MINISTRY OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS

Southern Region Workshop Report on the Alignment of Legislation
to the Constitution of Zimbabwe 2013:

**Prisons Act [Chapter 7:11]**

Holiday Inn, Bulawayo
20-21 July 2016

Prepared by:

INTER-MINISTERIAL TASK FORCE ON THE ALIGNMENT OF LEGISLATION
TO THE CONSTITUTION (IMT) TECHNICAL COMMITTEE
### List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CALR</td>
<td>Centre for Applied Legal Research</td>
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<tr>
<td>UN CAT</td>
<td>United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<tr>
<td>CATCH</td>
<td>Care at the Core of Humanity</td>
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<tr>
<td>FEMPRIST</td>
<td>Female Prison Support Trust</td>
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<tr>
<td>IMT</td>
<td>Inter-Ministerial Task Force on Alignment of Legislation to the Constitution</td>
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<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<tr>
<td>JCT</td>
<td>Justice for Children Trust</td>
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<tr>
<td>MoJLPA</td>
<td>Ministry of Justice, Legal and Parliamentary Affairs</td>
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<tr>
<td>NANGO</td>
<td>National Association of Non-Governmental Associations</td>
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<tr>
<td>NPA</td>
<td>National Prosecuting Authority</td>
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<tr>
<td>UNWomen</td>
<td>United Nations Entity for Gender Equality and the Empowerment of Women</td>
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<tr>
<td>ZACRO</td>
<td>Zimbabwe Association for Crime Prevention &amp; Rehabilitation of Offenders</td>
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<td>ZPCS</td>
<td>Zimbabwe Prisons and Correctional Services</td>
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<tr>
<td>ZimRights</td>
<td>Zimbabwean Human Rights Association</td>
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<td>ZLHR</td>
<td>Zimbabwe Lawyers for Human Rights</td>
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<tr>
<td>ZRP</td>
<td>Zimbabwe Republic Police</td>
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1. Introduction

Zimbabwe adopted a new Constitution in 2013 (hereinafter referred to as the Constitution). In line with this development, the Government of Zimbabwe has initiated a Constitutional Alignment Process aimed at aligning all legislation with the new Constitution. An Inter-Ministerial Taskforce on the Alignment of Legislation to the Constitution (IMT) was established by the Ministry of Justice, Legal and Parliamentary Affairs (MoJLPA) as an institutional platform to facilitate the implementation of the Constitution and ensure that all legislation is consistent with the Constitution. The overall objective of the IMT led project entitled ‘Implementation of the Constitution in Zimbabwe: Supporting the Constitutional Legislative Alignment Process’ is therefore to support the Constitutional Legislative Alignment Process in Zimbabwe.

The Ministry of Justice Legal and Parliamentary Affairs (MoJLPA) submitted a request for technical assistance in the review of a draft Prisons and Correctional Services Bill (PCS Bill) developed by the Ministry to ensure that it is in line with the Constitution of Zimbabwe. The draft PCS Bill was reviewed accordingly and was then put before stakeholders to obtain their input.

The project also supported the holding of a Southern Region stakeholder consultation workshop for the MoJLPA which was intended to obtain stakeholder input in the review process. The stakeholder consultation workshop was held over a two-day period in Bulawayo at the Holiday Inn Hotel on the 20th & 21st of July 2016. The consultative workshop was meant to enhance the discussion on gap identification and alignment of the PCS Bill with the Constitution and international treaties to which Zimbabwe is a party. Recommendations made by stakeholders in attendance were incorporated into a revised draft Bill.

Stakeholders that participated in the consultations included Zimbabwe Association for Crime Prevention & Rehabilitation of Offenders (ZACRO), Care at the Core of Humanity (CATCH), United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), Female Prison Support Trust (FEMPRIST), Zimbabwe Lawyers for Human Rights (ZLHR), Zimbabwe Women Lawyers Association (ZWLA), International Committee of the Red Cross (ICRC), Justice for Children Trust (JCT), Yields of Love, Zimbabwe Human Rights Association (ZimRights), Prison Fellowship of Zimbabwe, Legal Aid Directorate,
Miracle Missions, National Association of Non-Governmental Organisations (NANGO), Law Society of Zimbabwe, Legal Resources Foundation, National Prosecuting Authority, Centre for Applied Legal Research, officers from Zimbabwe Prisons and Correctional Services and Ministry of Justice, Legal & Parliamentary Affairs, members of Zimbabwe Republic Police as well as media representatives.

1.1 Programme of the Workshop
The workshop was held over a two-day period. The details of the workshop programme are outlined below.

<table>
<thead>
<tr>
<th>TIME</th>
<th>ITEM</th>
<th>PRESENTER</th>
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<tbody>
<tr>
<td>09:30-10:00</td>
<td>Registration</td>
<td>Inter-Ministerial Taskforce on the Alignment of Legislation to the Constitution (IMT) Technical Committee</td>
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<tr>
<td>10:00-10:15</td>
<td>TEA BREAK</td>
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<tr>
<td>10:15-10:20</td>
<td>Introductions</td>
<td>IMT</td>
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<tr>
<td>10:20-10:30</td>
<td>Opening Remarks - Secretary for Justice,</td>
<td>Mrs. V. Mabiza, Permanent Secretary, Ministry of Justice, Legal &amp; Parliamentary Affairs</td>
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<td></td>
<td>Legal and Parliamentary Affairs</td>
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<tr>
<td>10:30-10:45</td>
<td>Background to Constitutional Alignment Process</td>
<td>Mr T. Godzi, Director, Constitutional &amp; Parliamentary Affairs, Ministry of Justice, Legal &amp; Parliamentary Affairs</td>
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<tr>
<td>10:45-10:50</td>
<td>Objectives of the Stakeholder Consultative Workshop</td>
<td>Ms. P. Dhokwani, Law Officer, Policy &amp; Research, Ministry of Justice, Legal &amp; Parliamentary Affairs</td>
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<tr>
<td>10:50-11:30</td>
<td>Presentation of Prisons &amp; Correctional Service Bill</td>
<td>Senior Assistant Commissioner Chinobva, Zimbabwe Prisons &amp; Correctional Services</td>
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<td>(PCS Bill)</td>
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<td>11:30-12:00</td>
<td>Presentation by the IMT Technical Expert</td>
<td>Professor. G. Feltoe, Technical Expert, Centre for Applied Legal Research</td>
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<tr>
<td>12:00-12:30</td>
<td>International &amp; Regional framework for Prisons &amp; Correctional Services Bill (PCS Bill)</td>
<td>Ms P. Mbanga, Chief Human Rights Officer, Zimbabwe Human Rights Commission</td>
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<tr>
<td>12:30-13:00</td>
<td>PLENARY SESSION</td>
<td>Facilitator</td>
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<tr>
<td><strong>13:00-14:00</strong></td>
<td><strong>LUNCH BREAK</strong></td>
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<tr>
<td>14:00-15:00</td>
<td>Stakeholders’ Presentations on the PCS Bill: ICRC, FEMPRIST</td>
<td>Facilitator</td>
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<tr>
<td><strong>15:00-15:30</strong></td>
<td><strong>TEA BREAK</strong></td>
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<tr>
<td>16:10-16:30</td>
<td>PLENARY SESSION</td>
<td>Facilitator</td>
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<td>16:30-16:45</td>
<td>Recap of Day 1 &amp; Closing Remarks</td>
<td>Law Society of Zimbabwe</td>
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**DAY TWO**

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<tr>
<td>08:00-09:00</td>
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<td>Inter-Ministerial Taskforce on the Alignment of Legislation to the Constitution (IMT) Technical Committee</td>
</tr>
<tr>
<td>09:15-09:30</td>
<td>Stakeholders Presentations on PCS Bill: CATCH</td>
<td>Ms D. Chinyanga, Gweru Centre Head, Care at the Core of Humanity</td>
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<tr>
<td>09:30-10:00</td>
<td>Stakeholder Presentation on PCS Bill: ZACRO</td>
<td>Ms M. Nyabereka-Sadomba, Committee Member, Zimbabwe Association for Crime Prevention &amp; Rehabilitation of Offenders</td>
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<tr>
<td>10:00-10:15</td>
<td>PLENARY SESSION</td>
<td>ALL</td>
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<tr>
<td><strong>10:15-10:30</strong></td>
<td><strong>TEA BREAK</strong></td>
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<tr>
<td>11:00-11:15</td>
<td>Introduction to group work</td>
<td>Facilitator</td>
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<tr>
<td>11:15-13:00</td>
<td>Thematic Group Discussions</td>
<td>ALL</td>
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<tr>
<td><strong>13:00-14:00</strong></td>
<td><strong>LUNCH</strong></td>
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<tr>
<td>14:00- 15:00</td>
<td>Report Back</td>
<td>Group Rapporteur/Representative</td>
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<td>15:00-15:15</td>
<td>Consolidation and Way Forward</td>
<td>IMT</td>
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<tr>
<td>15:15-15:30</td>
<td>Closing Remarks and Vote of Thanks</td>
<td>Deputy Commissioner General Machingauta-ZPCS</td>
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<tr>
<td><strong>15:00-15:30</strong></td>
<td><strong>TEA BREAK &amp; CLOSE</strong></td>
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Day 1 Proceedings

2.1 Session 1 Introductions
The Executive Director of CALR, welcomed participants and gave delegates an opportunity to introduce themselves.

2.2 Session 2 Opening Remarks
The Director, Legislative Drafting, MoJLPA, gave the opening remarks on behalf of the Permanent Secretary, MoJLPA in her absence. In her remarks, the Permanent Secretary highlighted that the Ministry of Justice, Legal and Parliamentary Affairs has, since 2013, embarked on the enormous task of aligning Acts of Parliament to the Constitution and that the Prisons Act is one of the many important pieces of legislation that require alignment. It was also emphasized that the current Prisons Act (Chapter 7:11) was last revised in 1996 and is lagging behind developments which have taken place locally, regionally and on the international scene hence the need to draft a new Prisons and Correctional Services Bill. She further underscored how the field of corrections has developed considerably over the last decade stressing how the policies and practices of most correctional jurisdictions are being realigned and refined so as to execute the duty of reintegrating of offenders with excellence. She concluded by underlining that the Ministry of Justice has therefore found it necessary to combine the process of realignment with the review of the Act in order to come up with a modern Act, which upholds human rights and transforms the Zimbabwean prison system from being largely punitive to a rehabilitative and correctional system. In addition, she acknowledged the supportive roles that were being played by ICRC and CALR in the process of aligning the Act.

2.3 Session 3 Background to Constitutional Alignment Process
The Director of Constitutional and Parliamentary Affairs in the MoJLPA & IMT representative, gave the background to the Constitutional Legislative Alignment Process, the establishment of the IMT and its operating procedures. The presentation noted that the coming into force of the Constitution of Zimbabwe Amendment (No.20) Act of 2013 on the 22nd of May 2013 was lauded as a historic achievement in the post independent Zimbabwe. It further stressed the significant aspects brought about with the Constitution which include, amongst others, an elaborate Bill of Rights that seeks to protect and promote not only
citizens’ civil and political rights but social, economic and environmental rights including comprehensive property rights, and principles of good governance.

The presentation also emphasized the need to translate these constitutional gains into reality through a systematic and carefully crafted process of aligning the country’s laws with the Constitution, which is why the IMT had been created to lead the process. It also noted the progress that had been made so far in alignment of statutes under the IMT mandate as well as under the Ease of Doing Business initiative.

2.4 Session 4 Objectives of the Stakeholder Consultative Workshop

A Law Officer in the Policy & Research Unit, MoJILPA outlined the objectives of the stakeholder consultative workshop. These were summarized as:

The Stakeholder Consultative Workshop had the following objectives:
(a) To gather stakeholders’ views, comments and recommendations on the proposed Prisons and Correctional Services Bill and its alignment with the Constitution of Zimbabwe.
(b) To create a platform for increased engagement and impart knowledge about the Constitutional provisions in their role in supporting the drafting of Acts of Parliament
(c) Review progress made by Government of Zimbabwe in the drafting of the ZPCS Bill

2.5 Session 5 Presentation of the Prisons and Correctional Services Bill

ZPCS gave an overview of the proposed Bill, highlighting major improvements from the current status quo. These included provisions relating to the Prisons and Correctional Services Commission, the establishment, administration and control of various correctional facilities, the use of force and weapons by correctional officers, the Parole Board and powers of arrest.

2.6 Session 6 Review by IMT Technical Expert

Thereafter, Professor Geoff Feltoe, IMT Technical Expert gave remarks on the work that he had done in reviewing the Bill, noting both the positives and the negatives of the draft Bill. He observed that the Bill has gone a long way in incorporating the requirements of the Constitution, however, some provisions could be strengthened and there were some further
matters that need to be included. He observed the need to strike a delicate balance between
the protection of society and the rights of inmates. In the same vein, he also criticized the gap
in providing for the security of correctional officers in the conduct of their duties. Additionally, he noted that the Bill comes up short on outlawing inhuman and degrading
treatment and also on recognizing the constitutional rights of the inmates apart from those
expressly or impliedly taken away by the act of imprisonment. In order to deal with
vulnerability of prisoners, Professor Feltoe proposed that a mechanism be built into the bill
which would enable inmates to make complaints and have them addressed systematically. He
went on to recommend human rights training for officers as well as deferment of the clause
on corporal punishment for juveniles pending judicial pronouncements on that matter.

He provided a number of recommendations, including the following:

- The need for the Bill to contain general provisions along the lines of the South
  African legislation dealing with accommodation, feeding, clothing, bedding, exercise
  and health care of prisoners and of the right of prisoners to vote in elections.
- The Bill should contain provisions requiring all correctional officers to undergo
  training on how to maintain security and discipline in prisons without violating the
  fundamental rights of prisoners.
- The Bill should make reference to the constitutional mandate regarding prisons of this
  Commission
- The Bill must include provisions reflecting the recent unanimous ruling by
  Constitutional Court that prisoners serving life imprisonment must be considered for
  early release on good behavior just like their counterparts with lesser sentences. It
decided it is unconstitutional for inmates to serve life imprisonment without any
  possibility of parole or release on license.
- There should be explicit provisions allowing for the establishment of an inquiry body
to investigate allegations that prisoners’ rights are being seriously violated at a
particular prison or prisons generally. This investigation could be carried out in
conjunction with the Zimbabwe Human Rights Commission (ZHRC).

2.7 Session 7 International & Regional Framework for Prisons & Correctional
Services Bill
The Zimbabwe Human Rights Commission Chief Human Rights Officer outlined the international and regional framework, focusing on the international instruments which apply specifically to prisons that need to be taken into account to ensure holistic alignment. These include:

- UN Standard Minimum Rules on the Treatment of Prisoners (SMR)
- Mandela Rules
- UN Bangkok Rules on the Treatment of Female Prisoners
- Luanda Guidelines on Treatment of Pre-trial detainees
- SADC Minimum Standards for HIV and AIDS, TB, Hepatitis B and C, and Sexually transmitted infections, Prevention Treatment, Care and Support in Prisons in the SADC Region
- Prisoners Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)
- UN Code of Conduct for Law Enforcement Officials
- United Nations Rules for the Protection of Juveniles deprived of their Liberty (‘the Havana Rules’) 1990

She also spoke about the basic principles on treatment of prisoners, highlighting aspects on personal hygiene, clothing and bedding, food, medical services, discipline and punishment as well as institutional personnel.

2.8 Session 8 Presentation by International Committee of the Red Cross

The Regional Prison Systems Advisor, International Committee of the Red Cross (ICRC) shared his thoughts on the draft Bill in view of the work that ICRC has been doing with ZCPS. He observed that the Bill had a lot of details and recommended that some issues be incorporated into Regulations. Most of the modern Prisons legislation is relatively short with longer regulations, which makes for an easier process for amending and updating them. Furthermore, he noted that there was no mention of the mission and purpose of the Bill, which could be dealt with in a preamble to the Bill. He recommended that the Bill should contain detailed provisions of the Inspectorate, as well as on matters such as visits, daily activity programs, education for inmates and access to news.
Mr Geurts pointed out that the recurring phrase “as far as possible/practical” in the Bill was vague and imprecise, taking away responsibility from prison authorities and leaving room for gaps in implementation. Nevertheless, this was derived from the Constitution. He also noted that use of force is not clearly explained as prescribed by UN Basic Principles on the Use of force and Firearms by law Enforcement Officers and proposed that prison officers be trained in the use of proportional force. He suggested that medical personnel in prisons and correctional services should abide by medical ethics and not be involved in the execution of punishments or discipline or any work deemed to be risky. The professional privilege and independence of doctors was not articulated in the Bill yet this was crucial for effective medical services to be provided in prisons. He noted that it is important to describe the different types of searches and the way to go about them, in the Prison Regulations. He also commented that the Mandela Rules, although not legally binding, could be treated as soft law and therefore deserved more serious consideration for incorporation into the Bill.

He further observed that a comprehensive and detailed list of disciplinary offences should not be part of the Act but would be more suitably placed in the Regulations and that there is need to develop a matrix with disciplinary offences and the related punishments for the sake of transparency and predictability. He added that corporal punishment was no longer in line with the Constitution and International Standards and that ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment could also strengthen the Bill.

2.9 Session 9 Stakeholders’ presentation – Female Prison Support Trust (FEMPRIST)

The Director, Female Prison Support Trust (FEMPRIST) made a presentation on the work that they have been doing to advocate for the improvement of living conditions in prisons. She stated that the Bill was coming at the right time when the Gender Commission was now in place and she strongly advocated for a gender sensitive Bill, emphasised the following issues that need to be incorporated and addressed in the Bill:

- Improved living conditions for female prisoners
• Training of officers on gender and how to handle children as well as people with disabilities
• Extension of open prison facilities to female inmates as they are lower risk compared to even low risk men. Open prisons can improve conditions for female prisoners and their children.
• Admission of pregnant women and those nursing into correctional facilities and dealing with the psychological burden that is placed on such young children, now that the age limit has been increased from two years to almost five years. There should be an option of shelter nearby the prisons where the children can stay and be visited frequently by their parents so that they do not grow up in prison, yet they are often rejected by their families.
• Provision of appropriate facilities and services for female foreign inmates
• Legal assistance for female prisoners who sometimes are not able to speak up for themselves in the court setting
• Provision of specialist services like gynaecologists to cater for sexual and reproductive rights, paediatricians for the children who may have specialised medical conditions, as well as palliative care
• Access to water and sanitation for hygiene purposes, and inclusion of cleaning detergents and fumigation of cells under the right to health.
• Provisions to ensure privacy for female inmates.
• Searches should be conducted by a prison officer of the same sex
• Discriminatory limitations on women’s access to work out of the prison as well as access to gratuities

Mrs Nyamupinga highlighted the need to “catch them young” and train prison personnel while they are still rising through the ranks. UNWOMEN is working with ZCPS to see how this can be addressed at curriculum level.

At the end of her presentation, she showed a touching video of the highlights of FEMPRIST’s work, particularly around the International Women’s Day commemoration.

2.10 Session 10  Plenary session
Participants expressed the general consensus with most of the issues raised by the presenters and commented that issues affecting vulnerable prisoners such as people with disabilities, women and children should be dealt with more thoroughly in the Bill, particularly issues such as the provision of sanitary wear to women and gender sensitivity training for prison officers. There were indications that prison officers were alleged to have, on occasion, diverted sanitary items intended for female inmates. It was agreed that these allegations warranted further investigation.

It was pointed out that the existing prisons were built primarily as male spaces, so work needs to be done to make them more accommodating for women. It was also felt that the Bangkok rules should be incorporated, specifically rules 1-3, rule 5 and rule 9 which provide for …. On the whole, the meeting agreed that the process of aligning the Prisons Act [Ch 7:11 should not be limited to ensuring adherence to relevant constitutional provisions; but should include the incorporation of relevant regional and international normative frameworks.

One participant questioned whether in terms of section 172, the High Court was the right platform to refer the list of un-convicted inmates. It was also suggested that the list should be also given to the National Prosecuting Authority (NPA) as that is the institution which oversees the setting down of matters. However, the Judiciary and not JSC could still be retained since the court can also give orders to executive authority (NPA). There was also a suggestion to include the option of summons if the case has not been heard within a certain time period. As a matter of procedure, IMT proposed that this issue could probably be dealt with in other fora.

Another administrative issue that was brought up was that of prisoners’ limited access to information and court documents. It was agreed that these are vital for a prisoner to formulate his or her defense, and therefore this issue must be addressed by ZPCS and the judiciary.

Other participants commented that resources have to be put in place in order for prisoners to be able to enjoy all their rights, yet at the same time, there are critical needs in the country such as hospitals and schools which are still lacking resources. That being the case, prisoners’ rights are often sacrificed, which is not ideal in terms of respecting their human rights. A representative from Prison Fellowship expressed concern over the distribution of resources by the Ministry of Finance and Economic Development, stating that while the Bill presented
an ideal situation, there may not be the requisite political will and fiscal muscle to make it a reality. It was proposed that there be established a minimum core content that should be available to prisoners, although this would be difficult to define. It was further noted that there would be a need to lobby Parliament on this proposal. It was nevertheless noted that prison services the world over are generally under-resourced since they are not as great a priority as health, education and national security.

It was recommended that there be a hierarchy of offences with the varying levels of consequences so that grave offences are not mixed with relatively petty ones. It was suggested that the Bill could have a general provision on the offences, which would then be read together with the Regulations. It was further recommended that the Bill should have a long title which sets out the purpose of the Bill since that is where the Principles that need to be approved by Cabinet will come from.

There was a discussion on the Parole Board, with the hope expressed that the enactment of the Bill and its implementation would result in the Board being more effective in dealing with prolonged remand periods and amnesty. Reference was made to Zambia as a good example of a nation with a functional parole board. It was recommended that lessons be learnt from its best practices.

The meeting also discussed the lack of provision for legal aid in prisons, as required by Section 31 of the Constitution. Moreover, non-governmental organisations have great difficulty in accessing prisoners to provide legal aid. It was proposed that prison officers can also be trained as paralegals to assist in the many instances where prisoners need help, since, for example, most prisoners do not know how to apply for bail and this causes unnecessary congestion in prison.

It was recommended that section 70 of the Bill be made more specific so as not to include other irrelevant offences such as fines for road traffic offences.

2.11 Session 11 Recap of Day 1 and Closing Remarks
The Executive Secretary of the Law Society of Zimbabwe summed up the day’s proceedings and gave closing remarks, emphasising the importance of keeping in mind the context of alignment of the Bill and the commendable efforts by the Ministry to move from a punitive to a rehabilitative correctional system.

3 Day 2 Proceedings

3.1 Session 12 General Remarks by the Attorney General
The Attorney General gave brief remarks on the second day highlighting his pleasure with the steps being taken to include stakeholders in the alignment process. He mentioned that he hoped the deliberations had been fruitful thus far and added that he was looking forward to further discussions.

3.2 Session 13 Stakeholders’ presentation – Care at the Core of Humanity (CATCH)
Care at the Core of Humanity (CATCH), focused its submissions on child justice perspectives. Ms Chinyanga commended the addition of a definition for a juvenile and proposed the insertion of a provision for child-friendly facilities in prisons since children can stay with their incarcerated mothers up to the time they are 59 months of age (almost 5 years old). She added that educational facilities should be availed compulsorily in accordance with section 27 of the Constitution, a point on which the Bill is silent. Additionally, she pointed out the need for special provisions on the release of juveniles under Part XIII of the Bill (Release of Inmates).

3.3 Session 14 Stakeholders’ presentation – Zimbabwe Association for Crime Prevention & Rehabilitation of Offenders (ZACRO)
Zimbabwe Association for Crime Prevention & Rehabilitation of Offenders (ZACRO) briefly gave comments on the need for breastfeeding mothers to be adequately catered for in prisons. The organisation also emphasized the need for children to be allowed to visit their family members in prison, and urged that signs should be placed around the various prison buildings stating that children are allowed to visit. ZACRO commented that parents & guardians should be allowed to decide on the appropriateness of such visits for themselves, rather than to be hindered by negative societal beliefs.

3.4 Session 15 Plenary session

The meeting agreed that one major issue was to get children out of prisons and keep them out. Section 79 of the Bill outlines the separation of offender juveniles, in line with Section 81 of the Constitution. It was also emphasized that stakeholders should suggest where proposed recommendations should be inserted, whether in the main Act or in the regulations.

Others noted that issues were being mixed up, which might raise challenges in the process for the same office which is supposed to be overseeing the Act. For example, the rights of an accused cannot be put comprehensively in the Police Act, as well as convoluted administrative matters. The meeting agreed that the Act should have broader provisions and then the regulations would contain the finer details.

3.5 Session 16 Thematic Group Discussions – Report Back and Plenary Session

After the plenary session, participants were put in random groups to discuss a set of questions on thematic areas and proffer their feedback and recommendations for content and structure of the Bill. The thematic areas for the groups were as follows:

GROUP 1

1. What are the principles governing the administration of Prisons and Correctional Service Centres? (Part II & III)
2. Conduct a SWOT analysis of the establishment of Open Correctional Community Centres and Open Correctional Facilities? (Part IV)

For all provisions under discussion, comment on:

- clarity of language used
- alignment of provisions with Constitution
- alignment of provisions with UN Minimum Standards (N. Mandela rules 2015)
GROUP 2

1. Analyse the powers, duties and functions of correctional officers (Part V)
2. What could be regarded as reasonable measures when it comes to discipline of inmates, taking into account the Declaration of Rights?
3. Discuss the concept of proportionality in the use of force in prisons?
4. Discuss the principles of natural justice and legality in relation to Part VI of the Bill.

For all provisions under discussion, comment on:
- clarity of language used
- alignment of provisions with Constitution
- alignment of provisions with UN Minimum Standards (N. Mandela rules 2015)

GROUP 3

1. What can done to improve the conditions of Prisoners with special needs (such as pregnant women, children accompanying their mothers into prison, people with disabilities)? (Part VII)
2. Discuss the provisions on hygiene and health care services for inmates (Part VIII)
3. Comments on the provisions on the searching of prison inmates and visitors (Part IX)

For all provisions under discussion, comment on:
- clarity of language used
- alignment of provisions with Constitution
- alignment of provisions with UN Minimum Standards (N. Mandela rules 2015)

GROUP 4

Discuss the provisions on discipline of inmates? (Part X)

1. In relation to work for convicted inmates, what can be done to enhance the rehabilitation of inmates for their successful integration into society whilst ensuring their security and that of other members of society? (Part XI)
2. Comment on the outside employment of inmates. How best can ZPCS maximize benefits to both the inmates and the prison?

For all provisions under discussion, comment on:
- clarity of language used
- alignment of provisions with Constitution
- alignment of provisions with UN Minimum Standards (N. Mandela rules 2015)

GROUP 5

1. Discuss the expanded functions of the parole board and the release of inmates. (Part XIII)
2. Comment on the Correctional Board on visitors and its mandate (Part XIV)
3. Examine the paralegal system and how it can be practically and effectively implemented (Part XV).

For all provisions under discussion, comment on:
- clarity of language used
- alignment of provisions with Constitution
- alignment of provisions with UN Minimum Standards (N. Mandela rules 2015)

After their discussions, the groups gave their feedback to the rest of the meeting as follows:

GROUP 1

1. Examine the principles governing the administration of Prisons and Correctional Service Centres
   a) Establishment of ZPCS is in line with sec 227

<table>
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<tr>
<th>ZPCS Principles</th>
<th>Mandela Rules</th>
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| a) that the sentence is carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing court, other information from the trial or sentencing process, the release policies, comments from the State Parole Board, and information obtained from victims or community; | 1. Treat inmates with respect  
2. Torture prohibited  
3. Treat according to needs without discrimination  
4. Protect society and reduce reoffending  
5. Safety of prisoners, staff service, visitors |
| i) that the Service enhances its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through communication about its correctional policies and programmes to |
- offenders, victims and the public;
- that the Service facilitates the involvement of members of the public in matters relating to the operation of the Service;
- that prisons and correctional decisions are made in a forthright and fair manner, with access by the offender to an effective grievance procedure;
- that inmates are expected to obey prisons and correctional rules and conditions of release and to actively participate in programmes designed to promote their rehabilitation and reintegration into society; and
- that correctional officers are properly selected and trained, and given –
  (i) appropriate career development opportunities,
  (ii) good working conditions, including a workplace environment that is free of practices that undermine a person’s sense of dignity; and
  (iii) opportunities to participate in the development of prisons and correctional policies and programmes.

**b)** Section 4 of the ZPCS Act should make reference to section 5

**c)** Section 4 is line with the basic principles in the Mandela Rules

2. **SWOT analysis of correctional community centres and open correctional facilities**

**Strengths**

1. Less financial burden on the fiscus
2. Promotes good reintegration
3. Reduces chances of re-offending
4. Decongestion of prisons
**Weaknesses**

1. Risk of re-offending because of limited supervision

**Opportunities**

1. Support from community e.g. church support group
2. Skills that the prisoners have can benefit the community
3. Public Private Partner collaboration sec26 (3) (can be further provided for in regulations)

**Threats**

1. Risk of danger to the community
2. Possibility of stigma

NB: Definition of terms inadequate in the Bill

**GROUP 2**

1. The powers, duties and functions of correctional officers in Part V of the Bill are adequate. The question still exists as to whether these should be put in a separate Bill dealing with the conduct of officers and other administrative matters of ZPCS.

2. Inmates should not always be disciplined as a first resort but as a last resort, taking into account their minimum human rights. Reasonable measures are debatable but the discipline or measures taken should correspond with the offence. Use of force should be avoided but when unavoidable, should be proportional.

3. Principles of natural justice should prevail.

**GROUP 3**

- There was a debate on whether it was necessary to replace the term ‘infant’ because of its medical meaning which is a child in its first year but it was agreed to maintain it and give it a meaning intended legally.

- The group suggested the establishment of open prisons as this would ease many of the problems being faced and would improve the conditions of prisoners with special needs.

- The use of the phrase “as far as practicable” in the Bill – there is need to consider related constitutional provisions and revisit the term.
- It was suggested that mothers be given ample time to breastfeed their children and also that there be a special diet for pregnant and breastfeeding mothers. (Professor Feltoe to look at this if it has been dealt with in the regulations)

- The regulations should include provisions for informing the public that children can visit parents or guardians in prison.

- With regards to People Living with Disabilities it was recommended that the prisons be accommodative for people with special needs and their needs and officers need to be trained on how to deal with them.

- Come up with a broad provision for People Living with Disabilities in the Bill then expand on this in the Regulations.

- There is need to trim down the procedure for health care services for inmates and hygiene in Part 8 to reduce the bulkiness of that part however key issues should be maintained.

- Section 82-93 Professor Feltoe to look into the provisions laid out in these sections and determine what should be housed under the regulations and what should remain in the Bill.

- Section 97 terminology on the use of the word ‘capital offence’ to be revisited.

- Consider the importance of section 97 and 98. The issue was whether regular examination of inmates on death row was practical.

- Section 104 on hygiene only focuses on what the inmate should do and not what the prison should do. There is need to cross reference with the Rules 15-21. The Mandela Rules emphasise that when searching the members of the public the tactics used on prisoners must not be used on them. The methodology for searching to be clarified in the Regulations.

- Reference to be made to section 50(5)(d) of the Constitution on accommodating prisoners.

- Part 8 to consider availing of special health services for women

GROUP 4

1. In Relation to work for convicted inmate, what can be done to enhance the rehabilitation of inmates for their successful integration into society? (Part XI)

2. Comment on the outside employment of inmates. How best can ZPCS maximise to benefits to both the inmates and the prison.

1. Section 125 (2) of the Bill says “Female inmates shall not be employed outside a
prison or correctional facility except on the recommendation of a medical officer, and then only on such be work as may be prescribed.” We propose that women also be allowed to be employed outside a prison provided their safety is guaranteed or observed and supervised by female correctional officers.

They should partake in activities that are done by their male counterpart if they are interested in pursuing them. (In Mutare, female inmates are allowed to work at Gogo Olive as part of rehabilitation and are also rewarded.)

Inmates shall not be allowed to work for personal or private benefits of any prison staff. e.g. they should not be employed as house servants for no remuneration. This is in line with Mandela Rules 40, 96-103.

Inmates may be allowed to do outside work for individuals provided there is a proper contract with ZPCS.

Both the inmate and ZPCS should benefit from the proceeds. Inmates shall get gratuity upon release. The percentage allocated to ZPCS shall be deposited into the Retention Fund.

There is need to respect and reward the work of art produced or invented by inmates, for example Kudzai Nyoka’s case. Exceptions can be made by the Commissioner General or the Minister.

Rehabilitation programmes should be in line with the labour market.

GROUP 5 (not captured)

Discussions in the plenary session raised concerns that needed to be addressed by the lawmakers, particularly the powers of the Minister under Part IV, section 24 to declare ‘any place, building or enclosure or part thereof to be a prison or correctional facility for the purposes of this Act’. It was felt that this may infringe on property rights, and that there was a need for close examination of the Bill for lawfulness and congruency with the Constitution.

3.6 Session 17 Consolidation of Stakeholder Contributions and Way Forward

The Executive Director of CALR highlighted the key issues that had been discussed during all the sessions throughout the workshop as well as the group discussions. He mapped out the way forward, advising the meeting that the next step in the process was the second stakeholder consultation workshop for the northern region of the country. Thereafter, IMT
would organize and facilitate a “write shop” to finalise the draft Bill together with the Ministry and the Attorney General’s office before it was presented to Parliament.

**3.7 Session 18 Closing Remarks & Vote of Thanks**

On behalf of the Commissioner-General, Major General (Rtd) P.W. Zimondi and on his own behalf, **Deputy Commissioner General (DCG) A. H. Machingauta, ZPCS**, expressed appreciation for the spirited commitment shown by stakeholders in their participation. As a result of this, he felt that much ground had been covered in finalizing the draft Bill and aligning it to the Constitution. He explained the background of the Bill and the various processes through which it had already gone, from its inception in the Prisons and Correctional Services Legal Services Directorate through to the present consultative workshop.

He emphasized that the ZPCS does not exist in isolation but remains a part of the community that inmates come from and later return to, and called upon participants to continue working with ZPCS in its rehabilitation and re-integration efforts. In conclusion, he thanked all stakeholders and partners for their contributions and for committing their time and resources to ensure the achievement of the objectives of the workshop.

Thereafter, the workshop was officially closed and stakeholders were dismissed.