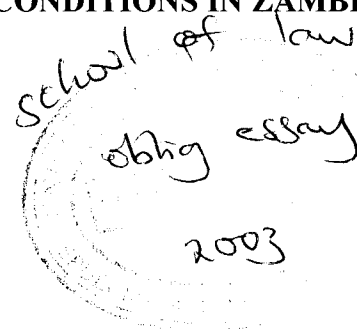


**THE RIGHTS OF A PRISONER AND PRISON CONDITIONS IN ZAMBIA: A
COMPARATIVE STUDY**



BY

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2003

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**A PAPER SUBMITTED TO THE UNIVERSITY OF ZAMBIA IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF A
BACHELOR DEGREE IN LAW. LL.B.**

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that the obligatory essay prepared under my supervision by Bernard Mwanandiwa

Entitled

**THE RIGHTS OF A PRISONER AND PRISON CONDITIONS IN ZAMBIA: A
COMPARATIVE STUDY**

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements relating to the format as laid down in the regulations governing directed Research.

SIGNATURE.....
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(SUPERVISOR)

DATE:.....

DECLARATION

I Bernard Mwanandiwa computer number 98326163 do solemnly declare that this work represents my own ideas and is not a production of any other work produced or submitted by any person to the University of Zambia or to any other institution.

DEDICATION

To Nelson Mandela, the longest prisoner of conscience who became president and world statesman, and to the lord for eternal grace and blessings.

PREFACE

The theme for the obligatory essay is “The Rights of the prisoner and prison conditions in Zambia: a comparative study. It opens with an introduction on the subject, which is chapter one.

In the second chapter the terms prisoner and prison are explored from their historical perspective. The vision of the prisons service for a prisoner is demonstrated. Equally some ex-prisoner care organisations have been spelt out as taking care of the discharged prisoner.

Chapter three deals with the rights of the prisoner; the right to life, to work for remuneration, to medial attention and so on. Chapter four ventures into the reality of prison conditions as they are perceived. A comparative analysis takes up chapter five. Here other countries are studied with regard to prison conditions and compared with situation at home.

In chapter six recommendations and a conclusion are stated.

ABSTRACT

The law must be firm with lawbreakers. But, prisoners are entitled to human rights by virtue of being human. Although, they have been adjudged by law to be fit for punishment, the prison conditions should be compatible with human life. Prison congestion, while it erodes prisoners rights cannot be blamed on prisoners. But on society and its government and its government who are ultimately responsible for the welfare of the prisoner.

ACKNOWLEDGEMENTS

My gratitude to Judge K.C. Chanda for supervising this work to completion. Also extended to Dr. Munalula, the coordinator of this project. And to . Dr. O. Munyati for his hand.

I am also grateful to the commissioner of prisons Mr. Mumbuwa Jethro for permission to carry out my research in prisons. The same is extended to his deputy Commissioner, Mr. Sifuwe Mubyana for logistical support and reading materials. Tribute too to the prisons secretary Mr. Chikwanda Royd for materials and suggestions. The staff at headquarters an the prison staff and inmates at Kabwe maximum, Lusaka Central and Choma state prisons deserve my appreciation for their contribution. Equal thanks go to the typist at UNZA Library typing pool, Miss Evah Mudenda for typing the essay.

I am indebted to Judge Philip Musonda for the reading material and valuable insights. I am equally thankful to the chief coordinator for ZEPRACT Mr. Musheke Kakuwa and his deputy Mr. Malubila for their timely contribution.

I extend my thanks to the Library staff at parliament and in particular the research officer Mr. Mumba for their assistance. Similarly to UNZA Library staff.

Finally, I thank my children and family in general for encouragement. In particular my cousin Bambara for her additional care. And, to my friends Collins, Paul and Aka and classmates in general, and my roommate Maxwell for compatibility.

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METHODOLOGY

The research has utilised two sources of data, namely primary and secondary. The primary sources include interviews with officers including prisoners from three prisons namely Choma, Lusaka Central and Kabwe maximum.

Also interviewed are other persons who possessed knowledge about prisons.

The secondary sources include library materials, statutes and international instruments and documents. These were evaluated. Chapters proceeded from one to six which contained the conclusion.

CHAPTER ONE

1.0 INTRODUCTION

This essay attempts to examine the rights of a prisoner and prison conditions in Zambia. A comparison is made of the Zambian situation with that obtaining in other countries in order to objectively determine the prison standards in Zambia.

‘The Rights of a prisoner and prison conditions’ was selected to be a most appropriate title of this essay primarily because of the vulnerability of a prisoner, right from the point of accusation through arrest and trial to imprisonment. In the last judgement the Lord Jesus put the position as follows:

“I was a prisoner and you did not visit me.”¹

In more recent times, here at home, one prisoner expressed the plight of the prisoner in poetic form as follows:

“Prisoners are people imprisoned by the state; dads and mums, uncles and aunts, brothers and sisters who think they are second rate. Sometimes they are weak and failing with needs like you and me. Other times they are strong and good; the side you may not see. Prisoners are people who break society’s laws; they come from many backgrounds. The famous, rich and poor. They need to love and be loved and accept warts and all. Not just revenge to pay them back. For, remember, everyone too falls. Prisoners are people who need to say they are sorry, to all the people they have hurt and caused such pain and worry. For guilty and God bring justice: but God will pardon too, and forgive the penitent prisoners...”²

In yet higher echelons of the public service it was observed as hereunder.

“of late there has been several articles in the local papers on the plight of prisoners and those in Remand.”³

Nigel Rodely put it more succinctly as follows:

¹ Holy Bible, Matt 25:43.

² Mayamba Geoffrey, a long-term prisoner, during personal interview at Mukobeko Maximum prison submitted a written poem, entitled; “PRISONERS ARE PEOPLE TOO.”

³ Registrar of the High Court for Zambia: Circular No. 2/2002, Decongesting Prisoners.

“All too frequently, however, the prison will be a place of harsh deprivation: it may be overcrowded and may offer little chance of exercise, or of adequate diet; its conditions may be generally poor and sometimes an arbitrary or even brutal prison administration will prevail.”⁴

It is much common knowledge today that prison conditions are poor worldwide and more so in Africa. It was observed in one magazine that a selection of recent examples demonstrates how the rights of prisoners are infringed in many countries around the world, rich and poor, large and small.⁵ In 1995, the African Commission on Human and People’s rights, after discussing prison conditions in Africa, expressed concern that the prisons and prisoners in many African countries are afflicted by severe inadequacies including high congestion, poor physical health and sanitary conditions, inadequate recreational, vocational and rehabilitation programmes: heavily restricted contact with the outside world: large percentages of persons awaiting trial.⁶

There is therefore need to research into the plight of the prisoner in Zambia, so as to find tangible means of securing one of the most vulnerable in our society.

1.1 HUMAN RIGHTS

A distinction ought to be made between prisoner’s rights and Human Rights. The former apply and are specific to a prisoner. For example the prisoner’s right or privilege to be visited at prisons and to communicate with his friends and relatives.⁷ The latter comprises rights which are universal and apply to all human beings. These are said to be inalienable, indivisible and universal.

⁴ Nigel Rodley, *The treatment of prisoners under international law*, Clarendon Press, Oxford (1987) P. 13.

⁵ *Inter Rights Bulletin*, Vol. 11 No. 4 A Review of the international centre for the legal protection of Human Rights, p. 135.

⁶ *Penal Reform international (PRI)*, prison conditions in Africa, Kampala (1996), p (I).

⁷ *Prisons Act*, r, 124.

Of great interest is to examine to what extent a prisoner enjoys his collectivities of human rights, really, how much of the human rights are eroded by the instrumentality of imprisonment. There is also need to examine whether a prisoner in Zambia enjoys those rights which are specifically allocated to prisoners.

1.2 DEATH PENALTY.

The death sentence poses as one area of eternal controversy. This is because life is considered to be the most sacred of all sacred things, God given as it were, and one of the parameters of Universal Human Rights. One side of the argument brings to the fore the principle of “a tooth for a tooth” which is that whoever takes away the life of another must have his equally taken away. One thing is certain. Life has no equaliser. Once taken away it cannot be restored. So it seems the more sure way of vindicating society’s revulsion of the crime and at the same time to quench all need for recompense to the family of the victim, where applicable, is to avenge on behalf of the deceased victim by divesting the assailant of his life.

The other side of the argument is that against death penalty, mainly, on the ground that it is inhuman and incompatible with the established culture of universal human rights.

The aim of the essay is to deal with obvious and unnecessary contradictions which have given rise to the differing approaches to the issue of death penalty vis-à-vis human rights. Ultimately, to re assert and so reaffirm the inalienable and indivisible right to life.

1.3 LEGISLATION RELATING TO THE PRISONER.

Locally, the prisons Act, Chapter 97 is the main segment of law that provides for the management and control of prisons and prisoners.⁸ To a lesser extent the Juveniles Act⁹ in

⁸ See preamble or long title thereto.

relation to Juvenile offenders. The mind ought also to be cast on the Mental Disorders Act¹⁰ which provides for control of those detained on medical grounds or who are deemed to be mentally disordered. So too on the debtors Act¹¹ which spells out conditions to be met by a judgement creditor in the event of imprisonment of a judgement debtor.

At the international level there are standard minimum rules for the treatment of prisoners. These were adopted by the first United Nations Congress on the prevention of crime and the treatment of offenders, held at Geneva, in 1955, and approved by the economic and social council by its resolution 663 C(XXIV) of 31st July, 1957 and 2076 (LXII) of 13 May, 1977. The minimum standards constitute a broad spectrum of basic rules ranging from personal hygiene through food and Medical Services to access to information, contact with the outside world and privilege.

Evidence abounds that the standard minimum rules were well received in prison circles.¹² The problem, it seems, as will be ascertained in due course, is not one of lack of rules, but of failure to implement them.

Also available at international level are human rights generally. More specifically referred to as universal human rights. Their universality entails that, apart from exceptional cases or circumstances, they apply universally to all human beings. These are contained in various instruments to which Zambia is a signatory.¹³

⁹ Cap, 53.

¹⁰ Cap, 305.

¹¹ Cap, 77.

¹² Mumbwa Jethro, Pamphlet of Extracts of United Nations rules for the treatment of prisoners, Prisons Headquarters (1993, N.B. Author is now Commissioner of Prisons.

¹³ Government of the Republic of Zambia, Governance: National capacity building programme for good Governance in Zambia, (1999), P. 79.

1.4 GENERAL

Three prisons were selected for research. These are Kabwe Maximum prison, Lusaka Central and Choma prisons.

Based on objective analysis of data conclusions and recommendations will be made. It is with a view to establishing prisoners rights and to seek improved treatment of the prisoner and prison conditions.

The essay is limited to fifty pages of double-spaced lines.

CHAPTER TWO

2.0 DEFINITION OF PRISONER

A historical perspective. The chapter will attempt to trace the idea of a prisoner as it was understood in the traditional society to present day. It will in addition grapple with the meaning of a prison in a modern setting. It is also an appropriate place to define terms. In common language a prisoner is any person whose liberty to go where he wills and wishes is being restricted by another or others or some authority. Legally, prisoner is defined as follows:

“Prisoner means any person whether convicted or not under detention in any prison.”¹⁴

At international level the provision that endows protection to persons who are deprived of their liberty is couched in universal terms, as follows:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of human person.”¹⁵

2.1 MEANING OF PRISON: DIVERSE VIEWS.

Really, what is a prison? One scholar posed the question;¹⁶ “is it surprising that prisons resemble factories, schools, barracks, hospitals, which all resemble prisons?” Indeed, it goes without saying that in all the preceding institutions freedom is a cardinal feature which is clearly restricted in all of them.

However, there is a distinction between such institutions and prisons in terms of the purpose and the degree of limitation on individual freedom of movement. In those institutions the purpose for the restriction is for the betterment, not only of the individual concerned, but of the society at large. At the same time the degree of limitation is flexible and compatible with personal development and other human needs. In a prison, on the other hand, there is simply too much

¹⁴ Prisons Act, Cap 97, S.2.

¹⁵ Melander and Alfredsson, the Roual Wallenburg compilation of Human Rights Instruments: ICCPR, art. 10, Martinus Nijhoff publishers, The Hague (1997), P 47.

¹⁶ Zimring F.E. The scale of imprisonment: Foucault's principal thesis on the “penitentiary technique” Hawkins G. The University of Chicago Press, Chicago, (1991) p. 47.

curtailment on the individual freedom of movement. The purpose for constraining the liberty of persons in a prison is retribution, rehabilitation and security of the society.¹⁷ There is little advantage, if any at all to the individual who is incarcerated in a prison.

Indeed, views as to what a prison is are varied. To some it is seen as an institution of repression, rejection, exclusion and marginalisation.¹⁸ It represented an unprecedented carceral totalitarianism where the tyranny of the majority took as its symbol and instrument the silence, the lockstep, and the bullwhip of Auburn penitentiary.¹⁹

2.2 OFFICIAL VIEW OF PRISONS.

There is the other side of the coin. What is often termed the penal system represents the state's response to the problem of how to deal with criminal law-breaking.²⁰ According to Rothman's interpretation the invention of the penitentiary represented an attempt to promote the stability of society at a time when traditional ideas and practices appeared outmoded and ineffective: It was an effort to ensure the cohesion of the community in new and changing circumstances.²¹

The penitentiary or prisons was designed to join practicality to humanitarianism, reform the criminal, stabilise society, and demonstrate how to improve the condition of mankind.²² In crowning it all, the prisons was described as the new symbolic representation of the state's ultimate power.²³ It is intended to effectively provide and maintain humane custodial and correctional services to inmates.²⁴

¹⁷ Harding C. and Koffman, L., *Sentencing and the penal system: Text and materials* Sweet and Maxwell, London (1995) P. 6.

¹⁸ *Ibid*, p. 40.

¹⁹ *Ibid*.

²⁰ *Supra*, *Sentencing and the penal system: Text and materials*, p. 1.

²¹ *Supra*, *The scale of imprisonment*, p. 41.

²² *Ibid*.

²³ *Ibid*, p 57.

2.3 STATUTORY DEFINITION OF PRISON

In legal parlance prison is defined as follows:

“Means any building, enclosure or place or part thereof, declared to be a prison under section three, or deemed to have been so established as provided in section one hundred and forty-seven and includes a temporary prison established under section four and a youth corrective centre deemed to be a prison under section one hundred and thirty-three.”²⁵

It is clear that, ultimately, the prerogative to declare any building, or enclosure or place to be a prison or not, squarely resides in the minister.²⁶ This should be understood to be the minister of home affairs under which portfolio prisons department falls.

2.4 HISTORICAL PERSPECTIVE OF PRISONS

There is need to examine what kind of penal system, if any, existed amongst the African people. And if so, whether the system had due regard for the prisoner. Or whether at all there existed a semblance of humane treatment of the offenders. This examination of the situation as it subsisted in the African setting is necessary in order to evaluate how far penitentiary has progressed in the humane treatment of wrong doers.

2.5 PRE-COLONIAL ERA

Before the coming of the white settlers indigenous people practiced African customary laws through their own system of courts.²⁷ These traditional courts had power to inflict death penalty and flogging.²⁸ In addition they had power to award compensation.²⁹

²⁴ Prisons Eagle Magazine Vol, 1, 2003; “Foreword” by Commissioner of Zambia Prisons Service p1.

²⁵ Prisons Act, cap. 97, S. 2.

²⁶ Ibid, S. 3.

²⁷ John Hatchard, Muna Ndulo Readings in criminal law and criminology in Zambia, Multimedia , Lusaka(1994) p1.

²⁸ Max Gluckman, Judicial process among the Barotse of Northern Rhodesia, Manchester University Press, Manchester (1967).p. 3.

²⁹ Opcit.

The nature of punishment differed according to different tribes, at least slightly, and depending on the seriousness of the offence. Non-fatal offences such as adultery, theft and assault were generally dealt with by means of compensation, and restitution in the case of theft. Witchcraft and theft of cattle were regarded very serious. These were met by death penalty.³⁰ The method of carrying out the death sentence varied. In some tribes the offender was burnt, in others he was hung, by being pulled upwards, thus resulting in death by strangulation.³¹

Homicide was often dealt with by means of compensation.³² The Ila, for instance, considered every member of the community to have a value. Therefore, to kill a man because he has killed another was ridiculous. It would only result in making a big hole in the community, and the question is why do it? It was preferred that such a wrong doer was better fined and let to live, unless he was a veritable danger to others.³³ Among the Bemba too, there was a more humane and amicable tradition of settling homicide.³⁴ In contrast, however, an assessor in another case rendered position of customary law susceptible to misadventure.³⁵

2.6 COLONIAL EPOCH

The beginning of the British prison structure in Zambia has a chequered history. Information on the theme is scanty.

However, the commencement of the English penal system can be traced as far back as 1899, when the British government issued the Barotseland (North-western Rhodesia) order in-council

³⁰ Ibid, p 3.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid; Sikasonde V. Malanational archives, KDHI/I. Decided in 1904 in the Native Court of Kasama. The assessors stated that according to old Bemba law, if a man killed another man's relative, the case could be settled by giving his daughter to the relative of the deceased to marry. This was done.

³⁵ RV. Ndhlovu 5 NRLR 298: He stated that, "it is the duty of a husband to carryout some form of punishment upon an erring wife, if death results from the beating it would merely be regarded as misadventure."

which gave the British South Africa company administrative powers over Barotseland.³⁶ Following from the proclamation of the preceding order-in-council, authority was given for the establishment of the Barotse Native police. The latter was empowered, among other things, to adopt such measures as may be necessary for the safe custody and conveyance of all prisoners.³⁷

In may, 1900, the North-Eastern Rhodesia order-in-council was proclaimed. It provided for the formation of a police force which was formally established in 1904.³⁸ It became known as the North-Eastern Rhodesia constabulary.³⁹ Among its duties was to guard native prisons. In 1912 a further proclamation was decreed for the establishment, Superintendence and control of prisons as well as the maintainance of their discipline.⁴⁰ That same year on 30 December, further rules and regulations were promulgated for the government and maintainance of prisons in Northern Rhodesia.⁴¹ It included a definition of 'prison' and 'prisoner' which were couched in terms wider than the current definition. A prisoner, for instance included a convicted person whether actually detained or lodged in any prison or not.⁴²

2.7 BEGINNING OF CONGESTION OF INMATES

The problem of congestion of inmates in Zambian prisons is an old tale. It dates back to colonial times.

In January, 1964, the total prison population recorded under the Northern Rhodesia prisons service was 5092, and at that time prisons had no capacity to accommodate such a number.⁴³ That same year it was observed by the prisons establishment that overcrowding in the prisons

³⁶ Mumbuwa Jethro. K, The Historical profile of Zambia Prisons Service. P 1.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Gazette No. 11 of No. 1912; Proclamation No. 14.

⁴¹ NRG gazette No.14 of 1912; Government notice No. 62 of 30 December, 1912.

⁴² Ibid.

⁴³ Supra, The historical profile of Zambia prison service, p. 9.

was a source of great concern. The congestion was basically due to the large number of remandees. Necessities such blankets, clothing and other equipment were practically non-existent.⁴⁴ At the time, neither was segregation nor classification of prisoners possible.

2.8 POST-COLONIAL ERA

Prison administration changed hands from colonial command to the Zambian government. This fact is also reflected in change in nomenclature.

On 23 October, 1963, the Northern Rhodesia Prisons Service was finally dissolved to give way to the Zambia Prisons Service which was established on 24 October, 1964⁴⁵.

2.9 VISION OF THE ZAMBIAN PRISON SERVICE

In light of deplorable prison conditions,⁴⁶ which characterised the prison establishment, from historical times to date,⁴⁷ it is inevitable to explore into the question of prison service vision for the establishment. This is so because under deplorable conditions rights of prisoners can hardly be upheld.

It is, therefore, vital that prison service has a vision which would, among others, redress the problem faced by inmates to halt erosion of their rights.

The prison service vision can be established from policy statements of the government and partly the goal statement by prisons service. As far back as 1974, President Kaunda called for a

⁴⁴ Ibid.

⁴⁵ Ibid, see too: Prisons Eagle Magazine, Vol: 1, 2003: "How Zambia Prisons Service was born". P11.

⁴⁶ The post newspaper, No. 2367, April 10, 2003 "I am coping well in prison". Minister of Home Affairs Lt General Shikapwasha has deplored the condition of the prison and assured inmates that government was doing everything possible to improve the situation.

⁴⁷ Supra, The Historical profile of Zambia Prisons Service, p. 9.

revolution in the Zambia penal system.⁴⁸ Proposed changes included the following: Prisoner's education; trade; training; abolition of the name prison; the introduction of an effective and systematic post prison-care. Putting the position of the prisoner from a humanist perspective, Kaunda stated more succinctly as follows⁴⁹:

“in our endeavour to create a humanist society, it is important to us too remember that, it is a duty of every Zambian to help the party make the Zambian revolution as success. Historically, prisons throughout the world were primary intended as places for punishing social misfits. However, in our philosophy of humanism, we reject the concept of punishment. We do not believe in punishing people for the sake of punishment. We believe in reforming them.”

It remains to be seen from the practice in the prisons service how far the preceding proposals have been implemented.

Further to the foregoing the vision of the prisons service is clearly reflected in their goal statement, which is as follows:

“To effectively and efficiently provide and maintain human custodial and correctional services to inmates and to increase industrial and agricultural production in order to contribute to the well being and reform of inmates and maintainance of internal security”.⁵⁰

To contribute to the well being of the inmates inevitably entails among other things, the upholding of human rights of prisoners such, as the right to life, to work, and to education, to mention only a few.

2.10 EX-PRISONER CARE

To be a prisoner is undeniably to assume different social status in society. One that goes with a stigma which society views with suspicion and revulsion. When a prisoner is discharged, comes out of the gate of the prison walls he certainly cease to be a serving prisoner. But he ceases not

⁴⁸ Ibid, p 11.

to be a prisoner since, now, he is referred to as an EX-PRISONER. With this stigma he is unlikely to find employment or other alternative means of earning a living. What happens, then?

This portion, therefore, is concerned with what happens to a prisoner after he is discharged. It examines his survival prospects with regard to ex-prisoners care organisations. These are non-governmental. There are mainly three such organisations in Zambia. They are summarised below.

i. Zambia Ex-prisoners Rehabilitation and Concelling Trust (ZEPRACT).

The organisation was established in 1996 and has its headquarters at Kabwe. It has a Chief coordinator⁵¹ and a deputy Chief Coordinator⁵², among its executive staff. The object of the organisation is to provide counselling to prisoners both whilst serving and after they are discharged, and to resettle them to society. To realise its objective ZEPRACT offers training programmes to Ex-prisoners to equip them with skills necessary for self reliance and sustainability.⁵³

The position of ZEPRACT is that the official aim of a prison system should be to encourage and assist prisoners to lead a good and useful life. And that, this goal could only be achieved if the prison system adopted “positive custody”. The latter comprises the following principles: Humane regime, which includes decent living conditions, physical exercise, purposeful activities, association and food; Reasoned explanations for all decisions that affect individual prisoners; fair procedures for dealing with prisoner’s grievances and perceived misbehaviour; security control and justice; and, reasonable conditions and satisfactory relationships.⁵⁴

⁴⁹ Kenneth Kaunda, *Humanism in Zambia*, Part II, Multimedia Publications, Lusaka (1993), P27.

⁵⁰ *Supra*, *Prisons Eagle Magazine*, P 1.

⁵¹ Musheke Kakuwa, Also lecturer at UNZA.

⁵² Emma nuel Malubila, also tacher and student at UNZA in Adult Eduction.

⁵³ *Ibid*.

⁵⁴ ZEPRACT, *Narrative report on the social skills training for prisoners’ Third phase*, September

In Zambia today as in the rest of the world, fewer people if any would support programmes that seek to improve the lot of the prisoners. The reasons are obvious. One of them is that prisoners are simply offenders who deserve to be punished. This is echoed by the American Bar Association on the legal status of prisoners as follows:

“That extensive debate ensued was attributable partly to the inherently controversial nature of the subject and partly to the deep-seated concerns voiced by a number of delegates who viewed some of the forward-looking standards as philosophically irreconcilable with the responsibilities of prison administrators order to maintain institutional order and security.”⁵⁵

Indeed, and subject on improving prisoners rights or provision of care to ex-prisoners is likely to be met with strong opposition. This is mainly, because as explained above, its very nature is inherently controversial. But this fact should not be permitted to pervade and blind society so as to fail to realise the overriding necessity and advantage of uplifting the status of prisoners and caring for them. Society must rise to the stupendous challenge of objectivity to break up the virtuous cycle of recidivisms. As was observed again by the ABA as follows:⁵⁶

“The standards relating to the legal status of prisoners were not included when the original criminal justice standards project was conceptualised and its volumes planned in 1963. The virtual absence of prisoner-rights litigation and dearth of publications about problems in corrections at that time generated no need for bar leadership to provide guide lines in the area. However, the decade of the seventies brought a profusion of prison litigation and an explosion of corrections problems. Thus, standards relating to prisoner’s rights now are not merely desirable; they are essential.”

It goes without saying that the work of ZEPRACT establishes a new chapter in Zambia which recognises the fundamental need to rehabilitate the prisoners and help them assimilate into society. Hence, conferring upon the prisoners new status. The range of training activities given to ex-

2003, P. 1.

⁵⁵ James George, B. Jr, American Bar Association, standards for criminal Justice, legal status of prisoners, Little, Brown and Company, Boston (1983), p. 23.5.

⁵⁶ Ibid, PP, 23.3-23.4.

prisoners varies from one prison to another. ZEPRACT operates only in five centres country wide. These are as below.

- i. Kamfinsa Female Prison. This is based in Kitwe. The skills offered are:
Tailoring; Tie and dye and batik; Food processing and cooking; simple Home Management economics; psycho-social and HIV/AIDS counselling services; and health and HIV/AIDS Education.
- ii. Kamfinsa Central (Males) prison. It is also based in Kitwe. It offers training in Carpentry and Ceramics.
- iii. Katombola Reformatory School. This one is located in Livingstone. It is the only juvenile Reformatory male school in the country. The law provides for establishment of Youth Corrective Centres, thus:⁵⁷

1. The minister may, by Gazette notice, declare any building, enclosure or place, or any part thereof, to be a youth corrective...No prisoner other than a person sentenced to corrective training in a youth corrective centre... shall be detained in such centre.”

This means that government cannot be constrained or be overborne by the increased population of juveniles since the law confers discretion upon the minister simply by the stroke of the pen to declare any building to be corrective centre. Obviously, in practice other factors have to be considered.

Nevertheless, Katombola reformatory school offers a good range of courses, namely: Agriculture; carpentry; plumbing and welding-simple metal fabrics; brick laying; and, Psychosocial and HIV/AIDS counselling services.

⁵⁷ prisons Act Cap 97, S. 133. See also Juveniles Act, cap 53, S. 91. “The minister may, by statutory notice-
(a) establish reformatories;

- (iv) Mukobeko Female Prison. It is situated in Kabwe. It happens to be the biggest female prison in the country. Its counterpart is Mukobeko maximum (male). The skills offered are similar to those under Kanfinsa Female Prisoner with the exception of health and HIV/AIDS education which is not offered by Mukobeko female. And in the case of food processing under Mukobeko it includes a component of oil extraction. The table⁵⁸ in Appendix B shows the number of inmates who were counselled and trained since inception of the organisation.

The figures in the table are an indicator of some measure of success. The organisation would like to do more and especially to widen its coverage in the country. The efforts to expand are hampered by dwindling resources. In fact the training programmes alluded to above were conducted with the financial support from the Norwegian embassy. More could be done to pool resources both locally and from abroad. ZEPRACT has ventured into a cause of justice to the need and one of great nobility, and so must be encouraged to plot on.

There are two other similar organisations. One is "Prison Fellowship." It suffices to point out that the fellowship is engaged in counselling and provision of materials such as books to prisoners, including refurbishing prison libraries. It is located in Kitwe. The other is the "Good Samaritan". It provides training mainly in carpentry. This organisation came into being between 1994 and 1995. and is based in Kabwe.

⁵⁸ (b) declare any reformatory or any part thereof to be a receiving centre. "This is to be a receiving Centre-S.2. Supra, note 41. P. 5.

CHAPTER THREE

3.0 PRISONER'S RIGHTS

This chapter will discuss prisoner's rights drawn from human rights, standard minimum rules and local legislation. It will also deal with the appropriateness of the death penalty.

3.1 HUMAN RIGHTS

The term human rights means a collectivity of all those rights that are inherent in a human being and which are inalienable, indivisible, interdependent and universal.⁵⁹ Hankin defines human rights as follows:

“ Those liberties, immunities and benefits which by acceptable contemporary values, all human beings should be able to claim as of *right of the society in which they live.*”⁶⁰

According to Dowrick, F.E the definition is as follows:

“ Human rights are those claims made by men, for themselves or on behalf of other men, supported by some theory which concentrates on the humanity of man, on man as a human being, a member of the human kind.....”⁶¹

Therefore, because of their versatility human rights apply universally to all human beings the world over.

Consequently, a prisoner though a prisoner is nevertheless a human being. Therefore he is entitled to universal human rights, subject of course, to some exceptions such as the limitation on the right to freedom of movement. And in some cases the right to life is made subject of qualification.⁶² Indeed, all human beings are born free and equal in dignity and rights.⁶³

⁵⁹ Peter Jones, *Issues in political theory: rights*, Mac Millan Ltd, London, p13.

⁶⁰ Oji Muzurike, *The African charter*, Wallenberg Institute, Lund, (1977) pp 3-4

⁶¹ Ibid

⁶² International covenant on civil and political rights (ICCPR), art. 6. See also constitution of Zambia, art 12.

They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁶⁴ Such a spirit negates that of “a tooth for a tooth” or “an eye for an eye.” Instead it entails that when a person becomes a prisoner, his treatment falls under exception to his human rights. Nonetheless he still retains his dignity and worth as a human being. The stipulation is that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.⁶⁵

Therefore, it is submitted that a prisoner may seek to defend and protect his human rights on the basis of universal human rights which are understood, among other things, to be inalienable and applicable to all human beings. Additionally, those seised with the responsibility of looking after prisoners should be fully appraised with and well aware of the fact that universal human rights such as the right to life,⁶⁶ except for those under death penalty, which is subject of exception the right to health⁶⁷ and generally, the right to human dignity are due to prisoners as well.⁶⁸

In analysing the arguments for recognition of the rights of prisoners, Stephen Livingstone, concludes, that human rights are distinct from civil rights, and are applicable to every one by virtue of their humanity. The whole idea of human rights is that we have them by virtue of being human beings: while they may be restricted they cannot be lost.⁶⁹

The very idea of making some of these rights in international treaties non-derogable, notably the prohibitions on torture or arbitrary killing, is to remove the notion that some people are

⁶³ Compendium of United Nations Standards and norms in crime prevention and criminal justice UDHR, Art 1, United Nations, New York, (1992), P242

⁶⁴ Ibid

⁶⁵ International Covenant on Civil and Political Rights, Art. 10

⁶⁶ Ibid, art. 6

⁶⁷ International Covenant on Economic, Social and Cultural Rights, art. 12

⁶⁸ UDHR, art 1, Not binding on member states

⁶⁹ Interights Bulletin, A review of the international centre for the legal protection of human Rights: Prisoners rights by Steven Livingstone Vol. 11, (1977) p 133

beyond the pale because of what they have done.⁷⁰ Instead, states which have committed themselves to human rights agreements must operate in a way which grants these rights to all and, when restrictions are justified, as many are in the case of prisons, seek to keep these to minimum to protect the legitimate interests of others.⁷¹

There are obvious ramifications for restating the importance of human rights. It means, *inter alia*, for instance, that if there is a high incidence of death or illness of inmates due, say, to contagious diseases or as a result of unsanitary prison conditions or other such like, then, such incidences would be held to be a violation of prisoners' rights by the authorities concerned.

In most parts of the world imprisonment does not mean to be detained in life threatening conditions or give the prison authorities licence to mistreat them. Deprivation of liberty is the designated punishment, and while the courts leave the prison authorities some discretion as to the regime they prescribe for someone during their time in prison, this surely cannot be one which inflicts worse treatment, in the form of torture or death.⁷²

3.2 INTERNATIONAL HUMAN RIGHTS STANDARDS FOR PRISONERS

The most comprehensive instrument, perhaps, at international level, on the rights of those in prison remains the united nations Standard minimum rules on the treatment of prisoners (SMRs), drawn up as long ago as 1955.⁷³ The SMRs cover a wide range of aspects of imprisonment including accommodation, hygiene, health care, education, discipline, access to the outside world and the powers and duties of prisons staff. The rules are not intended to

⁷⁰ Ibid, p. 136

⁷¹ Ibid

⁷² Ibid

⁷³ Goran Melander, The Raoul Wallenberg compilation of human Rights instruments, Gudmundur Alfredsson, Martinus Nijhoff publishers, the Hague p 457

describe in detail a model system of penal institutions.⁷⁴ Rule 1 indicates they seek only to set out what is generally accepted as being good principle and practice in the treatment of prisoners, while Rule 2 indicates that it is accepted that not all of the rules are capable of application in all places and at all times.⁷⁵

Nevertheless, they contain a wide range of provisions protective of prisoners' interest. For example, they provide that every prison shall have available at least one qualified medical practitioner, that every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health; that prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.⁷⁶

However, in a number of respects the standard minimum rules are clearly in need of updating; for example there are no specific provisions on women prisoners, family visits are permitted at 'regular intervals' without a specific number per week or month and there is no requirement that prisoners receive an equivalent level of health care to people outside a prison. Nonetheless, they remain a very useful benchmark. In fact, in Zambia the standard minimum rules were evidently acknowledged, at least by one prison officer in a document in which the same were reproduced.⁷⁷ The Zambian government itself acknowledged the critical need to adhere to the UN Standard minimum rules, at least in recent times.⁷⁸

It is key that the standard minimum rules must now be read in conjunction with the 1988 UN Body of principles for the protection of all persons under any form of detention or imprisonment

⁷⁴ Nigel Rodley, *the treatment of prisoners under international law* Clarendon press, new York, (1987), p 327

⁷⁵ Ibid

⁷⁶ Opcit, p 459: Standard minimum Rules for the treatment of prisoners; rules, 22, 17, 15

⁷⁷ Jethro Mumbwa K. Extract of United Nations rules, for the treatment of prisoners, prison Headquarters, Kabwe, (1993), p. 1

and the 1990 basic principles for the treatment of prisoners.⁷⁹ Although the body of principles is not confined to imprisonment (It clearly extends to detention in police cells or immigration detention centres) it has much to say of relevancy to the treatment of prisoners. It improves on the guarantees of the standard minimum rules, for example by providing for confidential communication between prisoners and their lawyers; that all prisoners shall have the right to take part in cultural activities and education aimed at full development of the human personality, and providing for conditions to be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their re-integration into the country's labour market.⁸⁰ in addition, they make provision for a prisoner to have a right to make complaints to a judge or other external body without the risk of disciplinary sanction for doing so.⁸¹

Other UN sponsored codes which are relevant to particular groups of prisoners or particular aspects of imprisonment include the 1990 UN rules for the protection of juveniles deprived of their liberty and the 1982 principles of medical ethics on the role of health personnel in the protection of prisoners.

The standard minimum rules together with the UN Body of principles for the protection of all persons under any form of detention or imprisonment are 'Soft Law' provisions, which are not binding on states, even at the international level. Zambia, being a member state of the United Nations is under persuasion to apply these rules and principles.

As regards binding international treaties it is clear that there is no specific international convention on the treatment of prisoners. But, perhaps, the international covenant on civil and

⁷⁸ Governance, National capacity building programme for good governance: Prison conditions, P. 15

⁷⁹ Interights, a review of the international centre for the legal protection of human rights: International Human rights Standards and Prisons, by Stephen Livingstone, P 136

⁸⁰ United Nations office at Vienna, Compendium of United Nations Standards and norms in crime prevention and criminal justice, United Nations, New York (1992), P 112

⁸¹ Opcit

political rights deserves mention here, on the issue of imprisonment. It provides, inter alia, that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation, and that juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.⁸²

Clearly, therefore, besides local legislation which will be dealt with below, there is a catalogue of rules and principles at international level that are available to Zambia for ameliorating the status of prisoners and prison conditions. As will become clearer in due course, the blame on the lack of appropriate legislation or rules as among the factors for poor prison conditions is misconceived, and often a lame excuse for not promoting reformation and rehabilitation of prisoners and generally improving prison conditions.

3.3 THE RIGHT NOT TO BE SUBJECTED TO TORTURE OR TO IN HUMAN OR DEGRADING OR OTHER LIKE TREATMENT

This is a constitutional right to which every person is entitled, and is non-derogable since no exception is provided. The right is provided as follows:

“A person shall not be subjected to torture, or to inhuman or degrading punishment or other like treatment.”⁸³

It is not debatable that a prisoner is a person. Therefore, a prisoner is entitled to the preceding constitutional right. Interestingly, this constitutional provision is couched in language similar to that of article 3 of the European convention on human Rights, which prohibits ‘torture or inhuman or degrading treatment or punishment’.⁸⁴ In 1972 the Tyrer case,⁸⁵ brought before the European Commission of human Rights, provided an opportunity to test the compatibility of

⁸² ICC PR, article 10 (3)

⁸³ Constitution of Zambia, Cap 1, Art 15

⁸⁴ Nigel Rodley, *The treatment of prisoners under international law*, Clarendon press, New York (1987) p 249

⁸⁵ *Tyrer v United Kingdom*, Application no. 2856/72 Report of the Human Rights, 14 Dec, 1976

judicially ordered whipping with article 3 of the convention.⁸⁶ In that case a school boy was convicted of assault occasioning actual bodily harm, and sentenced to three strokes of the birch. It was held by the ECHR,⁸⁷ on the merits of the case, that, “judicial corporal punishment constitutes a breach of article 3 of the convention.”⁸⁸ The ECHR upheld the decision of the commission concluding that corporal punishment was degrading. But it was not determined whether corporal punishment could also amount to inhuman treatment or punishment.

However, the decision in the Tyrer case was atoned in Zambia in recent times in the Landmark case of *John Banda v The people*⁸⁹ which outlawed corporal punishment in Zambia. Similarly, it involved corporal punishment. Chulu, J held that corporal punishment was inhuman, cruel and degrading and thus it contravened article 15 of the constitution.⁹⁰

In the light of the foregoing conclusion it may be argued by analogy that besides corporal punishment, the deplorable and peculiar prison conditions, if proved can amount to degrading, cruel or inhuman treatment or punishment. The argument towards this conclusion seems more persuasive and being in line with sound logic. In April this year Commissioner of prisons⁹¹ informed minister of home affairs that one prison cell meant for ten was now accommodating ninety prisoners. This means not just twice or thrice more, but nine times more than the normal capacity. The Commissioner, further told the minister that prisoners slept in a line and they all faced in one direction. “When one shouts let us turn to the left, they all turn and at times they do not even sleep,” he explained.⁹²

European court of human Rights, series B, No. 24

⁸⁶ European convention on human rights

⁸⁷ European court of human Rights

⁸⁸ *Op cit*

⁸⁹ The Times of Zambia, Ndola, 30 November, 1999.

⁹⁰ Constitution of Zambia

⁹¹ The Post, No. 2367, Thursday, April 10, 2003, “I am coping well in prison, Chungu.”

⁹² *Ibid*

There is no decided case at hand yet directly on the issue whether deplorable prison conditions can constitute degrading or cruel or inhuman treatment. But it is submitted that given the ratio decidendi in the John Banda case, and going by analogy, there seems no reason why the court cannot come to a similar conclusion. The onus is upon the prisoners to stand up to their rights. As the maxim goes “equity protects the vigil.” At the same time it ought to be appreciated that our court system, like any other civilised legal system, is such that the court cannot make a pronouncement of law or a declaration of right unless a motion was moved or the Judge was jolted, so to say.

It is therefore all the more important for the betterment not only of the prisoners, but of society in its entirety, that prisoners rights are implemented. After all, if prisons are left to be breeding grounds for disease such as tuberculosis (T.B) this would have serious repercussions for the rest of society.⁹³ In June, this year, the Commissioner of prisons Jethro Mumbuwa observed that T.B, in jails was severe to the extent that even the staff were being affected.⁹⁴ Naturally, the afflicted staff will inevitably come in contact with their families and friends. Similarly prisoners who are discharged have free social intercourse with family members and or friends as the case may be. Clearly, the whole society is threatened with affliction from tuberculosis. Hence the need to redress prison conditions is one of public interest and matter of priority.

3.4 RIGHT TO LIFE: APPROPRIATENESS OF THE DEATH PENALTY

The right to life when viewed against death penalty becomes a matter for controversy. The persistence of capital punishment remains a glaring contradiction in terms of restating the sacredness of human life. Paradoxically, it is because of that very sanctity and its irreplaceability that form the basis that one who takes away another’s life should likewise have

⁹³ Zambia Daily Mail, Vol 7 No. 154, June 28 2003: ‘Consider sending ARVs to prisons, state told’
“My staff especially at prisons in Lusaka were dying from T.B related diseases because of their involvement in looking after the inmates.”

⁹⁴ Ibid

his equally taken away. But in fact in terms of logical analysis the preceding situation remains within the confines of revenge or vengeance.

Ironically, the contradiction often eludes the commonsense that is sufficiently necessary to attain to a civilised legal system that bases its sentences on objective and reasoned principles as opposed to desire for revenge or vengeance.

The right to life is inherent in every human being and, inter alia, inalienable. It was described as the supreme right.⁹⁵ In Zambia the right to life is as much a constitutional right as it is a human right of every one.⁹⁶ Paradoxically the constitution makes provision for death penalty.⁹⁷ A person shall not be deprived of his life intentionally except in the execution of the sentence of a court in respect of a criminal offence under the law of which he has been convicted.⁹⁸ Similarly, as also a human right, it is expressed more comprehensively in one international instrument which Zambia ratified in 1984⁹⁹ including the First optional protocol, as follows:

“1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life:

2. ...

3. ...

4. Any one sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.”¹⁰⁰

Noteworthy is that the right to seek pardon or commutation of the sentence is made mandatory under the above covenant.¹⁰¹ But under our constitution the same is made not a right of a

⁹⁵ General comment No. 6 UN Human Rights Committee, 27 July, 1982, UN Doc. HRI/GEN1/Rev, 3, 6 – 7.

⁹⁶ Constitution of Zambia, art. 12.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Government of the Republic of Zambia, Governance: National Capacity building programme for good Governance in Zambia, (April, 1999) P79.

¹⁰⁰ ICCPR, art 12.

¹⁰¹ Ibid.

prisoner; rather a prerogative of the president.¹⁰² The latter has discretion whether or not to grant a pardon or respite¹⁰³. There is an advisory committee which is mandated to proffer advice to the president on the exercise of his prerogative of mercy¹⁰⁴.

It is evident from the foregoing that both the international covenant on civil and political rights and our constitution possess inbuilt mechanisms which provide inertia in the execution of the death sentence. One reason, perhaps, for this inconclusiveness embedded in the death penalty is that the modern conscience is increasingly rejecting capital punishment as an irreversible and therefore unacceptable denial of the individual right to life.¹⁰⁵

3.5 INAPPROPRIATENESS OF THE DEATH PENALTY

Death penalty is deep rooted in human society and it dates back to times immemorial. The Bible shows that during the old covenant (testament) God had given power to Judges and magistrates to impose, inter alia, a death sentence.¹⁰⁶ Evidently the crucifixion of Jesus Christ serves as a common example of public execution of a death sentence (note that Banabars was saved from execution by the fluke of a Jewish Passover custom).¹⁰⁷ And in it too lies the danger inherent in the death penalty of the possibility of executing an innocent man.

In Zambia the death penalty is not only peculiar to the modern penitentiary system. It existed in the traditional system.¹⁰⁸ It is believed that a place known as Libonda in Kalabo of Western province was so named because persons who were sentenced to death were killed by twisting (Kubonda in Lozi) their neck or simply strangling.¹⁰⁹

¹⁰² Constitution of Zambia, art 59.

¹⁰³ Ibid.

¹⁰⁴ Ibid, art, (60(1).

¹⁰⁵ Nigel Rodley, The treatment of prisonery under international law: see preface thereto.

¹⁰⁶ Holy Bible, KJV, Ezra 7:25-26.

¹⁰⁷ William Neil, The Bible Story, William Collins Sons and Co, Ltd, London (1971), PP 183-184.

¹⁰⁸ Max Gluckman, Judicial process among the Barotse of Northern Rhodesia, Manchester University Press (1967), P. 3.

¹⁰⁹ Sifuwe, Mubyana Commissioner of prisons in response during interview at Kabwe, on 24th June, 2003.

The problem of death penalty remains one of eternal controversy. It is a matter of great public concern the world over. It will be shown that despite the ingenuity of the argument in favour of the death penalty, there is nonetheless, a wealth of insurmountable evidence that it does not accord with the modern conscience¹¹⁰, it is irreligious and unorthodox.¹¹¹ It is clear and distinct that killing of a human being whether done by any person or the state goes counter to the universal right to life. From the horse's mouth, one prisoner put the point crystal clear as follows:

“It is wrong to commit crime. But it is wrong to execute a criminal.”¹¹²

The jurisprudence of the Ila people of Southern province put the matter philosophically by posing question:

“you kill a murderer, why cause such a big hole in the community?”¹¹³

According to them a wrong doer in this case a murderer was better fined and let to live, unless he was believed to be a real danger to others.¹¹⁴ It is evident from the Ila traditional thinking that capital punishment did exist. What is interesting is that, generally, a wrong doer was not to be condemned to death unless, in exceptional circumstances, where he is found to be a real danger to others. This sort of rationalisation, it is submitted qualifies to be objective. Notably, this objectivity can be discerned in both the constitution and the international covenant on civil and political rights. It manifests itself in the form of a pardon.

¹¹⁰ Supra, note 26, See Preface thereto.

¹¹¹ The Post, No. 2538, Monday, Sept, 29, 2003: “international news, Pope John Paul stood against death sentence. Rigali a college cardinal, formally archbishop of St. Louis publicly condemned the death penalty.

¹¹² Joseph Chimbala, A condemned prisoner during interview at Mukobeko on 25 June, 2003, he admitted killing his victim by shooting. He was aged 50, and had been on death row for ten years.

¹¹³ John Hatchard, Readings in criminal law and criminology.

Muna Ndulo, in Zambia, Multimedia publications, Lusaka (1994), P.3.

¹¹⁴ Ibid.

In Zambia, for example up to 1991 no less than 200 prisoners had been condemned to death but not executed¹¹⁵. Earlier on Musakanya, Shamwana and three others had their death sentences commuted.¹¹⁶ The last executions so far were carried out in 1997 involving eight condemned prisoners.¹¹⁷ But that at the time they were executed they had been converted, and God had forgiven them.¹¹⁸

3.6 VIOLATION OF RIGHT TO LIFE

The right to life has properly been characterised as the supreme human right.¹¹⁹ Nelson Mandela, one of the longest serving prisoner (27 years at Reuben Island), and ironically one who became the first black African president of South Africa, and perhaps the only president in the world who stuck to only one term of office (lasting four years), believed that the death penalty was barbaric.¹²⁰ In the Landmark Judgment in the case of *The State V. Makwanyane and Mchunu*,¹²¹ the constitutional court of South Africa decided that the death penalty was incompatible with the prohibition against cruel, inhuman or degrading' punishment. The court further held that, it was also incompatible with a 'human rights culture' which made the rights to life and dignity the cornerstone of the constitution.¹²²

Amnesty international made the following observation:¹²³

“In the same era that humanity reaches into space, countless people are being shot, gassed and hanged by their own governments. Judicial killing

¹¹⁵ Amnesty international, Amnesty international report, Amnesty international publications, London, (1991), p 28.

¹¹⁶ Amnesty international, when the state kills The death penalty V. Human rights, Amnesty international publications, London (1989) pp 237 – 238.

¹¹⁷ Joseph Chimbala, condemned prisoner during interview at Mukobeko Maximum prison on 25 June, 2003.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ General comment No. 6, adopted by the UN Human Rights committee, 27th July, 1982, para – 1.

¹²¹ Roger Hood, *The Death penalty: A world wide perspective*, 2nd edn, Clarendon press. Oxford, New York (1996), pp 28 – 29.

¹²² Ibid, Case No. CCT/3/94. Reported in the international Herald Tribune, June 1995.

¹²³ South Africa constitution.

lingers on as a state sanctioned practice, violating the most fundamental human rights.”

Like killings which take place outside the law, the death penalty denies the value of human life. By violating the right to life, it inevitably removes the foundation for the realisation of all rights enshrined in the universal declaration of Human Rights.¹²⁴ It is no doubt incontrovertible that the right to life, besides being at the apex of all other universal human rights, is indivisible and inalienable, which means that not even the owner or the beholder of the right to life can partition it. Neither can he opt to dispense with it. It is the most fundamental right from which all other rights draw inspiration. In recognising the right to life the Human rights committee set up under the international covenant on civil and political Rights observed as below:

“The right to life ... is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation...”¹²⁵

In a general comment¹²⁶ on Article 6 of the covenant,¹²⁷ the committee concluded that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life within the meaning of Article 40.¹²⁸ In one notable case the supreme court of Canada held as follows:¹²⁹

“Capital punishment is prohibited in Canada... The death penalty is per se a cruel and unusual punishment. It is the ultimate denial of human dignity. No individual can be subjected to it in Canada.”

¹²⁴ Amnesty international, when the state kills....., Amnesty international publications, London (1989) preamble.

¹²⁵ Ibid, pp 2 – 3.

¹²⁶ Ibid, p3.

¹²⁷ Infra.

¹²⁸ General comment No. 6, adopted by the UN Human Rights Committee, 27th July, 198, para – 6.

¹²⁹ Re Kindler and minister of Justice, (1991) 67 S.C.C. 3d1.

One point ought to be driven home. This is that, the fact that a particular country has abolished the death penalty does not mean that murderers or wanton killers or indeed those who commit serious crimes are to be let scort free. Far from it. There is clearly available alternative punishment which, viewed objectively, should be adequate and sufficiently punitive. This is imprisonment for a period considered to be appropriate.

Zambia is of course a retentionist country in the sense that it is among the countries that still retain capital punishment. It ought to be put on record however, that international behaviour is tending towards the abolition of the death penalty. Under the international covenant on civil and political rights there is the second optional protocol which provided for abolition of the death penalty.¹³⁰ All member countries are at liberty to ratify the protocol. Zambia has not yet ratified although it has signalled a willingness to work towards the ratification of, or accession to, the second optional protocol by continuing dialogue on the need to abolish the death penalty for serious crimes.¹³¹

From all the foregoing it is brought to light, that capital punishment is inappropriate for Zambia. There seems no good reason or justification why alternative punishment should not be explored. The existence of the provision for a pardon or prerogative of mercy in our constitution as well as in the international covenant on civil and political rights is only indication of the prevailing inertia in carrying out the death sentence. But is not a sufficient safeguard in the protection of the supreme and most fundamental right, the right to life. Over the years and especially through the instrumentality of the law the right to life has been undervalued. Though to a greater extent the law upholds the right to life. There is need to go a little further to abolish the death penalty.

¹³⁰ Adopted and opened for signature, ratification and accession by the General Assembly

3.7. THE RIGHT TO WORK FOR REMUNERATION

The right to work falls under the sphere of economic, social and cultural rights. These rights are equally important to the well being of every individual as well as to their survival. Gainful employment, whether it be engaging in physical work or intellectual pursuit is not only cardinal, but sufficiently necessary for a purposeful, meaningful and health life of every individual who is entitled to work. It is also vitally good for society in its entirety.

It remains to be seen how the right to work is crystallised in the law. Support is availed by the international covenant on Economic, social and cultural rights (ICESCR), the constitution of Zambia and the prisons Act.¹³²

(a) PROVISION UNDER THE CONSTITUTION

Under the constitution economic, social and cultural rights are provided by way of what is known as the directive principles of state policy. Among them is one relevant to the right to work. It reads as follows;

“The state shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment.”¹³³

As can be construed from the foregoing the provision is inclusive of all citizens. No doubt prisoners too. The fact that a person has become a prisoner is no justification for the state to abdicate its constitutional responsibilities.

However, there is need to delineate the issue of justiciability of the directive principles of state policy. The actual provision runs as hereunder.

“The directive principles of state policy set out, in this part shall not be justiciable and shall not thereby, by themselves, despite being referred to as

of the United Nations, resolution 44/128 of 15 December, 1989.

¹³¹ Government of the Republic of Zambia, Governance; governance in Zambia, (1999), pp 79 – 80.

¹³² CAP, 97.

¹³³ Constitution of Zambia Cap 1, Art, 112 (C.)

rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.”¹³⁴

Two views at any rate arise from the construction of the above provision. The one is that, as the marginal notes indicate, the directive principles of state policy are not justiciable. In that case it would be a misnomer to even call them as rights. And it seems a futile exercise to set off with all the rigour to attempt to provide rights which are not rights at all. The other view is that they are legally enforceable to some extent, provided the clamant can show he is not claiming the right by itself, but rather in addition to it. For example if a person is qualified as a doctor or a teacher but cannot be employed, he can use his qualification as a basis to claim his right to work. So too a prisoner, he can use the fact that, he is able to provide labour skilled or otherwise, coupled with the fact that apart from the need to earn a living after serving his sentence there may be need to provide for his family.

There is no case yet on the matter that has come before our courts. Therefore, it is submitted that a liberal rather than a restrictive approach to the provision is preferable as it is likely to yield results which are compatible with democratic tenets such as holding the governors accountable to the governed, and not only vice versa.

(b) INTERNATIONAL LEVEL

The right to work is widely acclaimed at international level. The covenant¹³⁵ provides as follows:

1. “The states parties to the present covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right;
2. The steps to be taken by a state party to the present covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and

¹³⁴ Ibid.

¹³⁵ ICESCR, Art. 6. Zambia ratified the covenant in 1984, *Supra*, Governance, p. 79.

techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Of course a prisoner's choice or acceptance of particular work is likely to be limited by the limitation imposed on his liberty. But, by no means abolished by the instrumentality of penitentiary. Such a position is reminiscent of manipulative tactic to use the fact of improvement as a scapegoat. Such an attitude seldom yields positive results. More often than not it leads to more social upheavals and economic strangulation of a section of society as more and more people are denied opportunity to earn a living. In actuality it only worsens the already unpalatable prison conditions.

For many people (including prisoners), work represents the primary source of income on which subsistence survival and life depend. The right to work is fundamental to the enjoyment of certain subsistence and livelihood rights such as food, clothing, housing, and so on.¹³⁶ The committee on economic, social and cultural rights observed that the right to work encompasses both the right to enter into employment and the right not to be unjustly deprived of work. Admittedly a prisoner may not, ipso facto exercise a right to enter into employment. But this does not entail that he should be unjustly deprived of work.¹³⁷

(C) THE PRISONS ACT

Undeniably the Act¹³⁸ provides for the right of a prisoner to work for remuneration. Interestingly too, is that it contains enabling provisions which confer powers to the minister to regulate by statutory instrument, with sufficient flexibility the management of prisons including

¹³⁶ Leif Holmstrom et al, United Nations Human Rights fact sheets No. 1-25, 5th edn, Raoul Wallenberg Institute, Lund (1997), pp. 273-274.

¹³⁷ Ibid.

¹³⁸ Prisons Act, Cap, 97.

payment of prisoners for work done.¹³⁹ So too is the power it confers on the commissioner of prisons.¹⁴⁰

It will be observed that prisoners are as a matter of requirement mandated to work. S. 75 (1) provides that:

“Every criminal prisoner shall be engaged in such work...as may be directed by the officer in charge, and as far as practicable such work shall take place in association or outside cells with other criminal prisoners: provided that the medical officer may excuse a prisoner from work or order that he perform light work, on medical grounds”.

Clearly, once directed to work by an officer in-charge a prisoner must yield. The only way he can avoid to work is on the basis of medical ground. A medical officer to some extent exercises a power to excuse a prisoner from work.¹⁴¹ A civil prisoner or an unconvicted prisoner may elect to work and, if he so elects, shall receive payment at such rates as may be prescribed.

(i) EARNINGS SCHEME AND RATES OF PAYMENT

The commissioner of prisons has discretion to authorise the introduction of an earnings scheme for prisoners in any prison or any part of a prison in the country.¹⁴² A prisoner under sentence of death is excepted. He shall not be subject to employment.¹⁴³

There is power on the commissioner, upon recommendation from the officer in charge, to vary the rate of payment in respect of any prisoner or class of prisoners.¹⁴⁴ A point to note is that any variations in the rate of payment to any prisoner must be recorded in the prisoners record.¹⁴⁵ There is a requirement that all prisoners who are eligible to participate in the earnings scheme

¹³⁹ Ibid, S. 146.

¹⁴⁰ Ibid, R. 142 (1).

¹⁴¹ Supra, S. 75 (1).

¹⁴² R. 142 (1).

¹⁴³ R. 142 (2).

¹⁴⁴ R. 144 (1).

¹⁴⁵ V. 144 (2).

should be graded according to special, A, B, C and first stage (being lowest) grades.¹⁴⁶ For that matter grade 'C' prisoners engaged in collective work may receive payment for work completed in excess of a fixed task in accordance with such instructions as may be issued by the commissioner.¹⁴⁷

In terms of rates of payment, so long as there exists an earnings scheme, every prisoner who is admitted to prison is as a must eligible to receive such payments, as prescribed in the third schedule.¹⁴⁸ Provided, of course, that no prisoner shall be eligible to be paid for days spent in a hospital or for days spent in separate confinement as a punishment for a prison offence.¹⁴⁹

Following from the third schedule below are the rates of payment:

First stage.....	K1.00 per day
Grade C. prisoners.....	K1.00 per day
Grade B prisoners.....	K2.00 per day
Grade A prisoners.....	K3.00 per day
Special stage prisoners.....	K3.00 per day

These rates included some gratuity per month.¹⁵⁰ It is lamentable that the schedule of rates stipulated above was last amended in 1990 by statutory instrument.¹⁵¹

There are further rates under the eighth schedule which are based on skill. These are as below.

1. For a skilled prisoner K1.00 per day
2. For a semi skilled 0.60 per day
3. For an unskilled prisoner 0.40

Even more lamentable, perhaps shocking is that the preceding table of rates was made in 1982.¹⁵² Since then, in both situations there has never been an amendment.

¹⁴⁶ R. 145 (1).

¹⁴⁷ R. 145 (2).

¹⁴⁸ R. 143.

¹⁴⁹ Ibid.

¹⁵⁰ Supra, third schedule.

¹⁵¹ Statutory Instrument No. 137 of 1990.

¹⁵² Statutory Instrument No. 123 of 1982.

(ii) THE POWERS OF THE MINISTER

Under part XXIII the minister is empowered, inter alia, to make provision for the following:

- (vii) the safe custody, management, organisation, hours, mode and kind of labour and employment, clothing, bedding, maintenance, instruction, discipline, segregation, treatment, restraint, correction and training of prisoners;
- (X) The payment of prisoners in accordance with earning schemes for work done while in prison;

These two items are timely in terms of the right to work. But it should be noted that under the part at stake the minister enjoys vast power to make various provisions ranging from (i) to (XXVII). In such a premise it is untenable to argue that the law, so far as upholding prisoners rights and improving prison conditions is inadequate. What is lacking is the spirit and will of those concerned to implement the existing law. The genuine concern to give effect to the spirit and letter of the law is lacking.

3.8. THE RIGHT TO MEDICAL ATTENTION

This right may generally be viewed as the right to health. It is more appropriately referred to as the right to the highest attainable standard of physical and mental health. The international covenant on economic, social and cultural rights provides as follows:

“1. The state parties to the present covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹⁵³

But recognition of the right to health does not by itself mean that the beneficiaries of this right have a right to be healthy. Rather, the covenant stresses the obligation of states parties to ensure for their citizens “the highest attainable standard of ...health.”¹⁵⁴ Article 12 therefore places emphasis on equal access to health care and minimum guarantees of health care in the event of

¹⁵³ Art. 12.

¹⁵⁴ Leif Holmstrom et al, United Nations Human rights Fact sheets, No. 1-25, 5th edn, Lund, (1997), p. 279.

sickness.¹⁵⁵ It is of the fundamental essence to realise that the fact that one is a prisoner does not of itself change the substratum of the right to equal access to health care and minimum guarantees of health care in the event of sickness.

The prisons Act¹⁵⁶ does not come out clearly to grant a right to medical attention or treatment. Nevertheless, the provisions it contains can fairly be construed to facilitate and uphold the right to health.

Section 17 provides thus:

“(1) subject to the provisions of this Act, the medial officer shall have the general care of the health of prisoners and shall visit the prison daily where practicable or when called upon by the officer in charge.”¹⁵⁷

There is no room for doubt that the prisons Act does have comprehensive provisions to ensure the health of prisoners. From a practical point of view, Choma prisons, Lusaka central and Kabwe maximum (mukobeko) prisons all have their own clinics.¹⁵⁸ In the case of Shamwana and others V. The people (infra), Shamwana, by way of application to court, complained against prison authorities for denial of medical attention, among other things. Although the court did not rule in favour on the matter, the applicant, nevertheless got an apology from the prison authorities.

The question, however, in most cases is whether the state has taken reasonable and necessary measures to treat the prisoner.¹⁵⁹ In the case of *McFeelay V.UK*¹⁶⁰ emanating from the European commission on Human Rights, it was held that there is a general duty on the relevant authorities to safeguard the health and well-being of prisoners, within the confinements of imprisonment.

¹⁵⁵ Ibid.

¹⁵⁶ CAP, 97.

¹⁵⁷ Ibid, S. 17 (1).

¹⁵⁸ Personal interview of prison officers taken at their respective prisons in February and June 2003.

¹⁵⁹ Keir Starmer, *Human Rights Digest*, 1st edn, Blackstone press Limited, London (2001), P. 136.

¹⁶⁰ (1981) 3 EHRR161, EcmHR.

CHAPTER FOUR

4.0. PRISON CONDITIONS

The general picture of prisons in Zambia is that prison congestion pervades most if not all our prisons. It seems it is the source of all the other problems.

4.1 ROOM

At Mukobeko one cell (room) measuring 3.5 metres by 3.5 metres which was previously meant for one person was now accommodating six to seven prisoners.¹⁶¹ There are no toilet facilities in the cells. When inmates are locked in till following day they have to make do with improvised “toilets” made out of 2.5 litres cooking oil plastic containers.¹⁶² One single mattress is shared by two inmates.

At Lusaka Central prison the picture is worse. The original capacity of the prison is 360 inmates.¹⁶³ The total number of prisoners was 1,384. The remandees by far out numbered those who were convicted. They stood at 1023 out of which 71 were female.¹⁶⁴ One inmate described the living conditions simply as “horrible”; one cell which ordinarily was for no more than ten, now, contained 98 inmates out of which only 5 mainly captains had mattresses.¹⁶⁵ Apart from himself and five others who shared mattress facility with he captains the rest just sit in between each others legs to fulfill the night. The toilet facility had no running water. But treatment from fellow inmates was generally not bad. Another inmate felt the living conditions were “pathetic and appalling.”¹⁶⁶ One cell meant for 20 was made to accommodate more than 100 inmates with

¹⁶¹ Kabwe Maximum (Mukobeko) prisons, interview of June 25, 2003: Five prisoners were interviewed. Three from the condemned section; one longterm prisoner, and one for life imprisonment.

¹⁶² Ibid.

¹⁶³ Lusaka Central Prison, Interview of June 27, 2003 of one prison officer.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid, Interview of Pundalika Shenoy of Bombay in India convicted of money laundering, was formerly a managing director of a Commercial Bank on the Copperbelt.

¹⁶⁶ Supra, note 3. Interview of Xavier Chungu, former Director-General of Zambia Intelligence Service.

one unflashable toilet among themselves. One remandee¹⁶⁷ disclosed that out of 100 inmates, only 30 managed to sleep. The rest make do with sitting until following morning.

The state prison in Choma differs slightly from the other two. The normal capacity of prisons was 120 inmates. One occasion the total number of inmates slightly more than doubled to 250¹⁶⁸. Mattresses and blankets were also fewer.

The information above finds ample support. One officer intimated that there were 21 cells each one of which was meant for 20 inmates. But in fact due to congestion each cell accommodated 90 prisoners.¹⁶⁹ A retired officer¹⁷⁰ noted that there was a shortage of blankets; prisoners slept in sitting or squatting position in queues due to shortage of space. Recently, when Minister of home affairs Lt. Gen. Shikapwasha visited Lusaka Central prison he deplored the condition of the prison and assured inmates government was doing everything possible to improve the situation.¹⁷¹ On the same occasion the Commissioner of prisons Jethro Mumbuwa told the minister that the Lusaka Central prisons was currently taking care of 2,000 prisoners.¹⁷² In the same breath, the Commissioner of prisons confirmed the information which prisoners provided on conditions in prisons. He stated that one prison cell meant for 10 inmates was now accommodating 90 prisoners. And that they slept in a line and all faced in one direction. They turned to the left or to the right as the case may be all at once. And sometimes they never slept at all. Earlier on the registrar of the High Court for Zambia registered her stand by appealing to magistrates to assume a deliberate policy to decongest prisons from time to time.¹⁷³

¹⁶⁷ Ibid, interview of Humphrey Muleya, a businessman, purchasing vehicles from South Africa and selling in Zambia. He was charged with aggravated robbery.

¹⁶⁸ Choma state prisons, interview conducted in March, 2003. Three officers responded.

¹⁶⁹ Opicit, interviewed Warder Mulenga Mubanga Victor; he had served a total of ten years as an officer at Central prisons.

¹⁷⁰ Kabwe, interview of Iluya Isaac Kenneth Mushe retired in 1977 as Senior Assistant Commissioner of Prisons.

¹⁷¹ The post, No. 2367, Thursday, April 10, 2003.

¹⁷² Ibid.

This far, in light of the veracity of the facts presented above it is irresistible to come a formidable conclusion, namely, that prison congestion is not only a serious problem, but also one which is deplorable.

4.2. FOOD

In all the three prisons cited above¹⁷⁴ food remains critically in short supply. From all the inmates, including some prison officers interviewed the general impression is that inmates feed on nsima and beans for every meal which comes at intervals of once per day. The amount of food allocated to each prisoner per meal was not accurately established. But a general impression can be got from information availed by Choma prisons. Each inmate got a half bawl of nsima plus half bawl of beans per day. Whether such an amount meets the minimum requirements can hardly be established.

However, it is vital to appreciate that both the quality and the quantity of food a prisoner has to have is a matter of law. The standard minimum rules provide as follows:

“Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”¹⁷⁵

The preceding rule reverberates in the prisons Act.¹⁷⁶ The first schedule at appendix “A” then stipulated the various rations in terms of grams. Below is part one of the said schedule.

An important aspect of the schedule which ought to be driven home is that the rations specified

are due to a prisoner on daily basis. As can be seen from the table of rations the standard of living of a prisoner that is envisaged by parliament or which was contemplated by our colonial

¹⁷³ Circular No. 2.2002: issued on April 3, 2002 by Getled Chabatama as registrar.

¹⁷⁴ Choma, Kabwe maximum and Lusaka Central state prisons.

¹⁷⁵ Goran Melandre and Gudmundur Alfredsson, *The Raoul wallenberg compilation of Human Rights instruments: standard minimum rules for the treatment of prisoners*, r.20., Martinus Nijhoff publishers, London, (1997), p. 450.

¹⁷⁶ CAP 97, S. 176 (2): “The officer in charge shall ensure that the rations supplied to prisoners are of good quality and that every prisoner receives the rations to which he is entitled in accordance with the first schedule and, subject to rule 44, no deviation from the authorized scale of rations shall be permitted unless the medical officer or the Commissioner has given his written authority to do so”.

master is humane and good. This stance obviously dispels the misplaced notion that a prisoner is an entity whose basic rights have been stripped off. It will be observed that a prisoner can apply to high court for redress of his grievance against unjust treatment by the prison authorities. In *SHAMWANA AND OTHERS V. THE PEOPLE*,¹⁷⁷ the applicant Shamwana complained against prison authorities for torture, solitary confinement, harassment and denial of access to medical treatment and a priest. And later against inadequate food. In the first place, although the court did not rule in favour of the applicant the latter, received an apology from the prison authorities for denial of access to a priest.

4.3. INTRA-INMATE RELATIONS

In general information¹⁷⁸ reveals that the attitude of prisoners towards each other is one of friendship. Instances of ill-treatment are uncommon. The bulk of evidence confirm that inmates cooperate with one another. One convict¹⁷⁹ particularly appreciated the respect accorded to him by his fellow prisoners and attributed it mainly to the fact that they recognized his advancing age. Another inmate,¹⁸⁰ like the former explained how he was able to share his food which was brought for him from his house with his fellow inmates.

However, not all is well. Most of those interviewed opted to avoid questions seeking to discover concerns about unnatural relationships among inmates. But a bit of information that trickled out stated a case for homosexual relationships which subsisted among some of the inmates. These were mainly inmates who received gifts from their visitors. They used their gifts to lure other inmates especially the younger ones and in turn sodomised them.

¹⁷⁷ Amnesty international, when state kills...The death penalty V Humonighty Amnesy international Publication, (1989), P. 238.

¹⁷⁸ Interview of inmates, at Mukobeko, Choma and Lusaka state Prisons in March and June 2003.

¹⁷⁹ Pundalika Shenoy, Interviewed at Lusaka Central Prison on June 27, 2003. He was aged 61 yrs.

¹⁸⁰ Xavier Chungu, F. The remandee was interviewed at Lusaka, Supra.

Although the existence of sodomy was denied by the assistant Superintendent, a prison officer¹⁸¹ during interview, this stance conflicted with the view of the deputy Registrar of industrial relations court.¹⁸² However, the weighty of evidence seems to suggest that sodomy is a reality in prisons. One of the inmates stated that “men sleep with men”¹⁸³. According to him there was a group of prisoners whom he labeled as sodomists who turned other men (inmates) into “women.” The inmate further explained that when sodomy is in session the culprits would block the cell until the whole ordeal was over. Interestingly some prison officers¹⁸⁴ were present when the preceding explanation was being given. None seemed to be moved. Nor was there a counter claim against the assertion for existence of sodomy. Therefore, following from the events above it is irresistible to come to the conclusion that homosexuality does exist in our prisons.

4.4. TREATMENT OF PRISONERS BY OFFICERS

from the officers¹⁸⁵ point of view prisoners are regarded as their fellow human beings. As such they feel they should treat the inmates well. Superintendent Chilalika observed that in the old society, it was “eye for an eye”, but in modern society the approach to prisoners was humane.¹⁸⁶ Another officer¹⁸⁷ explained that officers generally understood the concerns of the inmates. For instance, when a prisoner is sick he feels duty bound to take him to clinic or hospital.

Not surprisingly, though the officer’s position is vindicated by the inmates themselves who, to a greater extent felt comfortable with the treatment from the officers. In fact, all, except one of the ten inmates, randomly selected between Kabwe maximum and Lusaka central prisons, who submitted to the personal interview, affirmed that the attitude of the officers towards them was

¹⁸¹ Television interview of July 25, 2003 between 1800-1900 hrs at Kitwe studios. Tobias Mwanza categorically denied the occurrence of sodomy.

¹⁸² Ibid, Mwiinde Siavwapa, during the same interview nodded that sodomy existed in prisons.

¹⁸³ Kabwe Maximum Prisons; interview of Stanley Kapembwa Silungwe taken on June 25, 2003. He was on the death role, and was aged 53.

¹⁸⁴ Ibid, Sub-inspector Kennedy Sikaona, Prison Chaplain Henry Chansa.

¹⁸⁵ Ibid.

¹⁸⁶ Supra note 23.

¹⁸⁷ Supra, note 3. During interview of Warder Mulenga Mubanga Victor, had served at Lusaka Central

positive. It appears very strongly though, that the grievance by prisoners is directed to congestion due to limited space for room accommodation and other facilities. It is no doubt that such a scenario as the preceding constitutes circumstances beyond the officers' control. In which case it would be unfair and inequitable to allocate such blame wholly to the officers; perhaps partly, so long as the officers are not only seen to be, but form part of the governmental oppressive or liberating regime. What is certain, however, is that the relationship subsisting between officers and inmates is one of cooperation.

4.5. OFFICERS CONDITIONS

Prisons officers spend much of their time with prisoners. And so, by and large they too are affected to a lesser or greater extent by the conditions that affect inmates. In fact it is tenable to argue that, to a certain degree the relationship between them is one of interdependence and complementarity. In terms of attitude, for instance, that of officers inevitably affects that of inmates and vice versa. Equally, a positive attitude on the part of the officers is more likely to motivate the prisoners and that in turn makes the officers' duty easier and more enjoyable. This far the relationship is complimentary. In the same vein it is interdependent.

It is common cause that the conditions under which officers, particularly the low ranking serve are unpalatable. But most officers opt to be anonymous in stating what they perceive to be the true state of affairs of their working conditions, and in particular those pertaining to their conditions of service. One officer Mulenga Mubanga indicated that some of their conditions of service were out dated. Risk allowance still stood at K1,500 per month. That is shocking. More often than they got their salaries too late, say between 6th and 12th after month-end. It was also noted that accommodation was poor, usually the houses were too small. The prison

prison as an officer for ten years; was aged 37.

secretary¹⁸⁸ noted that besides poor conditions of service, the environment under which they worked exposed them to a high incidence of disease. Inmates too expressed their concern over officers' conditions of service. Xavier Chungu observed that the K1,500 was lamentable and suggested that the entire prisons Act required to be reviewed to bring it in line with current needs.

In the premise it suffices here to state that the conditions of service for prisons officers fall below par, and that the conditions were deplorable. As a result it is difficult to see how prisons officers would strive to look after prisoners and ensure that their rights are protected when the officers themselves were not cared for. That is, by no means to imply that the officers should neglect their bounden duty of maintaining law and order in prisons. It is such a onerous and of nobility an obligation that whatever their conditions of service they must do their best in their duty. And never give way to neglect of duty. At the same time government must not pay a blind eye to the plight of the officers.

In 1999, Government conceded that Zambia's prisons were in a state of dilapidation.¹⁸⁹ In fact the Munyama Human Rights Commission found that prison conditions violate human rights.¹⁹⁰ Government also recognized that poor conditions of service for officers affected prisoners' rights. In endeavouring to correct the situation Government took a positive stand. For example, government budgeted K1.25 Billion (\$521,000) for 1999 financial year for training prison officers locally as well a abroad in human rights.

¹⁸⁸ National Archives, Old building; the interview of Chilundika Royd took place on August, 2003 at his office at old building hereto.

¹⁸⁹ Governancy, Government of the Republic of Zambia: National Capacity Building Programme for Good Governancy in Zambia (1999).

¹⁹⁰ Ibid.

CHAPTER FIVE

5.0. COMPARATIVE ANALYSIS

The chapter will take a synopsis of prison standards obtaining in Africa in general and other countries as a yardstick for determining how Zambia's situation fares viewed from the rest of the world. The pan-African Seminar on prisons conditions in Africa, held in Kampala, Uganda from 19-21 September will be taken as case study.

5.1. PAN-AFRICAN SEMINAR ON PRISON CONDITIONS IN AFRICA

Generally many countries in the world and Africa in particular are faced with the un-ending problem of prison congestion. In March 1995, the African Commission on Human and peoples' Rights¹⁹¹ discussed prison conditions in Africa.

The first Pan-African Seminar on prison conditions in Africa took place in Kampala, Uganda in September, 1996. The Seminar was organized by penal reform International (PRI) and the African Commission, in partnership with the Ugandan Prison Administration a local Non-Governmental organization, which is the Foundation for Human Rights initiatives, the International Committee of the Red Cross and the observatoire international des prisons (international Prison watch).¹⁹²

More than 130 delegates from 47 countries, 40 of them from Africa, met in the Ugandan capital Kampala. The president of the African Commission on Human and people's Rights joined Ministers of state, prison Commissioners and judges together with international non-governmental organizations from across the African continent to discuss the problems facing African prisons and put forward solutions. Among the findings of the African Commission were as below.

¹⁹¹ Dossier, Prison conditions in Africa, Kampala (19th 21st, September 1996), p. see introduction thereto.

1. There was an intolerable over crowding in east African Prisons. Justice O’Ku-basu emphasized, however, that there was a willingness to consider reforms. “Most countries of Africa are in the process of re-examining their legal and paralegal apparatus to ensure institutionalization of individual freedoms, liberties and rights without sacrificing the effective maintenance of public order for the overall public good.”¹⁹³
2. In some African countries remand prisoners were up to 80% of the total prison population and remained in detention for many years before trial.
3. There was need to consider non-custodial sentences such as community service.

Professor Kakooza analysed the causes of the current crises in African prisons. He noted, among other factors, the absence of concern for the plight of prisoners from the side of governments as well as several practical reasons for overcrowding including bail conditions which are too strict, long delays in trials and overcriminalization of human conduct.¹⁹⁴

It is interesting to note that the pan African seminar culminated in the Kampala Declaration on prison conditions in Africa. The recommendations of the Kampala Declaration included the following:

(a) Prison conditions

- i. That the human rights of prisoners should be safeguarded at all times and that non-governmental agencies should have a special role in this respect, that is recognized and supported by the authorities.
- ii. That prisoners should retain all rights which are not expressly taken away by the fact of their detention.

¹⁹² Ibid.

¹⁹³ Ibid, pp1-2.

¹⁹⁴ Ibid.

- iii. The prisoners should have living conditions which are compatible with human dignity.
- iv. Conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by the loss of liberty.

(b) Prison Staff

- i. That there should be a proper career structure for prison staff:
- ii. That all prison personnel should be linked to one government ministry and that there should be a clear line of command between central prison administration and the staff in prisons;
- iii. That the state should provide sufficient material and financial resources for staff to carry out their work properly;

(c) Alternative Sentencing

- i. That Petty offences should be dealt with according to customary practice, provided this meets human rights requirements and that those involved so agree;
- ii. That whenever possible petty offences should be dealt with by mediation and should be resolved between the parties involved without recourse to the criminal justice system.
- iii. That community service and other non-custodial measures should if possible be preferred to imprisonment;
- iv. That there should be a study of the feasibility of adapting successful African models of non-custodial measures and applying them yet being used;

As is evident from the foregoing, that there is greater concern with Africa for the plight of prisoners and the deplorable conditions. Evident too is the ability of the African continent to organize itself into a seminar in order to resolve its pertinent issues of human rights pertaining to

prisoners. The Pan-African Seminar was quite fundamental and an historical event in the annals of African history for the following reasons: it demonstrated that there exists among Africans a political will to resolve the legacy of prison congestion in Africa and promotion of prisoners rights; that Africa shares the concern of civilized countries of the world about the plight of prisoners; and finally it showed that although prisoners fall under the auspices of the prisons service or department, their plight is the concern of the entire society.

Therefore tribute is due to these international organizations which provided support for the seminar in question. These are: the international committee of the Red Cross (ICRC); the Norwegian Agency for Development cooperation (NORAD); the Danish Ministry of foreign affairs (DANIDA); the Ford Foundation; the Swiss Federal Department of Foreign Affairs; the European Union (EU); the Agency de la Francophonie (ACCT); and Penal Reform International (PRI). It is overwhelming to see how international organizations are willing to pool their resources in order to help improve prison conditions in Africa.

In all that Zambia is no exception. It shares much in common in terms of prison conditions with most African countries. Other countries may now be viewed.

5.2. ZIMBABWE

At independence in 1980 the Prison population stood at about 22,000. The holding capacity in Zimbabwe is 16,000. At one stage after a general amnesty the figure came down to about 5,000. No sooner had most offenders who benefited from the amnesty, been released, than they were making tracks back to prisons. Clearly the amnesty made no impact at all on the prison population, which still stood at 22,000.

At any rate Zimbabwe is faced with the common problem of overcrowding in its prisons country wide, coupled with the rising cost of maintaining them.¹⁹⁵

5.3. MALAWI

The prison population has been increasing for many years. In August 1997, it was 5,557. It rose to 7,728 during the year 2000 and the following it came to 7,800.¹⁹⁶ It was observed that the prison population well tend to go on rising in the future unless some measures are implemented systematically, such as bail, Community Service, diversionary mechanisms and so on. Noteworthy too is that the population of Malawi stood at eleven million in 2001.

Although overcrowding remains a major concern, nonetheless the prison population is characterized by a rather lower level of remand prisoners in comparison with other African countries.¹⁹⁷ In June 2001, around 35% of the prisoners, 50% of the juveniles and 65% of women prisoners were on remand.

The majority of the prison premises were found to be in a miserable state, with building dating back to the first quarter of the 20th century, poorly or never maintained at all. Room accommodation is insufficient. In Zomba, for instance, the capacity of the prison is 800, however, at times it reaches 1,912 more than twice as much its capacity. In some cases 3 to 4 inmates share one cell and most of the time space is not enough to lie down properly.

In regard to food and beddings the position is much different. The meals are composed of maize (nsima) and boiled beans and sometimes pigeon peas, sweet potatoes and vegetables. Meat is almost unknown (about twice a year). However, by far this diet is better than one obtaining in

¹⁹⁵ Zimbabwe National committee on Community Service, *The development and use of community service in Zimbabwe*: By M. National coordinator, (1996), P. 3.

¹⁹⁶ Ibid.

¹⁹⁷ African Commission on Human and People's Rights, *Prisons in Malawi: Report of the Special*

Zambia where prisoners eat beans at every meal. Nevertheless prisoners in Malawi, like their Zambian counterparts receive only one meal per day.¹⁹⁸

5.4. MOZAMBIQUE

Notable too is that the prison population has decreased between 1997 and 2001. In 1997, the total prison population was 10,800. In 2001, there were 8,812 prisoners. Despite this decrease, however, overcrowding remains one of the biggest problems. For example, the prison population under the ministry of Home affairs is 3,030 while the theoretical capacity is only 2,419.

The situation in terms of beddings is equally poor. Prisoners should normally be given two blankets each upon arrival. Unfortunately since 1975 there had been no purchase of beddings by authorities. In terms of food, however, the picture is brighter. The meals consist of beans, maize, rice and some sauce. There is virtually no meat. Fish is served in places near to a river. In Tete provincial prison and Mabalane penitentiary prison, prisoners receive tea and bread for breakfast. At the moment, going by economic indicators and what obtains in prisons, such diet as obtains in Mozambique would be a pipe dream for Zambia, unless there was real political will. Record shows that, in Mozambique, the diet is even better in open centers. There, prisoners can have more vegetables, meat and fish.

5.5. LAS VEGAS US STATE

Las Vegas is one of the many states in the United States of America. We are here dealing with the developed world. Nevada will be selected for case study.

Rapporteur on Prisons and conditions of Detention in Africa Dr. vera Mlagnazuwa Chirwa (2001), p6.
¹⁹⁸ Ibid .

For a start an overview of the American continent.¹⁹⁹ The United States imprisons more people than any other country in the world, around 1.6 million or over 600 for every 100,000 of its population. Many are detained in conditions which US courts have found to constitute “cruel and unusual punishment” contrary to the US constitution.²⁰⁰ The UN special Rapporteur on Torture has expressed concern as to the effects on prisoners’ health on the near total isolation conditions of those held in the maximum security pelican Bay prison in California. What has been stated goes to underline the commonality of the problem of prison conditions worldwide.

However, the US being a developed world enjoys to a sound economy. It is, therefore, obvious that there exists a large margin of disparity in terms of prison conditions between the developed world and the developing countries. Hence it is found that, as observed by Justice Phillip Musonda, that prisons in the city of Nevada enjoy hotel conditions. Facilities such as telephones, Radio, television and so on are made available. Besides, well organized recreation and games such as basketball, volleyball, tennis and football to name but a few abound. In terms of food, prisoners eat the same quality of food as that of the officers.

But when you take another example, this time from the east the picture is gloomy. In Russia the UN special Rapporteur on torture claimed that he needed the skills of “a Dante or Bosch” to describe the sights and smells of overcrowded pre-trial detention facilities in Moscow. In 1996, 300 people died while awaiting trial in Russian prisons and the tuberculosis rate in these prisons hasen 100% in two years.²⁰¹

Therefore, from the foregoing it is clear that although prisons conditions in Zambia are deplorable, this is not only peculiar to Zambia alone. However, as between developing and developed world there is wide disparity which applies to prison conditions too.

¹⁹⁹ Ibid.

²⁰⁰ INTERRIGHTS BULLETIN VOL, 11 No. 4, 1997: International Human rights law, by Stephen Livingstone, P. 135.

²⁰¹ Ibid.

CHAPTER SIX

6.0. RECOMMENDATIONS AND CONCLUSION

Being the final chapter it will present a summary of the recommendations and, then the conclusion. In making the recommendations, it will be borne in mind that plans are underway by government, as reflected by “The prisons (AMDENDMENT) Bill, 2003 memorandum, to amend the prisons Act.

6.1. RECOMMENDATIONS

- i. That educational programmes for literacy and training of prisoners should be run;
- ii. That government should improve its funding to prisons;
- iii. That games and sporting activities for prisoners should be enhanced;
- iv. That the object of the penitentiary should be reformation and rehabilitation of the offender and so far as this goes the prisons Act should be amended where necessary to bring it in line with the preceding object.
- v. That more prisons and open air prisons should be created to ease congestion;
- vi. That alternative means and sentencing should be adopted as follows:
 - a) That petty offences should be dealt with according to customary practice, provided this meets human rights requirements and that those involved so agree, and to this effect the penal code and the criminal procedure code should be amended accordingly;
 - b) That whenever, possible petty offences should be dealt with by mediation and should be resolved between the parties involved without recourse to criminal justice system; and in this vein the penal code and criminal procedure codes should be amended to follow suit;

- c) That community service and other non-custodial measures should if possible be preferred to imprisonment.
- v That government should put in place a proper career structure for education and training of prisons officers both locally and foreign;
- vi That government should provide sufficient material and financial resources for prison staff to carry out their work properly;
- vii That government should facilitate the creation or establishment of an autonomous body, namely, the Zambia National prisoner care coordinating Agency which shall be a body corporate with limited liability, and whose object shall include sourcing for resources, material and financial and to distribute the same to affiliate organizations such as Prison Fellowship, Good Samaritan and ZEPRACT; as well as to coordinate their activities.

6.2. CONCLUSION

A prisoner is a person who is detained by government. Since Human rights apply to all human beings they also apply to a prisoner by virtue of his being a human being. Exception is made for the maintenance of order and security in public interest. Death penalty is not only contrary to the modern conscience, but also inconsistent with the supremacy of the right to life and, so incompatible with current aspirations towards abolition of the death penalty. Beyond this the argument poses as eternal controversy.

Rights of the prisoner can hardly be appreciated in a vacuum. To fully understand the value, relevance of the rights and how far they are upheld or to what extent they are derogated from, there is need to visualise the prisoner from a historical perspective. This chapter has sought to do just that.

The meaning of prisoner both in a traditional settling as well as in the modern times was demonstrated. So is the case with what a prison is understood to be. The problem of congestion was never experienced in the customary penitentiary system. It remains a phenomenon peculiar to the modern penal system. It is evident that the problem of congestion of inmates in the Zambian prisons is largely to blame for putting prisoner's rights at stake. This is so because the limited accommodation for prisoners is made necessarily inadequate. The same applies in the case of meagre resources such as clothing, beddings, food and medical facilities, to name but a few.

It has been shown that amidst changes and developments that have taken place in prisons service since pre-colonial era, as well as the problem of congestion of inmates in prison, coupled with its consequential erosion of prisoner's rights, nonetheless, the prisons service has a vision for the establishment. To what extent implementation of this vision has reached is yet to be determined. The degree to which rights of prisoners are upheld and protected plus the level of improvement in prison conditions will act as a barometer for measuring how far prisons vision has been implemented hitherto.

Although prison congestion characterizes Zambian prisons the source is not peculiar to Zambia alone. The prisoner care organizations are timely in the promotion of prisoners' rights. They must be embraced. Notably, there is adequate legislation in place sufficient to deal with the existing malady in prisons. However, room to amend the prisons Act exists. The recommendations were consciously and conscientiously made. Therefore, due kind consideration should be given to them.

APPENDIX ‘A’

FIRST SCHEDULE PRISON RATIONS

PART I

ORDINARY DIET: DAILY ISSUE

GROUP A:	Fresh meat.....	113 grams.
	Or fresh fish	170 grams.
	Or dried fish	85 grams.
GROUP B:	Maize meal or millet or bread	450 grams.
	Or rice (unpolished)	340 grams.
GROUP C:	Bread or porridge, flour and rice	226 grams.
GROUP D:	Protone soup powder	11 grams.
	Or milk non-fat skimmed	0.2 grams.
GROUP E:	Fresh vegetables	1.1 grams.
	Or potatoes or sweet potatoes	226 grams.
GROUP F:	Beans or peas or lentils or Dhalorgroundnuts	113 grams.
GROUP G:	Fresh fruits (in season)	113 grams.
GROUP H:	dripping cooking oil	28 grams.
	OR vegetable cooking oil	14 grams.
	OR red palm oil	4 grams.
GROUP I:	Salt (iodised if possible)	7 grams.
GROUP J:	Sugar	14 grams.
GROUP K:	Cocoa	14 grams.
GROUP L:	Chillies or peppers	4 grams.

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