



PRISON CONDITIONS IN ZAMBIA

VIS – A – VIS

COMMUNITY SERVICE SCHEME

*Spr.
Law
Ctto
2004
C.1*

BY

RICHARD CHOONGA

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**I recommend that the obligatory essay prepared under my supervision by
Richard Choonga**

ENTITLED

PRISON CONDITIONS IN ZAMBIA

VIS – A – VIS

COMMUNITY SERVICE SCHEME

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

Signature.....
S. KULUSIKA
(SUPERVISOR)

Date.....*14.12.2004*.....

DECLARATION

I Richard Choonga Computer No. 99357437 do solemnly declare that this work represents my own ideas and is not a production of any other work produced or submitted by any other person to the University of Zambia or to any other institution.

DEDICATION

This paper is dedicated to my wife Ngula and my children especially my daughters Monde and Chisiko who have been supportive during my academic endeavours. Continue being a blessing.

PREFACE

The theme for this obligatory essay is “Prison Conditions in Zambia vis a vis Community Service Scheme”. Chapter one is the introduction of the subject, which gives a history of criminal law in Zambia i.e. transition from traditional to modern society.

Chapter two is based on the rights of a prisoner and condition of prisons in Zambia in regard to room accommodation, food, sanitation, medical facilities etc. A comparative analysis in relation to what obtains in other countries is also provided in this chapter.

Chapter three will deal with the Community Service Scheme i.e. what it is, its objectives, advantages, eligibility, the Zambian experience and the problems encountered.

Chapter four is the general overview of the law on Community Service in Zambia and Chapter five recommendations and conclusion.

ABSTRACT

Every society has criminals because crime is a result of difference in values from individual to individual. This however does not mean that criminal behaviour should go unpunished. Criminals ought to be punished so that order is maintained in society and social change induced. Prisons however should be places where prisoners are rehabilitated but this can only happen if prison conditions were improved to an extent where a prisoner is accorded decent living conditions. Community Service is one method in which prisons can be decongested. Government and other relevant organisations need to intervene if prisoners are to enjoy their human rights.

ACKNOWLEDGMENTS

First and fore most thanks be to God Almighty for sustaining me through this exercise. I started this research at the time when my health was very poor but through his interventions I have made it this far.

In this same vein I pay very special tribute to my Supervisor S. Kulusika who apart from supervising this work encouraged me to soldier on inspite of my poor health, he is indeed an inspiration.

Tribute too to my niece Jean and my wife Ngula who both helped me in typing this work.

I am indeed indebted to the Prison Authorities who apart from granting me interviews allowed me to visit the prison facilities, in some cases at short notice.

I am equally thankful to Judge Hamaundu for some of the materials used in this work.

My thanks also extend to the staff at both the Supreme Court and UNZA Libraries for their assistance.

Finally to my family in general, in particular my niece Chimuka for her special attention in certain instances.

METHODOLOGY

The research has utilised two sources of data, namely primary and secondary. The primary source include interviews with officers and prisoners in certain prisons. Among the prisons in which the research was conducted are Lusaka Central, Kamwala Remand, Mukobeko Maximum and Kamfinsa. Also interviewed are other persons who possess knowledge about prisons.

The secondary source include library materials, statutes, international instruments and documents.

TABLE OF CONTENTS

CONTENTS	PAGE
Contents	i
Dedication	ii
Preface	iii
Abstract	iv
Acknowledgement	v
Methodology	vi
 CHAPTER 1	 1
1.0 Introduction	1
 CHAPTER 2	 2
2.0 Rights of a prisoner and conditions of prisons in Zambia	 5
2.1 Rights of a prisoner	5
2.2 International Human Rights Standards for Prisoners	 7
2.3 Conditions of prisons in Zambia	10
(i) Room accommodation	12
(ii) Food	15
(iii) Water	16
(iv) Sanitation and Toilet facilities	17
2.4 Comparative Analysis	18

CHAPTER 3	23
3.0 Community Service Scheme	23
3.1 What community service means	23
3.2 Aims and objectives of community service	24
3.3 Advantages	25
3.4 Illegibility to community service	27
3.5 Proper Inquiry	28
3.6 Administration of community service	
Scheme	28
3.7 Community service the Zambian experience	29
3.8 Specific Aims and objectives of the Zambian	
Scheme	30
3.9 Residence of the scheme	33
3.10 Steps towards implementation	34
3.11 Establishment of pilot projects	36
3.12 Problems encountered	40
CHAPTER 4	43
4.0 General overview of the law	43
CHAPTER 5	51
5.0 Recommendations and conclusion	51
5.1 Recommendations	51

5.2 Conclusion 53

BIBLIOGRAPHY 55

CHAPTER 1

Introduction

Offences have always been committed from time in memorial and the law has been established so as to bring order and provide remedies.

Prior to the arrival of the white settlers, the indigenous population enforced customary law through their own system of Courts. There was no clear distinction drawn between the civil and criminal law¹. Since there was no distinction the remedy or sanction provided was mainly compensation in both instances.

This compensation was in form of cattle (especially to the Tonga Tribe), goats chickens etc and if the offender could not afford compensation in form of any of the above, he would be required to perform manual labour at the chief's palace, in the headman's fields or indeed in those of the victim or the complainant and in cases of witchcraft the offenders were banished.

The Toka-leya tribe of Kalomo district in Southern Province confirmed that the olden days offenders were basically ordered to compensate

¹ Criminal Law in Zambia by J. Hatcharter and Muna Ndulo P.1

those they offended. This tribe still favour this system of punishment as they feel it maintains family unity?²

This position was also confirmed by the Lozi tribe of western Province of the Republic of Zambia which the owners prefer calling "BarotseLand". It was infact established that traditional Courts called KUTAs still exist among this tribe despite the coming of the white settlers and the attainment of independence.³

From the foregoing it is clear that there was no need to establish prisons in those days.

The settlement of the territory which was to become known as Zambia, by the British South African Company in 1894 brought with it profound changes in the system of law and order as the settlers introduced the law and sanctions obtaining in their Country (Britain).⁴

It was therefore during the colonial era that Prisons were built and in 1924 an Independent Commissioner of Prisons was appointed.

In 1942 the Northern Rhodesia Department of Justice and Director of Prisons Mr. T.C. Flynn visited the territory and was surprised to find that the female and male prisoners were in the same prison with inadequate facilities for classification and segregation i.e. of inmates.

² Interview with Chief Sipatunyana of the Toka-Leya tribe

³ Interview with Mr. G.S. Mufuzi, former Director of Local Court

⁴ Crimanal Law by J. Hatchard and Muna Ndulo at P.5

The Prison Department was established on 1st December, 1946 and this change had detrimental effect both in staff and planning generally.⁵

The foregoing shows that inadequate accommodation, poor conditions and staffing in prisons is not a new phenomenon.

The question is how can the Zambian Prisons built in the colonial days be updated to match the increased number of inmates, brought about by the increase in the crime rate, or what measures could the nation implement to bring the prison population to manageable levels?

The current situation is that imprisonment is the most widely imposed type of punishment even in minor offences such as assault, criminal trespass, malicious damage to property etc.

According to the statistics available at Chikwa and Boma Subordinate Courts about 70-80% of petty offenders are being given custodial sentences⁶. Which situation leads to an increase in the prison population.

Dr. K. Mwansa in 1996 observed that it was inevitable that a new sentencing policy was established, a policy which would be based on the traditional system of compensation but adopted to suit today's

⁵ History of Prison in Zambia by Prison Secretary Mr. G. Chilundika

⁶ Statistics provided by Clerks of Court at Chikwa and Boma Subordinate Courts

realities of economic and social circumstances. He raised a question as to what punishment could embody both the traditional theory of compensation on one hand the realities of modern living on the other and still be deterrent enough.⁷ This indeed is the question which ought to be addressed.

According to a study conducted by Penal Reform International from 1990 – 1991, most Governments in the world have embarked on a policy of reducing their prison population with a view to reduce Government expenditure on Prisons and to that effect have introduced what is known as “community ` service schemes” as an alternative punishment to imprisonment on petty offenders.⁸

In this vein , most of the Countries in the region e.g. Malawi, Zimbabwe, Uganda, Kenya, Mozambique and in West Africa, Burkina Fasso have introduced similar schemes and have either enacted new laws or amended the existing ones to cover such schemes.⁹

It therefore becomes inevitable that Zambia considers to introduce a scheme of this nature or to revive the one which was started in 1996 but now non operational. The advantages of such a scheme will be highlighted in Chapter three (3).

⁷ Paper presented by Dr. K. Mwansa to the National Committee on Community Service of Zambia on 6th April, 1996.

⁸ Study done by Dr. A. Othmani President Penal Reform International

⁹ Reports at Kadomo Conference held in Zimbabwe from 24th to 28th November, 199

CHAPTER 2

2.0 RIGHTS OF A PRISONER AND CONDITIONS OF PRISON IN ZAMBIA

This Chapter for convenience purposes will basically be a fusion of two topics i.e. Rights of a Prisoner and Conditions of Prisons in Zambia. The two are interrelated and considering them together will provide a clear view of the Prison situation in Zambia.

2.1 RIGHTS OF A PRISONER

In looking at the rights of a Prisoner it is important to take into account in the first instance human rights in general. The term human rights means a collectivity of all rights that are inherent in a human being and which are inalienable, indivisible, interdependent and universal.¹⁰

The concern of the United Nations with the promotion and protection of human rights and fundamental freedoms is derived from the international community that " recognition of the inherent dignity and of the equality and inalienable rights of all members of the human family is the foundation of freedom justice and peace in the world" and from the resultant pledge of members of the United Nations " to achieve in co-operation with the United Nations, the promotion of

¹⁰ Peter Jones, issues in Political theory, rights Macmillan Ltd. London P.13

Universal respect for and observance of human rights and fundamental freedoms".¹¹

Hankin defines Human Rights as follows:

" Those liberties immunities and benefits which by acceptable contemporary values, all human beings should be able to claim as a right of the Society in which they live." ¹²

Human rights therefore apply to all human beings world over, consequently a Prisoner though a Prisoner as such is nevertheless a human being, he is thus entitled to Universal human rights, subject of course to some exceptions, such as limitation on the right of freedom of movement and in certain instances the right to life is made subject to qualification¹³, for instance the right to life is lost if one is sentenced to death by Court, of competent jurisdiction.

It follows therefore that those entrusted with the task of looking after Prisoners should be fully appraised with the fact that Universal Human Rights apply to Prisoners as well. In analyzing the argument for recognition of the rights of Prisoners, Steven Livingstone concludes that " Human Rights are distinct from civil rights and are applicable to everyone by virtue of their humanity. That the whole

¹¹ Raul Wallenberg Institute of Human Rights and Humanitarian law, United Nations Human Rights Fact Sheets Nos. 1-25 at Page 2.

¹² Oji Muzuruke. The African Charter Wallenberg Institute Lund (1977) PP 3-4

¹³ International Covenant on Civil and Political Rights (ICLPR), Article 6 See also the Constitution of Zambia Act 12.

idea of human rights is that we have them by virtue of being human beings, while they may be restricted they cannot be lost”¹⁴

2.2 INTERNATIONAL HUMAN RIGHTS STANDARDS FOR PRISONERS

In 1955, the first United Nations Congress on the prevention of crime and the treatment of offenders adopted the minimum standard rules for the treatment of prisoners prepared by the Advisory Committee of experts established in accordance with the plan set out by the Secretary General and approved by General Assembly Resolution 415 (V) of 1st December, 1950.¹⁵

The purpose of these rules are not to describe in detail a model system of penal institutions, but, on the basis of the General consensus of contemporary thought and the essential elements of the most adequate systems of today to set out what is generally accepted as being good principle and practice in the treatment of Prisoners and the management of Institutions.¹⁶

The General Assembly in resolution 2858 (XXXVI) of 20th December, 1971 drew the attention of member States to the Standard minimum rules and recommended that they should be effectively implemented

¹⁴ Interrights Bulletin. A review of the International Centre for the Legal protection human rights, prisoners rights by Steven Livingstone Vol 11 (1977) P.133

¹⁵ Rooul Wallenberg Institute of Human Rights and Humanitarian Law Unite Nations.

Human Rights Fact Sheet Lund at P. 69

¹⁶ Ibid at P.70

in the administration of penal and correctional Institutions. It also invited them to consider these rules in their national Legislations.¹⁷

Zambia is a member of the United Nations and therefore the current Prisons Act enacted in 1965 was based on the requirement of the minimum standard rules adopted by the 1st United Nations Assembly, supra, unfortunately however, amendments made by subsequent¹⁸ resolutions of the United Nations Economic and Social Council meetings have not been effected in the present Prisons Act Cap 97 of the Laws of Zambia, thus rendering these amendments irrelevant.¹⁸

The standard Minimum Rules for the Treatment of Prisoners cover a wide range of aspects of imprisonment including accommodation, hygiene, health care, education, discipline etc. However for the present purpose only those rules that have direct relevance to the subject at hand will be tabulated and they are the following:

Rule 8: provides that different categories of Prisoners shall be kept in separate institutions or part of the institution taking into account their sex, age, criminal record the legal reason for their detention and the necessities of their treatment.

Rule 9 (1): that where sleeping accommodation is in individual cells each Prisoner shall occupy by night a cell or room by himself.

¹⁷ Ibid

¹⁸ Paper entitled Review and Recommended Amendments to Prisons Act Cap 97 of the Laws of Zambia compiled in 1997 by the Secretary to the Committee so appointed Mr. G.M. Chawatama, Registrar of the High Court at the time, currently Judge of the Industrial Relations Court.

¹⁸

Rule 10: That all accommodation and in particular all sleeping accommodation shall meet all the requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

Rule 12: That sanitary installations be adequate to enable every Prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

Rule 13: That adequate bathing and shower installations shall be provided so that every Prisoner may be enabled to have a bath or shower at a temperature suitable to climate, as frequently as necessary for general hygiene according to season and geographical region.

Rule 20: This is probably one of the most important rules and it provides that every Prisoner shall be provided by the administration at usual hours with food of nutritional value adequate for healthy and strength of a wholesome quantity and well prepared and served and that drinking water shall be available to every Prisoner when he needs it and

Rule 22: That at every institution there shall be available services of at least one qualified medical officer who should have some knowledge of psychiatry and the medical services should be

organized in close relationship to the general health administration of the community.¹⁹

The United Nations Minimum Rules for Treatment of Prisoners Supra, remains the most comprehensive document on the Rights of a Prisoner or International level.

2.3 CONDITIONS OF PRISONS IN ZAMBIA

The general picture of the Prisons in Zambia is that congestion is prevalent in most if not all of the Prisons and that this state of affairs has caused a lot of concern to the Government, Non-Governmental Organisations (NGO) and the nation at large.

In this vein the Minister of Home Affairs Hon. General Shikapwasha acknowledged the problem of congestion in the Zambian Prisons, a problem which he said the Government was aware of and which he attributed to the fact that most of these Prisons were built when the population was small and the crime rate very low. He said that it was high time that Prison facilities were up-graded to meet the population expansion and the increase in the crime rate.²⁰

The British High Commissioner to Zambia Mr. Tim David bemoaned the poor conditions in which the Prisoners in Zambia were being held, he noted that overcrowding was such a problem, that cells that were

¹⁹ Jethro K. Mumbuwa, extract of United Nations Standard Minimum Rules for the Treatment of Prisoners, Prison Headquarters in 1993

²⁰ Post Newspaper of 19th May, 2004

built to hold only 20 inmates were now holding 90. He said inmates were forced to sit or squat like trolleys in a supermarket taking turns to sleep, he observed that Zambia had other options like commitment to reforms including fast justice and that the other forms Zambia was faced with were alternative non-custodial sentences and better management of the Prison service.²¹

In the same vein the Commissioner of Prisons Jethro Mumbuwa acknowledged the fact that Prisons were congested. He observed that though the building of the new Subordinate Court Complex near Lusaka Central prison could facilitate speedy trials it would have the negative effect of aggravating congestion in Lusaka Prisons.

He said while this would solve the problem of slow pace trials it could cause a ripple effect of congestion in Prison as there will be nowhere to take convicted criminals.²²

The Speech by the former Chief Justice of the Republic of Zambia Justice Mathew Ngulube on 8th April, 1996, though this speech was made much earlier than the observations supra his observation remains valid to-date and by and large sums up the current conditions of the Prisons in Zambia.

He stated: "The Prisons were built way back before the federation of Rhodesia and Nyansaland for a very small population. No new

²¹ Post Newspaper of 22nd May, 2004

²² Post Newspaper of 2nd July, 2004

Prisons have been built and even the existing ones had collapsed. That with the general population explosion, the Prison population had equally shot up and these have to share the same little amount of water, sanitary facilities, food and living quarters. This has led to a lot of health problems to put in mildly”.²³

A research recently conducted into the Conditions of Prisons in Zambia and especially the Major ones do confirm the observations above i.e. that Prisons are congested.

2.3 (i) **ROOM ACCOMMODATION**

At Mukobeko one cell which was initially meant for one inmate was now accommodating six to seven inmates, that there were no toilet facilities in the cells when inmates are locked up till the following day they had to do with improvised toilets made out of 2.5 litres cooking oil containers cut into half.²⁴

Central Province Regional Commanding officer for Prisons Senior Superintendent Peter Mwanza said that Prisons in this Province were congested and that the total population of all the six (6) Prisons in the Province was 2,826. He however could not indicate the original capacities of each of these Prisons apart for Mukobeko Maximum Prison where he said the original capacity was between 250 to 300

²³ Speech by the former Chief Justice of the Republic of Zambia Justice Ngulube at the inauguration ceremony of the National Committee on Community Service of Zambia on 8th April, 1996 at Holiday Inn

²⁴ Interview of one James Musonda a Convict serving a jail term of 5 years for Stock theft, on 29th May, 2004.

inmates but that as at 30th May, 2004 it had 1.220 inmates. He said Mukobeko Medium had 559 a figure he described as being abnormal for such a small Prison. Other Prisons in Central Province were Mpima which had 356 Mumbwa State Prisons with 336, Mkushi 102, Kalonga 79 and Serenje 123. He said these figures showed serious overcrowding because apart from the two Mukobekos (Medium and Maximum) the rest are in relatively small districts, almost in a rural set up where crime rate had been very low and only changed in recent years.²⁵

At Lusaka Central Prisons commonly known as “Chimbokaila” the situation is even worse. The original capacity of this Prison is 160 inmates but as at 9th September, 2004 it had 1,445 inmates. The Officer-In-Charge, Assistant Superintendent A. Katota said a cell which was initially meant for 10 inmates was now accommodating 100. He said it was very difficult to isolate those who had diseases like Tuberculosis dysentery and Cholera from health ones. A good example was two (2) cells, one of these was occupied by 65 Tuberculosis patients mixed with health ones and the other 87 Tuberculosis patients mixed with others. Another extreme situation is a cell which harboured 11 mental patients mixed with normal ones.

²⁵ Goal deliveries by Regional Commanding Officer Central Province at Kabwe High Court and personal interview of this officer

The Officer-In-Charge whilst acknowledging that this arrangement was abnormal said there was nothing he could do because accommodation was insufficient.²⁶

Two (2) Prisoners were interviewed at the said Prison and they said for 18 months that they have been in custody pending committal for trial by the High Court they have been sleeping seated and as a result had developed sores on their buttocks.²⁷

At Kamwala Remand Prison the situation was not any different. The Officer-In-Charge, Assistant Superintendent Gerald Chibuye said the total number of inmates as at 9th September, 2004 was 784 which figure he simply described as being very huge. He said that because of insufficient space in the rooms inmates just sat without sleeping and that Tuberculosis patients were mixed with everybody else. As regards Juvenile offenders, he said complete separation of these from adults was not possible. The congestion at this Prison was aggravated by a large number of prohibited immigrants who were being detained pending deportation.²⁸

²⁶ Interview of the Officer-In-Charge of Lusaka Central Prison during a visit to this Prison on 9th September, 2004 by the author as a visiting Justice. Apart from interviewing the Officer-In-Charge the kitchen and cells were physically inspected.

²⁷ Interview of 2 inmates Mwape Malama and Steven Tembo all charged with Aggravated Robbery and awaiting committal to the High Court for summary trial.

²⁸ Interview of the Officer-In-Charge Kamwala Prison by the visiting Justice (the author) on 9th September, 2004. The visit included the visiting of cells.

At Kamfisa Prison in Kitwe it was learnt that although the original capacity of this Prison was about 150 inmates the population as at 6th August, 2004 was 749²⁹

The situation in Prisons in Western Province was similar. Mongu State Prison was built to accommodate 100 inmates but as at 3rd August, 2004 there were 469 in custody. Kaoma had 210 instead of the original capacity of 100 to 110 inmates³⁰

2.3 (ii) **FOOD**

In all the Prisons mentioned above food is critically in short supply to the extent that inmates were fed once in a day, the menu being Nshima and beans and sometimes with vegetables in those Prisons which manage to grow their own. The amount of food allocated to each Prisoner was not accurately established. The Officer-In-Charge Lusaka Central Prison complained about poor diet in his Prison. He said though the Prison Clinic was generally well stocked with medicines it was difficult for patients especially those suffering from Tuberculosis to recover because of the poor diet.

²⁹ Goal deliveries by the Officer-In-Charge Kamfisa Prison Superintendent Denis Phiri on 6th August, 2004 and the interview of this officer.

³⁰ Goal deliveries by the Regional Commanding officer for Western Province Senior Superintendent John Yumbe at Mongu High Court Sessions on 3rd August, 2004.

One inmate suffering from ulcers at Kamwala Remand Prison complained that his condition was getting worse because the food provided was not good for his health³¹.

It is important to note that both the quality and quantity of food a Prisoner is to have is a matter of law and to this effect the minimum Standard Rules for Treatment of Prisoners provides “ Every Prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength of wholesome quantity and well prepared and served.”³²

The Prison Act³³ endorses this rule. The 1st schedule at Appendix ‘A’ stipulates the various rations in terms of grams.

2.3 (iii) WATER

At Lusaka Central, Kamwala Remand and Mukobeko Prisons boreholes have been sunk by the International Red Cross Society, however the water supply still remains insufficient.³⁴ In Western Province the biggest problem according to the Regional Commanding Officer is that of poor water supply.³⁵ All in all therefore water supply still remains a big problem in Zambia’s Prisons.

³¹ Interview of one inmate Frank kangwa who is awaiting completion of trial in a case of Theft of Motor Vehicle during the visit (by the author) on 9th September, 2004.

³² Rule 20 of the minimum Standar Rules for the Treatment of Prisoners

³³ Cap 97 of the Laws of Zambia

³⁴ Findings of the visit conducted into Lusaka Central and Kamwala Prisons on 9th September, 2004 and Interview of the Prisons Secretary Mr. Chilundika on the same day

³⁵ Ibid

2.3 (iv) **MEDICAL FACILITIES**

It was generally observed that with the intervention of the Non-Governmental Organisations especially the International Red Cross and the Church, Medical facilities have improved in most of the Prisons.

2.3 (v) **SANITATION AND TOILET FACILITIES**

The fact that water supply is poor in most of these Prisons, it follows naturally that the sanitation and toilet facilities would equally be so. A visit at Lusaka Central and Kamwala Prisons revealed that there was one un-flushable toilet in each cell, un-flushable because the water supply was insufficient. Inmates had to pour water into the toilet pans to clear the waste. At Mukobelo it has already been indicated that in certain cells inmates use plastic container or cooking oil cut into half.³⁶

2.3 (vi) **PRISON OFFICERS CONDITIONS**

It is common knowledge that Prisons officers spend most of their time with Prisoners, it follows thus, that the poor conditions obtaining in these Prisons equally affect the officers. One officer said that their morale was very low because their conditions were outdated and

³⁶ Ibid

gave an example of the Risks Allowance which still stood at K1,5000 and that their houses were very small³⁷.

The Prisons Secretary said because the Prison officers were operating under very poor Prison conditions they were exposed to high incidences of disease. He added that apart from the poor working environment the salaries were not only small but were also paid to the officers late³⁸

2.4 COMPARATIVE ANALYSIS

Generally many countries in the world and especially in Africa are faced with the problem of congestion. In March, 1996, the African Commission on Human and peoples' Rights³⁹ discussed the Prison conditions in Africa.

The first Pan African Conference on Prison conditions in Africa held in Kampala Uganda in September, 1996 put situation starkly: " the level of overcrowding is inhuman"⁴⁰.

Since 1996 the situation has not improved as the following figures would show: the Prison in Cotonou Benin was built for 400 Prisoners but in March, 2004 held over 1730 persons (1462 of whom were on remand). In Accra Ghana, James Fort Prison has a capacity of 200 yet 699 were remanded in April 2004. In Kenya Nairobi Prison built in

³⁷ Interview of Constable W. Mwangala an officer at Kamwala Remand Prison

³⁸ Interview of Prisons Secretary on 9th September, 2004

³⁹ Dossier Prison Condition in Africa, kampala (19th – 21st September, 1996)

⁴⁰ Penal Reform News letter April, 2004 P.1

1911 has a capacity of 600 yet in March, 2004 had 3,000 awaiting trial. In Tanzania the rate of overcrowding in Arusha Prison was 500% in 2001.

In some Prisons in Malawi just as in many other African States overcrowding is such that fundamental rules regarding treatment of Prisoners cannot be met.⁴¹

In Zimbabwe at Independence in 1980 the Prison population was 22,000. At one stage after the general amnesty the figure came down to about 5,000. Unfortunately it didn't take long that offenders who benefited from the amnesty found their way back into Prisons. Clearly the general amnesty made no positive impact as the Prison population still stands above 22,000,⁴².

Findings at Bangui Prison in the Central African Republic makes a very sad reading, 22 inmates were sharing a cell measuring 5x7m. Some of these inmates had mats and some were sleeping on bare floor. In one cell 48 Prisoners were crowded therein. This Prison was not providing food to Prisoner, food had to be provided by friends and relatives who had to pay between 200 and 500 CFA to

⁴¹ Ibid P.2

⁴² The Zimbabwean experience, report by the National Co-ordinator, Mr. A.G. Msengezi on 20th Novemer, 1997. This report was availed to the National Committee on Community Service of Zambia as a guide.

the guards before handing over the food. Bathing was denied as part of punishment and medical care was not provided.⁴³

In Mozambique the Prison population had decreased between 1997 and 2001. In 1997, the total Prison population was 10,800. In 2001, there were 8,812 Prisoners, despite this decrease congestion still remains one of the biggest problems.

The situation in terms of beddings is poor, a prisoner under normal circumstances is supposed to be issued with two blankets on arrival, unfortunately since 1995 there have been no purchase or blanket by authorities.

As regards food the situation in Mozambique is much better than what is obtaining in other African countries, Zambia inclusive.

The meals consist of maize, rice and some sauce but there is critically no meat, however fish is served in places near a river. In Tete Provincial Prison and Mabalane Penitentiary Prisoners receive tea and bread for breakfast⁴⁴. Currently there is no hope that this can be attained in Zambia because apart from the poor economic situation there is no political will.

⁴³ Report on a visit by Professor E.V.O. Dankwa, Special Rapporteur on Prisons and Conditions of Detention in Africa June 19-29-2000

⁴⁴ Report on the Rapporteur on Prisons and Condition of detention in Afrca Dr. Vera Mlagwazuwa Chirwa, April 2004.

At this stage it is important to compare the conditions obtaining in Prisons in Africa with those in developed world especially the United State of America and for this purpose the city of Nevada will be taken as a case study.

The United States imprisons more people than any other Country in the world, around 1.6 million or over 600 for every 100,000 of its population. Many are held in conditions which United States Court have found to constitute "Cruel and unusual punishment" and contrary to the United States of America Constitution⁴⁵

However, the USA being a developed Country, it enjoys a sound economy. It is obvious therefore that there exists a large margin of disparity in terms of Prison conditions obtaining there and those in the underdeveloped countries. In the City of Nevada Prisoners enjoy more less hotel conditions and there are well organized recreational facilities and games like basketball, tennis, football etc. are available.

In Russia the USA Rapporteur on torture claimed that he needed the skill of "a Dante or Bosch" to describe the sight and smells of overcrowded pre-trial detention Prisons in Moscow. In 1996, 3000 people died while awaiting trial in Russian Prisons and tuberculosis rate had risen by 100%⁴⁶

⁴⁵ Interrights Bulletin Vol. 11 No. 4 1997 International Human Rights Law by Stephen Livingstone P.135

⁴⁶ Ibid

It is clear from the foregoing that deplorable Prison Conditions do not only apply in Zambia but also in other parts of the world, especially Africa.

CHAPTER 3

3.0 COMMUNITY SERVICE SCHEME

Chapter 1 did allude to the fact that most countries in the region had introduced community service schemes in an effort to reduce their Prison population. The first part of this Chapter will look at what community service is generally, the aims and objectives, advantages and the mode of operation, the second part is what has been termed as “ the Zambian Experience”.

3.1 WHAT THEN IS COMMUNITY SERVICE?

Community Service is an option the Court may use when it has decided that a person’s offending is not so serious and that he is suitable for making reparation by constructive unpaid work⁴⁷ Senior Assistant Commissioner of Tanzanian Prisons John C. Minja⁴⁸ put it simply “community service is a programme whereby a person convicted of a minor offence is ordered by Court to do unpaid public work for the benefit of the Community”.

The National Committee on Community Service of Kenya⁴⁹ defined a Community Service order as “ an order of the Court requiring the

⁴⁷ Community Service in practice all African Conference, Zimbabwe P.4

⁴⁸ Paper presented to the Regional Coordinators’ Conference on Community Service; Uganda 22nd – 27th July 2002

⁴⁹ Kenya Country Report to the African Regional Coordinators Conference July 22nd to 27th, July Uganda P.4

offender to perform unpaid work for the benefit of the Community for a period specified in the order”.

It is clear therefore that community service in this context is one of the alternatives to custodial sentence.

3.2 AIMS AND OBJECTIVES OF COMMUNITY SERVICE

The general objectives a community service order hopes to achieve, involve the reintegration of the offender into the community by:

- (a) enforcing discipline of positive and demanding unpaid work;
- (b) ensuring that the work proves reparation to the community, making good the damage done by the offending act⁵⁰

In United Kingdom the Home Affairs office issued a circular concerning national Standards for community service orders⁵¹ which states that an order had three main purposes namely:

- (a) punishing the offender by requiring him/her to perform unpaid work by the discipline of punctual reporting for work and loss of free time.
- (b) reparation to the Community by requiring the offender to do work which is socially useful, which repays the

⁵⁰ Ibid

⁵¹ Home Office Circular No. 18 of 1989.

- community for what the offender had done and which if possible makes good the damage done by offending; and
- (c) benefiting the community by providing work which otherwise would not have been done.

The foregoing have been described as general objectives because each individual National Committee on Community Service is at large to have objectives which are relevant to their situation which in some cases could be very comprehensive as will be seen in the case of Zambia later in this Chapter.

3.3 ADVANTAGES

Advantages of community service are quite obvious and that from the Country Reports supra are by and large the same as those noted by Zambia and they are the following:

- (a) That an effective community service scheme would help decongest the overcrowded prisons;
- (b) That it would help reduce Government budgetary expenditure on prisons which is very high, especially for poor countries like Zambia
- (c) That it would help to rehabilitate an offender so that he becomes a better member of society.
- (d) That the unpaid public work the offender is required to perform would be to the benefit of community as it would

be a way of paying back to the community for the wrong done.

- (e) That it is deterrent in nature, for instance it is very unlikely that people with superior status in society would entertain the idea of being seen around sweeping streets or cleaning school grounds as this would be so humiliating to them. An interview with one retired senior civil servant will illustrate this point⁵² This man when asked what he would choose between community service and custodial sentence in the event that he was charged and convicted. He simply said he would rather go to jail than go through such an embarrassing sentence.
- (f) That it would keep non-serious offenders away from hardcore criminals who more often than not educate them to commit more serious offences;
- (g) That it would enable the offender maintain family ties because such an offender will perform the work whilst coming from his home.
- (h) That if the offender is in employment would not lose the same because special care would be taken that the order does not result in him losing his employment. Community service in such cases should be ordered before or after normal working hours or during weekends. If the offender finds work during the performance of community service, the order would be varied.

⁵² Interview of Mundia Nalishebo retired as Deputy Permanent Secretary

- (i) That it would afford the offender an opportunity to reconcile with the victim.
- (j) That it would provide counseling to those who will need to rediscover themselves and abandon deviant behavior.

3.4 ILLIGIBILITY TO COMMUNITY SERVICE

It is generally accepted that only those charged with minor offences could be eligible to community service. In Zambia⁵³ it was resolved that those charged with offences whose sentence would not be more than 12 months would qualify. In Uganda⁵⁴ those whose sentences would not be above 24 months Kenya⁵⁵ those whose prison term would not carry more than 36 months (3 years). It is however debatable whether an offence carrying such a sentence can be petty.

As regards Juvenile offenders in all the countries where community service schemes have been established (in the region), by virtue of the privileged treatment accorded to them by the Law they generally do not qualify and the position in relation to female offenders is still debatable⁵⁶.

⁵³ Guidelines to Magistrates (Zambia)

⁵⁴ Statutory Instrument Supplement Uganda Gazette No. 62 Volume XCIV 12th October, 2001

⁵⁵ Kenya Country Progress Report 2002 P.4

⁵⁶ Research by Dr. Othman PRI President in 2001 covering Kenya, Malawi, Mozambique and Zimbabwe

3.5 PROPER INQUIRY

There must be proper inquiry⁵⁷ by normally the social welfare department called pre-sentence inquiry, this is to enable the sentencing Magistrate have a clear picture of the background of the offender. Upon this enquiry if the Social welfare Department considers for any reason that the offender is not a suitable case for community service, they may recommend him for any other suitable punishment. The discretion as to what type of sentence is appropriate, still remains that of the Magistrate in the final analysis.⁵⁸ It should be noted that an offender in order to be sentenced to community service must consent to such an arrangement⁵⁹

3.6 ADMINISTRATION OF COMMUNITY SERVICE SCHEME

The Administrative structure of a community service scheme is that designed by Penal Reform International.⁶⁰

The reason for this is that these schemes are a brain child of P.R.I. and as such are non-governmental to a large extent, they are thus mainly donor funded and donors would not like to fund superfluous institutions.

The structure will comprise at the top of a National Committee chaired by a Judge of the High Court and membership will comprise a

⁵⁷ Ibid

⁵⁸ Zimbabwe Guidelines on sentencing and community service order Act No. 10 1998 S.3

⁵⁹ Ibid

⁶⁰ Guidelines to National Committees by the Penal Reform International

diversity of stakeholders and the committee will be up to 22 members. The committee could be this large because members are required to give voluntary services i.e. no allowances would be payable. That from among the members of the National Committee a smaller committee called the "Executive Committee" comprising the Chairman, the National Coordinator (Secretary) and three (3) other members would be elected. This Committee would meet once a month, it will generally supervise the work of the Secretariat and make necessary recommendations to the National Committee, under the National Committee there will be District Committees chaired by a Senior Magistrate of the District and will include officers from the District Councils, Police, Prisons and other relevant organizations like church and NGOs.

The District Committee would supervise the operations of the scheme in the particular District.

3.7 COMMUNITY SERVICE – THE ZAMBIAN EXPERIENCE

A research into the operations of Community Service Schemes by the late Justice R.H. Zulu (at the time Registrar of the High Court) in 1995 culminated into the inaugural committee meeting in April, 1996 after Cabinet approval.⁶¹ The meeting was attended by the following:

1. Mrs. R.H. Zulu - Interim Chairperson, Judiciary
2. Mr. R. Choonga - Interim Secretary, Judiciary
3. Dr. A. Othmani - Penal Reform International

⁶¹ Introduction by Mrs. R.H. Zulu at the Inaugural meeting held at Holiday Inn 8-10 April, 1996

4. Justice B.M. Bwalya - Judiciary
5. Dr. E.M. Simaluwani – UNZA, School of Law
6. Dr. J.L. Kanganja – The Law Practicing Institute
7. Fr. F. Mcauliffe - Catholic Secretariat
8. Mr. E. Chikopela - Good Samaritan Centre
9. Miss. C. Kunda - Zambia Civic Education
10. Mr. L. Temfwe - Prison Fellowship
11. Mr. S. Sikota - Law Association of Zambia
12. Dr. K.T. Mwansa - Ministry of Home Affairs
13. Mrs. S. Chisense- Ministry of Community Development and
Social Services
14. Mr. K.R. Konsolo – Ministry of Legal Affairs
15. Mrs. G.M. Chawatama – Judiciary
16. Mr. S.J. Tembo - Prisons Department
17. Mr. M. Nkole - Police Training School

The above list is broad based because the community service scheme is meant to embrace all stakeholders. The President Penal Reform International advised the meeting that a National Committee could be up to 22 members because membership was voluntary and as such would not attract huge expenditure in allowances.

3.8 SPECIFIC AIMS AND OBJECTIVES OF THE ZAMBIAN SCHEME

Upon guidance from the PRI President a small committee was selected to formulate the aims and objectives of the Zambia National Committee. The Committee was called the Drafting Committee” and

comprised, Dr. E.M. Simulwani, Mr. S. Sikota, M/s C. Kunda, Dr. A. Othmani (PRI) and Mr. R. Choonga.

Dr. Othmani chaired the Drafting Committee meeting and said that before going into the aims and objectives of the National Committee, it was important to propose a name for the same and its composition⁶³

The Committee therefore proposed that the name of the National Committee would be “The National Committee on Community Service of Zambia” and that it would comprise of representatives from key Ministries, departments, non-governmental organizations and the church. That there shall be elected an executive committee with the functions of a Chairperson vice Chairperson, Secretary, Treasurer and two (2) Committee members.

The aims and objectives proposed and adopted by the main Committee together with the name and composition supra were the following:

1. To develop ways and means of reducing the use of imprisonment and enhance the use of non-custodial sanctions that would encourage social re-integration and take into account the interest of the victims.

⁶³ Aims “Adopted” by the Draft Committee and proposed by the Interim Committee

2. To develop methods of operation that would encourage and promote involvement of all relevant Ministries and Departments at a higher level and all components of the criminal justice system in Zambia and the region.
3. To advocate and ensure enactment of all necessary amendments to the law that will facilitate the development of community service as an alternative form of punishment.
4. To promote the ideals of community service and undertake educational and training programmes.
5. To lay down foundation and issue guidelines to promote community service.
6. To promote cooperation between governmental and non-governmental organizations in the field of community service.
7. To carry out research on Zambia cultural norms and values that would strengthen the community oriented sentencing.
8. To advocate and promote strengthening of those Departments and Institutions with a role in the monitoring and implementation of community service programmes.
9. To devise mechanisms for the proper implementation of a scheme of community service and to form organizational structures at national, provincial and district levels that would be

Autonomous and would amalgamate government and non-governmental institutions.

10. To build a healthy financial reserve for the continued running of the Committee by raising funds nationally and internationally.
11. To take any other steps that seek to further the foregoing aims and objectives.

The foregoing establishes the fact stated earlier in this Chapter that the general aims and objectives could not strictly be adhered to by each and every community services scheme because a lot of factors may apply differently to each individual Country and that what was provided at the beginning of this Chapter was a mere guide.

3.9 RESIDENCE OF THE SCHEME

After the adoption of the aims and objectives of the scheme a question was to be resolved as regards the Department or Ministry the scheme would be based. It was clear that personal interests at this stage were at play, some members especially those from the Ministry of Home Affairs argued that the same be resident in the Prison Department, a department under this Ministry, and those from Ministry of Legal Affairs, the department of Social Welfare and Law Association of Zambia argued that it should be resident in the Judiciary where the sentencers (Magistrates) were based.

Dr. Simalwani and Mr. S. Sikota observed that the prisons Act had a provision for Extra Mural Penal Employment (EMPE) which to some extent resembled community service but that due to improper guidelines and poor supervision the same was ineffective.

Dr. Othmani was called upon to give guidance on this issue and he said that in all the countries where community services schemes had been established they were resident in the Judiciary where the sentencers were based. He said that there was fear that if the scheme was based elsewhere it was possible that the sentencers could frustrate the same. Upon this guidance the meeting resolved that it be resident in the Judiciary.

3.10 STEPS TOWARDS IMPLEMENTATION OF THE SCHEME

As a follow up to the inaugural meeting a workshop involving magistrates from all over the Country and members from other stakeholders was held from 17th to 19th December, 1996.⁶⁴

The purpose of this workshop was among other things to introduce the scheme to the Magistrates who were recognized as the key players and also to elect a transitional committee.

The result of the elections were that Judge B.M. Bwalya was elected Chairperson and Mrs. R.H. Zulu his Vice, Dr. S. Kabanje (from the

⁶⁴ Minutes of the Garden Hotel workshop 17th – 19th December, 1996

Law Development Commission) as Secretary and R. Choonga his Vice and Mrs. G.M. Chawatama as Treasurer.

After this workshop, Mrs. R.H. Zulu with the assistance of the Vice Secretary initiated another workshop at Siavonga from 7th to 12th April, 1992.

This workshop was crucial to the implementation of the scheme in Zambia and a plan of action based on the Zimbabwean experience⁶⁵ was to be put in place and the same included the following:

- (a) the training of the Magistrates, that a group of Magistrates be sent to Zimbabwe to study the scheme there;
- (b) the enactment of Laws to regulate community service
- (c) the sensitization of the public as regards the advantages of the scheme
- (d) the immediate setting up of pilot projects.

⁶⁵ Resolutions of the Siavonga workshop 7th to 12th April, 1997 – the Zimbabwean experience was adopted as a guide because Zimbabwe is the model in Africa being the 1st Country to establish a community scheme.

3.11. ESTABLISHMENT OF PILOT PROJECTS

In accordance with the Siavonga plan of action pilot projects started to be formed in some districts. It must however, be noted that prior to the Siavonga workshop, Magistrates in Lusaka had already started ordering offenders to perform Community Service strictly at Court premises, unfortunately their efforts were unsuccessful due to poor supervision and those ordered defaulted. However, the pilot projects formed after the Siavonga Workshop⁶⁶ appeared to have been better organized and managed as will be seen later in this Chapter; The first of such projects to be formed was the Kaoma District Committee on Community of Zambia⁶⁷ established on 6th May, 1997, the next was Lundazi –Chama⁶⁸ on 21st May, 1997, Kasama⁶⁹ in October, 1997, and in the same month Mwense⁷⁰. There were other District Committees formed especially in the Copperbelt Province, among which were Kitwe, Luanshya and Chingola District Committees but these had not taken off the ground so well and confirmation of their formation was by and verbal thus, there was no proper correspondence between them and the National Committee in Lusaka,

⁶⁶ Ibid

⁶⁷ Minutes of Kaoma District Committee on Community Service of Zambia

⁶⁸ Letter dated 3rd June, 1997 by the Chairman. It will be observed that though Lundazi and Chama are separate Districts they are both manned by one Magistrate based at Lundazi and since these committees are always to be chaired by a Magistrate to avoid duplicity, it was resolved that one Committee be formed to cover both Districts

⁶⁹ Letter dated 17th November, 1997

⁷⁰ Letter from Magistrate in Charge, Mwense District.

addition will respond as soon as possible to requests for support from other National Committees or officials of other Countries and provide any such assistance as may be necessary.

3. Members will endeavor to provide Technical Assistance to others who seek it. To this end they will draw up a list of experts and resource persons. Those persons will provide their services on voluntary basis but will be entitled to such out of pocket expenses as may be considered reasonable.
4. Members will commit themselves to sharing of data and information with other National Committee Members, officials of other countries and interested organizations on a voluntary basis. They will maintain active communication links through such media as the internet and/or newsletters.
5. Members are to maintain financial accountability and in particular to maintain a clear financial record which accurately reflects all transactions and expenses incurred. Records should be subject to audit and are to be accessible to any member of the National Committee or other persons request.
6. Members will be persons of high moral calibre and are to be accountable to other Members of the National Committee for any assignments allocated to them.

The code of conduct has been reproduced in its totality to emphasize the point that service was voluntary and that financial accountability was to be very high, further that the scheme was not to run in isolation from schemes in other Countries.

The signing of the Code of Conduct symbolizes the serious commitment Zambia attached to the scheme.

3.12: PROBLEMS ENCOUNTERED

After the establishment of a few pilot projects, problems started to surface. In June 1997, Judge R. Zulu who was instrumental in the establishment of the scheme and in running it generally, died in a road traffic accident and Judge Bwalya was transferred to the Electoral Commission of Zambia and naturally became more involved with the work of the Commission paying little attention to that of the National Committee.

Apart from this transfer, it was apparent that he had not yet acquainted himself well with the operations of the scheme compared to Judge Zulu who appeared more knowledgeable and better exposed in this regard. This state of affairs led to inertia in the operations of the scheme, the National Committee thus became less effective to the extent that although meetings were being held there were on irregular basis, as a result the enthusiasm of the members began to decline.

Another factor that led to the decline in the enthusiasm of members is the element of voluntary service which is so pronounced and a phenomenon by and large unpopular to Zambians. Most members saw no reason why they would spend their energies on the scheme free of charge, they thus started to demand sitting allowances and in some cases subsistence allowances and because these demands could not be met, they thus decided to stay away, under the circumstances it became difficult to establish a National Secretariat and to appoint a National Coordinator. The other problem was lack of political will, for instance when team of Penal Reform International visited the Ministry of Home Affairs, on 11th June, 2000, the Minister Dr. P. Machungwa was somewhat reluctant to give the team audience and the visit to the Ministry of Legal Affairs on the same day did not yield any favourable result because the team only ended up meeting junior Officers, this behaviour by Government officials seriously frustrated the P.R.I team⁷⁵.

The situation was further complicated by the involvement of the Zambia International Monitoring Team (ZIMT) into the work of the National Committee, this organization apart from not being in good terms with the Government tried to hijack the scheme and started reporting directly to Penal Reform International; This made the Government distance itself from the scheme because it did not want to associate itself with a scheme in which ZIMT was a participant.

⁷⁵ Ibid

The comments by Dr. Othman⁷⁶ during the June 2000 visit provide a clear picture of what had happened to the scheme as at that time. He stated that although PRI had sourced funds from donors, it was difficult to give Zambia because of lack of progress. He said that nothing was showing that any progress was being made towards the implementation of the scheme, he observed that although the beginning was very good, things were at a stand still, that there was no law enacted to cover the scheme and no regulation and guidelines by the superior authorities on the supervision of offenders. He further observed that Judiciary staff had worked hard to ensure that the scheme worked but there had been no support in terms of Legislation and wondered why this was the state of affairs when the Zambian President was in full support of the scheme.

These observations were made when the scheme was stalling in its progress, currently it has grounded to a total halt, and the National Committee is no longer in existence and P.R.I's funding to the Scheme has ceased, Magistrates have equally stopped ordering offenders to perform Community Service. There are indications that if the National Committee was reconstituted or a new one formed P.R.I could resume funding. The recent interview of the Minister of Home Affairs General Shikapwasha⁷⁷ is indicative that the Government was studying the possibility of reviving the scheme as congestion in the Zambian Prisons was getting worse..

⁷⁶ Report on PRI's visit to Zambia 9th 12th June, 2000

⁷⁷ Interview on 9th November, 2004

CHAPTER 4

4.0 THE GENERAL OVERVIEW OF THE LAW

The sentencing policy in Zambia is by and large custodial oriented S.24 of the Penal Code⁷⁸ provides a variety of sentences that can be imposed on a convict, unfortunately the most preferred is custodial. In a few cases fines have been ordered but due to the poor economic situation in the Country those ordered to pay fines have defaulted and ultimately have ended up in Prison. Under the current environment therefore it is not possible to reduce congestion in Prison by extensive imposition of fines. Equally Extra Mural Penal Employment under the Prisons Act⁷⁹ is no longer resorted to, infact it has never been effective. In any event if a person was placed on Extra Mural Penal Employment, this would be at the discretion of the Prison authorities meaning that it would not take the burden of looking after a convict off the Prison authorities. In other words Prison officials would still be effectively involved in the welfare of such a convict.

The current situation therefore entails that other methods of decongesting Prisons are implemented and as already observed earlier in this study the most effective method that has been used by some Countries to decongest Prisons is Community Service.

78 Cap 87 of the Laws of Zambia

In Countries where community schemes have been established Legislations independent of their Penal Codes have been enacted to cover Community Service. In Zimbabwe it is called "Community Orders Act 80 S. 3 of this Act for instance provides a guide as to what type of offences would attract Community Service and makes it clear that not all cases attracting a sentence of three years and below automatically attract a sentence under community service. That offences against morality such as rape, sodomy and offences that endanger life and liberty would be dealt otherwise S.5 of this Act provides that where a Community Service is breached, the offender will automatically be sentenced to imprisonment.

In Uganda, they have also a "Community Service Act"⁸¹ and in addition as a supplementary Statutory Instrument on Community Service Regulation.⁸²

This Statutory Instrument provides for among other things the establishment of the National Secretariat and its functions, the District Committee and its functions.

In Zambia, in order to accommodate Community Service amendments were made to the Penal Code⁸³ Criminal Code⁸⁴ and the Prison Act⁸⁵.

⁷⁹. Act 97 of the Laws of Zambia

⁸⁰. Act No. 5 of 2000

⁸² Statutory Instrument No. 55 of 2001

⁸³. Ibid

⁸⁴. Cap 88 of the Laws of Zambia

⁸⁵. Ibid

The Penal Code was amended⁸⁶ in Section four to include in the definitions that of Community Service which was defined as a form of punishment as a Condition of suspension of a sentence of imprisonment requiring an offender to perform unpaid work within the Community where the offender resides for the period specified in the Order for Community Service. Section 24 was amended by the deletion of paragraph (b) and substitution thereof the following:

- (b) imprisonment or an order for Community Service. S. 26 was amended by inserting immediately after this section a new Section 26A which provides that where an offender had been sentenced to Community Service, he shall perform community work for the period specified in the order for Community Service and the Community Service shall be performed in the area the offender resides.

Perhaps the most extensive amendments were in the Penal Code⁸⁷ and in particular Section 306 where immediately after this Section there was an insertion of new Sections i.e. Sections 306 A, 306 B, 306 C, 306 D and 306 E⁸⁸

It is important to quote these amendments in full apart from S. 306 E which appear not very relevant for the present purpose. This

⁸⁶ Act No. 12 of 2000

⁸⁷ Ibid

⁸⁸ Act No. 13 of 2000

amendment appear to be the core of the Law governing Community Service in Zambia, thus the need to quote it in greater detail.

S.306 A(1) provides that a Court may make an order for Community Service where in the case of an adult, the offence is a misdemeanor and punishable with imprisonment.

(2) That before making such an order the Court shall explain to the offender in the language he understands the effect of the Order and shall obtain the consent of the offender to perform Community Service and explain that where the offender fails to comply he shall be liable to the term of imprisonment the Court had imposed in respect of that offence (suspended sentence).

S. 306 B relates to the contents of a Community Service, order and provides that the order shall specify:

- (a) the number of hours to be worked;
- (b) the day on which the work was to be done;
- (c) the period of Community Service;
- (d) the place where the offender is to perform Community Service; and
- (e) that the offender during the period of Community Service be under the supervision of an authorized officer;
- (f) any other special terms and conditions of the order

S. 306 C provides that upon making an order for Community Service, the Court shall order the offender in respect of whom the order is made to report forthwith to an authorised officer in the area Community Service was to be performed.

S. 306 D generally provides that if it appears to the Court that the offender had failed to comply with the requirements of the Community Service order it may do any of the following:

- (a) Vary the order to suit the circumstances of the case;
- (b) Impose on the offender a fine not exceeding three hundred penalty units ;or
- (c) Cancel the order and send the offender for the term he is liable.

The Prison Act ⁸⁹ amendment was to Section 135 where new Sections were inserted i.e. SS 135A and 135B.⁹⁰

S. 135 A (1) provides that where a Court makes an order for Community Service in accordance with the Penal Code and the criminal procedure code, the authorised officer to whom the offender reports shall notify the offender or cause the offender to be notified of the house place and nature and any other necessary details of the community service to be performed by the offender.

⁸⁹ Ibid

⁹⁰ Act No. 14 of 2000

(2) That where an offender who has been ordered to perform Community Service is found by the Medical officer to be medically unfit to perform Community Service, the authorized officer shall report to the Court which shall:

- (a) vary the order to suit the circumstances of the case;
- (b) impose on the offender a fine not exceeding three hundred penalty units; or
- (c) send the offender to Prison for the period the offender is liable, subject nevertheless to the reduction in the number of days, if any, for which Community service had already been performed.

S. 135 (1) provides that any Prisoner serving punishment of imprisonment in respect of a misdemeanor who had been convicted within the last six months before the coming into force of the Provisions for Community Service may apply to the Court for Community Service.

(2) That the Minister shall by Statutory Instrument make regulations for the process of applying to the Court for Community Service.

The foregoing therefore is the Law in Zambia as regards Community Service. The question is Could this Law be adequate for purposes of an effective Community Service Scheme or does it conform with Laws existing in other Countries in respect of such a scheme?

A sum up of the language in all these amendments is that Community Service will be administered by Police and Prison Departments, both Departments under the Ministry of Home Affairs whereas, in other countries Community Service Schemes are run as NGOs and are Resident in the Judiciary. To conform with the Law obtaining in other Countries these amendments must have among others things provided for the establishment of the National Committee on Community Service. This Law gives the superior officer and authorizing officer a key role to play in community service and these officers are found in either the Police or the Prisons Act which is not correct because the whole purpose of Community Service is that the offender be spared the stigma associated with imprisonment and that this could only be achieved if , the order is performed outside any Prison or Police environment.

It is difficult to imagine for instance a scenario where a superior Police officer would undertake a research into the history of an accused in relation to his general conduct and home surroundings and recommend him for Community Service, surely this would be tantamount to usurping the functions of a probation officer.

This task falls squarely on the social welfare Department and not the Police Service. In any event the role of a Police officer in cases of this nature is primarily to see to it that the person is sent to jail. There is nowhere in the history of this country where a Police Officer had recommended someone to a non-custodial sentence e.g. suspended

sentence or probation, this is done by Probation officers. This is the reason why other Countries left the duty to prepare a pre-sentence report with the Social Welfare Department.

On 20th November, 1997 the Ministry of Legal Affairs, Attorney-General's Chambers⁹¹ acknowledged receipt of copies of the Community Orders Bill 1997 of Kenya and the Community Service Regulations (General Orders) 1997 of Zimbabwe but as to whether or not these documents were considered when drafting the amendments in issue is debatable. Surely, if these documents were used as a guide in the drafting, better work would have been done.

To answer the question earlier asked, suffice to say the Law on Community Service is inadequate in many material aspects the reason the Magistrates have chosen not to make anymore orders for Community Service.

⁹¹ Letter from the Chief Parliamentary Draftsman

CHAPTER 5

5.0 RECOMMENDATIONS AND CONCLUSION

This being the last chapter it will deal with the recommendations which might be a bit detailed especially in the area of Community Service and they are the following:

5.1 Recommendations

(a) That educational programmes for literacy and training of prisoners must be enhanced, this is important because one of the roles of prisons is to train the inmates in skills which would make them become better citizens upon completion of their sentence.

(b) That Government should improve funding to Prisons because most problems in the prisons are attributable to poor funding.

(c) That all prisons should engage in agriculture and other productive ventures that would enable them raise money for their use and not for depositing into Government general revenue account, which is the practice at the moment

- (d) That more prisons, especially, open air prisons, be created to ease congestion
- (e) That games and sporting activities be encouraged because exercises are important for anyone's healthy
- (f) That alternatives to custodial sentencing be encouraged
- (g) That Government should put in place proper career structure for the education and training of prison officers both locally and elsewhere
- (h) That the National Community Service Scheme be revived and that the scheme should be autonomous and be judiciary driven
- (i) That the District Committee earlier established be revived and new ones be established nation – wide to amalgamate Governmental and non – governmental organisations
- (j) That Magistrates who are the key players in community service, be adequately trained in this area

(k) That in order to enhance the prospects of better reintegration of offenders into the society and better internalisation of social values, the local population, in particular local councils be involved in the rehabilitation of offenders through community service and counselling

(l) That a bill be drafted to introduce community service as a Penal sanction because the current provisions in the laws are inadequate for purposes of community service

(m) That the media be involved in the sensitisation of the public on the advantages of community service because without proper sensitisation the scheme can easily be misunderstood

That an action oriented research on the subject matter be promoted in order to make the scheme work

5.2 CONCLUSION

It has been stated at the beginning of this study that a prisoner though a prisoner is a human being and as such all human rights that apply to other human beings apply to him as

well. It is therefore imperative that the conditions under which a prisoner is being kept should conform to human rights generally.

The problem of congestion in prisons is by and large a new phenomenon because under the traditional set up there were no prisons as such and therefore congestion was not an issue.

It is evident that the problem of congestion in Zambia's prisons is largely the cause of violation of prison rights and it is quite apparent that if prison accommodation was expanded congestion would be reduced. It has already been observed that apart from expanding prison accommodation, congestion could be reduced by encouraging courts to impose non-custodial sentences more than is the case now. The use of Community Service have worked in other countries it can work in Zambia as well.

Clearly the problem of poor conditions in prison does not affect only Zambia but many other countries in the world, however this is not a good reason for Zambia to sit down and do nothing about it. Zambia should in this regard move together with other countries that have reacted positively to this problem and adopt measures that can improve prison conditions.

APPENDIX ‘A’
FIRST SCHEDULE
PRISONS RATIONS

PART 1

ORDINARY DIET: DAILY ISSUE

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

APPENDIX B

LUNDAZI REPORT ON COMMUNITY SERVICE WORKERS WHO HAVE SINCE BEEN COMMITTED

NAME OF OFFENDER	SEX	TYPE OF OFFENCE	AGE	NO. OF HRS CHARGED	DATE COMMENCED	DATE COMPLETED	REMARKS	INSTITUTION
CECILIA MUMBA MRS	F.	ASSAULT O.A.B.H.		100	09.06.97	01.07.97	SATISFACTORY	C.C.A.P. CHURCH
DENNIS ZIMA	M	O.A.B.H.		180	16.07.97	29.08.97	SATISFACTORY	LUNDAZI D. COUNCIL
BENSON NYIRENDA	M	THEFT		120	16.07.97	20.08.97	SATISFACTORY	LUNDAZI D. COUNCIL
SIMON PHIRI	M	ASSAULT O.A.B.H.		185	16.07.97	04.09.97	SATISFACTORY	LUNDAZI D. COUNCIL
ALFRED LWENJE (1)	M	THEFT		200	10.09.97		STILL WORKING	LUNDAZI D. COUNCIL
EPHRONS NYIRENDA(2)	M	THEFT		200	10.09.97		STILL WORKING	LUNDAZI D. COUNCIL
PETER FONDER MWELWA	M	ASSAULT O.A.B.H.		240	24.09.97	Still at large	ABSCONDED WARRANT OF ARREST ISSUED	CASTLE HOTEL
NICHOLAS CHIPETA	M	ASSAULT O.A.B.H.		140	11.11.97	Still working	HAS JUST STARTED	MPHAMBA LOCAL COURT

APPENDIX "C"

CHAMA REPORT FOR COMMUNITY WORKERS WHO HAVE SINCE BEEN COMMITTED TO COMMUNITY SERVICE:

NAME OF OFFENDER	SEX	AGE	OFFENCE	NO. OF HOURS	DATE COMMENCED	DATE COMPLETED	INSTITUTION	REMARKS
STANLEY ZIMBA	M	28	ASSAULT	210	20/05/97	COMPLETED	KAMBOMBO	SUCCESSFUL
EDWARD GOMA	M	41	THEFT	200	05/09/97	COMPLETED	HOSPITAL	SUCCESSFUL
MORRIS NKHATA	M	20	ASSAULT	180	05/11/97	STILL WORKING	CHAMA D. COUNCIL	SUCCESSFUL
ACKIM LUSANJA	M	19	ASSAULT	180	05/11/97	STILL WORKING	CHAMA D. COUNCIL	SUCCESSFUL
SIMON THOLE	M	19	ASSAULT	220	05/11/97	STILL WORKING	CHAMA D. COUNCIL	SUCCESSFUL
GEORGE MAFUKU	M	17	ASSAULT	180	05/11/97	STILL WORKING	CHAMA D. COUNCIL	SUCCESSFUL
ANDREW MVULA	M	24	ASSAULT	150	07/11/97	STILL WORKING	KATETE P. SCHOOL	SUCCESSFUL
LAMECK LUNGU	M	35	THREATENING VIOLENCE	200	09/10/97	STILL WORKING	TEMBWE RURAL HEALTH CENTRE	SUCCESSFUL
BENSON ZGAMBO	M	28	ASSAULT	150	06/11/97	STILL WORKING	KATETE P. SCHOOL	SUCCESSFUL
JACKSON GOMA	M	2	ASSAULT	150	06/11/97	STILL WORKING	KATETE P. SCHOOL	SUCCESSFUL

R.M. MUKWANA
MAGISTRATE IN CHARGE/CHAMA

APPENDIX “D”
REPORT ON COMMUNITY SERVICE PILOT PROJECT AT JUDICIARY – KASAMA

NO.	NAME	SEX	OFFENCE	HOURS	PLACEMENT INSTITUTION	AGE	CASE NO.
1.	Kasonde Evaristo	M	Threatening Violence	105	Kasama Teachers' College	30	2W/24/97
2.	Moses Simwanza	M	Assault O.A.B. Harm	105	Kasama Municipal Council	27	2W/08/97
3.	Siame Alex	M	Assault O.A.B. Harm	175	Kasama General Hospital	28	2W/39/97
4.	Kabwe Maxwell	M	Assault O.A.B. Harm	105	Kasama Subordinate Court	36	2W/56/97
5.	John P. Pilula	M	Shop Lifting Theft	105	Zambia Police Mbala	27	2D/41/97
6.	Evans Mwape	M	Theft	140	Local Court Mpulungu	35	2D/78/97
7.	Danny Simwinga	M	Theft	105	Kasama Subordinate Court	26	2W/4797
8.	Yonah Phiri	M	Threatening Violence	210	Chinsali Subordinate Court	40	2F/61/97
9.	Mubanga Gabriel	M	Arson	290	Chief Makasa's Place	41	2W/101/97
10.	Mwape John	M	Criminal Trespass	140	Kasama General Hospital	22	2W/78/97
11.	Bwalya Evance	M	Assault O.A.B.	175	Lukupa Hospital Kasama	27	2W/59/97
12.	Pasho Lameck	M	Malicious Damage to Property	350	Kasama General Hospital	43	2W/89/97
13.	Nkole Enerst	M	Threatening Violence	210	Kasama General Hospital	32	2W/89/97

BIBLIOGRAPHY

BOOKS

1. John Hatchard and Muna Ndulo, Criminal Law in Zambia
2. Oii Muzurike, The African Charter, Wallenberg Institute Lund (1997)
3. U.N Human Rights Fact Sheets No. 1 – 17 Lund 1997
4. Peter Jones: Issues in Political theory, rights, Macmillan London (1979)
5. Community Service in Practice, Penal Reform International

STATUTES

1. Penal Code Cap 87 of the Laws of Zambia
2. Criminal Procedure Code Cap 88 of the Laws of Zambia
3. The Prisons Act Cap 97 of the Laws of Zambia
4. Penal Code (amendment) Act No. 17 of 2000
5. Criminal Procedure Code (amendment) Act 13 of 2000
6. Prison (amendment) Act No. 14 of 2000
7. Zimbabwe Community Orders Act No. 10 of 1998
8. Uganda Community Service Act No. 5 of 2000
9. Supplementary Statutory Instrument No. 55 of 2001 (Uganda)

ARTICLES

1. Interights Bullentin Prisons Rights Vol. 11 No. 4 1997
2. Mumbuwa Jethro; extracts of United Nations rules for the treatment of prisoners

REPORTS

1. DOSSIER: Prison conditions in Africa, Penal Reform International, Kampala, 1996
2. Vera Mlaguazuwa: African Commission on Human and People's Rights, Report of Special Rapporteurs on Prisons in Malawi June 28, 2001, also report on Mozambique, April, 2001

3. Professor E.V.O. Dankwa: Prison and conditions of detention in Africa,
Report of Special Rapporteurs June, 2000
4. PRI Newsletter: Report on Penal and Prison Reforms in Africa April, 2000

UNPUBLISHED PAPERS

Minutes of Inaugral meeting of the National Committee on Community Service of
Zambia 18th – 12th April, 1996