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THE GROWING CONGESTION IN ZAMBIAN STATE PRISONS

AND

ITS IMPACT ON THE RAPID DISPENSATION OF JUSTICE IN THE COURTS OF

LAW

BY

TUTWA SANDANI NGULUBE

UNZA

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A PAPER SUBMITTED TO THE UNIVERSITY OF ZAMBIA IN  
PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD  
OF A BACHELOR OF LAWS DEGREE IN LAW [LLB.]

# **THE UNIVERSITY OF ZAMBIA**

## **SCHOOL OF LAW**

I recommend that the obligatory essay prepared under my supervision by

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**THE GROWING CONGESTION IN ZAMBIAN STATE**

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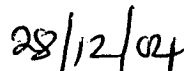
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**IN THE COURTS OF LAW**

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## **DECLARATION**

**I Tutwa Sandani Ngulube declare that this work represents my own ideas and is not a reproduction of any other work already written by any other author or person and submitted to the University of Zambia. I make this statement verily believing the same to be true in every respect to the best of my knowledge.**

## **DEDICATION**

**I dedicate my work to my Father the late Onesmus Sandani Ngulube, his brother Forward Sam Ngulube now living in Chama, my son Onesmus Sandani Ngulube Junior, my wife Glendah Sokontwe, my brothers Musalumbe, Soka, Changala, My sisters Tafwakose, Zyamike, and my twin sister Balyeni and her daughter Lusungu, my mother, Tivwale Mtonga and all friends and relatives not mentioned**

## **WORDS OF WISDOM**

**“ If the function of criminal law is to punish the Wicked, then everything which the law forbids must in the circumstances in which it is forbidden be regarded as in its appropriate measure wicked”.**

**Barbara Wooton, Crime and the Criminal Law “Reflections of A Magistrate And Social Scientist.”(1963). London: Stevens & Sons, At Page 46.**

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# **CHAPTER 1**

## **BACKGROUND TO THE PROBLEM OF CONGESTION**

### **1.0 INTRODUCTION**

Prison congestion has been regarded as one of the greatest impediments to the delivery of the justice system in Zambia especially when it comes to the treatment and welfare of prisoners, detainees and inmates. There has always been an overstretch of infrastructure which is believed, if the situation is not attended to, may stretch the justice delivery system to a breaking point. This chapter sets out to expose the major factors and issues identified as the major causes of congestion in state prisons countrywide. It will further assess and evaluate the effects and direct consequences these factors have on the congestion.

#### **1.1.0 WHAT IS CONGESTION?**

Congestion is described as a state of being too full or blocked up especially with humans or traffic.<sup>1</sup> The word congestion will be used as if synonymous to over population and crowding in prisons.

#### **1.1.1 CAUSES OF PRISON CONGESTION IN ZAMBIA**

There is no single major cause of congestion in prisons largely due to the fact that there are innumerable sources of overpopulation in prisons. Because of the aforementioned, the identified problems will be looked at separately.

#### **1.1.2 LIMITED PRISON INFRASTRUCTURE**

The problem identified as associated with the prison infrastructure is that, whereas the population of the nation and that of offenders continue to rise, the infrastructure has never been

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<sup>1</sup> Oxford English Dictionary, "Congestion" Oxford University Press. 1995 Edition.

extended nor rehabilitated<sup>2</sup>. The physical state of most state prisons in the country is deplorable with no one taking responsibility for the poor state of the prisons.

### **1.1.3 RISING CRIME RATES**

From the days of colonial struggle, the rates at which incarcerations were effected have not reduced with the effect that incarceration is not only restricted to convicts but also to remandees, prohibited immigrants and detainees. With the growth in population and opening up of administrative centres, towns and cities, there has been an upsurge and rise in crime. Offences deserving custodial sentences such as child defilement, rape, aggravated robbery, general theft and immigration and border crimes have rapidly shot up since the construction of these infrastructure. Other factors such as unemployment, deviance and poverty among the youth population have been the major attributes to the rising crime<sup>3</sup>.

### **1.1.4 DRUG ENFORCEMENT COMMISSION (D.E.C)**

The last seven years have seen the Drug Enforcement Commission nab, and prosecute huge numbers of people involved in, possession or handling psychotropic substances. Recently, this wing of the executive has recently even been dealing with matters such as fraud, money laundering and many more operations. Whereas they undertake a lawful purpose, they are quick to arrest even when there is insufficient evidence linking the offenders or people found in possession to their families. Where they fail to link a specific person to the crime being investigated the Drug Enforcement Commission officers prefer picking up the whole family even where the person found in possession of a psychotropic substance was not at home. The insistence by the Drug Enforcement Commission prosecutors to punish people by custodial

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<sup>2</sup> Human Rights Review. "Prisons Places With No Rights" Issue No. 11 of May 2003. by AFRONET-Zambia.

<sup>3</sup> Comment by Jethro Mumbuwa Commissioner of Prisons Reported in "The Post" Sunday Post 28<sup>th</sup> April 2002

sentences<sup>4</sup>, rather than non-custodial or social-rehabilitation sentences, has been a major contributor to the prison congestion<sup>5</sup>.

A survey conducted by the author in Kabwe in the state prisons revealed that some detainees arrested by the drug enforcement commission are not taken to court according to the cause list prepared at court thereby making it a problem for the courts to dispose of misdemeanour offences within a reasonable time<sup>6</sup>. The problem of transport shortage, lack of or limited number of prosecutors and many more factors share a bigger percentage in the congestion. This problem has superseded the irregularity of Drug Enforcement Commission officers taking suspects direct to prison, a trend that was also very common but was later reversed by the Former Chief Justice when he visited Kabwe Prisons.<sup>7</sup>

#### **1.1.5 LOCATION OF STATE PRISONS**

In addition to the major challenges faced due to the limited and very few infrastructures, some state prisons are located very far away from the courts such that without transport, prisoners cannot be ferried to court. While it is true that the population of the country has swelled over the years, no new prisons have been constructed in the recent past. Even the existing prisons were built when most towns and districts had not yet been delimited or created, thereby making some districts lack their own prisons. Districts such as Chama in the Eastern Province have no prisons of their own and if the courts convict, they have to transfer the convicts to other Districts such as Lundazi, which is about 397 Kilometres away from Chama, thereby leading to the congestion of the Lundazi Prison.

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<sup>4</sup> Prison Privatisation " The International Experience and Implications for Africa" By Steven Nathan,[2003] Broadcast Publication

<sup>5</sup> Annual Report Of the Legal Resources Foundation Prison Report Central Province.

<sup>6</sup> Ibid

<sup>7</sup> Sunday Post 28<sup>th</sup> March 2002.

Another living example can be drawn from Northern Province where Luwingu State Prison, which was constructed to initially cater for 30 people, now houses over 100 inmates. Other provinces such as Western Province experience the same problem. Kaoma State Prison also caters for two districts namely Kaoma and Lukulu districts. According to prison authorities, the prison was meant to cater for not more than 80 but as at 7<sup>th</sup> July 2004 catered for more than 202 inmates. As a measure to decongest this Prison, some prisoners and inmates are sent to Mukunkink Open Air Prison which is about 30 kilometres away from Kaoma along the Road leading to Lukulu. As at 19<sup>th</sup> July the Open Air prison had already received 18 inmates from Kaoma state Prison<sup>8</sup>.

#### **1.1.6**

#### **LACK OF JUDICIAL OFFICERS**

The other major source of prison congestion has been the lack of judicial officers. The research reviewed that some places have had no resident magistrates for a long time and such vacancies have aggravated the situation by denying offenders arrested a speedy trial. One such District has been is Namwala which has been without a resident magistrate for a long time. As at the 15<sup>th</sup> July 2004, inmates at Namwala prison had no hope of having a hearing and a fair trial.

The other such District is Luwingu in the Northern province where the resident magistrate was at the time of the research attending full time further studies at the University of Zambia, in the School of Law at Great East Road Campus in Lusaka. When the University opens, there is no one to take up the cases he has left. Cases continue to pile as the number of inmates continues to rise thereby causing congestion. During his absence, there are no court sittings unless some other magistrate from another District comes to sit in for him.

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<sup>8</sup> Opcit.



### **1.1.7 WITHDRAWAL OF RESIDENT JUDGES FROM SIX**

#### **PROVINCES IN PREFERENCE FOR HIGH COURT SESSIONS.**

Previously, each provincial capital had a resident judge sitting and hearing the cases in the province. Due to administrative changes, the judiciary withdrew the resident judges from Central Province, Eastern Province, Western Province, Luapula Province, North Western Province and Northern Province. The remaining provinces were Southern province, Copperbelt Province and Lusaka Which all have resident judges. The remaining provinces have High Court sessions opening every first two weeks of every month with the judges resident in Lusaka, Kitwe and Ndola rotating to hear cases in the other provinces<sup>9</sup>.

The withdrawal of judges has affected the disposal rate of cases especially those that are only triable by the High Court. The problem is that most judges are already overburdened and as such their workloads and busy schedules are impediments to the disposal of cases in good time. According to the Judiciary staff, the Resident Judges were withdrawn from the provincial centres because it was noted that the operation costs had doubled and that the number of cases had reduced tremendously thereby making their jobs almost half the normal load as such, the judiciary on the recommendation of parliament decided to withdraw the resident judges.

### **1.1.7 PROHIBITED IMMIGRANTS**

The Immigrations Department under the Refugees Control Act Chapter 120 of the Laws of Zambia, and the Immigrations Act is empowered to arrest any person suspected of having committed an immigration offence or being in the country without valid documents for stay.

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<sup>9</sup> Technical Review of the Public Private Partnership Prisons Contracts for the PPP Prisons Task Team , 8<sup>th</sup> November , 2002.

The immigration department is quick to arrest but delay in prosecuting their suspects because they do not have their own prosecutors' consent and have to wait for the consent from the Director of Public Prosecutions.

Most Prohibited immigrants are fined after conviction but because some are unable to pay the fine, they are meant to serve prison sentences. The other problem associated with the prohibited immigrants is failure to secure working sureties to have them released on bail, as most immigration offences are bailable. The Human Rights Commission has been of great help and assistance to the prison authorities in securing the release and deportation of convicted prohibited immigrants, by providing transport and escort of the prohibited immigrants and refugees to Refugee Camps or their respective countries.

## **2.0 EFFECTS OF PRISONS CONGESTION**

To understand the effects of the congestion, it would be best to include even the most severe conditions inmates undergo while in incarceration. Some of these include the most tangible and readily felt effects as listed below.

### **2.1.0 SHORTAGE OF TRANSPORT**

This problem has the hardest felt effects. Because of the shortage of transport, Criminal sessions are adjourned endlessly such that even those awaiting judgement pronouncements are meant to wait for several days of adjournment. This has prompted the prisons service to resort to taking prisoners to court by private transport in urban areas and at time at foot in rural areas. What the Officer in charge at Kamwala Remand Prison does is to make the list of people to be presented to court by them and make such people available before court according to the date

allocations given at court. The beauty of the matter lies in the fact that the courts are able to attend to some prisoners every time the truck takes them to court<sup>10</sup>.

### **2.1.1 LIMITED NUMBER OF SECURITY PERSONNEL**

The limited number of drivers and support staff to ferry prisoners is another effect felt by the Prisons service because most drivers are not ready to work for long hours while getting very little pay. This manifests in the poor work schedules and time management for the truck commonly known as “ Kasalanga” meaning the cage. An observation done at the Lusaka High Court showed that the truck only brings the suspects to court in the morning and later picks them up in the afternoon at 17:00 hours.

### **2.1.2 SHORTAGE AND LACK OF FACILITIES**

As a result of the congestion, there are very few amenities and facilities to cater for the larger populations in the prisons. Lack of handcuffs, uniforms for prisoners and shortage of manpower for the prisons service has been a direct consequence of the congestion<sup>11</sup>.

### **2.1.3 LITTLE MOTIVATION FOR THE STAFF**

Because the Prison Warders are supposed to work not only tirelessly but also very hard, they are usually demoralized and lack motivation due to lack of incentives in the prisons service. Consequently, more powerful inmates in most prisons are left to supervise, control and mistreat weaker inmates in full view of the prison warders<sup>12</sup>.

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<sup>10</sup> On the 19<sup>th</sup> May 2004 the Zambia Revenue Authority donated Cars to the Prisons Commission to ease the shortage of Transport in prisons.

<sup>11</sup> Over 200 inmates share a single cell in Petauke Prison, and inmates walk about 30KM to Court from Musanzala open air prison.

<sup>12</sup> Delayed salaries, shortage of accommodation and poor working conditions heavily demoralize the prison staff.

### **3.0     IMPACT OF THE CONGESTION ON THE ENJOYMENT OF                      HUMAN RIGHTS WHILE IN INCARCERATION.**

While some inmates do acknowledge the fact that they have inalienable human rights, most of them do not realize the reality of the existence of such things as the right and freedom of expression, freedom from torture, freedom of conscience and the rights and freedoms to know the elements of their offences. While these prisons are supposed to serve as total institutions for the rehabilitation and reformation of offenders, the lack and shortage of facilities and the lack of Knowledge on the existence of human rights, prisons serve as a place of severe punishment.

#### **3.1.0     JUVENILE OFFENDERS AND RIGHTS IN ZAMBIAN STATE PRISONS**

Ervin Goffman in his analysis of life of prisoners thought prisons serve the social function of rehabilitating the “self”. The reason why people should be kept in isolation was to inculcate new habits and to reform them so that once they are released into open society, they should have reformed while in Jail<sup>1</sup>. Most prisons in the country still mix juvenile offenders with adult offenders to the extent that it is hard to see how the juveniles would not just be transformed into hardcore criminals<sup>2</sup>. According to the findings of the visit of the Child Justice Forum [C.J.F] to Nakambala Reformatory School found that not all juveniles sent to such schools are sent there to reform. The possible explanation was that if the children are sent there, they are sent to starve and as such out of it comes the consideration of human needs.

## **CHAPTER TWO**

### **MAJOR CONTRIBUTORS TO THE CONGESTION.**

#### **2.0 INTRODUCTION**

There has been very little reform in the criminal justice delivery system in Zambia and as a result, the justice delivery system has lagged behind in terms of training for the public prosecutors and as such, the Office of the Director of Public Prosecutions depends on appointing Private prosecutors to handle more complicated criminal cases on behalf of the State. This Chapter looks at the role played by the Director of in contributing to the Congestion in Zambian State Prisons. It has been thought that the office of the Director of Public Prosecutions has liberalized their statutory powers to prosecute by allowing investigative wings of the government to take cases to court, thereby weakening the office.

This chapter critically analyses the various executive branches of government and the role they play in contributing to the congestion in prisons. Various law enforcement agencies of the government such as the Drug Enforcement Commission, the Zambia Wildlife Authority, and the Anti Corruption Commission have prosecutors empowered and entrusted by the Director of Public Prosecutions to prosecute cases in their departments. It is in these premises that this chapter will proceed.

As alluded to in the first chapter, there can be no congestion if the people entrusted with the responsibility of handling prison cases are so reluctant to handle the administration of the justice delivery system with care and expediency.

## **2.1.0 THE ZAMBIA POLICE SERVICE**

This is the biggest investigative wing of the executive branch of the government with wide ranging powers of arrest. The Zambia police service is governed by an Act of Parliament the Zambia Police Act<sup>1</sup>. Though they are empowered to arrest and investigate any person suspected of having committed a Criminal offence under any law in Zambia, they entirely depend on the Consent of the Director of Public Prosecutions for them to prosecute any person. This involves the Docket of Case of the accused person should be sent to the Director of Public Prosecution's Office for scrutiny and approval after which a fiat will be issued authorizing a particular police officer to prosecute the accused.

The busy schedule of the office of the Director of Public Prosecutions results in the delay by the police officers to take cases to court. The Director of the Public prosecutions is a Constitutional office<sup>2</sup> with powers to appoint public prosecutors and to discontinue investigations or court proceedings against any person accused or charged.

Because the consent of the Director of Public Prosecutions is not automatically given, this has resulted in several people being in detention for longer times after their arrest because there is no short cut way of getting around the consent of the Director of Public Prosecutions. This has had a negative effect on the liberty of the accused especially where the prosecutors cannot present the accused before court without the written approval and consent of the Director of public Prosecutions. The delay in issuing consent has been a major source of congestion in prison for accused persons.

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<sup>1</sup> Chapter 107 of the Laws of Zambia.

<sup>2</sup> Article 56 of the Republican Constitution

### **2.1.1 IMMIGRATIONS DEPARTMENT**

The Immigrations Department officers are empowered under the Immigration and Deportation Act<sup>3</sup>, the Refugees Control Act and other statutes to prosecute any person suspected of living with the Country illegally, or having lawfully entered the country does overstay to become a prohibited immigrant, or who deceives an immigration officer so as to illegally enter the country without valid documents of stay or tempers with valid documents with a view to unlawfully prolong the stay. With these powers, the Immigration Department has arrested scores of aliens suspected to be so living in the country.

The problems experiences by the immigration department include the lack of knowledge used to detect the offenders especially where they do not have accurate information. The easiest way of getting about this problem has been to identify and classify these aliens into groups depending on the nature of their stay in the country to include refugees, asylum seekers, prohibited immigrants and unclassified aliens of the special cases. The criteria has been that refugees are supposes to be in refugee camps and if they escape, they will be arrested and prosecuted. Asylum seekers must have proof of the same and valid reasons for the application and must report to the immigration officers upon entry into the country, while prohibited immigrants must apply for stay in a regular way if they are to be legally allowed to stay in the country.

The masses of such people that are in detention receive very little attention from the immigration office as the department only operates when they have enough resources. While arrests are done regularly, deportations and extraditions take extremely longer to be effected. This has also been a major source of the congestion in state prisons.

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<sup>3</sup> Chapter 123 of the Laws of Zambia.

### **2.1.2 DRUG ENFORCEMENT COMMISSION [DEC] AND ZAMBIA WILDLIFE AUTHORITY [ZAWA]**

As opposed to the Immigrations Department and the Zambia Police Service who entirely depend on the consent from the Director of Public Prosecutions, the Drug Enforcement Commission, and the Zambia Wildlife Authority can prosecute with the express consent of the Director of Public Prosecutions. These two departments have been efficient in presenting accused persons to court because they do not have to wait for the consent of the Director of Public Prosecutions. Save as aforementioned, they have been granted wide sweeping discretion to arrest and prosecute a trend that has resulted into abuse where they just wish to arrest<sup>4</sup>. The courts have reacted to this abuse of discretion by employing strict rules of proof before conviction. As a result malicious prosecutions have been the case in most districts.

Cutting these wide discretionary powers of arrest would enhance a quick and equitable disposal of tramped up charges. The discretions awarded to these two departments need some constant checks to avoid violation of privacies, unlawful searches, malicious prosecutions and unlawful detentions to the unsuspecting public especially in the rural areas where the masses do not appreciate that they have inalienable human rights and the rights to privacy<sup>5</sup>.

### **2.1.3 ANTI CORRUPTION COMMISSION [A.C.C]**

Anti Corruption Commission governed by the Act<sup>6</sup> has its own prosecutions department but they seriously lack or are crippled by the fact that they cannot prosecute any accused person

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<sup>4</sup> Mwangala v. The Attorney General [1974] (1974) ZR 97 (HC)

<sup>5</sup> National Parks and Wildlife Act, Cap. 316, ss. 98, 99 (1) (2), 128 (1) (2)

<sup>6</sup> Act. No. 42 of 1996.



without the Consent of the Director of Public Prosecutions which is in most cases delayed due to the fact that the Director of the Public Prosecutions office processes all the consent applications for all government department including that of suits against public and police officers. The delayed consent of the Director of Public Prosecutions has been a major contributing factor to the congestion in prisons for arrested persons as most of them are not even able to apply for bail bonds because presenting them to court would be irregular and tantamount to contempt of court.

#### **2.1.4 EFFICIENCY IN EFFECTING CRIMINAL PROCEEDINGS**

Having looked at the how the various departments of the executive operate vis-à-vis the office of the Director of Prosecutions, it would only be expedient to critically analyse the operations of these departments before the Director of Public Prosecutions is invited to issue consent.

#### **2.1.5 ARRESTS AND INVESTIGATIONS**

An arrest is defined as the process of putting an accused person in the custody of law enforcement agencies with a view to facilitate investigations. An arrest is deemed to occur when the liberty or freedom of movement of the accused has been curtailed<sup>7</sup>.

In the normal course of duty, the police or other law enforcement agencies are supposed to investigate the accused person prior to arrest. They also have the powers to stop and search any person they are investigating. The trend in Zambia today has been arresting the person and effect investigations much later while the accused is still in police custody. The police under such circumstances have a problem with collecting evidence in that even where they cannot link the accused to the offence, they choose to fabricate the evidence by making involuntary

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<sup>7</sup> HENRY V. THE US. 398 US 98

confessions result from the accused<sup>8</sup>. While disregarding the fact that an accused person has a privilege against self incrimination and this has been held to be a constitutional right. A potential defendant may waive that right against self-incrimination but he still retains the right to withdraw the waiver.

### **2.1.5 LACK OF PROSECUTIONS POLICY**

The office of the Director of Public Prosecutions operates under a fragmented setting whereby even the prosecutors do not even have the opportunity of meeting with state advocates to discuss technical hints of the offences they prosecute. The Prosecutors in Zambian courts, in as much as they work hand in hand with the State, there has been very little done to coordinate the prosecutions department. The shortage or lack of state advocates in the Director of Public Prosecutions office has been a serious setback in the advancement of the criminal justice delivery system.

It is surprising to note that most police officers are quick to arrest suspects and hand over the dockets of cases to the prosecutors with the aim of just prosecuting their accused persons without weighing their evidence against the possibility of securing a conviction, which nevertheless, should be the guiding principle for all offences and cases taken to court. Because of the shallow education offered to most prosecutors and the heavy dependence and reliance on the Director of Public Prosecutions on police officers to act as public prosecutors, little has been done to upgrade their levels of education. Most courts in the country operate with untrained prosecutors who rely on their own experience in handling these cases.

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<sup>8</sup> THE PEOPLE V. CHANDA. [1972] Z.R. HC 116.

## **2.1.6 LACK OF OR INSTITUTIONAL FAILURE IN THE DIRECTOR OF PUBLIC PROSECUTIONS' OFFICE.**

The Director of Public Prosecutions office lacks a central place of operations to facilitate a quick disposal of criminal cases. Whereas other institutions like courts, the Directorate of Legal Aid, the Attorney General's Chambers, the Director of Public Prosecutions operates mostly in shadowy set-ups. For instance, the current Director of Public Prosecutions is operating from the Zambia Law Development Commission House in Rhodes Park, while the other State Advocates operate from Findeco House and others from Kulima Tower building. This has led to most difficulties in the operations of this office.

## **2.1.7 LIMITED RESOURCES**

Coupled with little resources, the lack of a central place for all the operations of the Director of Public Prosecutions has been a great hindrance. Lack and shortage of stationery has been the hardest problems for the prosecution not only in the rural areas but also in the capital City itself where the head of operations and the Director of Public Prosecutions is based.

Problems of shortage of the most vital court documents such as charge sheets, dockets and summons to witnesses are not regularly supplied to the prosecutors in time such that it is difficult for them to work. The Prosecutors , mostly police officers who lack the requisite materials and stationery at times prefer to use mere plain bond paper accompanied with a date stamp in place of summons for witnesses which should be regularly issued out of court or obtained from the Government Printers. Where the prosecutors have failed to locate witnesses, trial has to delay at times indefinitely.

### **2.1.8            SHORTAGE OF TRANSPORT TO COURTS**

In as much as the police can arrest their accused, the prosecutors do not have transport of their own to make follow-ups with witnesses especially those situated in the remotest parts of the Country. While the accused still languishes in prison, the prosecutors have at times failed to locate the witnesses and have at times failed to proceed with trial. This has been a major source of concern for the prisons service where the prosecutors are not ready to proceed with trial while the accused still has to remain in detention, further contributing to the congestion.

## **CHAPTER THREE**

### **AN INNER LOOK AT THE ACTUAL DAY -TO -DAY LIFE OF A PRISONER**

#### **3.1 INTRODUCTION**

It may be a truism that all persons committing offences should be locked up or detained in custody. If that was the case all the people would one way or the other vanish behind bars. This can be contrasted with the heavy presence of statutes which provide for offences that require payment of fine. This chapter will analyse the various circumstances under which the penal law of the Zambian criminal jurisdiction does justify the detention and imprisonment of criminals and the extent of the rights a prisoner is supposed to enjoy while in custody. While it is true that imprisonment can only take effect after conviction, one way or the other pre-trial detention is done at a large scale for all offences that require confinement of the offender.

#### **3.2. PRISON ROUTINE**

The actual daily routine of a prison varies from one established prison to another. That of a local prison may perhaps be taken as an example, as being the one routine experienced in at some time by all prisoners. In Zambian prisons, the prisoner's routine day begins at about 04:00 in the morning. The utopian scenario is that at this time the prison must be tidied, the prisoner must bath and dress up and must shave. At some point, he must be unlocked to empty their Chamber Pot and must have breakfast by 08:00 O'clock in the morning. All this shall remain a dream if the congestion continues to grow and rise in the face of the very limited resources and infrastructure. Regardless of the serious shortage of bed space, prisoners still have to be locked up behind bars all day and night long.

### **3.3. FACILITIES AND WORK FOR PRISONERS**

There are very real and practical difficulties associated with work for prisoners. The overcrowding for prisoners applies not only to cell but also to workshops. The labour force, though large is selected from the masses on criteria which would not appeal to the average employer. A proportion of prisoners are unfit for heavy and complicated work and the great majority are serving short-term sentences which preclude their attendance of training course for skilled work<sup>1</sup>. Prisoners are mixed together, the healthy and the unhealthy alike. There is no discrimination in terms of a clear quarantine of patients based on health or illness of some contagious sort<sup>2</sup>.

### **3.4 TRAINING FOR PRISONERS AND THEIR POTENTIAL CONTRIBUTION TO DEVELOPMENT.**

Although related to the question of prisoner work, this requires some special attention. Despite some recent changes, prisons earnings are still at “pocket money” level. Some writers have objected to this stating that prison training and earning is intended to develop some personal responsibility of a kind.<sup>3</sup> In normal life, the management of money is a large part of this, but in practice for those in prison, there can be no other training given to inmates except for those few prisoners in cells who work outside the prison at a full rate equal to that of an ordinary job. The ideal situation is that prisoners working inside the prison should have normal rates of pay and conditions of work. National wage statutes and all the provisions of the Factories Act would apply- though the right to strike would be deprived of them. In the United Kingdom, the

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<sup>1</sup> Former Vice President Nevers Mumba links the New Deal administration's policy on Agriculture to the Increase in Farm produce For Prison Farms. They Produced 30,000 Bags of Maize Countrywide. Speaking at Mwembeshi during the Prisons visit on Saturday, 25<sup>th</sup> September, 2004

<sup>2</sup> “300 Prisoners Discharged”. Zambia Daily Mail, Saturday 25<sup>th</sup> September, 2004.

situation is different. It was held in the case of *PULLIN vs. PRISON COMMISSIONERS*<sup>3</sup>, that Prison workshops are not in the realm of the Factories Act.<sup>4</sup>

Out of these earnings, a prisoner could send money to his family and save for his release. It may be that his ideal will come nearer when the modernization of prisons industries is complete, but that probably entails the building of the majority of prisons in all the provinces, a long and enormous task<sup>5</sup>.

In some foreign countries, this situation is already operational. In Sweden, which has the best and most advanced legal and penal systems, new institutions are built around the Factories, rather than workshops being next to the cellblocks. Modern industrial methods have led to the growth of some highly successful ventures especially in making fabricated houses. In at least one prison, full civilian wages are paid to all prisoners who pay income taxes and a charge for room and board<sup>6</sup>. With the advancement and improvements of our own penal system, there seems to be totally no reason why our own prison labour cannot contribute to the Gross Domestic Produce of this country [GDP]<sup>7</sup>.

### **3.5 DISCIPLINE AMONG PRISONERS**

All members of staff are concerned with the maintenance of discipline, law and order in prison. The nature of the task in various types of prisons is well expressed in a group representing the ranks in prisons service. Indiscipline is punishable. In Zambian prisons, there are no

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<sup>3</sup> [1957] 1 WLR 1186.

<sup>6</sup> Erickson, *The Correction System In Sweden* pp. 60 Et Seq.

<sup>7</sup> In Malawi, state prisons produce almost 70% of the Cash crops Tobacco that also accounts for 70 % of the country's foreign exports. About 40% of the Maize production of each year. According to Mr. Siziba of Malawi Prisons Commission speaking during the first Open day for Prisons in Zambia held in Kabwe.

disciplinary rules set out and there are no disciplinary tribunals to hear prisoners. Prisoner offenders are sent by to the courts for trial on fresh grounds. A prisoner may also be allowed to go and give evidence.

What lacks is a legal framework for the scrutiny, protection and supervision of human rights in prison. Corporeal punishment is the only punishment meted to prisoners. The Constitutional protection afforded to all citizen and members of the human kind that they shall not be subjected to cruel, inhuman and degrading treatment only become a daydream<sup>8</sup>.

### **3.6 THE EFFECT OF IMPRISONMENT ON OFFENDERS**

It is almost impossible to measure the effect of imprisonment as a general deterrent in dissuading individuals from offending. It is easier to state a few points about its effect on those who are or have been imprisoned. Such comment can be based either on the examination of statistics, principally those reconvictions, ex-prisoners or on a closer exam of the reaction of prisoners to their prison experience.

### **3.7 RECONVICTION RATES**

Reconviction rates are deceptively a simple measure of success of any form of penal treatment, but they do not provide a guide whatsoever as to an indication of the effect of imprisonment on offender and ex- convicts<sup>9</sup>.

### **3.8 FORMS OF SENTENCES**

Imprisonment is not a uniform system of treatment. There are great differences between imprisonment in open conditions and imprisonment in a maximum security prison. These

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<sup>8</sup> Article 15 of the Republican Constitution Chapter 1.

<sup>9</sup> Child Justice Forum Report September 2004.



differences are of great importance to the individual prisoner, prison staff and prison administration, but they are not the concern of the courts. This section is concerned with the function of the courts and their effectiveness in meting out punishment that leads to the reformation of offenders. These will be dealt with in Chapter four.

The courts must decide whether a sentence of imprisonment is to be imposed or not. Although every case is different and must be decided on its own merits, there are inevitably and properly well-defined patterns in the sentencing practice. It is possible, for example to list a number of sexual offences which will certainly attract a sentence of imprisonment.

### **3.9 EFFECTIVENESS OF IMPRISONMENT**

There is nothing either in practice or on record to show that imprisonment is the most effective method of punishment of offenders. There are several sentences which can help the offender to reform better than if he is sent to prison where there will be very little reformation exercises of the convict<sup>10</sup>. Fines, suspended sentences and Parole have all proved to be effective in some way. Though it is up to the magistrate or the judge to assess how effective a fine will be in determining the reformation of a convicted person.

### **3.10 COMPARING EFFECTIVENESS**

The sad truth of the fact is that most studies reveal considerable similarities between the effectiveness of penal treatments of various kinds. In other words, imprisonment has the same proportion as probation. This leaves the conclusion that imprisonment may not be the best form of punishment as it is not the most effective way of reforming a convict.

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<sup>10</sup> "Prison Conditions", 'Boring Old Tune' Times of Zambia- March 17, 2004.

### **3.11 LACK OF PENAL POLICY IN ZAMBIA**

Many sectors of society think and strongly feel Zambia lacks a comprehensive penal policy and as such, all is left to the courts to implement through their judicial officers, a move seen as misplaced because policy issues are not for the judiciary and the courts. First offenders will normally be met with lesser sentences but will undoubtedly receive harsher punishments on their second conviction. The lack of guidelines and exactness in the specific offences have been due to legislative failure because the legislature cannot legislate for each and every situation that may arise because each case is judged on its own merits. Matters such as mitigation, the right to the last words and the presumption of innocence of the accused all make the practice of sentencing a very fluid act.

### **3.12 DIFFERENT TREATMENT AMONG PRISONERS AND INMATES**

It would be a misdirected opinion to state that there is no special treatment of offenders in prison. Special categories arise such as Juveniles, the mentally ill and the disabled. The legal mechanisms for the treatment of juvenile offenders may be said to be sufficient. There are several issues such as child friendly courts, sometimes referred to as juvenile courts, trial in camera for juveniles, the involvement of probation officers in their trial and the direct involvement of prosecutors and state advocates to represent the juveniles can all be said to be steps towards the establishment of juvenile courts child friendly<sup>6</sup>.

The other category that involves special treatment is that of the mentally ill patients who are detained at the president's pleasure. They may be detained in special places such as a mental hospital and instead of standing trial may receive special verdicts such as "unfit to plead", "Guilty but insane" and "Not guilty by insanity"<sup>7</sup>.

In Zambia State Prisons today, the mentally ill offenders are not given as much special treatment as they deserve due to the fact that there are limited facilities both in the only country's mental hospital Chainama and also in the state prisons congestion. Violent mentally ill detainees are sent back to State prisons from the mental hospital. Trial of the mentally ill patients also involves technicalities and may not at times be properly handled in the absence of a state advocate.

## **CHAPTER FOUR**

### **IMPEDIMENTS TO THE FIGHT AGAINST PRISON CONGESTION**

#### **4.1 INTRODUCTION**

Having laid a framework to the understanding of the operation of Zambian State prisons and also the treatment of offenders, this chapter would like to highlight the legal impediments that are faced in the fight against the congestion in state prisons. This Chapter will look at the best way through the law that would be used as an alternative to the terms of imprisonment for offenders of less serious offences termed misdemeanours which usually attract lesser terms of imprisonment.

Whereas it is true that the growing congestion has an impact on the rapid dispensation of justice in the courts of law, there is no direct link of the congestion to the prisoners themselves, meaning that the system used to arrest and sentence the prisoners itself may have a problem somewhere that has not yet received as much attention as it should have done. Below is a set of arguments used to justify the congestion in prisons.

#### **4.2 CAPITAL PUNISHMENT**

This is the execution of offenders of very serious crimes such as aggravated robbery, murder and treason. It is the heaviest form of punishment in most legal systems. Though it takes many forms, some forms such as “Firing Squad” are not found in Zambia. Zambia uses the hanging system where the condemned prisoner is hanged by the neck until pronounced dead.

There has been an increase in the number of condemned prisoners on the death roll but the current Republican President Levy Patrick Mwanawasa has indicated little willingness to sign

the death Roll. This means in technical terms that the death penalty is “temporarily” suspended. Some sectors of society have called for the abolition of the death sentence saying it is barbaric.

The President reacted to the calls for the abolition of the death sentence by commuting the death sentences to life imprisonment in the much-publicized case of the Coup Convicts of 1997 that had attempted to unlawfully take over government from the Second Republican President Frederick Chiluba. In a Press briefing, President Mwanawasa assured the nation that during his tenure of office, he would not allow any person to be hanged. In essence all the condemned prisoners will be in prison for life leading to the increase in the number of prisoners in jail, thus aggravating the congestion already being felt and complained of.

#### **4.3 ARGUMENTS FOR CAPITAL PUNISHMENT.**

Lord Denning giving evidence to the Royal Commission of 1949, said:

“The ultimate justification of any punishment is not that it is deterrent but that it is the emphatic denunciation by the community of a crime , and that from this point of view there were some murders which in the then state of public opinion , demanded the most emphatic denunciation of all, namely the death penalty”.<sup>1</sup>

This is one of the forms which can be taken by the feeling shared by most supporters of capital punishment. This approach includes elements of vengeance of atonement and of indignation. It is clearly the basis of the popular support which capital punishment enjoys.

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<sup>1</sup> 714 Common Debates 5<sup>th</sup> Series Col. 213.

#### **4.4 ARGUMENTS BASED ON DETERRENCE**

Another argument in favour of the death penalty is deterrence relied upon by the same supporters especially when the death penalty is suggested for certain categories of murder for its unique deterrent value<sup>2</sup>. Some say, a killed killer can never kill again. Some police officers, judges and magistrates think the capital punishment has this deterrent effect although, of course, their experience is limited to those who for one reason or another, it was failed to deter<sup>8</sup>. One practical difficulty that arises is whether the deterrence is for the person executed or for those that remain contemplating the commission of a similar offence. This difficulty has also led to difficulties in statistical interpretation.

#### **4.5 ARGUMENTS BASED ON PUBLIC OPINION**

It is undoubtedly true that a large proportion, probably a majority, of the public opinion favour capital punishment. Some regard this as being in itself an argument to be weighed, but strictly it is rather a measure of the impact of the earlier argument based on deterrence.

#### **4.6 ARGUMENT AGAINST CAPITAL PUNISHMENT**

##### **4.6.1 THE ETHICAL ARGUMENT**

The ethical argument is that it is wrong, or unjustifiable, to take human life, even when the life is that of a convicted murderer. This argument rejects the “life for a life” argument by emphasizing the value of each and every human being<sup>3</sup>. A variant of this argument puts it in weaker terms that killing to be permissible needs very clear justification and continues that the evidence does not provide adequate justification.

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<sup>2</sup>Ibid.  
<sup>3</sup>Ibid.

### 4.6.2 FRAILITY OF CRIMINAL JUSTICE

It has been suggested and argued that on several occasions, innocent men have been hanged. The courts can make mistakes but a hanged man cannot be unhanged. Secondly, any legal system which uses capital punishment, whether death sentence is mandatory or optional, needs some machinery of review corresponding to our “reprieve system”. It is said that no satisfactory system is available. Arguments of this nature stem from the two English cases of **Graham Rowland and Timothy Evans**<sup>4</sup>, which have aroused a great deal of anxiety because no reprieve was given despite the existence of a scintilla of doubt<sup>5</sup>.

The case of George Riley, hanged in 1961, when he was 21, is in point .His conviction rested almost entirely on his own confession. In Particular, his conviction for capital murder in the course of furtherance of theft rests on his statement that he went to his victim’s home because he knew she had some money, he was in no need of money and took none. He was also drunk but his previous record was bad<sup>6</sup>.

Many people felt a reprieve should have been given, and a fierce debate took place in the House of Commons after his execution. At least, the decision to hang must have been a landmark one, and the critics of the reprieve system, and the critics of the reprieve system think it was wrong that a Home Secretary and his advisers had taken such a decision.

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<sup>4</sup> Sellin, T. The Death Penalty, pp.63-65. Hale, “Hanged in Error, Bressler, Reprieve Part three”[1968].  
<sup>5</sup> Sellin, T. Capital Punishment [1967] Harper& Row.  
<sup>6</sup> Tuttle, E. The Crusade against Capital Punishment in Great Britain-[1961] Steven.

#### **4.7 OTHER SUPPORTIVE ARGUMENTS**

Psychologists and criminologists have argued that the morbid interest shown in the execution of offenders is an unhealthy feature of any society and that hanging has a brutalizing effect on prison staff, and other prisoners in the building and the consequences of the sentence for the convicted man's family are unjust. Evidence cannot be admissible on such grounds though it is felt by an individual judge when sentencing and remorse and regret characterise such a judge<sup>7</sup>.

#### **4.8 SENTENCING FOR OTHER LESSER OFFENCES**

Assuming the offence committed was less heinous such that it cannot attract the death sentence or capital punishment, or a bigger sentence of imprisonment, it is imperative that the legal mechanisms that would be used to decongest the prisons discussed below be seriously looked at and implemented.

#### **4.9 NON CUSTODIAL SENTENCES**

The penal policy would require that judges, magistrates and other officers of the court refrain from passing a sentence that is so outrageous and disproportionate to the offence committed. Better still would be a situation where they sentence offenders to non custodial sentences that would require community rehabilitation of offenders, especially because there is no evidence to show that imprisonment is the most effective way of punishing an offender, unless the law so require, a situation to be judged by the degree of the seriousness of the offence committed. Below is a list of non-custodial sentences that would assist in decongesting the Zambia state prisons.

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<sup>7</sup> Interview with a sitting judge at the Lusaka High Court who refused to be named or quoted saying he has been misquoted several time.



#### **4.9.1 FINES AS SENTENCE AND PUNISHMENT.**

The most common of all statutory sentences is a fine. Fines as a means of punishment are sometimes thought to be inappropriate for people who cannot feel the pain of paying a fine. Secondly, a fine may be subject to the nature of the offence committed. In most cases the courts are faced between the choice of a fine and probation. Probation is a period of supervision by a probation officer. This form of treatment is also sufficiently important to require separate treatment.

The sentencing practice in Zambia today is the imposition of a fine, default of which would be a term of simple imprisonment up to a specified period of time. Some magistrates feel, the tallying of the fine to the term of imprisonment in default of payment is only for enforcement purposes and has nothing to do with the reformation of an offender.

#### **4.9.2 PROBATION**

By probation is understood, "the submission of an offender while at the liberty to a specified period of supervision by a social worker who is an officer of the court"<sup>8</sup>. Most statutes are remarkably silent and the exact legal nature of probation is also hard to define.

The international definition of probation is that it consists in "the conditional suspension of punishment while the offender is placed under personal supervision and is given individual guidance or treatment"<sup>9</sup>. This reflects the legal position in many countries where probation is an adjunct to the older institution of suspended sentences, or suris<sup>10</sup>. Regard should be had to

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<sup>8</sup> Departmental Committee on the Probation Services Report. Cmnd, 1650 paragraph, 9.

<sup>9</sup> 'Probation and related Measures', UN Papers, 1951," in the United Nations European Seminar on Probation, 1952", per Pause Grovin and Ancel.

<sup>10</sup> Voin and Leaute, Droit Penal et Procedure penal (1960) pp. 137-141]

the fact that probation is a sentence and the courts may make a probation order in place of 'sentencing'. It is not primarily as punishment though there are plainly punitive elements in being under the supervision of a probation officer who has the power to bring the probationer before a court for failing to obey lawful and reasonable instructions. If the probationer offends again, he may be brought to court and dealt with for an original offence. This power must be regarded as a safeguard to prevent abuse of the system by the probationer, rather than the status of a probationer is seen as being provisional.

The legal framework and the historical background also explain the restricted effect given to a conviction followed by a probation order and the requirement of the consent of the offender before he is placed on probation. If a probation order is made, the conviction has a limited effect. The legal consequences of conviction do not necessarily occur, and in particular, the conviction is ignored in future proceedings, so long as the probation period is successfully concluded. This rule is not quite as generous as the reader of this essay or a layman might suppose.

Section 3 (1) of the Probation of Offenders Act reads:

"3. (1) Where a court by or before which a person is convicted of an offence, not being an offence the sentence for which is fixed by law, is of the opinion that, having regard to the youth, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to do so, the court may, instead of sentencing him, make an order, hereinafter in this Act referred to as a "probation order", requiring him to be under the supervision of a probation officer for a period to be specified in the order of not less than one year nor more than three years."<sup>11</sup>

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<sup>11</sup> Chapter 93 of the Laws of Zambia.

The decision in the English case of **Harris**<sup>12</sup> is illustrative of this fact. Harris was charged with an offence under the Vagrancy Act of England of 1824 as being a suspected person. It was held by the Court of Criminal Appeal that the accused was heard in court to admit the commission of an offence, and was made the subject of an order as a result.

#### **4.9.3 ABSOLUTE DISCHARGE**

Having convicted the offender, the court feels that Punishment is unnecessary; conviction especially if it is noted in the columns of a local newspaper is often an adequate punishment in itself. This would require and mean an outright release of the prisoner or detainee before conviction of all the charges he was facing, especially if the likelihood of securing a conviction by the prosecutors is so minimal<sup>13</sup>.

#### **4.9.4 CONDITIONAL DISCHARGE**

The circumstances in which the order of conditional discharge can be made are very similar to those in the case of the circumstances leading to an absolute discharge. Where the discharge is conditional, the court retains a sanction.

If the offender commits another offence within a prescribed timeframe, he can be sentenced, not only for that further offence but also for the offence which led to his conditional discharge. This position is explained to the accused at the time of the first appearance, when he is subsequently convicted, a sentence will normally be imposed<sup>14</sup>.

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<sup>12</sup> 1954 KB 107

<sup>13</sup> *Opcit*.

<sup>14</sup> Fry [1955] 1 W.L.R. 28 & Whitehead [1961] Criminal Law Report 109

Section 230 of the Criminal Procedure Code of Zambia provides:

“230. If, at the close of the case for the prosecution or after hearing any evidence in defence, the court considers that the evidence against the accused person is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts...”

#### **4.9.5 BINDING OVER**

The procedure of binding over is used a great deal in English Criminal procedure and to a lesser extent as something akin to a sentence. Despite this, the law is ancient and obscure and the matter is not made any clearer by confusing terminology. It should be stated at once that, binding over requires “sureties” or some other person entering into recognizance are all part of the same process.

What this involves is that the person concerned, usually the offender promises to do or refrain from doing something and further promises to forfeit a certain sum of money should he fail to keep the promise. It takes the form of a statement recognizing a debt, payable if the stated condition is not fulfilled. The power to binding over was and is still being used to secure the attendance of the accused, prosecutors, co-accused persons and witnesses at the trial.

Section 233 of the *Criminal Procedure Code of the Laws of Zambia* reads:

“233. (1) A subordinate court conducting a preliminary inquiry shall bind by recognizance, with or without surety or sureties, as it may deem requisite, the complainant and every witness, to appear in the event of the accused person being committed for trial before the High Court, at such trial to give evidence, and also to appear, if required, at any further examination concerning the charge which may be held by direction of the Director of Public Prosecutions.”

This provision has been used in many instances and if used at a larger scale and may be used to rid the unnecessary congestion for all lesser misdemeanours.

#### 4.9.6 ADMISSION OF GUILT FINES

Where the accused person, usually of a traffic offence admits to the charge by pleading guilty, there is no need to take him into custody. The fine he pays as admission of guilt charge together with the intent to prosecute notices can all be use at his appearance in court that he already pleaded guilty as charged and taking the matter for trial would only delay the courts business.

The accused person thereby, upon the order of the court is discharged and given a probation order. This is one of the most effective ways of decongesting the prisons from the time of arrest, as it is well known at this time that congestion starts from police stations and when the accused persons appear for mention in court, they are transferred to the Remand prisons to join the already overcrowded prison cells.

Section 221(3) of the Criminal Procedure Code Provides as follows:

“(3) A person who has signed and delivered an Admission of Guilt Form may, at any time before the fixed day, transmit to the clerk of the court-

- (a) An intimation in writing purporting to be given by him or on his behalf that he wishes to withdraw the Admission of Guilt Form aforesaid; or
- (b) In writing, any submission which he wishes to be brought to the attention of the court with a view to mitigation of sentence.”

By and large the admission of guilt fines would be very effective for all types of misdeaneanor offences such as traffic offences, loitering, common assault and many more similar and lesser offences.

### 4.9.7 POLICE BONDS

A police bond is a document issued by the arresting officer specifying the Charge, the names of the accused and the amount of the bound over together with the surety, his signature and the amount pledged as security<sup>15</sup>. This is done at the police station but it has a direct connection with prisons because it secures the liberty of the accused instead of taking him to remand prison and he will enjoy the freedom of movement while the case proceeds or delays in court. The Police Bond is returnable at court or accompanied with the docket of case or medical report if any and it is given to the prosecutor who reads the charge in court<sup>16</sup>.

The criteria for release on police bond include the following:

- (a) Likelihood of appearance in court
- (b) The gravity of the offence<sup>17</sup>
- (c) The nature of the offence
- (d) The residence of the individual
- (e) Character of the individual
- (f) Likelihood of conviction
- (g) Interest, hardship and inability of the family of the accused.

The law On bail and all the exception provided in the law also applies to Police Bonds and not all offences are bondable. Police bonds are only reserved for minor offences and are excluded for felonies.

<sup>15</sup> Makala, H. Prisons Conditions. Obligatory Essay [1983 -1984] Unza Lusaka.

<sup>16</sup> Emerson, Harzer. Civil and Political Rights in the United States. [1967] 3<sup>rd</sup> Edition Volume 1. Boston: Little Brown and Co Ltd.

<sup>17</sup> Schabus, A. William. The Abolition of Death Penalty in International Law. [1993] Cambridge: Grotius Publication Ltd.

**CONCLUSION AND RECOMMENDATIONS.****5.0 INTRODUCTION**

This chapter wraps up the research findings by spreading out the issues and subjecting them to a critique. A discussion will follow after which the chapter will put up recommendations. The essay will lay out the research as it was empirically observed and understood.

**5.1 CONCLUSIONS**

This section of the essay attempts to lay down the findings of the research in a manner as objective as possible. The findings in this essay and the conclusions as they follow were personally investigated and researched by the author. In a few errands to most state prisons in and around the country, the author discovered that the people interviewed were hostile and not willing to share their prison experiences. But with the help of Prison staff who have always been very helpful in setting and understanding of the prison conditions, the research was smooth and challenging. In setting out the conclusions and recommendations, the author wished to state that all the sentiments presented in this essay and the analysis of issues was and still is according to the happenings and the particular situation at the time of research.

**5.1.2 MOTIVATION FOR PRISON STAFF**

It has been discovered in the research that prison staff in Zambia are demoralized and lack motivation. This has led to the prison environment being very harsh. Very little correction for offenders is done<sup>9</sup>.

### **5.1.3 REMAND PRISON**

The concept of innocence until proven guilty is overshadowed by the congestion in remand prisons. This has resulted in the two remand prisons acting as real prisons. While the short-term prisoners are supposed to be subjected to lesser strenuous conditions, there seems to be no discrimination as to the amount of work given to all the inmates in a remand prison. The difference between a convict and a remandee is hard to see in the light of the heavy congestion experienced there. The two remand prisons, the Kamwala Remand prisons and (Chimbokaila) Lusaka Central Prison are heavily congested. In conclusion, there are no remand prisons in Zambia.

The word remand only exists by name<sup>10</sup>. The Remand Prisons were designed to have Medical personnel but due to unclear circumstances, the provision of Medical services is done at a scale below the expected standard. What is now happening is that if an inmate is ill, the Prison staff have to take him to a government hospital but this is after the inmate is terminally ill. Worse enough, after taking him to the Hospital or clinic, they abandon him as though letting him to die.

### **5.1.4 COURTS**

The courts have been reduced to a place where persecution and malicious prosecution takes place. Most of the cases that go to court either lack merit or are seriously actuated by malice. The courts, especially the subordinate courts which are the courts of first instance in most criminal offences, must ensure that there is a reduction in cases of a malicious nature by not letting cases that lack merit go as far as the trial stage.



There is an element of reluctance on the courts to handle and conclude cases in a rapid manner. In most instances, the courts are little concerned with what happens next to the accused person once he appears for mention. Accused persons who lack the relevant legal knowledge of the way courts operate have at times appeared for mention more than seven (7) times on the same charge<sup>11</sup>.

At times the accused will be languishing in court without even taking a plea. The majority of the inmates do not even know when they will be formally indicted.<sup>12</sup> Cases that should be committed to the high Court are not taken as priority because most Magistrates think they have the final authority on when an accused must be committed to the High Court either for sentence or for trial. As a result, those who commit minor offences are meant to stay in prisons longer than the statutory prescribed sentences.

In cases where a person stays in prison for three (3) years without being tried on a charge of assault Occasioning Actual Bodily Harm, for which the maximum sentence is one (1) year imprisonment, an accused person has already spent more time than he was supposed to spend had he been convicted. This defeats justice<sup>13</sup>. The courts have also allowed the prison officer in charge to prepare the list of people to appear in court or attend court session. This means that the courts work will be determined by the operations of the prison officers in charge<sup>14</sup>.

#### **5.1.5 TRANSPORT SHORTAGES.**

It is a well-known fact that prisoners are not thought of when it comes to the National budget because they are always thought to be second class citizens. The government is preoccupied with other Programmes such as reducing poverty levels, creating employment and establishing

a free market economy. These policies cannot be looked at in a vacuum. The prisons department despite being involved in agricultural production and self-sustaining farming activities has received little assistance from the government.

The shortage of transport which all prisons face today can be a problem of the past if all the government departments such as the National Service, the Police and the Roads Department partnered with the prisons department so that they can provide labour to these departments at intervals in a year in exchange for motor vehicles<sup>15</sup>.

The shortage of transport has a direct effect on the operations of both the courts and the prisons. Whenever the prisons truck is grounded, no court session for detained suspects remanded in custody take place until the same is repaired. As a result, courts wait for prisoners for as long as three weeks.

The other notable problem closely linked to the shortage of transport is the shortage of fuel. This is very common in all prisons which have vehicles. Whenever there is a short supply of fuel, the prisons department are reduced to beggars to beg for fuel from not only other departments but also private companies and individuals. In the eastern province, specifically Petauke and Chipata, the prisons department rely on the Asian businessmen for assistance with fuel, a practice seen as compromising the operations of the courts and the Police.

#### **5.1.6 THE SENTENCING PRACTICE IN ZAMBIA.**

Though the prison is a place of great social and psychological importance to the prisoners and remandees, there is very little done to cater for the short term prisoner as a means of helping

him reform the moment he leaves prison. This research revealed that most prisoners are shocked with the conditions they find in prison the moment they are arrested, but find prison a better place after the shock is over. This suggests why some ex- convicts prefer committing other lesser offences so that they can go and revisit the prison.

When sentencing offenders, there is little to suggest that the age of the offender is taken into account. While the age of the offender is very relevant to the practice of sentencing for juveniles, and also for determining the sentence to be given to the offender, in Zambia there has been a real miscarriage of justice in that some juveniles convicted together with adults are sent to jail for the same sentence as the adult offenders without recourse to the options available for juvenile offenders such as Reformatory schools and Probation orders.

The law states that where a person is sentenced for two or more offences , the sentences must not be in contradiction. For example, Probation and imprisonment cannot both be ordered at the same time because imprisonment overshadows the probation and as such the convict may serve a term of imprisonment or if he decides to appeal against the sentence, his appeal may be allowed and the convictions quashed. The sentences can , nevertheless be concurrent or consecutive.

In Zambia, the sentencing practice seems not to be adhered to mostly when it comes to sentencing especially in the local and subordinate courts. This has contributed to the growing congestion in prison because most local court justices and magistrates lack the requisite education about the importance of sentencing. Some local court justices and magistrates interviewed in the Cities of Lusaka, Ndola and Livingstone revealed that sentencing is mostly

governed by the Magistrates mood of the day as to whether he must be lenient or not. Most of them referred to section 354 of the Criminal Procedure Code which as the authority for harsh sentences. And it reads:

“353. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on any ground whatsoever unless any matter raised in such ground has, in the opinion of the appellate court, in fact occasioned a substantial miscarriage of justice:

Provided that, in determining whether any such matter has occasioned a substantial miscarriage of justice, the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceeding”<sup>16</sup>.

### **5.1.7 RECOMMENDATIONS**

Having highlighted the various problems facing the different wings of government dealing with prisoners, it is the wish of the author of this essay to recommend a few things that are seen to be very relaxed and should be strengthened to enhance an effective way of dealing with prisoners in such a way as would reduce the congestion in prisons while remaining an effective tool of compacting deviance and crime.

The justice delivery system, for example must be tuned in a manner that does not open new doors to injustice. For instance, suspects represented by counsel have their dates fixed in advance while those representing themselves or appearing in person have no say on their rights to a speedy trial. Courts must be equipped with libraries to help the magistrates recapitulate on vital principles of the law and also to avoid them being misled by advocates.

The government should not just concentrate on rehabilitating old structured court buildings around the country. They must expand the courtrooms and more courtrooms in places that do not have such. The government should construct some more prisons in places where none exist. In some districts, there are no prisons meaning they have to rely on the nearest prisons in their province. Most prisons were built in the 1970's when the population of this country was very small, about three times less than it is today. What this means is that the number of crimes and the offenders are growing commensurate to the population.

Prison labour should not be taken lightly as it has the potential of contributing to the country's food basket. Prisons in other countries such as Malawi and Zimbabwe grow sufficient food not only for themselves but also for sale in their localities.

Prisoners in Zambia have small gardens where they employ traditional means of farming. If these were trained to meet the modern agricultural technology such as using tractors for ploughing, water pumps for irrigation and may more, the scale of food production would rise and the prisons would not have to depend entirely on the government's erratic funding. Others are trained in skills such as carpentry, bricklaying and other communicable skills<sup>17</sup>.

Decongestion of prisons must begin from police stations where it begins. This is because most bad cases that lead people into remand are generated as a result of poor investigation and malice by the police officers. To get rid of such frivolous cases without

defeating the course of justice, the officers in charge of police stations must ratify whether the suspect in police custody may be take to court or not.

The reason for this is because after the suspect appears for mention, the suspect is transferred to remand prison where he joins the chain of congestion. An alternative would be , that state advocates should study the dockets carefully before taking them for signing to the Director of Public Prosecutions<sup>18</sup>, and frivolous and maliciously charged suspects must be discharged until there is enough justification for going ahead with the cases. Lastly, prison facilities must be improved such as to help the prisoner to assimilate new values in themselves while still in detention which they can use when their sentence ends<sup>19</sup>.

The research found that all the educational Programmes had a bias towards those inmates who were to stay in prison for a period exceeding one year. The short-term prisoner was not included in most projects. This essay recommends that the short-term prisoner must also be catered for in terms of reformation Programmes. The Prisons commission should train its staff to give an after care service to the prisoner that will rehabilitate him and not merely cause him a psychological temper that will inhibit him to re-assimilate in society.

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