

SOUTHERN AFRICA
LITIGATION CENTRE



Removing legal barriers to treatment: Legal training on health and human rights

Wednesday, 29 June 2016

Workshop 2 (14:45-16:15): Prison health

Case study 2: Health rights of mentally ill prisoners

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Jurisdiction: Malawi

Problem statement:

The prioritisation of punishment over treatment is denying prisoners who are mentally ill access to proper health care and treatment whilst in prison

Background information:

There are several ways by which persons who are mentally ill find themselves in prison. Some mentally ill persons commit offences and find themselves remanded to prison or sentenced to serve a sentence for a conviction in prison. Some persons develop mental illness whilst they are in prison. Prison conditions have also been held to be another cause of mental illness.

In prison, everyone fend for themselves. Mentally ill prisoners are therefore forced to fend for themselves even though their condition is such that they cannot fend for themselves. This makes them end up missing the daily provisions as no one minds to check if they have received food or not.

When in prison, relations of the mentally ill prisoners are ashamed to visit them in prison and in some cases, the relations feel relieved from the burden of looking after them.

Mentally ill prisoners face stigma and discrimination from fellow prisoners as they are perceived to be dangerous even where they do not have any history of violence.

Prison officials are not trained in looking after let alone diagnosing and treating mental illnesses. Mentally ill prisoners therefore end up serving their sentencing or staying on

remand without getting proper care and treatment. The system appears to favour making sure that the person serves their sentence or continues to be on remand even though the prison officials and the courts that send these people to prison are well aware of their mental illnesses, The system appears to prioritise punishment over treatment.

The case study considered situations of 25 mentally ill prisoners at Zomba prison and 17 mentally ill prisoners at Chichiri prison. The case also has previous experiences of mentally ill homicide remandees who were on remand for a long period of time before they were considered for bail on account of their mental illness.

Relevant legal provisions:

Section 19 (1) of the Constitution provides that the dignity of all persons is inviolable.

Section 19 (2) of the Constitution guarantees human dignity in the enforcement of any penalty.

Section 134, 135 and 136 of the Criminal Procedure and Evidence Code provides for the procedure in dealing with suspects who are mentally ill.

The mental Treatment Act (cap 35:02) of the Laws of Malawi makes provisions relating to provision of mental treatment and management of mental hospitals.

Relief sought: serious consideration of prohibition of imprisonment of persons who are mentally ill as the prisons do not afford a dignified life for prisoners who are mentally ill.

Prioritisation of treatment over punishment as execution of punishment over a mentally ill persons does not serve any of the known purposes of punishment in criminal law.