

**A CRITICAL ANALYSIS OF PAROLE IN THE CRIMINAL**

**JUSTICE SYSTEM OF ZAMBIA**

**BY**

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## **DEDICATION**

Dedicated to my late father, Mr Peter Nahshon Nkunika, who will always be my pillar of strength and an inspiration throughout my life.

## **ACKNOWLEDGEMENTS**

Herewith my sincere thanks and appreciation to:

My mother Susan Ng'oma, thank you for all your prayers, encouragement and loving support;

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Last, but not least, our Heavenly Father Jehovah, through whom all things are possible. Lord, thank you for being faithful to me and for always being there for me from the time I started school till now. Your mercies endure forever.

## **ABSTRACT**

The idealistic correctional goal of protecting the community while rehabilitating the offender has served as a reason for conducting research into the parole system from the Zambian perspective. The aim of this research is to explore parole as a phenomenon and to describe the process involved in successfully reintegrating an offender into the community in Zambia. The research gives an overview of the body responsible for all matters incidental to parole in Zambia, the National Parole Board. The research further explores the meaning of parole by analysing among others the functions parole plays in the criminal justice system of Zambia. The research also analyses the efficacy of parole in the criminal justice system of Zambia.

It is important to note that parole had always been there in Zambian legislation. But the old Prisons Act had seen no prisoner released on parole as it is known today. The Prisons Act was amended in 2004 to establish the National Parole Board, which would be responsible of handling matters incidental to parole. However, the National Parole Board does not have the final say as to which prisoner is granted parole. The Board only recommends to the Commissioner of Prisons.

Parole is the early release of inmates from correctional institutions prior to the completion of the prison sentence under supervision in the community. Parole was introduced to serve a number of purposes such as help in the rehabilitation of offenders and provide a smooth transition of their re-entry into the community. It was also introduced with the hope it would help reduce prison population as Zambian prisons are overcrowded.

However, parole has not served most of its intended purposes in criminal justice system of Zambia because there are many barriers affecting the smooth administration of parole. Society is not well aware of the benefits of parole. When a prisoner is released early, society feels that the criminal justice system has failed. This contempt of parolees by society encourages recidivism and thus defeats the whole purpose of parole. Also, the criteria for prisoner eligibility for parole is insufficient. A prisoner can only be eligible for parole in Zambia if they have six months left on their sentence. Six months is insufficient incentive for behavioural change. Furthermore, parole is flawed in Zambia because the National Parole Board only recommends to the commissioner of Prisons who should be granted parole. The Board is not the final decision maker. Furthermore, the National Parole Board is underfunded. This causes a negative impact in the manner in which parole hearings are conducted.

In order to make parole effective in the criminal justice system of Zambia, the National Parole Board should have programmes to educate society on the importance of parole in the criminal justice system. In addition, parole period should be increased from the current six months because six months is not enough if parole is to serve its functions in Zambia. Furthermore, the National Parole Board should be decentralised and it should have the autonomy to make parole decisions. Funding to the National Parole Board should be increased to enable parole hearings to be conducted thoroughly.

## **TABLE OF LEGISLATION**

The Prisons Act Chapter 97 of the Laws of Zambia.

The Prisons (Amendment) Act No. 16 of 2004 of the Laws of Zambia

The Criminal Procedure Code Act, Chapter 88 of the Laws of Zambia.

Statutory Instrument No. 101 (The Parole Rules) of 2008 of the Laws of Zambia.

The Namibian Prisons Act 17 of 1998.

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## **CHAPTER ONE**

### **GENERAL INTRODUCTION**

#### **1.1 INTRODUCTION**

The aim of this research is to critically analyse the parole system in the Zambian criminal justice system. Parole is defined under section 2 of the Prisons (Amendment) No. 16 of 2004 as the conditional release of a convicted offender from a penal or correctional institution, under the continued custody of the State, to serve the convicted offender's remainder of sentence in the community under supervision. In Zambia, the National Parole Board is mandated with the coordination of activities related to parole and recommends the release of prisoners on parole.

The research focuses on the formation and legal status of the National Parole board, as well as its legal status. The research also analyses the functions of the National Parole Board. The National Parole Board however only makes recommendations to the Commissioner of Prisons on prisoners to be released on parole. Putting this into consideration, the research criticises the autonomy as well as the efficacy of the National Parole Board.

Furthermore, the research critically analyses the parole system by expounding on what is parole. The research also explains how prisoners become eligible for parole and the procedure taken to be given parole. It will also explain on the consequences of non adherence to parole conditions.

In Zambia, the parole system is used as one of the ways to help deal with the growing problem of overcrowding in prisons. Zambian prisons are overcrowded and this poses a lot of challenges in the running of the prisons. And the early release of prisoners on parole is seen as one of the ways to help deal with the overcrowding problem. Hence, the research further analyses the efficacy of the parole system in the Zambian criminal justice system.

## **1.2 BACKGROUND**

Over the years, Zambia has seen a rise in the number of prisoners leading to overcrowding in prisons.<sup>1</sup> The overcrowding situation in Zambian prisons is so dire that the parole system was adopted as one of the ways to help mitigate the problem.<sup>2</sup> The parole system was also introduced to help promote good behaviour amongst the prisoners.<sup>3</sup> It is worth noting that the Zambian parole system was modelled after the Canadian parole system.<sup>4</sup> In the old Prisons Act, Chapter 97 of the Laws of Zambia under section 114, the Commissioner of Prisons had the authority to release a prisoner on parole. However, Chapter 97 was later amended in 2004 to create the Prisons (Amendment) Act No. 16 of 2004. The amended Act repealed and replaced section 114. It also established the National Parole Board, whose main objective is to coordinate activities related to parole and to recommend to the Commissioner the release of prisoners on parole. The National Parole Board was established as an administrative tribunal to help make recommendations about parole.

## **1.3 STATEMENT OF THE PROBLEM**

Parole only became operational in Zambia on November, 28 2008. The concept is still a new one. There is less information on the Zambian parole system and few prisoners have benefited from the fruits of the parole system. The parole system in Zambia still remains far from achieving its objectives. It is supposed to be an incentive for behavioural change amongst the prisoners, but the time period for parole defeats that purpose. Also, parole has not helped address

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<sup>1</sup> National Audit of Prison Conditions in Zambia, *An Assessment of the Conditions that Inmates in the Prisons in Zambia are Housed in and the Challenges the Zambia Prisons Services are facing in Running the Prisons*, (Lusaka: Government Printers, 2009), 90-91

<sup>2</sup> Fredrick S.S. Chilukutu. “The Parole System in Zambia,” presentation at the 29<sup>th</sup> APAI Annual Conference, Savannah, Georgia, May 17, 2010. (Unpublished), 12

<sup>3</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 16

<sup>4</sup> Fredrick S.S. Chilukutu. “The Parole System in Zambia,” presentation at the 29<sup>th</sup> APAI Annual Conference, Savannah, Georgia, May 17, 2010. (Unpublished), 8

the problem of overcrowding in Zambian prisons. It is against this background that this research critically analyses the functions of the National Parole Board, the parole system and its efficacy in the Zambian criminal justice system.

#### **1.4 OBJECTIVES OF THE STUDY**

The main objective of this research is to critically analyse the parole system in the Zambian criminal justice system. The specific objectives of the study are to:

- i. Give an overview of parole in Zambia;
- ii. Analyse the efficacy of parole in the criminal justice system of Zambia;
- iii. Make recommendations on how parole can be made effective in the criminal justice system of Zambia.

#### **1.5 SPECIFIC RESEARCH QUESTIONS**

This study seeks to answer among others the following questions:

- i. What is parole?
- ii. How does a prisoner become eligible for parole in Zambia?
- iii. What functions does parole serve in the Zambian criminal justice system?
- iv. How does parole differ from probation, suspended sentence and presidential pardon?
- v. What is the efficacy of the parole system in the Zambian criminal justice system?

## **1.6 SIGNIFICANCE OF THE STUDY**

This study is important because it comes at a time where the number of prisoners is on the rise in the country. The concept of parole can be said to be a new phenomenon in the Zambian criminal justice system because in Zambia, parole only became operational in November 2008.<sup>5</sup> This research critically analyses the parole system in the Zambian criminal justice system. This research is helpful because it will open up the minds of society at large on the subject of parole. The research is also helpful because it is intended to contribute to greater understanding and appreciation of the parole system in Zambia. The information contained in the research is important because there is insufficient information on the Zambian parole system.

In this age of risen numbers of prisoners, it is important that both prisoners and non prisoners know about the parole system in the country and this study will help achieve this goal as it adds to the knowledge on the subject. This study is also important because it adds on the much needed literature review on the subject of parole which may be used by other scholars carrying out research in this area and other related subjects.

## **1.7 LITERATURE REVIEW**

Zambia like most countries in the world is struggling with increased crime rates, thus leading to the increased prison population in prisons. Imprisonment is not only meant for punishing the offender. It is also meant to help rehabilitate and reform the offender to become a valuable member of society.

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<sup>5</sup> Tobias Mwanza, “Parole as a way to reduce overcrowding In Zambian prisons: a communicative and participatory approach” (Master’s thesis, University of Zambia, Zambia, 2012), 41

Tkachuk propounds that there are other alternative interventional programmes such as community corrections that can help in rehabilitating and reforming criminal offenders other than incarceration.<sup>6</sup> He gives a general overview of various alternatives to incarceration such as suspended sentence, community service etc. In his postulation, Tkachuk however does not explain in detail how such alternatives like parole can be used to rehabilitate and reform the offender. This research on the other hand focuses only on parole. It thoroughly analyses how the offender can be rehabilitated and reformed with parole. It explains in detail what role parole plays in rehabilitating and reforming prisoners.

The Prisons Amendment Act the mandate of the National Parole Board as set out in section 113B is to coordinate activities related to, and recommend the release of prisoners on parole; and perform such other functions as the Minister may, by statutory instrument, prescribe. This research propounds or recommends that it is better to have the National Parole Board be the one to make the final decision regarding parole. The Act as it is does not promote the autonomy of the National Parole Board. In order to have an effective parole system, the National Parole Board should have the autonomy to be able to make independent, quality conditional release decisions. This research also shows how the Prisons Amendment Act also parole ineffective in Zambia due to the short period of six months that a prisoner can be out on parole. The research shows how in its current state, the Prisons Amendment Act almost renders parole ineffective in Zambia.

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<sup>6</sup> B Tkachuk , J Kriel & W Clack, *Zambia Prison Service Needs Assessment Report* (University of South Africa, Pretoria, 2005), 18

Mwanza argues that parole is one of the non-custodial community correctional measures that are used to reduce overcrowding in Zambian prisons.<sup>7</sup> According to him, the only reason the parole system was introduced in the Zambian criminal justice system is to help reduce the problem of overcrowding in prisons. However, this research shows that reducing overcrowding in prisons is not the sole and main purpose parole was introduced in the criminal justice system of Zambia. According to the National Parole Board's 2013 annual report, parole was introduced as an incentive to promote good behaviour amongst inmates therefore reducing chances of reoffending and ensuring a safer community.<sup>8</sup> Where there is prospect for early release from prison, the prisoner would modify their behaviour so they can be eligible for the early release. This was the main reason for the introduction of parole in Zambia. Parole does have the function of reducing prison populations but this is not the main and only reason it was introduced in Zambia.

Champion propounds that despite the difficulties of measurement, there is irrefutable evidence that for the vast majority of offenders, community corrections such as parole are the most effective in reducing reoffending and consequent recidivism.<sup>9</sup> He further states that the risk of most former prisoners returning to prison is high because Prison reduces the spirit of embracing one another thus reducing social inclusion, resettlement and integration. This research however adds on to Champions deductions. In adding on to Champions deductions, this research propounds that Prison is not tough on the causes of crime; it creates more causes of crime. For example, when the prisoner is released from prison, they have no employment to sustain

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<sup>7</sup> Tobias Mwanza, "Parole as a way to reduce overcrowding In Zambian prisons: a communicative and participatory approach" (Master's thesis, University of Zambia, Zambia, 2012), 86

<sup>8</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 14

<sup>9</sup> Dean J. Champion, *Probation, parole and community corrections* (New Jersey: Prentice Hall, 2002, 4<sup>th</sup> edition), 243

themselves, for this reason, they will retain to crime to earn a living. Also, in prisons, people serving different sentences for different crimes share ideas on crimes.

Walmsley comments that “it has been said that prisons are ‘universities of crime’ and imprisonment is an expensive way of making bad people worse”.<sup>10</sup> Conquering with Walmsley, this research tries to show how accurate his postulation is in the Zambian context. This research evaluates how overcrowded Zambian prisons are. Because of such overcrowding in Zambian prisons, all offenders are placed in one cell regardless of degree of offence.<sup>11</sup> Due to such placements, the prisoners share ideas and knowledge on how to commit crime and how to avoid getting caught. Furthermore, this research while conquering with Walmsley shows how parole is a cheaper method of rehabilitating and reforming offenders compared to incarceration. The research shows how expensive it is running prisons in Zambia. The research evaluates how prison is an expensive way of making bad people worse by evaluating recidivism rates among prisoners who were released on parole and those who served their full sentences.

Louw observes that parole serves three main functions. The first function of parole is associated with community safety and protection. Parole offers the parolee an opportunity to live a reasonably normal life within the community. Public safety is the ultimate goal for society, and in parole that means protecting the community from released offenders. The best way of obtaining public safety is to turn the offender into a useful, law-abiding citizen, and parole can be a means to this end. The second function of parole is associated with the parolee and restitution, rehabilitation and reintegration into society. Restitution means paying back, and parole can give the offender an opportunity to repay their financial debt to society. Rehabilitation entails the

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<sup>10</sup> Roy Walmsley, *World Prison Population List. In Research Findings No. 116, Home Office Research, Development and Statistics Directorate*, (London: Centre for Prison Studies,2000), 19

<sup>11</sup> Human Rights Watch, *Unjust and Unhealthy: HIV, TB, and Abuse in Zambian Prisons*. (United States of America, 2010), 111

altering of the behaviour and attitudes of the offender in such a way that they no longer want to or need to commit crime. Reintegration focuses on adaptation to the community by requiring the offender to participate in rehabilitation programmes to develop skills and educational abilities and allow the offender to use those skills in the community. Finally, according to Louw's observation, the third function of parole is associated with correction, including deterrence of crime and institutional control, punishment, control of prison overcrowding and cost saving.<sup>12</sup>

This Louw's proposition on the functions of parole is very accurate. However, despite the accuracy of his postulations, these postulations are rendered ineffective as long as they are not applied to the Zambian context. This research therefore applies Louw's postulations in the Zambian context. The research looks at the functions parole has played in the criminal justice system of Zambia.

According to Burke, the concept of parole came under a lot of criticism and still is under criticism from many stakeholders in society.<sup>13</sup> According to her, the main reason parole is criticised is because it defeats one of the purposes of incarceration which is punishment. To most, parole does not achieve retribution; it defeats the moral imperative of 'balancing the scales' after an offender has taken advantage of the community by committing a crime. Balancing the scales to critics of the parole system entails the offender paying for the crime they committed through incarceration just as the victim suffered.

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<sup>12</sup> Francois Christiaan Marthinus Louw, "The parole process from a South African perspective" (Master's thesis, University of South Africa, South Africa, 2008) 38-42

<sup>13</sup> Peggy B. Burke, ed, *A Handbook for New Parole Board Members: Part of a Resource Kit for New Parole Board Members* (Silver Spring, Maryland: National Institute of Corrections, 2003), 5

Burke however does not show the effect such societal negativity towards parole has on the whole parole process. She does show how society's attitude towards parole can be changed. This research can be distinguished from Burke because it shows how society's negative attitude renders the whole parole process ineffective because the parolee in such an instance is not reintegrated into society. This research elaborates how society's negative attitude towards parole can be altered by having the National Parole Board carry out programmes to educate society on the importance of having parole in the criminal justice system of Zambia.

According to Clear and Dammer, the parole system is seen as a kind of agreement, like a contract, between an offender and the state to find a way to meet the needs of both parties – the state gets to see if the offender becomes a law-abiding citizen, and the offender gets to leave the prison early.<sup>14</sup> However, Clear and Dammer do not expressly show that parole is a privilege which has to be earned, and that it can be taken away at any time. This research attempts to show that parole is a privilege which the prisoner earns after a modification in behavior. The research also attempts to show that this privilege can be taken away; the state can revoke a parolee's parole license at anytime.

## **1.8 METHODOLOGY**

This research was conducted by analysing literature on the subject of parole. In addition, it comprised of field investigations in form of interviews with relevant officers from the National Parole Board and the Zambia Prison Service. The research also utilised desk research as the primary source of information. This was done through collection of information from books, statutes, cases, reports, journals, dissertations and internet sources.

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<sup>14</sup> Clear, T.R. & Dammer, H.R, *The offender in the community*, 2nd edition (Belmont: Wadsworth, 2003), 174

## **1.9 OUTLINE OF CHAPTERS**

Chapter two of this research provides an overview of the National Parole Board and comparatively analyses the National Parole Board with the parole boards of Canada and Namibia. While chapter three critically analyses parole. Chapter four evaluates the efficacy of parole in the Zambian criminal justice system. In conclusion, chapter five concludes the research by giving the research recommendations and final conclusion.

## **1.10 CONCLUSION**

In conclusion, parole, which is a conditional release granted to a deserving prisoner before normal expiry of his or her sentence is a new phenomenon in the Zambian criminal justice system. This is so because despite the concept of parole having existed in the Prisons Act, the parole system only became operational in 2008 under the conditions set forth in the amended Prisons Act. In trying to achieve the objectives of his research, the next chapter will give the historical overview of parole as well as the legal framework in Zambia. It will further evaluate the National Parole Board. The following chapter will also give a comparative analysis of the National Parole Board of Zambia to the parole boards of Canada and Namibia.

## **CHAPTER TWO**

### **AN OVERVIEW OF PAROLE AND THE NATIONAL PAROLE BOARD IN ZAMBIA**

#### **2.1 INTRODUCTION**

This chapter is aimed at giving and overview of the National Parole Board. In Zambia, the National Parole Board is tasked with the mandate of coordinating activities related to parole. The Board also has the duty of recommending the release of prisoners on parole to the Commissioner of Prisons. It also performs other functions related to parole that are prescribed by the Minister of Home Affairs in a statutory instrument. This is a great responsibility placed on the National Parole Board and that is why it is vital to have an overview of the Board. The aim of this chapter will be achieved by analysing the formation and legal status of the National Parole Board as well as its composition. The chapter will further analyse the functions of the Board and the challenges it faces in trying to carry out its functions.

#### **2.2 HISTORICAL OVERVIEW OF PAROLE IN ZAMBIA**

The release of prisoners on parole had always been in the Zambian legislation since 1964. It was provided for under sections 114 of the Prisons Act Chapter 97 of the Laws of Zambia as follows:

*A prisoner serving a sentence of imprisonment for a period of four years or more may, within three months of the date he is due for release for reasons approved by the Commissioner, be permitted by the Commissioner, on such conditions as he may specify, to be temporarily absent on parole for a period of time, which shall not exceed fourteen days, specified by the Commissioner.*

The prisoner was allowed, within three months of the day he or she is due to be released to go home for a period of not more 14 days to go and access the home environment to which he or she

would be going after release from prison. After that, the prisoner would go back to prison to complete the sentence.<sup>1</sup> This process even if it was termed as parole in the Act, it did not really satisfy the definition of parole. Also, this system did not in any way encourage the rehabilitation and treatment of prisoners in any way.

It was for this reason that in 2004, the Prisons Act was amended so as to really satisfy the meaning of parole. The amended Act defined what parole is and set new criteria for parole eligibility in Zambia.

### **2.3 THE LEGISLATIVE FRAMEWORK OF PAROLE IN ZAMBIA**

The provisions of the Prisons (Amendment) Act No 16 of 2004 significantly changed the concept of parole as it was known in Zambia under the old Act. It was a paradigm shift from the system that was erroneously referred to as parole under section 114 of the Prisons Act Chapter 97 of the Laws of Zambia.<sup>2</sup> Under section 113A(1) of the Prisons (Amendment) Act, in order to facilitate the operations of parole, the National Parole Board is established which has the mandate to coordinate activities related to, and recommend the release of prisoners on parole; and perform such other functions as the Minister may, by statutory instrument, prescribe. The Prisons (Amendment) Act further under section 114 prescribes the conditions for that a prisoner must satisfy in order to be eligible for parole.

In order to supplement the provisions of the Amended Prisons Act of 2004, Statutory Instrument No. 101 of 2008 was enacted. The Statutory Instrument contains the Parole Rules that govern the parole system in Zambia. The Parole Rules contain among other things the functions of the

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<sup>1</sup> Lloyd H. Chilundika, Deputy Commissioner of Prisons; Director, Corrections and Extension Services; Chairperson-National Parole Board, interview by Tifwepo Nkunika, February 4, 2015.

<sup>2</sup> Fredrick S.S. Chilukutu. "The Parole System in Zambia," presentation at the 29<sup>th</sup> APAI Annual Conference, Savannah, Georgia, May 17, 2010. (Unpublished), 2

National Parole Board, Factors to be considered in determining an application for parole and the conditions on release on parole.<sup>3</sup>

Currently, only the Prisons Amendment Act and the Parole Rules of 2008 are the only pieces of legislation that govern the parole system in the Zambian criminal justice system. However, there is need to as a country to carry out legislative and policy reforms such as to enact more pieces of legislation if the parole system is to be effective in Zambia.<sup>4</sup>

## **2.4 AN OVERVIEW OF THE NATIONAL PAROLE BOARD**

This part of the research examines the general overview of the National Parole Board in Zambia. It is important for one to understand the operations of the National Parole Board if they are to understand the whole concept of parole in the Zambian criminal justice system.

### **2.4.1 FORMATION AND LEGAL STATUS OF NATIONAL PAROLE BOARD**

The National Parole Board is established under section 113A (1) of the Prisons (Amendment) Act which states that “There is hereby established the National Parole Board....”<sup>5</sup> It is an administrative tribunal that makes recommendations for early release of prisoners on parole. The discretionary early release of Prisoners was introduced in Zambia in 1964 upon attainment of Independence under Section 114 of the Prisons Act CAP 97 of the Laws of Zambia. This provision was repealed by the Prisons (Amendment) Act No. 16 of 2004 Section 113A, which

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<sup>3</sup> SI No. 101 of 2008

<sup>4</sup> Report Of The Committee On National Security And Foreign Affairs On The Report Of The Auditor General On The Rehabilitation And Reintegration Of Prisoners For The Fourth Session Of The Eleventh National Assembly Appointed On 25<sup>th</sup> September 2014

<sup>5</sup> Act No. 16 of 2004 of the Laws of Zambia

provided for the establishment of the National Parole Board.<sup>6</sup> In Zambia, the National Parole Board is a department of the Zambian Prison Service.

#### **2.4.2 COMPOSITION OF THE BOARD**

The composition of the National Parole Board is outlined in section 113A (1) of the Prisons (Amendment) Act. The amended Act states that the members of the National Parole Board shall be appointed by the Minister of Home Affairs. According to the Act, the National Parole Board shall consist of the following people:

- (a) the Deputy Commissioner in charge of correctional services who shall be the Chairperson;
- (b) the Chaplain-General;
- (c) the Director;
- (d) a representative of the ministry responsible for home affairs;
- (e) a representative of the ministry responsible for community development and social welfare;
- (f) a representative of the Attorney-General;
- (g) a representative of religious organisations;
- (h) a representative of a non-governmental organisation dealing with the welfare of prisoners and
- (i) a member of the reception and discharge committee referred to in section 116B.<sup>7</sup>

Section 113A (2) further stipulates that the Vice-Chairperson of the board shall be elected by the member from amongst themselves. The members of the National Parole Board shall hold office for a period of three years which may be renewed for a further period of three years.<sup>8</sup> From the

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<sup>6</sup> Fredrick S.S. Chilukutu. “The Parole System in Zambia,” presentation at the 29<sup>th</sup> APAI Annual Conference, Savannah, Georgia, May 17, 2010. (Unpublished) 4

<sup>7</sup> According to section 116B of the Prisons (Amended) Act, a reception and discharge committee shall comprise such members as the Commissioner of Prisons may, by standing order, determine and shall include the prison chaplain.

<sup>8</sup> SI No. 101 of 2008

outline above, it can be observed that the Board draws its membership from various Institutions with a variety of Professional backgrounds.

#### **2.4.3 FUNCTIONS OF THE BOARD**

Pursuant section 113B of the Amended Act, the functions of the National Parole Board are to “(a) coordinate activities related to, and recommend the release of prisoners on parole; and (b) perform such other functions as the Minister may, by statutory instrument, prescribe.”

However, the functions of the National Parole Board according to rule 4 of the Parole Rules are discussed below.<sup>9</sup>

According to rule 4(a) of the Parole rules, the National Parole Board has the mandate to coordinate activities related to, and to recommend to the Commissioner of Prisons, the release of prisoners on parole. This means that the Board can manage any matters incidental to the parole system. The Board also has the mandate to recommend to the Commissioner of Prisons prisoners that can be released on parole. Pursuant to rule 4(b), the National Parole Board has the function of receiving and considering applications for parole and to recommend to the Commissioner the grant or refusal of such applications. When a prisoner is applying for parole, the application will be submitted to the National Parole Board, which will consider the application. If the Board is convinced that the prisoner should be granted parole, it will recommend to the Commissioner of Prisons to grant parole; if not satisfied that the prisoner should be granted parole, it will recommend the Commissioner to withhold parole.

The National Parole Board has a further mandate under Rule 4(c) to issue summons requiring the appearance before the Board of any parolee or applicant for parole or such witnesses as the

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<sup>9</sup> SI No. 101 of 2008

Board may consider necessary for the purposes of these Rules. This is so because when considering an application for parole, the Board carries out hearings. There are two types of hearings the Board can employ; oral hearings and paper hearings.<sup>10</sup> Rule 4(c) comes in to play when the Board is carrying out oral hearings, when a parolee or applicant for parole or a witness is required to appear before the Board.

Furthermore, the National Parole Board has the duty to recommend to the Commissioner the recall from parole of a parolee for violation of parole conditions and to recommend to the Commissioner the suspension or revocation of parole in respect of any parolee.<sup>11</sup> Parole is a conditional release, meaning it can only be granted upon the prisoner agreeing to abide by conditions set of that release once in society.<sup>12</sup> The parole order may be suspended or revoked because where a parole order is made; the prisoner shall be deemed to be still under a sentence of imprisonment. If a parolee violates the conditions of the parole, the Board can then recommend to the Commissioner of Prisons to recall the parolee from parole back to prison. The National Parole Board also has the function of recommending to the Commissioner of Prisons to suspend the parole in respect of any parolee for any period during which investigations are being carried out for;

- (a) An offence which the parolee is alleged to have committed while on parole; or
- (b) Any breach by the parolee for any other condition of parole.

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<sup>10</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013) 6

<sup>11</sup> SI No. 101 of 2008

<sup>12</sup> SI No. 101 of 2008

In addition, the National Parole Board has the responsibility to make reports to the Minister at the end of the year and at such other intervals as the Minister may direct. This is stipulated in Rule 4(f) of the Parole Rules.

#### **2.4.4 PROCEEDINGS BEFORE THE BOARD**

The nature of the proceedings before the National Parole Board is stipulated in Rule 6 of the Parole Rules.<sup>13</sup> According to the rules, upon receiving the application for parole from a prisoner, the Board has to give notice of the receipt of the application and the day and time fixed for the hearing of the application to the prisoner to whom the application relates. The Board also has to give notice of the same to the Officer-in-Charge, the Inspector-General of Police and the victim if, in relation to an offence for which the prisoner was imprisoned, there is a known victim. However, the rules state that the victim shall not be notified if he or she has indicated to the Board that he or she does not wish to be notified.

Furthermore, the Parole Rules stipulate that for the purposes of the proceedings, the Officer-in-Charge or any person authorised by him for the purpose, may make written submissions to the Board in writing as the Officer-in-Charge thinks fit. This rule also applies to the Inspector-General who may himself or any person appointed by him for this purpose make written submissions to the Board as the Inspector-General thinks fit. The same also applies to victim who may also make written submissions to the Board as the victim thinks fit, or by prior arrangement with the Board, in person. The person to whom the proceedings relate may also make submissions to the Board in writing as the person thinks fit. Rule 6 further stipulates that the person to whom any proceedings before the Board relate is entitled to be represented in those proceedings by a legal practitioner.

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<sup>13</sup> SI No. 101 of 2008

The hearings by the Board must be conducted in camera, and the applicant may be given permission to appear thereat if the Board sees fit. Furthermore, the Board may only give details of the recommendations made by the Board to the Commissioner of Prisons in any proceeding relating to a prisoner or parolee to a person who made submissions to the Board in the proceedings. The same recommendations may also be given to a member of the prisoner's or parolee's family or a close associate of the prisoner or parolee, a legal practitioner representing the prisoner or parolee or any other person who the Board thinks has a proper interest in the release of such information.

## **2.5 SUPERVISION AND MONITORING OF PAROLEES**

When parole is granted to a prisoner, they are still serving their sentence and so they need to be supervised and monitored in the community whilst on parole. For this reason, the extension service programme was established in the Zambian Prison Service to carry out the supervising and monitoring function of parolees. Section 116A(1) of the Prisons (Amendment) Act establishes the extension services programme to provide post imprisonment programmes for discharged prisoners and persons released under compulsory after care. Section 116(2) further states that the Commissioner shall appoint, as extension officers, persons who are professionally qualified in social welfare for the purposes of administering the extension services programme and compulsory after care orders.

In addition to the above stated duties, extension officers have the following additional duties in relation to parolees pursuant to Rule 19 of the Parole Rules:

- (a) to supervise persons released on parole as assigned by Commissioner;
- (b) to prepare reports in Form 7 set out in the Second Schedule as required by the Board.
- (c) to maintain case records and statistics as required by the Board;

- (d) to carry out the direction of the Commissioner in relation to a parole order;
- (e) to investigate and make reports to the Board on the employment and place of living available to each person applying for release on parole; and
- (f) to perform such other duties as directed by the Commissioner or the Board.<sup>14</sup>

It is important that the National Parole Board works closely with the extension services programme so they can continue having the relevant information about the parole in the community. The Board has the duty to recommend to the Commissioner of prisons to revoke parole in respect of any parolee if he or she does not abide by the conditions of the parole.<sup>15</sup> The only way the Board can have sufficient information to recommend such revocation is if they get the relevant information from the extension officers.

## **2.6 A COMPARATIVE ANALYSIS OF THE NATIONAL PAROLE BOARD OF ZAMBIA WITH PAROLE BOARDS OF CANADA AND NAMIBIA**

The Zambian parole system was modelled after the Canadian parole system.<sup>16</sup> However, not all aspects of the Canadian system have been followed in Zambia. For instance, the Canadian National Parole Board makes the final decision on parole releases whereas the Zambian National Parole Board does not. This part of the research compares and contrasts the National Parole Boards of Canada and Zambia. It also tries to bring the comparisons closer to home by comparing and contrasting the Zambian National Parole Board with the Namibian Parole Board.

### **2.6.1 CANADA**

The National Parole Board of Canada is an independent, administrative tribunal under the Corrections and Conditional Release Act and has exclusive authority to grant, deny, cancel, terminate or revoke parole. The National Parole Board of Canada, as part of the criminal justice

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<sup>14</sup> SI No. 101 of 2008

<sup>15</sup> SI No. 101 of 2008

<sup>16</sup> Fredrick S.S. Chilukutu. “The Parole System in Zambia,” presentation at the 29<sup>th</sup> APAI Annual Conference, Savannah, Georgia, May 17, 2010. (Unpublished), 8

system makes independent, quality conditional release decisions. The Board contributes to the protection of society by facilitating as appropriate, the timely reintegration of offenders as law-abiding citizens.<sup>17</sup> The correctional Services of Canada prepares report and makes recommendations to the Parole Board on prisoners, and also supervises the prisoners while they are on parole.<sup>18</sup>

The National Parole Board of Canada makes conditional release decisions for offenders serving sentences of two years or more, in provinces that do not have their own parole boards.<sup>19</sup> Only the provinces of Ontario and Quebec have their own parole boards, and these have authority to grant releases to offenders serving less than two years in prison.<sup>20</sup> The National Parole Board of Canada has an Appeal Division which handles appeals from prisoners who are denied parole.<sup>21</sup>

In comparison to the National Parole Board of Canada, the National Parole Board of Zambia is not independent. As earlier stated, the National Parole Board is an administrative tribunal, but it is not independent because it is a department of the Zambia Prisons Service. Furthermore, the National Parole Board in Zambia is different from the National Parole Board of Canada because it does not have the exclusive authority to grant, deny, cancel, terminate or revoke parole. The National Parole Board only recommends to the Commissioner of Prisons who has the exclusive authority to grant, deny, cancel, terminate or revoke parole. Furthermore, a prisoner in Canada

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<sup>17</sup> “Overview of the Parole Board of Canada,” Parole Board of Canada, last modified December 4, 2014, <http://www.pbc-clcc.gc.ca/about/legisleng.shtml>

<sup>18</sup> National Parole Board of Canada, *Parole in Canada: Community Safety Through Effective Reintegration of Offenders*, by Odette Gravel Dunberry (Montreal, 2004), 4

<sup>19</sup> “Overview of the Parole Board of Canada,” Parole Board of Canada, last modified December 4, 2014, <http://www.pbc-clcc.gc.ca/about/legisleng.shtml>

<sup>20</sup> “Overview of the Parole Board of Canada,” Parole Board of Canada, last modified December 4, 2014, <http://www.pbc-clcc.gc.ca/about/legisleng.shtml>

<sup>21</sup> “Overview of the Parole Board of Canada,” Parole Board of Canada, last modified December 4, 2014, <http://www.pbc-clcc.gc.ca/about/legisleng.shtml>

can appeal the decision of the National Parole Board of Canada to the Appeal Division of the Board. This is different in Zambia; a prisoner cannot appeal the decision of the National Parole Board anywhere.

## **2.6.2 NAMIBIA**

In Namibia, the body responsible for parole is the National Release Board which was established pursuant to section 97(12) of the Namibian Prisons Act 17 of 1998. Members of the Release Board are appointed by the Minister of Safety and Security.<sup>22</sup> The mandate of the National Release Board is to make recommendations, based on a thorough risk assessment of every case, to the Minister of Safety and Security or the Commissioner of Prisons regarding the release on parole of prisoners serving determinate sentences, those sentenced to life imprisonment and offenders declared as habitual criminals.<sup>23</sup> The National Release Board also sets the conditions of parole. The National Release Board may only recommend parole before the expiration of the offender's sentence, if it is of the opinion that the offender will contribute to the protection of society and will not present an undue risk to society.<sup>24</sup>

It can be observed that the National Release Board of Namibia has similar authority to that of the National Parole Board in Zambia. Both the National Release Board and the National Parole Board only make recommendations to the Commissioner of Prisons (and the Minister in the case of the National Release Board). Both Boards do not have the exclusive authority to grant, deny, cancel, terminate or revoke parole of prisoners like the Parole Board of Canada. It can also be noted that the National Release Board just like the National Parole Board is not an independent

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<sup>22</sup> Namibian Prisons Act 17 of 1998

<sup>23</sup> Francois Christiaan Marthinus Louw, “The parole process from a South African perspective” (Master’s thesis, University of South Africa, South Africa, 2008), 58

<sup>24</sup> Francois Christiaan Marthinus Louw, “The parole process from a South African perspective” (Master’s thesis, University of South Africa, South Africa, 2008), 58

body. This is because the members of the National Release Board are appointed by the Minister, and the Minister can appoint whoever he wants to serve on the Board.

## **2.7 CONCLUSION**

In conclusion, Offenders or persons convicted of crimes come from communities, and these offenders will return to their community after parole has been approved by a parole board. It is therefore imperative that the decision of the parole board is transparent, fair and in the interest of community safety whether it is just recommending or is actually making the final decision to grant parole. In Zambia, the National Parole Board is tasked with ensuring that parole decisions are transparent, fair and in the interest of community safety. The National Parole Board has similar characteristics with the Parole Board of Canada and the National Release Board of Namibia. However, the National Parole Board of Zambia has some flaws when compared to the other two Boards.

The following chapter will critically analyse what parole is by explaining the meaning of parole and the functions of parole in Zambia. The chapter will also analyse offender eligibility and parole conditions in Zambia. Lastly, the chapter will distinguish parole from probation, suspended sentence and presidential pardon.

## **CHAPTER THREE**

### **A CRITICAL ANALYSIS OF PAROLE**

#### **3.1 INTRODUCTION**

The aim of this chapter is to critically analyse parole. Parole can be defined as the early release of inmates from correctional institutions prior to the completion of the prison sentence under supervision in the community. Not every prison is eligible for parole, one needs to meet certain criteria in order to qualify for parole. It is also worth noting that parole is not a right that prisoners are entitled to, rather it is a privilege to be earned. For this reason, a parolee has to abide by certain conditions set by the National Parole Board. Parole serves a number of functions in the Zambian criminal justice system. The aim of this chapter will be achieved by analysing what parole is, what are the functions of parole, what are the conditions for parole and how does a prisoner become eligible for parole. The chapter aim will also be achieved by distinguishing parole from probation, suspended sentence and presidential pardon or prerogative of mercy.

#### **3.2 WHAT IS PAROLE?**

Parole is the early release of inmates from correctional institutions prior to the completion of the prison sentence under supervision in the community. Different jurisdictions have different definitions of parole mainly based on the conditions for parole in that particular jurisdiction.<sup>1</sup> In South Africa for instance, Parole refers to a period whereby an offender who has served the prescribed minimum detention period of his sentence in a correctional centre is conditionally released to serve the remaining sentence in the community under the supervision and control of

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<sup>1</sup> Jonah Aaron Siegel, “Prisoner Reentry, Parole Violations, and the Persistence of the Surveillance State” (PhD thesis, University of Michigan, 2014) page 98

the Department of Correctional Services.<sup>2</sup> In Zambia, parole is defined as the conditional release of a convicted offender from a penal or correctional institution, under the continued custody of the State, to serve the convicted offender's remainder of sentence in the community under supervision.<sup>3</sup>

Although states differ substantially in the extent to which they utilize the parole system, the general structure of parole is relatively consistent across jurisdictions.<sup>4</sup> It can be noted that the common aspect of parole in all jurisdictions is offender supervision. It is also important to note that when a prisoner is released on parole, they are still considered as prisoners, hence still under the supervision of the states correctional department.

Biles observe that parole is neither a right nor a reward for good conduct. It provides the parolee with help and guidance over the difficult period when he endeavours to re-adjust himself to life in the community; it retains control so that he may be returned to custody if he breaks the condition of his parole. Parole is part of the sentence.<sup>5</sup> Parole is designed to function as a critical surveillance and rehabilitative mechanism for offenders transitioning from prison to the community.

### **3.3 THE FUNCTIONS OF PAROLE**

Parole serves a number of functions in the Zambian criminal justice system. The functions of parole in Zambia can be divided into three main categories. The three main categories are: (1)

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<sup>2</sup> Department of Correctional Services. Commissioner of Correctional Services. *Correctional supervision and parole board manual*. (Pretoria: 2004), 3

<sup>3</sup> Act No. 16 of 2004 of the Laws of Zambia

<sup>4</sup> Jeremy Travis., & Kirsten Christiansen, "Failed reentry: The challenges of back-end sentencing." *Georgetown Journal on Poverty Law and Policy No. 13* (2006), 249-260.

<sup>5</sup> David Biles, *Current international trends in corrections* (Annandale: The Federation Press, 1988), 176

the Functions of Parole associated with Community Safety and Protection; (2) Functions of Parole associated with the Parolee, and (3) Functions of Parole associated with Corrections.

### **3.3.1 FUNCTIONS OF PAROLE ASSOCIATED WITH COMMUNITY SAFETY AND PROTECTION**

Parole is the best way to ensure that offenders released from prison live a reasonable normal life within the community. The ultimate goal of the criminal justice system is public safety and in parole that means to protect the community from released offenders. It is obvious that the most profitable way of obtaining community protection is to turn the offender into a useful, law-abiding citizen and parole can be a means to this end.<sup>6</sup> The conditions for parole encourage the parolee to become a useful, law-abiding member of the community.

Parole can be used as an incentive to promote good behaviour amongst inmates.<sup>7</sup> This behavioural change is exhibited by the parolee even as they re-enter the community as they are being supervised. The supervision, restriction and monitoring of parolees and the revocation of parole when conditions of release are not complied with contribute to community safety and protection.<sup>8</sup> The parolee will obey the conditions of the parole for fear of being taken back to prison and serving the remainder of their sentence in prison.

### **3.3.2 FUNCTIONS OF PAROLE ASSOCIATED WITH THE PAROLEE**

There are three main functions associated the parolee that can be identified. These three functions are reintegration of the parolee into society, rehabilitation of the parolee and restitution

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<sup>6</sup> Dennis Stevens, *Community corrections: An applied approach* (Upper Saddle River, New Jersey: Prentice Hall, 2006), 291

<sup>7</sup> Lloyd H. Chilundika, Deputy Commissioner of Prisons; Director, Corrections and Extension Services; Chairperson-National Parole Board, interview by Tifwepo Nkunika, February 4, 2015.

<sup>8</sup> Dennis Stevens, *Community corrections: An applied approach* (Upper Saddle River, New Jersey: Prentice Hall, 2006), 297

by the parolee to the victim and the community in general. The three functions are discussed below

### **3.3.2.1 REINTEGRATION**

Reintegration is the process of finding an offender employment, restoring family relationships and confirming his support system (via address), and guiding an offender toward an independent, crime-free lifestyle.<sup>9</sup> Reintegration stresses adaptation to the community by requiring the offender to participate in rehabilitation programmes to develop his skills and educational abilities and allow the offender to use those skills in a community setting.<sup>10</sup>

Being stigmatised as “once a criminal always a criminal” can become an obstacle for many ex-convicts, especially in finding suitable employment. Parole reduces stigma by community members as persons serving on parole are supervised by parole officers. Parole also provides an opportunity for offenders to re-unite with their families hence giving them chance to become economically viable as they can secure employment or start a business.<sup>11</sup> Offenders, especially those who have been incarcerated for long periods, often find it difficult to readjust to life in the community. Parole provides a means through which an offender may make a smooth transition from prison life to living in a community with some degree of freedom under supervision.

### **3.3.2.2 REHABILITATION**

Rehabilitation focuses on altering the behaviour and attitudes of offenders in such a way that they no longer need or want to commit crimes. This can be accomplished by providing

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<sup>9</sup> Dennis Stevens, *Community corrections: An applied approach* (Upper Saddle River, New Jersey: Prentice Hall, 2006), 291

<sup>10</sup> Paul Cromwell and Rolando Del Carmen, *Community-based corrections, 4<sup>th</sup> edition*, (Belmont: Wadsworth, 1999), 3

<sup>11</sup>National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 16

rehabilitation programmes such as development or skills training, educational or work programmes and vocational or treatment programmes (life skills, drug abuse, etc.) that aim to target the specific needs of offenders.<sup>12</sup> Parole is the next logical step in the total development of the process of rehabilitation. By providing supervised assistance, the offender has a better chance of being successful in the community.

### **3.3.2.3 RESTITUTION**

Monetary payment from offenders to victims or institutions they have harmed or to compensate for their losses is the most common form of restitution. Parole can provide an opportunity for offenders to repay their financial debt to society and teaches them responsibility for their actions.<sup>13</sup>

In some instances, the parolee may be required to perform community service (free labour to benefit the community). This community service can be referred to symbolic restitution. This type of restitution is both punitive and rehabilitative in nature. The parolee's time and freedom is restricted until the task is completed thus punitive and rehabilitative as it allows the parolee to do something constructive in the community.<sup>14</sup>

## **3.3.3 FUNCTIONS OF PAROLE ASSOCIATED WITH CORRECTIONS**

### **3.3.3.1 CONTROLS PRISON OVERCROWDING**

The official holding capacity of Prisons in Zambia is 5,265 while the number of Prisoners currently in custody is over 16,000. Parole is one of the non-custodial community correctional

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<sup>12</sup> Dennis Stevens, *Community corrections: An applied approach* (Upper Saddle River, New Jersey: Prentice Hall, 2006), 293

<sup>13</sup> Paul Cromwell and Rolando Del Carmen, *Community-based corrections, 4<sup>th</sup> edition*, (Belmont: Wadsworth, 1999), 5

<sup>14</sup> Dennis Stevens, *Community corrections: An applied approach* (Upper Saddle River, New Jersey: Prentice Hall, 2006), 298

measures that are used to reduce overcrowding in Zambian prisons.<sup>15</sup> Not only does parole benefit those who are released, but also those who remain as prison populations will reduce thereby decongesting the limited prison space to create more room.<sup>16</sup>

### **3.3.3.2 COST SAVING**

Parole is a cheaper means for the state to manage offenders compared to incarceration.<sup>17</sup> The costs of incarcerating an offender are higher compared to those for supervision cases. By the year 2008 the average annual expenditure on prisons was K36 billion.<sup>18</sup> There are also significant indirect or consequential costs, for imprisonment; for example, overcrowded prison conditions breed diseases such as tuberculosis and HIV and AIDS and treatment and care of inmates suffering from such chronic diseases results in a higher expenditure bill on the Government.<sup>19</sup> It is clear that with the proper administration of the parole system in placing “rehabilitated” offenders in the community, and thus reducing the period of imprisonment, the Zambian Prison Services, not to mention the taxpayer, can save a lot of money.

### **3.3.3.3 PUNISHMENT**

Even while on parole, the parolee continues to be punished for the crime they committed. This is so in that the parolee is subjected to strict parole conditions under the supervision and monitoring of parole officers. Parolees are not free to do whatever they wish, and parole can be revoked for misbehaviour or not keeping their promise to comply with the conditions. Parole has to do with

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<sup>15</sup> Tobias Mwanza, “Parole as a way to reduce overcrowding In Zambian prisons: a communicative and participatory approach” (Master’s thesis, University of Zambia, Zambia, 2012), 86

<sup>16</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 16

<sup>17</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 16

<sup>18</sup> Zambia Law Development Commission. *Report of the implementation of community sentencing in Zambia*. (Lusaka Zambia, 2012), 22

<sup>19</sup> Zambia Law Development Commission. *Report of the implementation of community sentencing in Zambia*. (Lusaka Zambia, 2012), 22

“how” punishment and not “how much” punishment is administered. Parole implies flexible, judgement-driven, tailored and targeted punishment.<sup>20</sup>

### **3.3.3.4 DETERRENCE OF CRIME AND INSTITUTIONAL CONTROL**

The prospect of parole provides a strong incentive for offenders to comply with institutional rules.<sup>21</sup> The prospect of parole modifies prisoners’ behaviour making them more likely to comply with institutional rules so they may be considered for parole. Parole boards are persuaded to approve parole for offenders with good conduct records in prison. They are deemed better risks than those who engage in institutional misconduct or disciplinary offences. When the prisoners exhibits behaviour change while in prison, then they can be trusted to have really changed and can be reintegrated in the community without posing a threat to the community.

## **3.4 OFFENDER ELIGIBILITY AND CONDITIONS FOR PAROLE IN ZAMBIA**

Section 114 of the Prisons (Amendment) Act provides that The Commissioner may, on such terms and conditions as the Parole Board may determine, permit a prisoner who is serving a term of imprisonment of at least two years, within six months of the date the prisoner is due to be released, to be absent from prison on parole until the expiry of the remainder of the prisoner’s term of imprisonment. This means that to be eligible for parole in Zambia, a prisoner must be serving a term of at least two years and can be on parole from six (6) months before their expected release date until the expiration of their sentence (unless parole is suspended or revoked).

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<sup>20</sup> Peggy Burke, *Issues in parole release decision making: Correctional theory and practice* (Chicago: Nelson Hall, 1992), 11

<sup>21</sup> Lloyd H. Chilundika, Deputy Commissioner of Prisons; Director, Corrections and Extension Services; Chairperson-National Parole Board, interview by Tifwepo Nkunika, February 4, 2015

The conditions for release of a prisoner on parole in Zambia are set out in Rule 10 of the Parole Rules.<sup>22</sup> The first condition for parole is that the prisoner is under supervision of the extension officer and must obey their directions until the expiration of Parole. Furthermore, the prisoner is not supposed to commit any offence. The prisoner is also not allowed to possess an offensive weapon without permission of the National Parole Board. Furthermore, the prisoner may be subject to other conditions recommended by the Board.

Once parole is granted, the prisoner needs to agree to obey the conditions of the parole. Once a parolee breaches the conditions of the parole, the National Parole Board can recommend to the commissioner of Prisons to revoke the parole of the guilty parolee. The Commissioner of Prisons then orders accordingly.<sup>23</sup>

### **3.5 PAROLE DECISION MAKING**

Parole decision making involves assessing the degree and nature of risk to the public represented by an offender's release from prison. It also encompasses determining if, when, and under what supervised conditions that release would be most compatible with the safety and welfare of the general public.<sup>24</sup> The paramount consideration of Parole Boards worldwide, including the Zambian National Parole Board when considering an application for parole is the safety of the community.

When considering an application for parole, the National Parole Board conducts two types of hearings; oral hearings or paper hearings.<sup>25</sup> In oral hearings, the applicant is required to appear

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<sup>22</sup> SI No. 101 of 2008

<sup>23</sup> SI No. 101 of 2008

<sup>24</sup> Josh Wall, *Parole Decision Making: the Policy of the Massachusetts Parole Board*, (December 2006)

<sup>25</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 6

before the Board for the purpose of giving his or her full account and to answer all questions pertaining to the parole application. Oral hearings are usually necessary for cases which are of a grave nature. Paper hearings on the other hand are where the National Parole Board members consider cases on paper without the presence of the parole applicant.<sup>26</sup>

When considering an application for parole, the National Parole Board will take into account the nature and circumstances for the offence which the applicant was sentenced to Prison and the relevant remarks which were made by the court at the time of sentencing. The National Parole Board will also consider likelihood of the prisoner to comply with conditions of parole. It will also take into account the circumstances and gravity of offence(s) for which the applicant was sentenced, the impact of crime (s) on the victim if applicable, the institutional behaviour of the prisoner and the behaviour of the prisoner while on previous parole (if any). The National Parole Board will further consider reports concerning social, medical, psychological condition of applicant as well as reports from the extension officer pertaining to the probable circumstances of the prisoner after release and any other considerations.<sup>27</sup>

### **3.6 PAROLE DISTINGUISHED FROM PROBATION, SUSPENDED SENTENCE AND PRESIDENTIAL PARDON**

Parole, probation, suspended sentence and prerogative of mercy usually cause confusion in the minds of many people because they all involve persons found guilty of a crime. This section distinguishes the four concepts.

Probation is sometimes used as an alternative to sending a defendant to prison. It will be used when an individual is guilty of a crime but that crime is either deemed not sufficiently serious, or

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<sup>26</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 7

<sup>27</sup> SI No. 101 of 2008

the defendant's previous record indicates that a prison sentence is perhaps not suitable.<sup>28</sup> By being on probation, the defendant is spared a prison sentence and so they are expected to comply thoroughly with the rules of their probation conditions. One of the aims of probation is to try to rehabilitate the offender and try to prevent them from committing similar crimes in the future. In Zambia, probation is governed by the Probation of Offenders Act, Chapter 93 of the Laws of Zambia.

Parole is different from probation in that for parole, a person needs to have served a large part of their sentence in prison, while for probation the person does not serve the sentence in prison. Furthermore, the judge who hears the case is the one who decides to place the offender on probation. On the other hand, the National Parole Board in Zambia is the one that considers people to be granted parole after they are left with six months on their sentence.

A suspended sentence is issued when an individual is convicted of a crime and given a sentence to serve for that crime, however, the individual will not have to serve that sentence immediately and may never have serve it at all.<sup>29</sup> In Zambia, the suspension of sentences is found under section 16 of the Criminal Procedure Code Act.<sup>30</sup> A suspended sentence means that a person is found guilty of an offence and if the person does not refrain from doing certain activities they will serve the sentence ordered. This was illustrated in the case of *The People v. Jacqueline Frances Walsh* where the Magistrate warned the defendant not to commit a similar offence within the year. If she was found with a similar case, she would be imprisoned to serve the

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<sup>28</sup> "What is the difference between probation and a suspended sentence?," Findlaw UK, last modified February 15, 2015, <http://www.findlaw.co.uk/law/criminal/sentencing/500387.html>

<sup>29</sup> "What is the difference between probation and a suspended sentence?," Findlaw UK, last modified February 15, 2015, <http://www.findlaw.co.uk/law/criminal/sentencing/500387.html>

<sup>30</sup> Chapter 88 of the Laws of Zambia.

sentence which was suspended.<sup>31</sup> The aim of a suspended sentence is to give an individual an opportunity to repent rather than immediately go to prison.<sup>32</sup>

Suspended sentence is different from parole in the sense that the judge is the one who gives the offender a suspended sentence. Furthermore, for a suspended sentence, the offender does not serve the sentence in prison; the sentence is suspended to be served if the offender does not follow the conditions of the suspended sentence.

Presidential pardon or prerogative of mercy on the other hand is when the president of a country pardons a convicted person. In Zambia, the constitution endows the president with the power to either pardon or commute the sentence of a convicted person. This is set out in Article 59 of the Constitution of Zambia. One of the functions of prerogative of mercy is to act as a corrective institution for miscarriages of justice, because the human justice system is not perfect. There are a number of cases where one is convicted and sentenced but later found to be innocent.<sup>33</sup>

Presidential pardon is different from parole because the president can pardon any convicted person at any time he wishes. Also, such pardon may be conditional or non conditional. The exercise of prerogative of mercy is at the discretion of the president.

### **3.7 CONCLUSION**

In conclusion, parole is the early release of inmates from correctional institutions prior to the completion of the prison sentence under supervision in the community. Parole serves a number of functions in the criminal justice system. The offender eligibility and conditions for parole in

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<sup>31</sup> The People v. Jacqueline Frances Walsh (2013) Unreported

<sup>32</sup> “What is the difference between probation and a suspended sentence?,” Findlaw UK, last modified February 15, 2015, <http://www.findlaw.co.uk/law/criminal/sentencing/500387.html>

<sup>33</sup> Chipola Bako, “Capital Punishment in Zambia and the Presidential Prerogative of Mercy” (Degree thesis, University of Zambia, 2004), 45

Zambia are contained in the Prisons (Amendment) Act and the Parole Rules. It is also important to distinguish parole from probation, suspended sentence and presidential pardon. After critically analysing parole in Zambia, the next chapter will evaluate the efficacy of parole in the Zambian criminal justice system. The aims of the following chapter will be achieved by analysing the benefits of parole in Zambia, parole statistics and factors affecting parole decisions. The chapter will also endeavour to evaluate if parole has served any significant purpose in Zambia.

## **CHAPTER FOUR**

### **THE EFFICACY OF PAROLE IN THE CRIMINAL JUSTICE SYSTEM OF ZAMBIA**

#### **4.1 INTRODUCTION**

Parole is still a new phenomenon in the Zambian criminal justice system having been made operational in 2008. Since parole was introduced in Zambia, a total number of 1223 prisoners have been released on parole. Prisons in Zambia are very congested. One of the purposes of parole in Zambia is to decongest the overcrowded prisons. However, the overcrowding problem in Zambian prisons has not changed for the better. Zambian prisons are still overcrowded. Analysing the parole and prison statistics in Zambia, it is hard to answer the question if parole has served any purpose in Zambia or if at all parole has been effective in the Zambian criminal justice system. This chapter will analyse the parole statistics in Zambia. It will give a detailed statistical breakdown of parole releases by gender since 2009 till the latest, 2014. The chapter will further analyse the benefits of parole in the Zambian criminal justice system. It will also evaluate the barriers affecting parole decisions in Zambia.

#### **4.2 PAROLE STATISTICS IN ZAMBIA**

APPLICATIONS CONSIDERED			GRANTED			REVOCATIONS
MALE	FEMALE	TOTAL	MALE	FEMALE	TOTAL	
<b>2009</b>						
180	Nil	180	115	Nil	115	1 Male
<b>2010</b>						
323	Nil	323	203	Nil	203	Nil
<b>2011</b>						

506	19	525	250	12	262	1 Male
<b>2012</b>						
660	6	666	275	04	279	1 Male
<b>2013</b>						
516	18	534	150	10	160	Nil
<b>2014</b>						
494	18	512	193	11	204	2 Male
<b>GRAND TOTAL</b>						
2,679	61	2,740	1,186	37	1,223	5 Male

**Figure 1.1**

With reference to figure 1.1, since parole was made operational in Zambia, a total number of 1,223 prisoners have been granted parole from 2009 till 2014. Of the 1,223, 1,186 are male and only 37 are female. Also only 5 parolees have had their parole licence revoked. In total, 2,740 applications were considered for parole and 2,679 applicants were male and 61 female.<sup>1</sup>

### **4.3 AN ANALYSIS OF THE PAROLE STATISTICS IN ZAMBIA**

#### **4.3.1 PAROLE AND FEMALE PRISONERS**

Looking at the numbers, it looks like very few females have been granted parole in Zambia. However, statistically speaking, more females have been granted parole because about 61 percent of female applicants have been granted parole. The same cannot be said for the male population. Only about 44 percent of the male applicants have been granted parole. Therefore, the small number of female parole beneficiaries can be attributed to the fact that less females

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<sup>1</sup> National Parole Board Statistical Breakdown of Parole Releases by Gender since 2009 (2015)

apply for parole because few qualify for parole.<sup>2</sup> It has been observed that many females serve short sentences of less than two years compared to their male counterparts, thus making them not eligible for parole in Zambia.

Apart from the sentence length, another factor that has contributed to less females being eligible for parole is the fact that in some prisons there is no education and skills training for female prisoners.<sup>3</sup> One of the factors considered before a prisoner is considered for parole is the prisoner's demonstration that he or she is committed to improving his or her life. And this can be observed from the activities he or she was involved in whilst in prison such as education and skills training.<sup>4</sup> Because most female prisoners do not have access to education or skills training whilst in prison, they are usually not considered for parole, hence the lesser number of females granted parole.

#### **4.3.2 PAROLE APPLICATIONS VS. PAROLE LICENCES GRANTED**

From the statistics, it can be observed that very few prisoners are actually granted parole compared to the number of applications that are actually considered. The less number of people granted parole can be attributable to the ineffectiveness of the parole system in the Zambian criminal justice system.<sup>5</sup> For instance, the criteria for parole eligibility in Zambia prevents the effective administration of the parole system in Zambia. The eligibility for parole is too restrictive such that in some cases, by the time a prisoner's application is considered, they would have lost their eligibility due to the expiry of their sentence. This was due to delayed parole

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<sup>2</sup> Lloyd H. Chilundika, Deputy Commissioner of Prisons; Director, Corrections and Extension Services; Chairperson-National Parole Board, interview by Tifwepo Nkunika, February 4, 2015.

<sup>3</sup> Office of the Auditor General. Report of the Auditor General on the rehabilitation and reintegration of prisoners, by Dr. Anna O Chifungula (Lusaka, Zambia, July 2014), vii

<sup>4</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 14

<sup>5</sup> Office of the Auditor General. Report of the Auditor General on the rehabilitation and reintegration of prisoners, by Dr. Anna O Chifungula (Lusaka, Zambia, July 2014), viii

hearings, failure to pay allowances to the board members, which in turn resulted into apathy and lack of offices in the provinces for the National Parole Board.<sup>6</sup>

#### **4.3.3 PAROLE REVOCATIONS**

It can be observed that very few people have had their parole revoked. Only 3 people have had their parole license revoked since 2009. One of the functions of parole is to promote good behaviour amongst prisoners, altering the behaviour and attitudes of offenders in such a way that they no longer need or want to commit crimes.<sup>7</sup> By looking at the number of revocations, it can be argued that indeed the parolees are actually rehabilitated hence almost all do not have their parole license revoked. Therefore, if parole is introduced on a large scale and a lot of prisoners are granted parole, then this will see the criminal justice system achieving one of its function of rehabilitating the offender.<sup>8</sup>

Where a parolee's licence is revoked, the parolee is sent back to prison to serve the remainder of their sentence in prison.<sup>9</sup> This is the practice in the Zambian criminal justice system. However, this only shows that imprisonment is overused in the Zambian criminal justice system.<sup>10</sup> There are other forms of punishment apart from incarceration that can be used to punish a parolee who does not follow the conditions of parole and has their parole licence revoked such as community service. Community service sentencing is available in Zambia as it was illustrated in the case of

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<sup>6</sup> Office of the Auditor General. Report of the Auditor General on the rehabilitation and reintegration of prisoners, by Dr. Anna O Chifungula (Lusaka, Zambia, July 2014), viii

<sup>7</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 16

<sup>8</sup> Zambia Law Development Commission, *Report of the implementation of community sentencing in Zambia*. (Lusaka Zambia, 2012), 2

<sup>9</sup> SI No. 101 of 2008

<sup>10</sup> Zambia Law Development Commission, *Report of the implementation of community sentencing in Zambia*. (Lusaka Zambia, 2012), 22

*The People v. Maiko Zulu*<sup>11</sup> were the defendant sentenced to two years imprisonment suspended for 12 months and was also ordered to perform community service. If the parole system is to be effective in Zambia, it should make use of such sentences like the community service when punishing parolees who do not follow the conditions of their release. Taking them back to prison only hinders the success of the parole system.

#### **4.4 HAS PAROLE SERVED ITS FUNCTIONS IN THE ZAMBIAN CRIMINAL JUSTICE SYSTEM?**

Since parole became operational in Zambia in 2008, it was hoped that it would have many benefits for the Zambian Prison Service. When parole was introduced, it was hoped that it would help encourage the restitution, rehabilitation and reintegration of the prisoner into the community. It was also hoped that it would control prison overcrowding in Zambian prisons, it would be a cost saving measure for the Zambian Prison Service and that it would act as deterrence to crime and it would encourage institutional control in prisons. Parole was also introduced in the hope that it would be the best way to offer community safety and protection when a prisoner is released from prison.

##### **4.4.1 FUNCTIONS OF PAROLE ASSOCIATED WITH COMMUNITY SAFETY AND PROTECTION**

Since the parole system was made operational in Zambia, only three parolees have had their parole license revoked.<sup>12</sup> This is sufficient evidence to show that parolees abide by the parole conditions, hence it can be said that they have really modified their behaviour and so do not pose a threat to the community. Also, recidivism rates amongst people who were released on parole

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<sup>11</sup> (2009) Subordinate Court of the First Class of Lusaka (unreported)

<sup>12</sup> National Parole Board Statistical Breakdown of Parole Releases by Gender since 2009 (2015)

are actually very low.<sup>13</sup> This also shows real change of behaviour of parolees. The low rate of parole revocations and recidivism shows that indeed when a prisoner is released on parole, the community is safe as that person has really changed their behaviour. Therefore, parole has, although on a very small scale helped to provide community safety and protection from ex-convicts.

#### **4.4.2 FUNCTIONS OF PAROLE ASSOCIATED WITH PAROLEE**

With regard to the function of rehabilitating and reintegrating the prisoner into society, parole has indeed served that purpose in the Zambian criminal justice system.<sup>14</sup> Parole is a gradual way of reintegrating the prisoner into society as they are still being supervised. Parole has helped reduce stigma by community members as parolees are supervised by the parole officers. Parole has also provided an opportunity for offenders to reunite with their families hence giving them a chance to become economically viable as they can secure employment or start a business while serving the sentence in the community.<sup>15</sup> Parole has helped provide a smooth transition for prisoners from life behind bars to life in the community. Also, for those who were released on parole, recidivism is lower. Parole helps them to get used to living a law abiding life. However, even if rehabilitation and reintegration is achieved, it is at a very small rate due to the low number of prisoners actually granted parole.

Parole has also been useful in giving an opportunity to prisoners with failing health to go out into a much favourable environment. With the appalling conditions in prisons, their life and well-being is compromised if they remain in prison. A domestic environment will very likely improve

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<sup>13</sup> Zambia Law Development Commission. *Report of the implementation of community sentencing in Zambia*. (Lusaka Zambia, 2012), 53

<sup>14</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 16

<sup>15</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 16

nutritional support through a balanced diet in comparison to restrictions in food that the prison environment necessarily imposes.<sup>16</sup>

#### **4.4.3 FUNCTIONS OF PAROLE ASSOCIATED WITH CORRECTIONS**

In regard to the functions of parole associated with corrections, it was hoped that parole would help reduce overcrowding in prisons, would be a cost saving measure for the Prisons service and it would be an incentive for prisoners to comply with institutional rules.

Even after parole was made operational, the overcrowding situation in Zambian prisons has not changed. Zambian prisons are still appallingly overcrowded.<sup>17</sup> Very few people have been released on parole in Zambia and so it is hard to categorically state that parole has helped reduce prison populations in Zambia. It is however hoped that as the parole system is still developing, it will eventually help reduce prison populations thereby decongesting the limited space to create more room.<sup>18</sup>

As for the cost saving function, parole is a cheaper means for the state to manage offenders compared to incarceration. However, since few prisoners have been granted parole, the Zambian Prisons Service can hardly be said to have saved any costs in running prisons in Zambia. It is hoped that as the parole system develops, the prisons service will save more financially by having many prisoners on parole rather than being incarcerated.<sup>19</sup>

Parole in Zambia has indeed provided a strong incentive for offenders to comply with institutional rules; it has increasingly been instrumental in promoting good behaviour amongst

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<sup>16</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 16

<sup>17</sup> Tobias Mwanza, “Parole as a way to reduce overcrowding In Zambian prisons: a communicative and participatory approach” (Master’s thesis, University of Zambia, Zambia, 2012), 86

<sup>18</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 16

<sup>19</sup> Human Rights Watch, *Unjust and Unhealthy: HIV, TB, and Abuse in Zambian Prisons*. (United States of America, 2010), 120

inmates.<sup>20</sup> The prospect of parole has helped modify prisoners' behaviour making them more likely to comply with institutional rules so they may be considered for parole. The National Parole Board is persuaded to recommend offenders with good conduct records in prison for parole to the Commissioner of Prisons. When the prisoners see their fellow inmates granted early release, they become inspired to also change for the better so they can also be granted early release.

#### **4.5 PAROLE AND RECIDIVISM**

Recidivism can be defined as the return of ex-prisoners to prison.<sup>21</sup> It can also be defined as chronic tendency towards repetition of a criminal act or anti-social behaviour patterns.<sup>22</sup> Recidivism is the return to prison for a criminal offence or the commitment of a new crime other than a technical violation of parole.<sup>23</sup> Technical violations, such as failing to report a change of address involve non-criminal behaviour and do not amount to recidivism.

Recidivist rates are generally used to test whether the different programs undertaken within a correctional institution or prison contribute towards reoffending or whether other forms of community-based punishment are more effective at reducing further reoffending.<sup>24</sup> Community based punishments include parole and community service.

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<sup>20</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 16

<sup>21</sup> Kenworthy Mwandamena Mulilfe Likando, "Rehabilitation programmes and recidivism in the Zambian prison system" (Master's thesis, University of Zambia, 1983), 38

<sup>22</sup> Zambia Law Development Commission. *Report of the implementation of community sentencing in Zambia*. (Lusaka Zambia, 2012), vii

<sup>23</sup> Dennis Stevens, *Community corrections: An applied approach* (Upper Saddle River, New Jersey: Prentice Hall, 2006), 16

<sup>24</sup> Dennis Stevens, *Community corrections: An applied approach* (Upper Saddle River, New Jersey: Prentice Hall, 2006), 16

Rates of re-offending are quite high among ex-convicts because they do not achieve meaningful rehabilitation and skills training whilst in prison. Hence when reintegrated into society without any skills to lead a meaningful life, they tend to fall back on their earlier activities in order to make ends meet.<sup>25</sup>

It has been observed that where a prisoner is released after having learnt a skill in prison, their chances of re-offending is very low because the skill learnt enables them to lead a responsible life once reintegrated into society.<sup>26</sup> They learn a way of making a living and so do not have to fall back on their life of crime to make ends meet.

It has also been observed that rates of recidivism are very low among persons that were released on parole.<sup>27</sup> This can be attributable to the fact that parole really encourages behaviour modification of the offender. One of the facets of this behaviour change is learning of a skill while in prison. Hence, because the person released on parole would have learnt a skill while in prison and changed their behaviour, they are able to live a meaningful responsible life once reintegrated into the community.

#### **4.6 BARRIERS AFFECTING PAROLE DECISIONS IN ZAMBIA**

There are a number of barriers that affect parole decisions of the National Parole Board in Zambia. These barriers include funding, the Board not being the final decision maker and pressure from the victims. Such problems negatively affect the effective coordination of the parole system in Zambia by the National Parole Board. Removing such problems from the

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<sup>25</sup> Zambia Law Development Commission. *Report of the implementation of community sentencing in Zambia*. (Lusaka Zambia, 2012), 34

<sup>26</sup> Zambia Law Development Commission. *Report of the implementation of community sentencing in Zambia*. (Lusaka Zambia, 2012), 31

<sup>27</sup> Dennis Stevens, *Community corrections: An applied approach* (Upper Saddle River, New Jersey: Prentice Hall, 2006), 18

equation would ensure the effective operation of the parole system in the Zambian criminal justice system. It would ensure that more deserving prisoners are granted parole and it would also ensure that parole indeed serves all of its purposes in the criminal justice system. These barriers are discussed at length below.

#### **4.5.1 PRESSURE FROM VICTIMS OR VICTIM GROUPS**

The National Parole Board is usually faced with pressure from the victim or victim groups when considering a prisoner for parole. Crime is at its core a violation of a person by another person, rather than a violation of an abstract entity – the state.<sup>28</sup> The person affected by a crime is the victim. The victim may have suffered physical injury, emotional distress and financial loss. When victimised there is almost always psychological trauma, and this may affect job or academic performance, marital relationships, sexual interest or behaviour.<sup>29</sup> Therefore, victims feel that criminals need to serve their full sentences in prison; they should not be released into society prematurely. Most victims feel parole is being too lenient on the criminal and a double victimisation on their part, as most victims don't feel free to live with criminals or their victimisers.<sup>30</sup> Public outcry is always aimed at keeping perpetrators of crime away from victims and the community. When parole is granted, the victims and the community feel cheated, the system not helpful and authorities perceived as being corrupt.

When society does not embrace prisoners released on parole so they can serve part of their sentence in the community, the prisoners develop feelings of rejection exclusion, guilt and shame. According to Taylor, the response to these feelings of shame and powerlessness is a rage

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<sup>28</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013) ,20

<sup>29</sup> Daniel w. Vanness, and Charles w. Colson, *Crime and Its Victims* (Downers Grove: Inter Varsity Press, 1986) 30

<sup>30</sup> Australian Ministry for Corrections and Crime Prevention, *Review of the Parole System in Victoria*, by Ian Callinan AC, (jully 2013) 80

which he directs either outwardly at the world or inwardly at himself.<sup>31</sup> Such responses lead to the parolee's recidivism.

#### **4.5.2 PAROLE ELIGIBILITY**

The eligibility for applicants to be released on parole in the Zambian criminal justice system is too restrictive. A prisoner is eligible for parole pursuant to section 114 of the Prisons (Amendment) Act. A prisoner may be eligible for parole if they are serving a term of imprisonment of at least two years and has six months left on the sentence. This means that a prisoner can only be on parole for six months. This period of six months is too little to act as an incentive for behavioural change for a prisoner serving a long sentence. A prisoner serving a long sentence who has already served a majority of their sentence would not mind completing the remainder of the six months in prison.

#### **4.5.3 FUNDING**

The National Parole Board is an extension of the Zambia Prison Service. The Board lacks administrative autonomy. It does not receive direct funding from the Treasury or Ministry of Finance and National Planning. The Board receives its unit allocation from the Prisons Budgetary allocation, making the funding inadequate. The problem of inadequate funding can be illustrated by the National Parole Boards Annual Report of 2013. In the report, the Board stated that there were inadequate finances which called for the Board to re-think the manner parole was to be conducted. This led to a departure from the practice where sittings were conducted on a

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<sup>31</sup> Charles Taylor, *Counseling Prisoners Addicted to Crime* (Hantsport Nova Scotia: Lancelot Press, 1980), 38

provincial basis to a more central system where all eligible applicants across the country were considered at the same time.<sup>32</sup>

#### **4.5.4 DECISION MAKING**

Another challenge the National Parole Board faces in Zambia is the fact that the Board is not the final decision maker on the granting of parole. The Board only recommends to the Commissioner of Prisons which prisoners should be granted parole. The Commissioner of Prisons considers at the Board's recommendations and makes the final decision of whether to accept or deny the grant of parole to a prisoner.<sup>33</sup> This makes the National Parole Board a mere extension of the Zambia Prison Service and not an independent tribunal that makes independent decisions.

#### **4.6 CONCLUSION**

In conclusion, many parole applications have been considered but very few of those applicants have actually been granted parole. The few number of parole licences granted can be attributed to the fact that there are many barriers that hinder parole decisions in Zambia. If these barriers are removed from the equation, many people will actually benefit from the parole system. Eliminating the barriers that hinder parole decisions will also see to it that the functions of parole are fully realised in the Zambian criminal justice system. Parole in Zambia has been effective only to a small scale. Many factors are hindering the system from being fully effective. Elimination of those barriers will make the parole system in Zambia to have its efficacy. The next chapter will provide the recommendations of the author. It will also provide the final conclusion to this research.

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<sup>32</sup> National Parole Board, *National Parole Board 2013 Annual Report* (Lusaka: 2013), 5

<sup>33</sup> Act No. 16 of 2004 of the Laws of Zambia

## **CHAPTER FIVE**

### **RECOMMENDATIONS AND CONCLUSION**

#### **5.1 INTRODUCTION**

The objective of this research was to critically analyse the parole system in the Zambian criminal justice system by giving an overview of the legal and statutory framework of parole in Zambia, and analysing its efficacy. To this effect, this paper has shown that parole is still a new phenomenon in the Zambian criminal justice system and there is still room for it to develop and become more effective. Parole was introduced to serve a number of purposes such as help in the rehabilitation and reintegration of the offender into the community. It was also introduced so as to help reduce overcrowding in Zambian prisons which are inhumanely overcrowded with over 16,000 against the official holding capacity of 5265 prisoners.. Some of these purposes of parole have been achieved and are evident, while some are far from being achieved. Some purposes of parole are evident on a very small scale. This is attributed to the many barriers that hinder parole decisions in Zambia.

#### **5.2 RECOMMENDATIONS**

Taking into account the analysis of this research, it would be deficient for the author to conclude the research without suggesting any solutions to the flaws that have been discovered with parole system in Zambia. Based on this argument, the following are the most important recommendations to be made in order to ensure that the parole system in Zambia is effective. None of the recommendations are prescriptive to any organ of the government, but they will have relevance in terms of implementation in the Prison Services and may potentially contribute to the effectiveness of the parole system.

### **5.2.1 EDUCATE SOCIETY ON IMPORTANCE OF PAROLE**

Firstly, the National Parole Board should have programmes where it can educate society on the importance or benefits of parole in Zambia. As earlier discussed under 4.4.1, when a prisoner is released on parole, the community, especially the victims feel cheated, they feel the system is not helpful and authorities perceived as being corrupt. But if the society understands the parole system, the community cannot perceive parole as being too lenient on the offender or as a flaw in the justice system. The community will embrace parolees and this will reduce recidivism rates. This in turn will make the parole system more effective at helping reduce prison populations.

### **5.2.2 REVISE PRISONER ELIGIBILITY FOR PAROLE**

In Zambia, a prisoner may be eligible for parole if they are serving a term of imprisonment of at least two years and has six months left on the sentence. Six months is too little to act as an incentive for behavioural change for a prisoner serving a long sentence and it does not reflect the essence of parole in Zambia. It is for this reason the author's recommendation that the best way to make the parole system more effective in the Zambian criminal justice system is by revising the criteria for prisoner eligibility for parole. The parole period should be increased from six months to a longer period. For instance, a prisoner can be eligible for parole after they have served half of their sentence. This would be a better incentive and thus would really encourage rehabilitation of the prisoners.

### **5.2.3 DECENTRALISE NATIONAL PAROLE BOARD**

The author further recommends that the National Parole Board should be decentralised. Currently, the National Parole Board is at national level. The members of the Board move from province to province to carry out parole hearings. This presents a strain on the decision making process of the Board as it presents the Board with a hefty workload of having to consider

applications from all ten provinces of Zambia. Decentralising the National Parole Board at provincial level would ensure that parole applications are considered at the earliest time and thoroughly. This would make the parole system very effective.

#### **5.2.4 MAKE NATIONAL PAROLE BOARD INDEPENDENT TRIBUNAL**

In addition, the National Parole Board should be made an independent administrative tribunal. It should become an independent tribunal under the Ministry of Home Affairs so that it has a clear mandate, a voice and authority to manage conditional releases and pardons in Zambia. It should not be a department under the Prisons Service. This can be achieved by firstly ensuring that the staff of the Board are not members of the Prisons Service. The members of staff should be employed solely as workers of the National Parole Board. Secondly, independence of the tribunal can be achieved by making sure that parole officers are employed just as parole officers. Currently, prison officers are the ones who work as parole officers under the extension services unit of the Prisons Service. Once the National Parole Board has its own structure, the chairperson of the Board shouldn't also be chosen from the Prisons Service. Such an independent structure would ensure the smooth administering of the parole system in Zambia.

#### **5.3.5 MAKE NATIONAL PAROLE BOARD FINAL PAROLE DECISION MAKER**

Further, once the National Parole Board becomes an independent tribunal, it should also be given autonomy to make parole decisions. It should be the final decision maker as to who gets parole. The Board should not just be recommending to the Commissioner of Prisons which prisoner to be granted parole. The Zambian system should emulate the Canadian system where the National Parole Board has exclusive authority to grant, deny, cancel, terminate or revoke parole. The National Parole Board, as part of the criminal justice system in Zambia should be able to make independent, quality conditional release decisions. It would also be prudent for the National

Parole Board to have an Appellate Division which will be able to handle appeals from prisoners who are denied parole.

#### **5.2.6 INCREASE FUNDING TO THE NATIONAL PAROLE BOARD**

Also, the author recommends that once the National Parole Board is made an independent body, funding to the Board should increase. The Board receives its unit allocation from the Prisons Budgetary allocation, making the funding inadequate. It does not receive direct funding from the Treasury or Ministry of Finance and National Planning. Inadequate finances have an impact in the manner in which parole hearings are conducted. Instead of hearings or the entire parole process being thorough, it is rushed and restructured so as to be able to meet the target within the limited finances. To ensure quality parole decisions made by the National Parole Board, the Board should have adequate finances to be able to carry out its tasks effectively.

#### **5.2.7 ALTERNATIVES TO INCARCERATION MUST BE USED AFTER PAROLE IS REVOKED**

After parole is revoked, the defaulting parolee is sent back to prison. This does not help in any way in decongesting the prisons or ensuring the reintegration and rehabilitation of the offender. It is for this reason that the author also recommends that once a parolee's license is revoked, the alternatives to incarceration must be found.

### **5.3 CONCLUSION**

In conclusion, it may be expressed that the contents of this research reveal the operations of the parole system in the Zambian criminal justice system. The research reveals the purposes of having parole in Zambia as well as the factors that hinder the effective operation of parole in Zambia. The research also reveals the legal framework of parole in Zambia.

In Zambia, the National Parole Board is given the mandate to handle all matters incidental to parole and then recommend to the Commissioner of Prisons the prisoners to be released on parole. Parole has a number of purposes, but in Zambia it has served few of those purposes. It has been observed that the purposes of parole in Zambia has been realised on a very small scale.

It is regrettable to note that despite there being legislation governing the parole system in Zambia, parole still has a lot of flaws in the Zambian criminal justice system. For instance, very few prisoners have actually been released on parole since it was made operational in 2008. Worse off, very few women country wide have actually benefited from parole. However, the small numbers of parole releases can be attributed to the fact that parole is still a new phenomenon in the criminal justice system of Zambia. It is hoped that in years to come, parole will develop to become more effective and it will begin to serve its purpose on a larger scale.

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