

CONSTITUTION WATCH 9/2019

[27th October 2019]

Death in Custody : Rights of Prisoners

According to Zimbabwe Lawyers for Human Rights, eleven street vendors were arrested on the 12th October for assaulting a police officer, having taken refuge in the cellar of a building in the centre of Harare in which a large number of old police helmets were found. The vendors were later taken before a magistrate, who remanded them in custody pending consideration of their applications for bail.

One of their number, a young man named Hilton Tamangani, was found dead in his cell in the Harare Remand Prison on the 18th October. His death was announced by the Ministry of Information in a statement which read in part:

“The individual was remanded in a condition of unwellness and immediate medical care was sought for him and he was hospitalised.

“He was attended to by doctors. All deaths in custody are thoroughly investigated. We now await the result of a post-mortem to ascertain the cause of death.”

Mr Tamangani’s lawyers claim that he was severely beaten by the police. They have released a copy of a letter they wrote to the Officer in Charge of the Harare Remand Prison, in which they said:

“Our client has advised us that he has developed a fatal infection whilst being medically attended to at your premises, Harare Remand Prison Clinic. In the premises, we are approaching your office to request that our client be attended to by a private doctor of his choice. Our client undertakes to pay the requisite medical costs.”

The prison authorities, the lawyers say, refused to accept the letter and so Mr Tamangani was not examined by his own doctor before his death.

Violation of Constitutional Rights of Prisoners

Whatever the cause of Mr Tamangani’s death, the events surrounding it show a deplorable disregard for his constitutional rights as a prisoner.

Section 50(5)(c) of the Constitution provides that anyone who is detained has the right to communicate with, and be visited by, their relatives, their chosen religious counsellor, their chosen lawyer and their chosen medical practitioner. The right to be visited by all these people is important, but it is particularly important for prisoners to be allowed to see their medical practitioners, as Mr Tamangani’s case so tragically demonstrates.

There are at least three reasons this right is so vital:

1. Prisoners are in the custody of the State which means the State is responsible for ensuring their health and well-being. If medical facilities in prisons are inadequate – and it is notorious that they are basic at best and

rudimentary or non-existent at worst – then the prison authorities must take prisoners to hospitals outside their prisons or allow them to receive care and treatment from their own medical practitioners.

2. Prisoners may be in poor health and need medication or treatment which their own medical practitioners can provide more readily than prison doctors.
3. Prisoners who claim they have been assaulted by the police or prison authorities may need to be examined by their own doctors in order to establish their claims.

Above all, prison authorities must remember that prisoners have rights. Prisoners are deprived of much of their freedom of movement – they cannot leave their prison whenever they want to – and they may be deprived of other rights and freedoms so far as it is necessary to prevent them escaping and to maintain discipline in prisons. But apart from that they have all the fundamental human rights and freedoms guaranteed them by the Constitution, including the right to be seen by their chosen medical practitioner which, as we have pointed out, is specifically given to them by section 50(5)(c) of the Constitution. This is particularly so in the case of awaiting trial prisoners who have not been convicted of any criminal offence.

Even prisoners who have been found guilty of the most heinous crimes remain human beings entitled to their basic human rights. And it must be remembered that Mr Tamangani was an awaiting trial prisoner who had not been tried for, let alone found guilty of, any crime at all.

Prison authorities, in brief, have a duty to care for their prisoners and respect their rights. In the case of Mr Tamangani, it seems, they failed in this duty – and they compounded their failure terribly by refusing to allow him to be seen by his own doctor even after being requested to do so by his lawyers.

Post Mortem

In the event Mr Tamangani has died. All the authorities can do now is to ensure that his death is properly investigated at a public inquest and that those responsible for his death are brought to justice. The underlying purpose of an inquest, as explained by a court in 1990, is to promote public confidence, to reassure the public that all deaths from unnatural causes will receive proper attention and investigation so that, where necessary, appropriate measures can be taken to prevent similar occurrences and to bring persons responsible for the deaths to justice. For an inquest to achieve this purpose a post-mortem examination should be conducted on the body of the deceased to establish the cause of death, and the post-mortem examination should be such as to promote public confidence in its thoroughness and impartiality. In this case, regrettably, public confidence may be lacking since a magistrate turned down a lawyers' request to have an independent medical practitioner present when the post-mortem was conducted.

Mr Tamangani’s family might have been able to push more effectively for a proper post-mortem if an effective and independent complaints mechanism had been established under section 210 of the Constitution. Unfortunately the Government has not carried out its duty to establish such a mechanism, and the Constitutional Court has failed to order the Government to establish one, despite an application brought by Veritas in early 2016 requesting it to do so.

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