protect these rights through their own initiative."¹²
111. In terms of Article 10(3) of the ICCPR the essential aim of any prison system shall be the "reformation and social rehabilitation" of offenders. The duty to treat all detained persons with dignity and humanity in a manner to reform and rehabilitate them, entails positive obligations¹³ on States that is not dependent on available resources.¹⁴
112. Except for very few rehabilitation facilities in the four major prisons, there are practically none in all the other prisons. Accordingly, the situation fall below the standards by all measures.
113. Section 30 of the Constitution recognises the right to education for all persons. Article 26 of the Universal Declaration on Human Rights provides "everyone has a right to education". Article 13 of International Covenant of Economic and Social, Cultural Rights recognises everyone's right to education. This means that the right to education applies to all persons including those in prison. To be more respect for persons.

⁹ Article 10 of ICCPR. *Cabal and Pasini v Australia* (7 August 2003) UN Doc CCPR/C/78/D/1020/2002), para. 7.7.

¹⁰ *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (a/68/295) UNODC/CCPCJ/EG.6/2013/INF/2 7 October 2013*; *Human Rights Committee, General Comment 21, Article 10, U.N. Doc.HRI/GEN/1/Rev.1 at 33 (1994), of 10 April 1992, para 3.*

¹¹ *Commission on Human Rights "Civil and Political Rights, including the Question of Torture and Detention: Report of the Working Group on Arbitrary Detention" (1 December 2004) UN Doc E/CN.4/2005/6, para 68.*

¹² *UN General Assembly "Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/64/215) 3 August 2009, para 47.*

¹³ *Human Rights Committee, n 10.*

¹⁴ *Human Rights Committee, n 10, para 4; Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (a/68/295) UNODC/CCPCJ/EG.6/2013/INF/2 7 October 2013.*

114. The Nelson Mandela Rules underlines the importance of education and training for all prisoners who are able to benefit and states that prison education and training should be integrated with mainstream educational system. Access to education is also closely linked to offenders' rehabilitation.
115. Whilst there have been some success stories with the prison education programme with one of the inmate scoring 11 points at MSCE in 2017, the fact is that the education system is marred by so many challenges, major ones being lack of professional teachers and a lack of books and other resource. Due to the meagre funding the prison gets, prioritisation is given to feeding the prisoners above anything else. Accordingly, the right to education of prisoners is heavily compromised ultimately breaching the right to education itself.
116. The criminal justice system is generally fashioned to ensure fairness in the manner in which those suspected or convicted of offences are treated without in any way compromising the need to punish offenders. However, it is clear that most of the safeguards meant to ensure fairness in the treatment of detained and convicted prisoners are not respected.
117. The right to be released from detention, with or without bail, unless the interests of justice require otherwise, is a right for every arrested or accused person as per section 42(2)(e) of the Constitution. Moreover, section 42(2) (b) provides for right to be brought before court and charged within 48 hours of arrest. Across the prisons, there are so many suspects whose offences are bailable but have not been granted the same thereby increasing the prison congestion. Related to this is also the long time that suspects spend in waiting for conclusion of their trial itself such that in other instances the period spent on remand is equal to the maximum sentence available for the offence charged. This goes against the spirit of the right to fair trial, which includes under section 42(2)(f)(i) of the Constitution, the right to be tried within a reasonable time.
118. Despite the availability of legal guidance to facilitate the exercise of judicial discretion on sentencing (including extensive High Court and Supreme Court jurisprudence, the Courts Act, the CP & EC, and the Magistrate's Court Sentencing Guidelines) across the prison there are a number of irregularities in as far as the sentencing of convicts is concerned. Some sentences are longer than the maximum set by the law and / or excessive in relation to the offence committed. Some sentences exceed the jurisdictional limit of magistrates. Moreover, some magistrates are failing or forgetting to indicate whether sentences are to run concurrently or consecutively, which effectively means that in accordance with section 17(1) of the CP & EC, prison authorities would always consider the sentences to run consecutively with the undesirable effect of having sentences that exceed the sentencing limit of the magistrate. Lastly some sentences whose offences were committed during the same transactions were being ordered to run consecutively thereby elongating sentences further.

119. Section 15 of the CP & EC requires automatic review by the High Court of every case where a subordinate court imposes a fine exceeding K1,000, two years' imprisonment in the case of a resident magistrates court, one year imprisonment in the case of a first or second grade magistrate, or six months' imprisonment in the case of a third or fourth grade magistrates court. As stated by the High Court, "The section imposes a duty on the lower court to transmit the record to this Court speedily for this Court to review the sentence under the powers in the [CP & EC] and the Courts Act. Equally, there is a duty on this Court to review the sentence as soon as possible. To re-enforce the policy the [CP & EC] provides that, if this Court does not exercise the powers, prison authorities can only keep the prisoner for up to two years, one year, six months ... respectively. Speed, therefore, is important."¹⁵ Contrary to these requirements, the Inspectorate observes some sentences having not been confirmed for 8 years. Moreover, in trying to bypass the prisons' stance of refusing to take in prisoners in cases of sentences of imprisonment in lieu of fines without such sentences being confirmed, the Police are sending such the prisoners to prison with remand warrants resulting in the system completely forgetting such prisoners and with others still finding themselves in prison even after finishing serving the default term.
120. Moreover whilst an appeal and or review of conviction and sentence are a matter of right as provided for in section 42(f)(viii) of the Constitution, the general complaint from the prisoners was that court clerks demand a bribe for them to process their files for review or appeal. There were also cases where lawyers have disappeared on the prisoners upon being given money to appeal but they do not actually appeal., The ultimate effect is that they further make the prisoners vulnerable and constitute a breach of their rights.
121. There are also many irregularities and illegalities in the manner in which remand warrants are being handled. Section 329, read with section 336, of the CP & EC requires warrants for imprisonment in execution of a sentence to be signed by the sentencing judge or magistrate. In terms of section 267 of the CP & EC remand warrants are granted by the court, with Form XX of the Criminal Procedure (Forms) Notice (Committal on Adjournment or Remand) clearly requiring the signature of the resident magistrate. The Inspectorate found, however, that most warrants were signed by someone else on behalf of magistrate. Moreover, contrary to principles of natural justice which mandate that a person affected by the decision be allowed an opportunity to make representations, so many warrants were found to have been extended in the prisoners' absence.

¹⁵ *R v Nalumo and Another (Confirmation Case No 489 OF 2000); R v Nambazo (Confirmation Case No 643 OF 1999)*.

122. In as far as children in conflict with the law are concerned, there are a number of illegalities in the manner in which these children are being handled. To begin with, contrary to section 86 of the Child Care, Protection and Justice Act 22 of 2010, children are being convicted and sentenced to particular prison sentences. Furthermore, contrary to the law and in particular the High Court decision of *The Republic v Children in Detention at Bvumbwe and Kachere Prisons* (Review Case No 21 of 2017) and sections 140 and 147 of the Child Care, Protection and Justice Act, children were being sent to Young Offenders Rehabilitation Centres and not reformatory centres or safety homes. Moreover, the committal to these centres are being done in an open ended fashion by simply stating “subject to review by Board of Visitors”. Such Board doesn’t meet regularly resulting in such children staying there longer and unlawfully.
123. Section 15 of the Courts Act prohibits a person’s arrest or imprisonment for defaulting in payment of a sum of money, noting certain exceptions. Article 11 of the ICCPR provides that “No one shall be imprisoned merely on ground of inability to fulfil a contractual obligation.” Section 16 of the Courts Act provides that (notwithstanding section 15), “any court” may commit a person to prison for up to 6 weeks or until the payment of a sum due, in respect of a person “whom makes default of any debt or instalment of any debt due from him in pursuance of any order or judgment of a court”. The Inspectorate has observed that contrary to these provisions, there appears to be a practice of persons being illegally incarcerated for failure to judgement debt under guise of contempt of court when in fact there were no such proceeding in the court file. To the extent that any order for a person to be committed is made lawfully in terms of section 16 of the Courts Act, the Inspectorate observes that in terms of Rule 94 of the Nelson Mandela Rules, persons imprisoned for debt or civil processes “shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order” and that their “treatment shall not be less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.”
124. Finally, there are serious administrative and management problems and challenges within the Malawi Prison Service that infringe on the officers’ rights to fair labour practices provided in section 31 of the Constitution. These are as follows:
- a. Excessive workload as a result of insufficient numbers of warders resulting in an average warder-prison ratio of 1:7, contrary to the Prison Standing Orders recommendation of 1:5.
 - b. Insufficient and outdated security equipment thereby making them vulnerable to possible attacks or insecurity incidents from the prisoners.
 - c. Acute shortage of and dilapidated housing. Looking at the houses in which the officers lodge, one gets an impression they themselves are equally prisoners.
 - d. Inadequate uniforms where most officers have one uniform and yet they

- are expected to be in uniforms every day for work.
- e. The promotions in prison service are almost non-existent and / or poorly done such that it is normal for an officer to be on same position for two decades and even until they retire.
 - f. Insufficient funding which, apart from affecting the operations of the prison, also affects administrative functions like provision of education advances to the officers.

PART FOUR: SUMMARY OF FINDINGS

- 125. The physical structures of most of the prisons are in an extremely bad shape posing a serious danger to the lives of the prisoners themselves and the prison officers themselves.
- 126. The overpopulation of the prisons at 260% of the official capacity as at the time of the inspection debases the prisoners as human beings and amounts to a violation of the right against prohibition of torture, cruel and inhuman treatment.
- 127. The failure to provide adequate food and medical care is a serious breach of national and international legal and policy instruments and amounts to a breach of human rights.
- 128. The failure to provide rehabilitation facilities amounts to a breach of article 10 ICCPR.
- 129. The educational system in all the prisons leaves a lot to be desired and amounts to a serious breach of the right to education.
- 130. There are serious human rights breaches in the manner in which the criminal justice processes are being applied to the prisoners. The way the system is being operated by the courts, police, the legal practitioners and police is almost criminal in its own and further exacerbates the vulnerable position of the prisoners.
- 131. The work environment and conditions of the prison officers is so poor leaving one with impression that they are prisoners themselves. This is a serious breach of right to fair labour practices.

PART FIVE: RECOMMENDATIONS

132. To deal with the problem of poor infrastructure and prison congestion we recommend the following:
- a. As a medium-term solution, Government should identify buildings that can be used as makeshift prisons.
 - b. In the long-term, Government should consider constructing prisons in all districts where there are no prisons. Where some prison structures can be salvaged, Government should rehabilitate them making sure that ventilation is improved.
 - c. Government should re-operationalise the penal public work programme using the current district structure that implements the social cash structure public works programme. Using the same local government structure or with special staff recruited, Government may place convicted persons serving such punishments under the low level supervision system where applicable camp system may be re-operationalised.
133. To counter the health problems and to ensure consistency and certainty in the provision of health services in prisons, the Inspectorate recommends all Officers in Charge of various prisons to enter into formal Memorandums of Understanding with respective DHOs to enhance collaboration and coordination between prisons and the DHO in the course of service delivery. The agreement should amongst other things provide for issues to deal with:
- a. timely replenishment and availability of drug stocks in all prison clinics;
 - b. improvement of health screening services; and
 - c. enhancement of HIV preventive services.
134. In addition, Government should construct more prison clinics and rehabilitate the infirmaries where there are some. Along with this, Government should provide sufficient health workers with a minimum qualification of clinical officers and nursing technician in all prisons and adequate medical equipment, including ambulances. As a matter of urgency, Government should procure ambulances for Thyolo, Luwani, Byanzi, Kasungu, Nkhatabay, Mzimba, to facilitate quick emergency response as they are not close to hospitals.
135. The Malawi Prison Service should put up a system that ensures that upon release, there is proper transfer of records for ex-prisoners to hospitals for continuity of care for HIV and TB treatment. Prisoners should also be given a medical package for chronic diseases so that there is continuity.
136. To deal with various environmental health issues observed in some prisons, we recommend that at Mpyupyu prison, Malawi Prison Service should construct appropriate sewage system to dispose of human waste. In Nkhotakota, management should seriously take up their responsibility of supervising and inspecting the prison environment to ensure that there is good sanitation. Most importantly, the Inspectorate recommends that the Malawi Prison Service

should uniformly diversify into bio-energy manufacturing using human faecal waste as is happening at Mangochi Prison.

137. To curtail the food problem, there is need to provide uniform nutritional support to all prisons in compliance with legal standards. Moreover the Malawi Prison Service is encouraged to use locally available food types for example banana in Karonga and Nkhatabay instead of relying on maize all the time.
138. The Inspectorate further recommends that Malawi Prison Service should discuss with the Secretary for Treasury for a waiver that all revenue from sale of vegetables and meat or pork should not be deposited into Account Number 1 but should be reinvested in the farms and used to supplement the food budget for the prisons.
139. All Officers in Charge of Malawi Prison Service should enter into Memorandum of Understanding with the District Education managers of their respective districts to ensure further collaboration and cooperation in the provision of education services in prisons. Moreover, over and above increasing the education budget to include tertiary education, there should further be partnerships formed or enhanced with relevant education providers to extend education to tertiary level.
140. To sort out the problems with the criminal justice processes, the Inspectorate recommends that all the Officers in Charge with the guidance of the legal section of the Malawi Police Service should put up a system that ensures that all the paper work of the prisoners is in place and also one that it is at least reviewed monthly to ensure adherence to the law.
141. In the long-term, the Inspectorate recommends the Malawi Human Rights Commission, with the blessing of the Chief Justice, undertakes an inquiry into various human rights abuses within the criminal justice system and make substantive recommendations on how the same can be remedied.
142. To address the administrative issues involving staff the Inspectorate recommends that:
 - a. The Malawi Prison Service should negotiate for better portion of the houses that Government undertook to build for the security officers.
 - b. The Malawi Prison Service should recruit more prison officers to have the warderprison ration within the required ratio.
 - c. More funding should be negotiated with Treasury in the next financial year.
 - d. Modern technological equipment such as CCTV should be installed.

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