Meeting Report

Advancing HIV and TB Treatment and Prevention in Botswana Prisons

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SOUTHERN AFRICA LITIGATION CENTRE

ARASA
AIDS & Rights Alliance for Southern Africa

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Background

In August 2015, the Botswana Network on Ethics, Law and HIV/AIDS (BONELA), working together with the Southern Africa Litigation Centre (SALC), succeeded in obtaining a court order from the Botswana Court of Appeal requiring government to provide antiretroviral treatment (ART) to all HIV-positive foreign prisoners who meet the treatment criteria. The Botswana government indicated its intention to comply with the Court order but also voiced challenges in the practicality of the order's implementation and budgeting.

In an effort to support government in ensuring effective HIV treatment and prevention in prisons, BONELA, in partnership with SALC and the AIDS and Rights Alliance for Southern Africa (ARASA), hosted a high level meeting, with stakeholders involved in prisoners' welfare and regional experts. The purpose of the meeting was to share achievements and lessons learnt. The meeting forms part of a broader objective of the organisers to build on the success of the *Tapela* case to improve health services and conditions in the prisons in southern Africa.

Attorney General and Others v Tapela and Others

The *Tapela* case concerned a challenge by 2 non-citizen prisoners and BONELA to the Botswana government's policy of refusing anti-retroviral treatment (ART) to non-citizen prisoners living with HIV. On 22 August 2014, the High Court held that the denial of HIV treatment to foreign prisoners living with HIV violated their constitutional rights. The Attorney-General appealed the decision to the Court of Appeal. On 26 August 2015 the Court of Appeal dismissed the appeal. The Court held that the policy was contrary to the Prisons Act and unlawful. The Court ordered the government immediately to provide free testing, assessment and ARV treatment to all foreign prisoners to the same extent as citizen prisoners. SALC continues to work with BONELA to ensure the judgment's enforcement.

More information and copies of the judgments and legal arguments are available here:
http://www.southernafricalitigationcentre.org/cases/completed-cases/botswana-securing-access-to-hiv-treatment-for-prisoners/

Meeting objectives

The meeting aimed to bring together key Botswana government actors, civil society from Botswana and the southern Africa region, and government actors working in the prison sector from other countries in the region to lend expertise and develop thinking on:

- Strategies and development of an action plan by the government to enforce the order by the Court of Appeal, and to ensure adequate budgeting and services for equitable HIV treatment and prevention.
- The potential for civil society partnerships in advancing public health imperatives in the prisons.

Outcomes

The meeting provided a valuable opportunity for the sharing of information, strategies and best practices in achieving prison health and human rights objectives in other countries.

The discussions led to the development of strategies to frame advocacy efforts to continue the momentum of the *Tapela* case to advance health and human rights in prisons. Consensus was reached among participants on the importance of establishing a stronger partnership between the Botswana Prisons Service and civil society organisations (CSOs) and in improving transparency and accessibility of the prisons.

Image: Participants at the meeting.

Welcome and opening remarks

Dr Bonolo Dinokopila, the BONELA Chairperson, welcomed the meeting participants and highlighted the conveners' gratitude to those who had travelled from neighbouring countries to attend. It was acknowledged that while much progress has been made, more needs to be done to protect prisoners' rights and the rights of those incarcerated by the state, many of whom are unable to take their grievances to the courts. The meeting, Dr Dinokopila noted, was an opportunity to exchange ideas on how to reach this segment of the population.

HIV and TB prevention in Botswana prisons: Where are we and what are the challenges? (Botswana Prison Service)

Phazha Molebatsi, Policy and Legal Advisor at BONELA, noted the scheduled address from the Botswana Prison Service on the agenda and the invitation that had been made to share progress and challenges in HIV and TB treatment and prevention in prisons. It was noted with regret that the Prisons Service had belatedly refused the conveners' invitation to attend the meeting.

The High Court and Court of Appeal judgments in *Tapela and Another v the Attorney General and Others*: Summary and analysis of the legal obligations - Annabel Raw - Lawyer, SALC

Ms Annabel Raw, Health Rights Lawyer from SALC, addressed the participants on the High Court and Court of Appeal judgments in the case of *Attorney General and Others v Tapela and Others.* She noted that it was broadly understood that the Court of Appeal held that it was unlawful to withhold ART from non-citizen prisoners and ordered the Botswana government to provide the treatment to these inmates on the same conditions as citizen prisoners. She noted, however, that the importance of the judgments must be understood more broadly than the order: the reasoning of both courts provide an authoritative understanding of the legal obligations on government in respect of prison health issues and on the duties the state owes to persons denied their freedom.

A number of misconceptions about the meaning and consequences of the judgments were addressed:

1. The first popular misconception was the idea that the solution to avoiding the legal obligation to non-citizen prisoners was simply to amend the Prisons Act. Ms Raw explained that the Court of Appeal's interpretation of the Prisons Act affirmed its consistency with the common law and constitutional principles. An amendment to the Prisons Act to allow for discrimination against non-citizen inmates is therefore likely to be unconstitutional. The Court of Appeal limited itself to its findings based on the Prisons Act because it held that it was not necessary to rule on the constitutional issues.

"It is trite that the Prisons Act, as is the case with all legislation, must be interpreted, where the language so allows, in line with the common law; so as to comply with the Constitution; and also as far as possible, in line with Botswana's international obligations. …The refusal of free enrolment on HAART to non-citizen prisoners when this is afforded to citizen prisoners clearly discriminates against the non-citizens on account of the place of origin, and that is prohibited by [the Constitution]." [Botswana Court of Appeal, *Tapela* judgment 2015.]

2. A second misconception is the suggestion that to avoid these legal obligations, Botswana should simply deport all foreign inmates. Ms Raw noted the important humanitarian and law enforcement prospects of returning foreign inmates to serve their sentences at home but cautioned that there remain legal limitations on the ability of government to transfer prisoners internationally, not least of which is the prohibition on transferring a prisoner if it results in a violation of their human rights.

3. A third popular misconception was that criminals ought not to be "rewarded" with medication. Reference to both the Court of Appeal and High Court judgments makes clear the courts' insistence that medical treatment in general and ART in

particular is not a privilege given to prisoners as a gift but a legal entitlement.

"While prisoners have their liberty curtailed by the sentence of the Court, they remain entitled to enjoy the residuum of the constitutional and human rights, subject only to the lawful derogations permitted by the Constitution." [Botswana Court of Appeal, Tapela judgment 2015.]

4. A fourth misconception is that instead of providing ART to foreign inmates, civil society should be fighting to improve prison conditions for all. Ms Raw argued that ensuring equitable treatment does benefit all prisoners. She noted the Court of Appeal's "bigger picture" approach to the cost of ART where it noted the potential, when HIV is not managed by ART, for increased costs in treating resulting opportunistic infections (OIs), as well as treating other inmates who are more likely to contract OIs like tuberculosis. The High Court judgment in addition acknowledged the increased likelihood of HIV transmission when the viral load of a person living with HIV is not managed by effective ART. Providing ART to foreign inmates indeed benefits all prisoners.

"The denial of HAART to HIV-positive inmates not only exposes them to premature death but increases the likelihood of HIV transmission as well as other life threatening contagious infections like tuberculosis to other inmates. …The non-treatment of non-citizen inmates poses a danger to the very citizen inmates the respondents have tried so hard to protect." Sechele J, Tapela and Another v Attorney General and Others [2014] High Court.

Ms Raw explained that the judgments further elaborate on what the law requires in respect of prison health:

1. The Court of Appeal refers to three standards of care: an obligation to keep prisoners in "good health", an obligation to provide "basic healthcare", and an obligation to provide "adequate care". These standards should be understood together as requiring at least the same medical care for all incarcerated persons as is provided for citizens in the community.

2. Both the High Court and Court of Appeal referred to the obligation to prevent the spread of disease. In the context of the High Court's express acknowledgment of HIV transmission occurring in prisons, these legal principles have important implications for prisons in preventing TB and HIV transmission through structural, prophylactic and other interventions. A duty on a medical officer to prevent the spread of HIV in prisons should embody the duty of that officer to take measures such as distributing condoms.

3. Lastly the Court of Appeal made clear that all prisoners must be treated equally, "regardless of their status and place of origin."

Ms Raw concluded her address by noting the approach of the High Court in the interim contempt of court proceeding, in which the Court had assumed BONELA to have the capacity to monitor compliance with the order to provide ART despite that the two prisoner applicants had been released from prison at that stage. This she regarded as motivating a clarion call for greater transparency in the prisons.

Participants discussed their pleasure with the state's willingness to enforce the *Tapela* order but concern that the wider import of the judgments needs to be understood.

Some participants raised a question whether the Court of Appeal's findings applied to other detained persons such as encamped refugees and asylum seekers and persons in police custody. Ms Raw explained the state's obligation to keep detained persons "in good health" flows from the fact that the state exercises complete control over those persons, and in so doing assumes a duty of care. The judgment should therefore apply in equal measure to all detained persons:

"In terms of the common law the State has a duty to keep in good health the prisoners in its custody because, having forfeited their freedom, they are unable properly to fend for themselves." [Botswana Court of Appeal, *Tapela* judgment 2015.]

Innovations in the Zambian prison system: What strategies is Zambia undertaking to improve access to treatment and preventative health care?

- Dr George Magwende - Senior Assistant Commissioner, Zambia Correctional Service

Dr George Magwende, the Senior Assistant Commissioner, Head of Health Services in the Zambian Correctional Service addressed the participants on innovations in Zambia in improving access to treatment and prevention services. In framing an understanding of Zambia's Correctional system, Dr Magwende noted that despite a prison capacity for only about 6,000 – 7,000 inmates, Zambia's current prison population housed about 20,000 inmates. However, in recent years a number of efforts have been made to improve services and to increase the number of health professionals working in the prisons.

"Good prison health is good public health." [Dr George Magwende.]

It was noted that historically, colonial masters built prisons with the sole purpose to punish and keep offenders away from society for as long as they could with no intention to reform them. The maintenance of these dilapidated, ill-structured facilities affirms the colonial legacy of an intent to kill and punish and not to reform individuals. This, Dr Magwende noted, has an enduring impact on the stigma attached to prisons and the people that are incarcerated and work there.

Dr Magwende discussed a number of useful innovations that had been developed in recent years to address these dire conditions and the public health imperative in a context of resource constraints:

- The establishment of Prisons Health Committees allow prisoners to lead the monitoring and enforcement of prison health and sanitation standards.

- Prisons have enhanced their cooperation with the Ministry of Health which by law at least retains some legal responsibility for healthcare in prisons. This has been assisted by developing a relationship with the district health officers as well as a positive approach from the current Minister of Health towards prison health.

- The Zambian Correctional Service has adopted an "open-door" policy: everyone from members of Parliament, the media, civil society and the Vice President are welcomed into the prisons. Dr Magwende noted that the Zambian system was previously very closed and sympathised with the frustrations of many prisons and prisons staff who are not necessarily at fault for the state of historically underfunded and overpopulated institutions. He noted the reaction of a number of parliamentarians who wept after visiting some of the prisons. This open door policy, he explained, has resulted in significant increases in budgetary allocations to the prisons and parliamentarians becoming passionate about prison issues during discussions in Parliament. Some of these members of parliament are also members of the coalition of African parliamentarians against HIV (CAPAH).

"Sometimes one feels a sense of guilt when showing people a facility that is dilapidated and unhygienic. As a prison official, it is my responsibility to change this but we need to be given the capacity to change the environment. We should not carry the guilt alone." [Dr George Magwende.]

Image: Dr George Magwende.

- The Prisons have enhanced collaboration with non-governmental and international stakeholders, for example: the UNODC, PEPFAR, the Centre for Disease Control (CDC) and Red Cross,

as well as local non-governmental organisations like the Prisoners Care and Counselling Association (PRISCCA) and Prisoners' Reintegration and Empowerment Organisation (PREO). These relationships have assisted in providing community support to rehabilitation, training and activities. These partners can access any facility by calling ahead to notify the relevant authorities.

- The prisons have also on their own initiative invited judges and magistrates to visit Lusaka Central Prison with the support of UNODC. The officials planning the visits did not forewarn the officer in charge that they were coming to ensure the conditions the judiciary observed would be reflective of daily realities. Following the visit, a number of judges said they would think twice before imposing a custodial sentence. Dr Magwende noted that judges and magistrates routinely visit the prisons and highlighted the importance of their being able to visit without forewarning.

- Realising the drastic insufficiency of healthcare workers in the prisons, Dr Magwende noted a number of strategies to enhance services and capacity. This included improving the training at the Zambian Correctional Training School to ensure prison officers have basic healthcare knowledge and to equip them to make good decisions when assessing inmates who may need medical attention. In addition, HIV/TB coordinators have been established at all stations under Global Fund, CIDRZ and CDC funding. These focal points' knowledge is continuously updated. Psychosocial counselling and health sensitisation has also been increased for inmates to include them in monitoring hygiene and prevention efforts.

- The Zambian National HIV Policy recognises prisoners as a key population. While achieving this was a difficult task, the recognition has been important in developing the growing positive political will towards corrections.

Dr Magwende acknowledged, however, that the Zambian Correctional Service continues to face severe challenges including congestion, inadequate funding, lack of modern health infrastructure, equipment and medical officers, and an absence of legal provisions to assist in reducing sexual abuse in prisons. With the change of the prisons in name to "correctional services", he noted his intent to live up to that name.

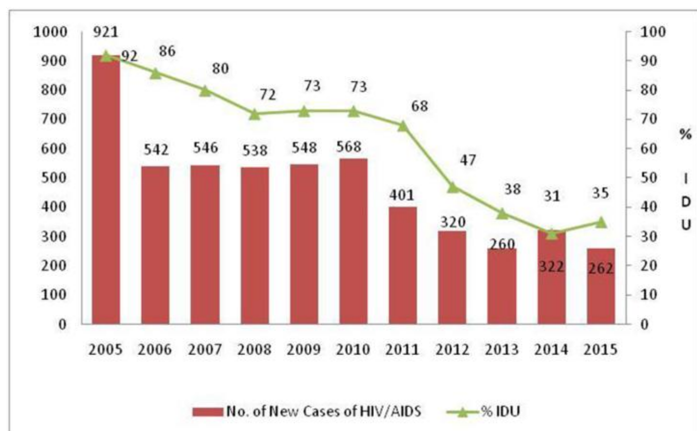
"My hope is to build new and better facilities to replace what colonial masters left us. Our attitudes must be seen to be different from theirs. … We didn't create this situation but what is important is to do something about it." [Dr George Magwende.]

Best practices in providing for prisoners' health rights in Mauritius - Mr Sagar Motah - Chief Hospital Officer, Mauritius Prison Service

Mr Sagar Motah, the Chief Hospital Officer of the Mauritius Prison Service shared some of the best practices that have been developed to advance prisoners' health rights in Mauritius.

Image: Mr Sagar Motah.

Mr Motah noted that the reductions in HIV prevalence in the Mauritian population have been due to harm reduction strategies adopted. These have included methadone substitution treatment for injecting drug users. There is no compulsory testing for HIV but good education and training to encourage patients to come forward for voluntary testing.



Mr Motah presented the above graph illustrating the reductions in HIV prevalence amongst injecting drug users achieved in Mauritius over the past 10 years.

Mr Motah explained that there were eight prison institutions in Mauritius which includes separate facilities for remandees and a halfway house for prisoners with good conduct. Since the recent opening of a new prison facility, the official prison population in 2015 was at 70% capacity.

HIV prevalence in Mauritius, he noted, was (similarly to other jurisdictions) significantly higher amongst the prison population (about 19.4%) than the national average (about 1.02%).

Mr Motah drew attention to a number of legislative frameworks and institutions that support the fulfilment of the human rights of detainees. These include:

- The Ombudsperson, established in terms of the Constitution.
- The Ombudsperson for Children, established in 2003.
- The National Human Rights Commission, established in 2001.
- Legislation such as the HIV/AIDS Act of 2006, the Imprisonment for Civil Debt (Abolition) Act of 2006, the Borrowers Protection Act of 2007, and the Sexual Discrimination Act of 2002 all encourage the promotion and protection of human rights.

In Mauritius, Mr Motah noted, about 6.8% of the total prison population is comprised of non-citizen inmates, with only two HIV cases amongst this group. The vast majority of non-citizen inmates are detained for drug-related offences, which invite heavy penalties in Mauritius. There is no discrimination against non-citizen inmates: all prisoners are treated equally.

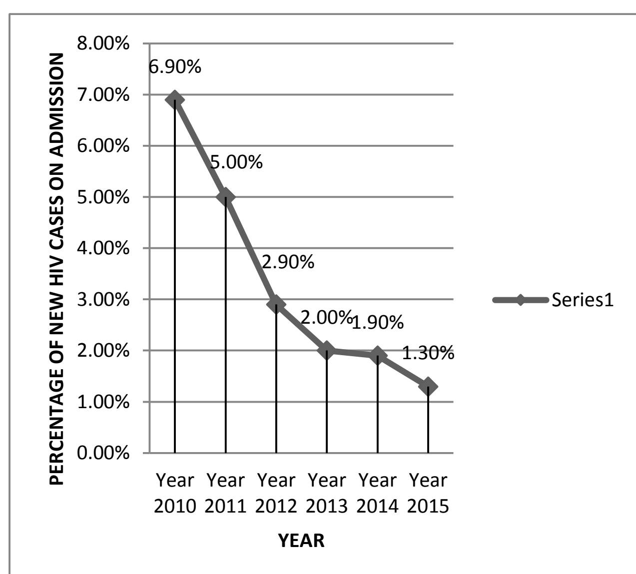
Of the 20% of the total prison population of 2,100 persons that are HIV-positive in Mauritius, Mr Motah indicated that about 70% are on ART. 44 qualified nurses, four full-time medical officers, and one full-time dentist service the Mauritian prisons. Visiting medical specialists (for example, surgeons, dermatologists, and HIV specialists) are further used to minimize the need to take prisoners to hospital. Prisoners receive 24 hour coverage by healthcare providers. Medicines and medical equipment are procured from the Central Supplies Division, the Ministry of Health and Quality Life, and from local suppliers. Inmates receive psycho-social support from psychologists, Welfare Officers and Dynamic Security Support Officers.

Upon entering a prison facility, all inmates receive a comprehensive health assessment by a medical officer. Inmates also receive Information Education and Communication materials for the prevention of infectious diseases. All new detainees are offered provider-initiated voluntary HIV testing and counselling. Treatment is offered according to the National Guidelines. CD4-count and viral load assessments are used to appropriately manage inmates' conditions. The prisons are now aiming to implement a "test and treat" policy in the near future, in recognition of prisoners as a vulnerable group.

Mr Motah emphasised the importance of the prisons' collaboration with other governmental and non-governmental agencies and the successes in building sustainable links between prison health services and community services to ensure a continuum of care once inmates are released. Health services in prisons fall under the Ministry of Health – all inmates, he noted, should receive the same medical treatment both in and outside of prison. NGO-support, he noted, also assisted in ensuring continuity of the health and reform efforts implemented in prisons. Additional strategies to ensure continuity of treatment include to incentivise treatment follow up through providing released inmates with travel expense reimbursement and phone cards to remind and encourage adherence at release. Doctors and nurses also actively undertake follow ups.

"The prisons cannot work in isolation." [Mr Sagar Motah.]

About 18% of inmates are on Methadone substitution therapy for opioid addiction. Nationally about 5,765 persons receive this therapy across 16 dispensing sites, including in the prisons. The Prison Methadone Induction Unit has been operational since December 2011. The prisons also have a rehabilitation unit for the rehabilitation of substance abusers. Since June of last year, however, new substitution therapies have been introduced in the community in an effort to reduce methadone dependency. A needle exchange programme in the community has also assisted in reducing harm and HIV transmission amongst injecting drug users. About 6,000 injecting drug users are reached through this programme across 43 national sites. These interventions have seen significant reductions in HIV prevalence amongst injecting drug users.



Mr Motah provided the above graph to illustrate the reduction in new HIV-infection in inmates on admission in the last five years.

Despite these innovations, Mr Motah noted that there remain difficulties in distributing condoms in prisons: the issue has become more or less dormant. Condom distribution in the communities is also insufficient. Key challenges to addressing HIV in prisons mirror those in the community: needing to strengthen adherence to treatment, improved follow up of HIV-positive pregnant women, and increasing and sustaining long-term services for ART, needle exchange and methadone substitution therapy.

How does civil society and the Prison Inspectorate work to support government in achieving public health aims in Malawi prisons?

- Justice Sylvester Kalembera – Judge of the High Court, Malawi Inspectorate of Prisons

Justice Sylvester Kalembera, a Judge of the High Court in Malawi and of the Prison Inspectorate, addressed the participants on the roles of the Inspectorate of Prisons and civil society in achieving prison health in Malawi.

Image: Justice Sylvester Kalembera

Justice Kalembera noted that historically, the prisons were a closed system in Malawi. In May 1994, with the adoption of a new Constitution, Malawi transitioned from a one-party state to a multi-party democracy, leading Malawi on a journey that increasingly subjected all public authority to the principles of transparency, accountability and adherence to the rule of law. This process led to the previously closed system of the prisons becoming more accessible.

The Inspectorate of Prisons was established in terms of section 169 of the 1994 Constitution. It is an independent body charged with monitoring the conditions, administration and general functioning of penal institutions, taking into account applicable international standards. Justice Kalembera explained that the Inspectorate is mandated to visit any facility without notice, and to interview any person on any subject relevant to its functions. This

includes the power to inspect and visit not only prisons but also police detention facilities.

The current Chairperson of the Inspectorate is Justice Kenan Manda. Other members include the Chief Commissioner for Prisons, a member of the Prisons Service Commission and the Ombudsman. Additional to these members, the Inspectorate is empowered under the Constitution to co-opt persons as representatives of any local or international organisation with an office in Malawi in the conduct of its work.

The Inspectorate is reliant on funding from the Ministry of Home Affairs and Internal Security. Justice Kalembera noted that funding is received on an ad hoc basis and the Inspectorate is chronically underfunded. The Inspectorate is therefore reliant on civil social organisations to fulfil its mandate, with whom it maintains a strong relationship.

Justice Kalembera described how prisons in Malawi face significant problems. They are significantly overcrowded at almost 300% capacity. In a 2009 decision of the High Court (sitting as the Constitutional Court) in the *Masangano* case, the Court held that:

"Put simply, the overcrowding and poor ventilation in our prisons amounts to inhuman and degrading treatment of the inmates". [*Masangano v the Attorney General and Others* [2009] MLR 171, Malawi Constitutional Court.]

These conditions post a major public health risk. Disease prevalence in the prisons is high, including tuberculosis and HIV in the highly congested and unsanitary conditions. Rates of HIV infection are much higher in the prisons than they are in the general public. Prisoners' nutrition is inadequate. There are also high levels of rape. Food, protection, and other favours are often used to coerce newly-admitted inmates to engage in sex acts.

"Such practices and generally poor conditions of our prisons are a health threat to prisoners themselves, prison warders, and the general population". [Justice Sylvester Kalembera.]

He noted in addition that many of the prisons do not have stock of medicines and healthcare personnel are inadequate.

Despite these problems, the prisons remain largely transparent and accessible. Apart from the Inspectorate, various other individuals and groups have access to the prisons in terms of the Prisons Act. This includes:

- Judges of the High Court,
- Magistrates,
- Cabinet Ministers,
- Ministers of religion,
- Prisoners' aid societies,
- Official visitors appointed by the Minister,
- Independent lay visitors.

Civil society organisations (CSOs) make use of these provisions to have unhindered access to the prisons. Organisations that have collaborated and worked with the Inspectorate have included the following:

- The Paralegal Advisory Service Institute (PASI) offers paralegal services to prisoners, focussing on legal empowerment. They have assisted many prisoners to seek bail and be released on bail pending trial, helping to decongest the prisons.

- The Centre for Human Rights, Education, Advice and Assistance (CHREAA) advocates for prisoners' welfare, conducts litigation, and advances prisoners' rights. It has assisted the Inspectorate by financing some of its inspections and assisting in preparing the Inspectorate's Report, which will be tabled before Parliament. The Inspectorate and CHREAA have in addition been working together to lobby for the repeal of vagrancy laws, the application of which has been responsible for congestion in the prisons.

- The Centre for Legal Assistance provides legal services to inmates and has assisted in constructing additional cells to ease congestion.

- Médecins Sans Frontières (MSF) implements a number of programmes in the prisons for HIV treatment, prevention, care and support. They have full-time clinics at Chichiri and Maula prisons, have their own pharmacies and treat prisoners for a number of ailments.

- Volunteer Service Overseers (VSO) started a prisons project in 2015 dealing

with nutrition, and advancing HIV treatment continuation amongst others.

- Light House focusses on voluntary testing and treatment in Maula prison.
- Dignitas International assists with entry and exit screening of inmates at Zomba Central Prison as well as rehabilitation support.
- The Prison Fellowship International offers safe houses aimed at assisting recently-released inmates to reintegrate.

Justice Kalembera noted with regret that there were no formal agreements between the CSOs and the Inspectorate, leading to poor coordination and some overlap of activities. He noted in addition the need to address structural problems confronting the ability of the Inspectorate to fulfil its mandate. These included the lack of independent funding for the Inspectorate, and its lack of an office, permanent staff or a secretariat.

Justice Kalembera acknowledged the significant human rights concerns in Malawi's prisons despite the hard work of the Inspectorate of Prisons and CSOs.

"There is a need for a comprehensive approach to prison health improvement, requiring consolidated efforts from all stakeholders concerned with the criminal justice system and public health." [Justice Sylvester Kalembera]

Image: Participants at the meeting.

Making use of the Regional Advisory Committee on HIV, TB and Human Rights in Prisons - Ms Nelago Amadhila – Regional Advocacy Officer, ARASA

Ms Nelago Amadhila, Regional Advocacy Officer at ARASA spoke about ARASA's prisons work and how the Regional Advisory Committee on HIV, TB and Human Rights in Prisons can support the advancement of prison health.

Image: Ms Nelago Amadhila.

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." [Former President Nelson Mandela.]

Ms Amadhila presented extracts from the Southern African Development Community's (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, to which ARASA's advocacy efforts had contributed. The Standards stress that the acquisition of disease should not be part of an inmate's sentence. Healthcare workers, she stated are required to deal with prisoners as patients – there should be no discrimination on the grounds of their legal status as prisoners. She stressed further that the SADC Minimum Standards require healthcare workers to have the same professional independence as their colleagues in the community and that health policy in the prisons should be compatible with and integrated into the national health policy.

Ms Amadhila referred to research from the United Nations Office on Drugs and Crime (UNODC) which indicated that globally on average 30 million people go through the prisons system annually and that most prisoners at some point return to their communities. These facts affirm that good prison health is good public health. She noted in addition that prisons may account for some 25% of a country's share of TB cases and that increasing levels of multi-drug-resistant (MDR) TB have been reported in prisons.

Since 2009, ARASA and its partners have prioritised human rights-based HIV and TB advocacy in prisons. An example of this work was a joint research report published with the Zambian organisation Prisons Care and Counselling Association (PRISCAA) and Human Rights Watch entitled "Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons." The report documented failures of the Zambian prison service to provide basic nutrition, sanitation and access to HIV and TB services, amongst other problems. The report's comprehensive recommendations were used to develop evidence–based advocacy by CSOs and government stakeholders. PRISCCA continues to work with the prison authorities to implement the recommendations.

At ARASA's 2014 Annual Partnership Forum (APF), partners highlighted the need to formulate strategies to deal with prison conditions, including:

- The absence of condom access in prisons
- Sexual violence and rape
- The neglect of children in prisons
- Outdated laws
- Overcrowding

As an outcome of the 2015 ARASA Regional Dialogue on HIV, TB and Human Rights in Prisons of a cross-section of government and CSO stakeholders, the multi-sectoral Regional Advisory Committee (RAC) on HIV, TB and Human Rights in Prisons was established. The RAC comprises representatives from southern and eastern Africa and includes experts from the judiciary, CSOs, representatives of the legal and medical professions, academics, correctional services, and national human rights institutions. The RAC is intended to provide a forum for multi-stakeholder discussion and engagement, to facilitate the sharing of evidence and human rights-based practices and programmes. The RAC is further intended to guide ARASA and its partners in developing and implementing regional advocacy on prisons HIV, TB and health.

In 2016, ARASA is planning to launch the "Unjust and Unhealthy: Uncaging Prisoners' Human Rights" campaign which aims to:

- Promote better understanding and appreciation by policy and decision makers of prisoners' rights and health issues.
- Encourage decision and policy makers to review and amend policies and improve funding towards respective correctional services departments.
- Create awareness in the public of prisoners' human dignity as well as challenges facing prisoners' health.

Four campaign strategies are being adopted:

1. Increase regional visibility of the issue by calling on governments to promote transparency in the prisons. This is to support evidence-based interventions.
2. Conduct policy advocacy by supporting partners in the focus countries with one-on-one meetings with key decision makers who can influence the process of increasing funding within prisons, and to push for a review of existing prisons policies.
3. Support and provide technical assistance to partners in the focus countries to document best practices.
4. Work with the Regional Economic Communities (SADC and EAC Secretariat) to push for accountability and transparency of member states.

Ms Amadhila put forward a number of opportunities for collaboration and support to advance HIV and TB treatment and prevention in prisons:

- ARASA has developed an online short course on HIV, TB and human rights in prisons which will be facilitated on ARASA's online training portal (http://www.arasa-online-training.org). The online course is scheduled to run from June 2016.

- Collaboration with strategic partners and inviting the RAC to strategic meetings.

- Support to local advocacy campaigns.

How can civil society support the achievement of public health objectives in the Botswana prison system?

- Ms Cindy Kelemi – Executive Director, BONELA

Ms Cindy Kelemi, BONELA's Executive Director, spoke on BONELA's vision for how civil society could support the achievement of public health objectives in the Botswana prisons system.

Image: Ms Cindy Kelemi.

Ms Kelemi expressed deep regret that the Botswana prisons representatives who had been invited had declined the invitations to attend. She explained that the prisons had indicated that their unwillingness to attend was based on their understanding that the order in the *Tapela* case was already being implemented and there was nothing further to discuss. Ms Kelemi recounted her explanation that the meeting was about a holistic approach to HIV and TB testing, treatment and prevention, and to frame civil society's intent to avail itself to support government strategies to achieve public health goals in prisons.

Ms Kelemi explained that civil society's support in achieving prison health objectives is guided by the following principles:

- The promotion, protection and fulfilment of the right to a dignified life for all.
- The goal of achieving zero new infections, pursuant to the National Strategic Framework on HIV and Vision 2016, UNAIDS fast track targets 90/90/90 and Millennium Development Goal – Ending AIDS by 2030.
- A human rights approach: leaving no one behind and promoting universality of access.

Ms Kelemi stated that communities and civil society are at the heart of strong, accountable health systems, they represent the end users of health services; they are also engaged in implementation, service delivery, planning and priority setting, advocacy, and monitoring and evaluation.

"*Civil society is thus poised to stimulate and expand access to health services, extending coverage for marginalised populations, protecting and promoting rights-based approaches to health, and strengthening health systems governance and creating an enabling environment through law and policy reform.*" [Cindy Kelemi]

She stressed that public health can no longer afford to ignore prison health in Botswana as indicated in the rise and rapid spread of HIV infection and TB, in the prevalence of sexual activities between men in prisons in the absence of a comprehensive prevention model, and overcrowding.

Ms Kelemi stated that several key elements were essential to supporting the achievement of good public health outcomes in Botswana prisons. These included the following:

1. Multi-sectorial coalition building, which requires the strengthening of CSOs, government and other stakeholders' engagement and partnerships.
2. Advocacy and lobbying for political will and leadership for the development and implementation of sound policies and rights-based prison procedures and principles.
3. The development of an evidence base through research and country-specific recommendations from the perspective of civil society to inform policy elaboration.
4. Developing and implementing independent civil society monitoring mechanisms
5. Building partnerships for health with prisoners and ex-prisoners to drive self-advocacy.

6. Capacity building for prison leadership on health.
7. Media and community engagement to elevate public and community support for a critical mass to promote health and well-being in prisons.

"Only a rights based approach will support public health." [Ms Cindy Kelemi.]

In concluding, Ms Kelemi noted the imperative for a stronger partnership between civil society and prisons and increased accessibility to prisons. She stressed the importance of developing mechanisms for mutual accountability between stakeholders, and of ensuring sufficient resources and political will to sustain prison health advances.

Image: Participants at the meeting.

The way forward

Mr Molebatsi for BONELA facilitated a discussion amongst participants on the way forward to advance HIV and TB treatment and prevention in Botswana's prisons. The following recommendations and actions were discussed:

- Sharing a report of the meeting with all participants, prisons officials and the public to ensure the valuable information discussed is fully disseminated.
- Developing a plain-language interpretation of the Court of Appeal *Tapela* judgment for use as an advocacy tool.
- Advocating for increased transparency in and access to prisons and improved partnerships between the Prisons Service and CSOs.
- Advocating for an independent body charged with monitoring prison conditions and prisoner wellbeing, with transparent and public reporting capacities and the right to enter and inspect places of detention without notice.
- Developing an understanding of the implications of the *Tapela* judgments beyond prisoners to include encamped migration detainees and persons held in police custody.
- Involving members of parliament in enforcing and/or monitoring the full implementation of the *Tapela* judgments' broader import.
- Engaging parliamentary committees.
- Involving the judiciary to monitor prison conditions and prisoner welfare and to improve judges' understandings of the impact of custodial sentences.
- Adopting an inclusive approach to prison health advocacy to include CSOs not working exclusively on prison issues: this will advance the recognition of prisoners' rights as human rights.
- Engaging prisoners to monitor compliance with the *Tapela* judgment.
- Continued legal services to prisoners to follow up on any instances of non-compliance with legal obligations towards the treatment of prisoners.
- Engaging the media to increase sensitivity and interest on prison health issues.
- Advocating for a holistic approach to HIV and TB treatment, prevention, and education in prisons.
- Continuing efforts to ensure affordable access to treatment, including through supporting initiatives for the appropriate use of TRIPS flexibilities.
- Monitoring and supporting strategies to overcome logistical issues relating to the release of prisoners to ensure a continuum of care between prisons and the community. Examples include the transfer of medical records upon prisoners' release.
- Advocating for the establishment of Prisons Health Committees as exist in Zambia.

Annexure A: Participant List

Akanyang Korong (BIRRO)

Anders Pedersen (UNDP)

Annabel Raw (SALC)

Bonolo Dinokopila (BONELA)

Cindy Kelemi (BONELA)

Dikarabo Ramadubu (CBET)

Freedom Mompe (BONELA)

George Magwende (Zambia Correctional Service)

Gilbert Mangole (Parliament)

Harriet Pedersen (EU)

Honourable P Major General Mokgware (Parliament, Committee on Foreign Affairs)

Keikantse Shumba (GabzFM)

Lesetse Dlhula (BONELA)

Mandipa Machacha (UNHCR)

Matshidiso Mtswaagae (Botswana Rehabilitation and Reintegration of Offenders / BIRRO)

Mothei Sejakgomo (BIRRO)

M Powatshego (MDIS)

Nadine Schuepp (UNAIDS)

Nelago Amadhila (ARASA)

Pamela Timburwa (SALC)

Phazha Molebatsi (BONELA)

Sagar Motah (Mauritius Prison Service)

Seneo Setilo (Gabz FM)

Sylvester Kalembera (Malawi High Court and Inspectorate of Prisons)

Uyapo Ndadi (Ndadi Law Firm)

Wilfred Mooketsi (Parliament)