

**THE PHENOMENON OF CONGESTION IN ZAMBIAN
PRISONS AND ITS IMPACT ON THE ZAMBIAN CRIMINAL
JUSTICE SYSTEM**

BY

CHRISANTOS KATEULE CHANDI

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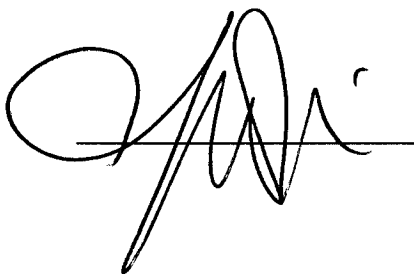
**An obligatory Essay submitted to the University of Zambia, Law
Faculty, in partial fulfilment of the requirements for the award of
the Degree of Bachelor of Laws (LLB)**

UNZA – 2011

DECLARATION

CHRISANTOS KATEULE CHANDI, do hereby solemnly declare that this work represents my own ideas and it is not a reproduction of any other work produced or submitted by any other person to the University of Zambia or to other institutions.

CHRISANTOS KATEULE CHANDI

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by several loops and a long, sweeping underline that extends to the right.

APRIL, 2011

APPROVAL

I approve and recommend that the Obligatory Essay prepared under my supervision by HRISANTOS KATEULE CHANDI entitled **“The Phenomenon of Congestion in Zambian Prisons and its impact on the Zambian Criminal Justice System”** be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements relating to the format as laid down in the regulations governing directed research.

JUDGE KABAZO CHANDA (RTD)- SUPERVISOR_____APRIL, 2011

DEDICATION

This work is dedicated to my wife Angela, my children Musonda, Chimwemwe and Yande and to my beloved Mum (posthumously) and Dad.

ACKNOWLEDGEMENT

My sincere appreciation to the Chief Human Resources, Judiciary, Ms Nsama Mulenga and my Directed Research Supervisor, School of Law of University of Zambia, Judge Kabazo Chanda (Rtd) for their support and encouragement before and throughout the research. I owe the completion of this work to their hard work. I also wish to express my sincere gratitude to Mr. Chikalanga, of Access to Justice program at Governance Secretariat of the Ministry of Justice, the Prison Secretary-Ministry of Home Affairs and the officers in Charge for Kamwala Remand, Lusaka Central Prisons and Mwinilunga State Prison for the information they provided without which completion of this work could have been impossible. My thanks also go to the Human Rights Commission and the British High Commission for expert data supplied and lastly the Directed Research Coordinator for continuous updates on format and style.

I am highly indebted.

STATUTES

1. Constitution of Zambia Chapter 1 of the Laws of Zambia.
2. Standard Minimum Rules for the Treatment of Prisoners, 1957 and 1977.
3. The Prisons (Amendment) Act No. 14 of 2000, Chapter 97 of the Laws of Zambia.
4. The Human Rights Commission Act No 39 of 1996
5. Constitution of Zambia Chapter 1 of the Laws of Zambia.
6. Penal Code Chapter 87 of the Laws of Zambia.

TABLE OF CASES

- 1. Bell v Wolfish 441 Us 520, 99 S. Ct 1861

ABSTRACT

The principal objective of this study was to highlight the full extent of the problem of congestion in Zambian prisons and show how this problem has impacted the Zambian criminal justice system. The findings revealed that congestion in Zambian prisons is a reality and quite a phenomenon. It was also our finding that the phenomenon of congestion impacted greatly on the Zambian criminal justice system and that they were operating under conditions that fall way below the recommended Standard Minimum Rules for the Treatment of Prisoners.

Congestion delayed the delivery of justice as courts found themselves dealing with offenders who opted to deny the charge at the time of taking plea in order to avoid prison conditions. Prisons did achieve the purposed of Incapacitation and Deterrence and Retribution. But when these achievements are measured with individual rights of prisoners, congested prisons only perpetrate conditions which amount to torture or degrading and inhuman treatment. Other findings were that the phenomenon of congestion in Zambian prisons was a factor on increase or prevalence of corruption within Criminal Justice System.

Some of the responses to Overcrowding and its impact on the criminal Justice System were made and they include alternative sentencing, adjustments to the law relating to bail requirement, identification and construction of more places of safety, Expansion of existing prisons and construction of new prisons. Others are the need to design an Education system for the ZPS, improvement on recreation facilities. The reviews of parole eligibility qualifications to capture more prisoners and capacity building and improvement of conditions of service for those who operate the criminal justice system have been recommended. It is hoped the study will go a long way in helping to improve justice delivery, protection of human rights for all and protection of society from the effects of crime.

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CHAPTER ONE

INTRODUCTION

The problem of congestion in Zambian prisons is a historical, legal and institutional one. It is historical because it has been there since the Nineteen Seventies (1970s) to date; only it has become worse owing to various factors; including growth in population, increase in crime rate and ran down and inadequate prison infrastructure. It is also a legal problem in that there are legal challenges and inadequacies in terms of legislation or statutory provisions to deal with the problem; or rather to support alternative forms of sentences after conviction as a measure to mitigate on the problem and its effects on society. Further, support to community service mechanism is still undeveloped under the current legal regime. The problem of congestion is also institutional in that the capacity of the Prison Service and supportive institutions, if any, is clearly insufficient in all areas; including finances, human resources and prison space. The assertions are based on the reports generated by the activities of the Human Rights Commission over the past decade and official documents from the Ministry of Home Affairs. Some scholars, including students, have also indicated the historical nature of the problem of congestion. This has also been acknowledged by the latest National Audit of Prison Conditions to which document we have made references in subsequent chapters.

It should also be appreciated that the Human Rights Commission has been talking about congestion in prisons for some time now. Under section 9(d) of the Human Rights Act No. 39 of 1996, the Commission has the mandate and obligation to visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of prisoners held in such places; and make recommendations to redress existing problems. In Zambia prisoners who are held in such places are in three categories. The first category is that of convicted prisoners. The second is that of remand prisoners or suspects or criminal defendants in remand awaiting trial. Due to lack of remand prisons or places of safety this category of

people who come in conflict with the law is combined with the first category in State prisons. The third category is that of prohibited immigrants. Owing to this same mandate the Commission has been visiting and inspecting prisons and police cells and the findings of the Commission are compiled and published every year in the Commission's Annual Report. The latest report is on prison conditions and police cells in Northwestern Province. The reports are mainly for the attention of government through the Ministry of Home Affairs and other stake holders. Subsequent publications by the Commission over the years have generated interest and have attracted various interest groups to take a keen interest in the plight of prisoners.

The inspections by the Commission have also revealed that Zambian prisons and police cells are in a state that falls far below what is stipulated in the Standard Minimum Rules for the Treatment of Prisoners¹ which were adopted the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva, and approved by the Economic and Social Council (ECOSOC).² By January 2003 the revelation was that prisons were in a sorry state and bellow these recommended international minimum standards for treatment of prisoners.³

One positive effect of the Human Rights commission reports is that the work of the commission has helped with awareness issues on the phenomenon of congestion in Zambian Prisons. This has culminated in, among other things, strengthening of the Parole system; with the latest on this development being the establishment of the Parole Board. Government has also responded by embarking on construction of prison cells in district such as *Mwinilunga* where new cells have been completed.

It was also revealed that of all the problems which were serious and needed immediate attention; the most serious was that of congestion. The problem of congestion has a historical background and thus termed 'phenomenon.' As has been detailed under chapter two below, the prisons in the country were built in the fifties (50s) and sixties (60s), mostly by colonial

¹ Human Rights Commission Annual Report 2004 page 9.
² Economic Social Council Resolution of 31st July 1957 and 13th May 1977 on United Nations Standard Minimum Rules on the Treatment of Prisoners.
³ Human Rights Commission Annual Report 2003 page 12.

masters for the detention and suppression of the natives; especially those who where agitating political strife against the colonial administration. Since then there has been no significant expansion. The capacity of these prisons has remained the same. Yet the population of the country was only around three (3) to five (5) million⁴ and since then the country's populations has increased three to four times without corresponding development in the prison space. The number of inmates has thus "swelled to astronomical levels over the years rendering heavy pressure on the poor facilities and amenities with the number of inmates in most, if not all, prisons far exceeding the recommended capacity."⁵

The current prison space was designed for five thousand five hundred (5,500) prisoners. Currently the prison population is about fifteen thousand (15,000).⁶ Aside that historical fact, several other factors such as increase in crime rate attributed to poverty and unemployment, logistical problems (transport), and limited number of magistrates and Judges and various other situations incidental to the foregoing have worsened the problem. There is no doubt that the government of the Republic of Zambia has shown concern about this state of affairs and has been trying to find a permanent solution. Yet several factors such as failure to implement faster justice, lack of alternative non custodial sentence, poor conditions of Police and Prison Service officers and several other factors hamper efforts to redress the situation.

Congestion has affected, among other things, the morale of the Prison Service officers. More seriously, though, are the effects of congestion on the lives of inmates such as diseases, poor ventilation in prison cells, food and cooking facilities, hygiene and lack of sleep, which for all intent and purposes, amounts to torture. The vices of sodomy and drug abuse also characterize the life of majority prisoners; among many other problems. These hinder the achievement of the goals of a criminal justice system. In the face of these vices prisoners are unlikely to reform or be rehabilitated in any way. Inhumane treatment due to congestion amounting to torture is not encouraging for Zambia's image regarding her human rights record in the eyes of the international community.

⁴ Decongestion of Remand Prisons in Zambia: Radio Presentation on Zambia Today By Honourable Minister of Home Affairs (Document supplied by Home affairs was without date) (pages not numbered)

⁵ Decongestion of Remand Prisons in Zambia: Radio Presentation on Zambia Today (pages not numbered)

⁶ Decongestion of Remand Prisons in Zambia: Radio Presentation on Zambia Today.

However, it remains to be seen how a failed prison system such as the Zambian prison system has affected the functions of the criminal justice system as a whole. This too has remained an uninvestigated area. The prison system is an important division of the Zambian criminal justice process. Its proper functioning is a sure way of ensuring the success of the justice system and its mal-functioning is a litmus proof of a failed system of justice. It is often said that society may be judged by its treatment of those who are at the margin; those who are somehow less able to compete in the conventional life of the society;⁷ such groupings as the children, the sick, the aged, the handicapped, the poor⁸ and, we here add, the prisoners.

The fact that the problem has perpetuated, despite the efforts to redress the situation, called for more consented efforts for a quicker, deliberate and effective holistic approach to address the problem. It was time to seek and implement a more practical and permanent solution to end the phenomenon of congestion and bring sanity and humane conditions to our prisons. This will in turn bring about a more efficient and effective criminal justice system. Further, it is important to realize that, in most if not all civilized nations, the criminal justice system or process involves the people and agencies that perform criminal justice functions. The three basic divisions of the criminal justice system are police, courts, and correctional institutions⁹ or prisons, as the case may be, in jurisdictions like Zambia. There is no doubt that in Zambia, like in other jurisdictions world over, prisons and correctional institutions have been part of the criminal justice system and are just as important as the police and the courts. Perhaps even more important because convicted offenders actually spend more time in prison than they do at the hands of the police and the courts; once they are sentenced to custodial punishment. World over, more convicted offenders end up in prison or correctional institutions; more than they are sentenced to alternative types of punishment such as warnings, fine, community service, corporal punishment and control in freedom. A United Nations survey of 1994 on types of punishments applied to adult convicted persons in Thirty Four (34) countries showed that

⁷ E. Fairchild et. Al., *Comparative Criminal Justice Systems* 2nd ed, Wadsworth Thomson Learning, USA, 2001. page 247

⁸ E. Fairchild et. Al., *Comparative Criminal Justice Systems* 2nd ed, page 247

⁹ E. Fairchild et. Al., *Comparative Criminal Justice Systems* 2nd ed, page 5 & 7

Thirty Five percent (35%) went to prison or deprived of there liberty.¹⁰ This confirms the fact that the use of imprisonment is a world wide practice; although conditions of prison facilities differ from country to country. A good criminal justice system is, thus, one which does not alienate the prisons from the criminal justice process. This is because the prisons system, being a part of the criminal justice process of every country, always has an effect on the effective and proper functioning of a country's criminal justice system. In fact it is acknowledged by many that prisons today are symbols of the failure of the criminal justice process to achieve the changes in human attitudes and behavior that would make their use a worthwhile endeavor.¹¹

In the case of the Zambian criminal justice system imprisonment is imposed for most offences; with some few minor offences fined or such lesser punishment. This situation is compounded by the fact the there are serious inadequacies in both the legal regime and institutional framework in terms of providing for and implementation of alternative sentences other than custodial ones. It is also not in dispute that population growth and increase in crime rate has not corresponded with limited prison facilities and amenities whose capacity has remained static since independence. Penal enactments have also been made to create new crimes resulting into many prosecutions and convictions. Currently, the population of prisoners in the country's prisons stand between fourteen (14000) and fifteen thousand (15000);¹² all held in prison infrastructure meant to accommodate five thousand five hundred (5500) inmates.¹³ This has lead to Zambian prisons experiencing the problem of overcrowding.

Despite government and stakeholders efforts to decongest prisons, the phenomenon has been getting worse. This prompted a new and holistic approach to address the phenomenon. Yet a comprehensive and holistic approach was inconceivable without establishing the full extent of the problem and its impact on the criminal justice system as a whole. The question was whether a failed prison system like the Zambian one does indeed impact on the other parts of the criminal justice system, namely; the police and the courts. As such a research was needed as a step towards a more practical and permanent solution. This study was a response to this

¹⁰ E. Fairchild et. Al., *Comparative Criminal Justice Systems* 2nd ed, page 219

¹¹ E. Fairchild et. Al., *Comparative Criminal Justice Systems* 2nd ed, page 250

¹² The Post Newspaper, Thursday August 2006, page 2.

¹³ Decongestion of Remand Prisons in Zambia: Radio Presentation on Zambia Today (pages not numbered)

need. It has highlighted the full extent of the problem of congestion in Zambia prisons and shown how the same has impacted the Zambian criminal justice system.

This study, however, focused on establishing the full extent of the phenomenon of congestion and its impact such a phenomenon had on the criminal justice system. This research did not deal with causes of congestion and human rights of convicts per se, as that was not the purpose for this study and thus were beyond the scope of the research. Further, that these areas of the phenomenon have been ably dealt with by the Human Rights Commission and other stakeholders.

This research has gone a long way in helping efforts to decongest prisons. The researcher was aware that noble efforts and well intended projects failed or achieved very little due to lack of empirical data or information which is essential to address problems by stamping out the roots of such problems. In the current study congestion of prisons has various causes which have been clearly identified by the human rights commission as seen from their reports. The study was, therefore, very significant in that an assessment of the full extent of the reality of congestion in prisons and its impact of the criminal justice system added a new dimension to the efforts to be employed in order to find a lasting solution. This is so especially in the area of the necessary legal reforms, capacity building for the courts and the prison service and creation of supportive institutions to implement alternative but effective means of punishing offenders. It is expected that this will in turn ease pressure on the prison system and help to achieve the goals of a criminal justice system.

This research had as its general objective to highlight the full extent of the problem of congestion in Zambian prisons and show how this problem has impacted the Zambian criminal justice system. To do so the researcher drew attention to the extent of the problem of congestion in prisons in Zambia, to bring to light the impact of congestion in prisons on the Zambian criminal justice system as a whole and finally to propose new solutions to help decongest prisons in order to mitigate its adverse effects on the criminal justice system.

The research was guided by the hypotheses that it was a notorious fact that most Zambian prisons were heavily congested and in a sorry state; way below the recommended international minimum prison standards. Further, hypotheses were that the extent of the phenomenon was alarming and its impact on the Zambian criminal justice system is immeasurable and that despite these, not all was lost; but a lot needed to be done to reverse the problem and mitigate its effects through a deliberate system of reform to both the legal regime and the institutional framework.

The usefulness of the study cannot be over emphasized. The study has exposed the full extent of the problem of congestion in prisons and indicated to the Zambian public, law makers and law enforcement agencies that the prison system has always been a part and parcel of every criminal justice system. Left as they are the prisons are rendered useless to the justice system in terms of achieving the objectives of criminal law in Zambia. The study has further indicated what changes are needed to be implemented with regard to the legal regime that governs the criminal justice system and proposed the required changes to the prison system and institutional framework dealing with life of convicts in prison. It is hoped that through this research prison conditions will improve to the benefit of inmates and that the burden of prison service officers will be lightened. The courts will also be assisted in having various options at their disposal in terms of sentences to be given to convicts. In the end the criminal justice system will be helped to live up to its purpose of providing justice, and achieving more in the areas of preventing reoffending, rehabilitation of inmates and integration of offenders back into the society. It is hoped that this study will also help to significantly reduce crime in Zambia and that society will be, thereafter, better protected.

The study was qualitative in nature in that the researcher had a special interest in the value of the information received and data collected; given the legal nature of the research. The research involved interviews, questionnaires and discussions with a cross-section of contemporary players in the criminal justice system; ranging from Judges, Magistrates, Police, Human Rights Commission officials, Prisoners, the Prison Service officials and NGO's which are in contact with the subject matter. Where, in the course of the interviews, oral evidence/representations seemed to be too divorced from recorded information, it was doubly checked or discarded

altogether. In this way the researcher was able to eliminate personal prejudices of those interviewed and avoided prejudices with a potential of overshadowing the reality and objective judgment. Therefore, both primary and secondary data were then analyzed qualitatively.

The researcher overcame many challenges to complete the study. Whilst literature is available with regard to previous works by past students, official documents from government departments were difficult to obtain. This is because officials were reluctant and skeptical to release information to the public. Moreover, at the beginning of the study, it was discovered that most of the information on this subject is classified. All this was because of the bad image associated with the problem of congestion on the part of government. The other constraint was the limited time for the conduct of the research and inadequate finances to meet the requirements of transport and follow ups regarding appointments for interviews and distribution and collection of questionnaires. Despite these challenges the research was still possible as the researcher was only delayed but not prevented from achieving the objectives of the study even; though under difficult circumstances.

This document is the outcome of the research and is organized in chapters. In this chapter we have dealt with the introduction and matters incidental thereof. It mainly contains the background to the research, the justification for the research and explanation of the methodology employed. Chapter two has discussed the extent of the problem of Congestion in Zambia by reference to its historical perspective, the present situation and anticipated scenario if the status quo was not changed. Chapter three is dedicated to discussing the purposes of having a criminal justice system and the role of prisons in the administration of justice and then the impact of the Problem on the Zambian criminal Justice System. Chapter four is dedicated to an analysis and assessment of the impact of the phenomenon of congestion on the Zambian Criminal Justice System as a whole. Chapter five is the last part of the study. It sums up the study by drawing conclusions and making of recommendations for the attention of government and other participants in the Zambian criminal justice system. Let us now turn to chapter two and discover the extent of the problem of congestion in Zambia.

CHAPTER TWO

THE HISTORICAL PERSPECTIVE, PRESENT REALITY AND EXTENT OF THE PHENOMENON OF CONGESTION IN ZAMBIAN PRISONS

In this chapter we have discussed the extent of the problem of Congestion in Zambia. The first part has looked at the history of the problem whilst the second part is an evaluation of the present reality. The third part of this chapter is a projection of the anticipated scenario if the status quo is not changed.

a. Congestion of Zambian Prisons in History:

The problem of congestion is not new to Zambia. In fact the problem is perennial and equally phenomenon. However, on the world front, this historical problem of congestion is as old as the history of Jails and prisons themselves. Suffice to say that the antecedents on the use of prisons, as a principal sanction for criminal behavior, developed in the late Eighteenth (18th) and the early Nineteenth (19th) centuries and have grown into a worldwide institution to date. Today, nations have come to know the prison as an institution for the confinement of people convicted of criminal offences. They are also secure places for the detention of people awaiting trial and for people who are considered insane, and need to be isolated. Children who find themselves in conflict with the law may be kept there too. As such prisons have been built in most societies for the confinement and punishment of people considered as dangerous to the society.¹⁴ Zambia, like other countries, has used the prisons and or jails for the foregoing purpose.

In Zambia the establishment of prisons is statutory. One of the purposes for enacting the Prisons Act Chapter 97 of the Laws of Zambia was to provide for the establishment of Prisons. The act provides as follow:

¹⁴ E. Clive in Microsoft Encarta 2006 Publication.

“...the establishment of prisons, for a prison service, for the discipline of prison officers, for the management and control of prisons and prisoners lodged therein; to provide for youth corrective training centres and extra-mural penal employment; to provide for compulsory after care orders; and to provide for matters incidental to or connected with the foregoing.”¹⁵

Further, it is pursuant to the provisions of this act that convicts and remanded persons are kept in prisons or jails. However, offenders commit offences under various penal laws enacted by Parliament; most of which provide for a penalty of imprisonment as the sanction for offences committed.

In his introduction to “The Role of Prisons as Corrective Institutions in Zambia,” *Masauso Nkata* acknowledged the fact of upswing in crime wave in post independent Zambia; which also led to prison populations to increase rapidly. He noted that despite adopting some measures, numbers of people being committed to prison for various offences kept raising leading to congestion.¹⁶ Further, that the prisons were overcrowded and this resulted in violence and illnesses¹⁷ and the squalor conditions and congestion of many prisons reduced the chances of treating the prisoner humanely.¹⁸

Further, State official publications have also acknowledged the historical nature of the phenomenon of congestion in Zambia. This position is clear from the pronouncements of the Honourable Minister of Home Affairs on his radio address entitled “Decongestion of Remand Prisons in Zambia Radio Presentation on Zambia Today by Honourable Minister of Home Affairs.” In this press release the Minister began by saying: “Congestion in the Zambian Prisons is phenomenon.” He then said that since independence prison space has not been developed to correspond with growth of the country’s population; adding that the current prison space was designed to hold the capacity of about five thousand and five hundred (5, 500) prisoners and that currently the prison population was about fifteen thousand (15, 000).¹⁹

¹⁵ The Prisons (Amendment) Act No. 14 of 2000, Chapter 97 of the Laws of Zambia.

¹⁶ M. Nkata. Role of Prisons as Corrective Institutions in Zambia. LLB Obligatory Essay, 1999, P. 1

¹⁷ M. Nkata. Role of Prisons as Corrective Institutions in Zambia. LLB Obligatory Essay, 1999, P. 15

¹⁸ M. Nkata. Role of Prisons as Corrective Institutions in Zambia. LLB Obligatory Essay, 1999, P. 17

¹⁹ Decongestion of Remand Prisons In Zambia Radio Presentation on Zambia Today By Honourable Minister of Home Affairs.

He then went on to say that government was aware and alive to the many problems that are a result of prison congestion such problems as

“communicable diseases which were easily transmitted in crowds, poor ventilation in prison cells, poor and inadequate food and cooking facilities, sanitation...”²⁰

In the Past decade it has become so clear that the problem of congestion in *Zambian Prisons* kept getting worse on a daily basis. Year after year reports show that the problem was increasingly getting more serious countrywide. One example of this reality and magnitude of the problem of congestion was revealed by the Legal Resources Foundation News Letter in which *Nchelenge* Prison was reported to be congested and that the situation kept getting worse. As at October 2006 the district prison had One Hundred and Eighty Eight (188) inmates against its capacity of Forty-Five (45); and that the number kept rising every day.²¹ Also inmates were said to be having sleepless nights as they had to squat due to lack of space in their cells.²²

The Human Rights Commission Annual Report of 2003 and 2004 has documented the extent of the problem of congestion in prisons and appalling conditions existing therein. The Commission is empowered and mandated to visit prisons and all places of detention such as police cells or related facilities.²³ In line with this responsibility, the commission did, in 2002 and 2003, conduct prisons and police cells inspections in all provinces in the country. The 2003 report particularly tabulated the findings on congestion in prison in four (4) provinces. In these findings, the Human Rights Commission Report of 2003 noted with concern that congestion was a very serious problem in all the four (4) provinces covered in the 2003 report. The report said:

“...the majority of the prisons visited were found to be seriously congested. Most of these facilities are old and were built before independence in 1964. Since then there has apparently been no expansion, the capacity of these prisons has remained the same while the number of inmates swelled to astronomical levels over the years; rendering heavy pressure on the poor facilities and amenities. The number of inmates in most prisons far exceeds the recommended capacity. For example at the time of the Commission’s Visit,

²⁰ Decongestion of Remand Prisons In Zambia Radio Presentation on Zambia Today By The Minister of Home Affairs.

²¹ P. Sichikwenkwe. Legal Resources Foundation News Letter No. 19 of December 2006. P.4

²² P. Sichikwenkwe. Legal Resources Foundation News Letter No. 19 of December 2006. P.11.

²³ Section 9 (d) of the Human Rights Commission Act No 39 of 1996

Lusaka Central (*Chimbokaila*) prison had a population of 1, 262 against a recommended capacity of 240 inmates. Most structures were in a dilapidated state and had not been maintained or painted for a long time.”²⁴

In the same issue the Commission further noted that prisoners had complained of poor sanitation, inadequate and poor food quality, lack of sleep, shortage of mattresses and poor or nonexistent medical facilities. The Commission concluded its report on the state of prisons by saying that

“congestion was a sure way of contracting contagious illnesses such as tuberculosis (TB) and Scabies.”²⁵

Other pragmatic indicators on the state of prisons in the last Ten (10) years are as per Human Rights Commission Annual report of 2004. This time the Commission visited Lusaka Central Prison, *Kamwala Remand Prison, Mwebeshi Open Air Prison and all police cells in Lusaka*. The report documented that the prison facilities were overcrowded and filthy; with poor toilet and sanitation facilities. The Commission found Lusaka Central Prison which had the capacity of 200 to 240 inmates was now occupied by 1, 435 inmates in comparison to 1, 262 inmates as per 2003 report.²⁶

The Commission further said that congestion led to inmates spending nights in a sitting position. The same lack of space also made it very difficult to separate juvenile inmates from adult inmates and the same caused juveniles to be detained in the same cells as adult criminal defendants and convicts.²⁷ In the same report the Commission lamented the situation at Kamwala remand prison that at the time of its visit there was a serious case of congestion.²⁸ As at 7th June 2004 there were 815 inmates against the capacity of 99 to 150. Of these 666 were in remand and 58 were convicts and 55 were prohibited immigrants. The inmates had no space for lying down in the night.

Another official confirmation of the phenomenon of congestion in Zambian prisons was governments own official statement made by the then Ministry of Home Affairs Permanent

²⁴ Human Rights Commission Report, 2003, page 13.

²⁵ Human Rights Commission Report, 2003, page 13.

²⁶ Human Rights Commission Report, 2003, page 13.

²⁷ Human Rights Commission Report, 2003, page 13.

²⁸ Human Rights Commission Report, 2003, page 13.

Secretary Peter *Mumba* when he said that *Zambian Prisons* had Four Thousand (4000) remand inmates. He went on to give statistics as follows:

“The total number of inmates in the country stood at 14,524, out of which 4, 505 were in remand. According to this statement and as at August 2nd, 2006 the number of convicted prisoners stood at 9, 088. Lusaka province had 1, 036 convicted inmates against 1, 448 who were in remand.”²⁹

Permanent Secretary Peter *Mumba* also acknowledged the fact that prisons were congested; adding this was due to many factors.³⁰

The phenomenon of congestion was also a subject in the Press Release dated Wednesday 30 January 2007 in which the British High Commission lamented overcrowding at Lusaka Central Prison. In an earlier development Mr. Tim David, the British High Commissioner to Zambia, had expressed concern at the conditions in which *Zambian* prisoners were being held.³¹ Speaking on 21st May 2004 at a dinner hosted by Barclays Bank Ladies Group to raise funds for improvement of facilities for women held at *Chimbokaila* Prison, Mr. Tim David said he had been shocked to learn that cells built to hold 20 were now holding 99 prisoners. He commented that congestion was such a problem that some prisoners were forced to sit, or squat like trolleys in a supermarket, taking turns to sleep. Mr. David added that no government, however well intentioned, can put and keep everything right at once; but if the reports he heard were true, *Zambian* prisons should be a lot less awful than was the case. He added that

“Zambia needed to reform its criminal justice system for example to include faster justice, alternative non-custodial sentences, and better management of the prison service...”³²

Further, on 28th June, 2004 when the British’s High Commissioner to Zambia, Tim David, commissioned two new boreholes and water storage tanks at *Mukobeko* Maximum and Medium Security Prisons in *Kabwe* to help improve health and sanitation facilities, it was found that even *Mukobeko* Maximum and Medium Prisons were not spared from the

²⁹ The Post Newspaper, Thursday August 2006, page 2

³⁰ The Post Newspaper, Thursday August 2006.

³¹ British High Commission Press Release by Tim David headed “Zambian Prisons Need Attention,” 21st May 2004.

³² British High Commission Press Release by Tim David headed “Zambian Prisons Need Attention,” 21st May 2004.

phenomenon of congestion. It was found that eighty (80) prisoners were held in cells designed to accommodate only thirty five (35).³³

b. The Present Reality:

Today one needs not to search far away to meet this reality. Simply approach a former inmate, a serving prisoner, or walk into the prison to see the numbers of human beings confined in a small building called a cell. The facts are there to see. Moreover, recent official documents have also confirmed that the problem of congestion is real and need immediate short and long term measures for redress.³⁴

As regards the present reality of congestion in Zambian prisons, therefore, information is available from country wide reports on the state of prisons in the electronic and written media. Yet several documents that may even disclose much more on the problem remain as classified government security documents which cannot be released for public consumption. However, what is documented here does not only give an idea on the problem, but goes to root of the subject matter and thus sufficient to achieve the purpose of this research. We rely mostly on the latest National Audit of Prison Conditions in Zambia.³⁵

The report of the National Audit of Prisons Conditions in Zambia revealed that the major challenge facing the Zambia Prison Service was the overcrowding of inmates in the prisons. Against an official holding capacity of 5,265, the visited institutions had a total population of 14, 377 indicating an overload of about 173% at 9,112.³⁶ It is important, therefore, to mention that prison overcrowding is undoubtedly the single most serious and critical challenge facing the Zambia Prison Service. Zambia has over the years been experiencing unprecedented growth of its prisoner population. Further, that the problem of overcrowding poses serious

³³ British High Commission Press Release by Tim David headed “*Mukobeko* Prison Improves Water Supply, 21st June, 2004

³⁴ Report is a National Audit and is “An assessment of the Prison Conditions in Zambia and the challenges the Prisons Authority are facing in running the Prisons,” conducted by the Zambia Prison Service and the Governance Secretariat with support from the Access to Justice Programme, released in May 2009.

³⁵ National Audit of Prison Conditions in Zambia, 2009

³⁶ National Audit of Prison Conditions in Zambia, 2009, page 4

direct and indirect health risks to all segments of the prison population.³⁷ The National Audit of Prison Conditions in Zambia of 2009 documented the national prison population statistics as follows:

Table 1: National Inmate Population Demographics

PROVINCE	Male	Female	Total	Official Capacity	%Overload
Central	3,077	67	3,144,	1,055	198%
Copperbelt	2,948	75	3,023	1,191	154%
Eastern	1,227	19	1,246	324	285%
Luapula	609	37	646	268	141%
Lusaka	1,774	88	1,862	435	328%
Northern	1,188	43	1,231	450	174%
North-Western	712	14	726	329	121%
Southern	1,379	40	1,419	818	73%
Western	1,058	22	1,080	395	173%
NATIONAL TOTAL	13,972	405	14,377	5,265	173%

From the above table it is clear that the nation is overloaded in terms of inmates by about 173%. With an official holding capacity of only 5,265 the audited prisons held 14,377 inmates of which only about 3% were female at 405.³⁸

On a prison level, the worst hit prison in 2009 was *Nchelenge* whose official capacity is eleven (11) inmates was exceeded by 873% to actually hold 107 inmates while *Mwembeshi* was also overloaded by 555% by holding 360 inmates against an official capacity of only fifty-five (55).

³⁷ National Audit of Prison Conditions in Zambia, 2009, page 13

³⁸ National Audit of Prison Conditions in Zambia, 2009, page 4

None of the prisons visited during the audit was holding fewer inmates than the official capacities.³⁹

Today the scenario has not changed much. Recently, Zambia Prison Service Commissioner, Percy *Chato*, has disclosed that Zambia has recorded an overcrowding rate of 250 percent in prisons and that the development has exerted pressure on many facilities in prison. Mr. *Chato* added that the parole system has helped to address many challenges including overcrowding. He said that since 2009, 230 prisoners have been released and that the prison service was targeting to release 1000 prisoners this year. He was speaking during the official opening of training workshop for parole extension officers in Lusaka.⁴⁰ It should be noted, however, that despite the efforts by the Prison Service and the Parole Board many prisons in Zambia have remained congested. A visit by the researcher to *Mwinilunga* State Prison revealed that there were 79 in-mates in a cell with an official capacity of 20.⁴¹ This goes to show that the problem of congestion is far from being addressed.

c. The Anticipated Scenario:

What is clear for now is that no prison was found not to be overloaded by the National Audit Team on Conditions of Prisons in Zambia.⁴² Sleeping accommodation will continue to be under pressure and will continue to fail to meet the requirements of health and humane treatment of prisoners. The prisons may also become breeding ground for rebellions against the system; a recipe for riots and uprising against authorities as a means to change the scenario.

³⁹ National Audit of Prison Conditions in Zambia, 2009 page 90

⁴⁰ Muvi Television 18:30hrs News of Monday January 3rd 2011 also reported on <http://www.muvi.tv.com?p=7036> visited on 13th January 2011.

⁴¹ Visited on 19th November, 2010.

⁴² National Audit of Prison Conditions in Zambia, 2009, page 4

CHAPTER THREE

THE ROLE PRISONS IN THE ADMINISTRATION OF CRIMINAL JUSTICE

This chapter explores, in the first part, the purposes of having criminal law or a criminal justice system generally and thereafter looks at the role of imprisonment, as a form of punishment, in the administration of justice.

It is imperative that before analyzing the data collected during the study and make conclusions, as shall be done in the next chapter, we need to understand the purpose for which a Criminal Justice System or indeed criminal law exists in a given jurisdiction like Zambia; and the role that imprisonment and the Prisons and or the Prison Services play in bringing to fruition such purpose and goals of the Criminal Justice System. Doing so is critical as this is important for us to assess the impact that prison conditions, particularly the problem congestions, have on the entire Criminal Justice System.

a. The Purpose of Criminal Law and the Criminal Justice System.

The protection of the human person and property is the principal function of any state's criminal justice system. To achieve this principal function and achieve the goal of protecting society states perform various other functions. One of these functions is to prohibit behavior deemed harmful to society as a whole.⁴³ The state will, therefore, establish which behavior ought to be criminalized, enact penal laws to prohibit such behaviour and promulgate it to the citizens so that they are aware of what types of behaviour has been prohibited. This is in order that no one suffers in body or property except for the operation of the law.⁴⁴ In Zambia such

⁴³ S. E. Kulusika, Texts, Cases and Materials on Criminal Law in Zambia. UNZA Press, Lusaka, 2006. Pages 13 and 14.

⁴⁴ Article 11 the Constitution of Zambia Chapter 1 of the Laws of Zambia.

prohibitions or penal laws are contained mainly in the penal code⁴⁵ and penal sections of various other Acts of Parliament.

Another fundamental reason for states to have criminal law or a criminal justice system is that those who commit crimes must be punished because they deserve to be punished for the offences they have committed.⁴⁶ It is, therefore, the duty and responsibility of the state to create and manage institutions to administer such forms of punishment as are commensurate with offences committed; or as are pronounced by the courts after the person who has been convicted has been through an effective and impartial due process. Society believes that it is right for the state to impose punitive sanctions because harm deliberately and criminally caused should be confronted by appropriate punishment.⁴⁷ It is hoped that through this society (human persons and property) will be protected from intentional harm by deterring criminal behavior and that in the ultimate end the state, through criminal law or criminal justice system, will achieve its goal of controlling criminal or anti-social behavior to protect human persons and property from deliberate harm.⁴⁸

In general, therefore, societies punish individuals to achieve revenge against wrongdoers and to prevent further crime both by the person punished and by others contemplating criminal behavior. Some modern forms of criminal punishment reflect a philosophy of correction, rather than (or in addition to) one of penalty. Correctional programs attempt to teach offenders how to substitute lawful types of behavior for unlawful actions.⁴⁹ In other words society would want those with criminal inclination to reform or be rehabilitated.⁵⁰ This again is for the principal purpose of protecting society from deliberate harm.

Dean J Champion, writing on the goals of criminal punishment, stated inter alia:

“The major driving force underlying all punishment is revenge, also referred to as retribution. The word retribution derives from a Latin word meaning “to pay back.” In retaliation for wrongdoing, societies seek

⁴⁵ Chapter 87 of the Laws of Zambia.

⁴⁶ J. Martin & T. Storey., ed., *Unlocking Criminal Law*, 2nd ed., Holder Education, London, 2007. Page, 3

⁴⁷ S. E. Kulusika, *Texts, Cases and Materials on Criminal Law in Zambia*. Pages 13 and 14.

⁴⁸ J. Herring, *Criminal Law: Text, Cases and Materials*, 2nd ed., Oxford University Press, New York, 2006. Pages 76 and 77

⁴⁹ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009.

⁵⁰ Herring, *Criminal Law: Text, Cases and Materials*, 2nd ed., 2006. Page 78

to punish individuals who violate the rules. Criminal punishment is also intended as a deterrent to future criminality. Offenders who are punished may be deterred from future wrongdoing because they fear additional punishment. Others who contemplate crime may also be deterred from criminal behavior. Societies also impose punishments in order to incapacitate dangerous or unlawful individuals by restricting their liberty and to rehabilitate these wrongdoers and correct their behavior. The various goals of criminal punishment may conflict with one another. For instance, the goal of incapacitation may be achieved by confining offenders for long prison terms. However, inmates who are warehoused in large prisons where they associate closely with other criminals and lack control over their life may develop additional antisocial behaviors. Consequently, punishment may perpetuate criminal dispositions and behaviors rather than eliminate them. ⁵¹

It should be noted for now that people who commit crimes may be punished in a variety of ways. Offenders may be subject to fines, infliction of physical pain (corporal punishment), or confinement in jail or prison for a period of time (incarceration).

An analysis of forms punishments has shown that although some societies still use ancient forms of harsh physical punishment, punishments have also evolved along with civilization and become less cruel.⁵² Punishments range in severity depending on the crime, with the most severe forms applied to individuals who commit the most serious crimes. In most industrialized and civilized societies, contemporary punishments are either fines or terms of incarceration or both. Contemporary criminal punishment also seeks to correct unlawful behavior, rather than simply punish wrongdoers.⁵³

By the foregoing we can now itemize or summarize the purpose of having punishment under a criminal justice system as follows:

1. Retribution or pay back concept:

Retribution is probably the oldest goal of criminal law. The Babylonian Code of Hammurabi, dating from the 18th century BC, contained this principle of equal retaliation.⁵⁴ Similarly, the laws of the ancient Hebrews demanded “an eye for an eye and a tooth for a tooth.” The

⁵¹ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

⁵² Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

⁵³ J. Martin & T. Storey., ed., *Unlocking Criminal Law*, 2nd ed., Page 4.

⁵⁴ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

corporal punishments used in England and the American colonies were based on retribution.⁵⁵ Over time many came to believe that the brutal punishments imposed on offenders far exceeded the seriousness of the crimes. French novelist Victor Hugo ridiculed criminal punishment in France during the 19th century in his novel *Les Miserables* (1862),⁵⁶ in which a character is sentenced to 20 years of hard labour after stealing a loaf of bread to feed his family. When the later escaped, officials pursued him for years as though he had committed murder.⁵⁷ Although extreme, this fictional account captured the vengeful nature of the criminal law regime in those times.⁵⁸

In the United States, the retribution philosophy remains apparent in the sentencing practices of courts, the laws enacted by state legislatures and Congress, and the rules and regulations of various correctional programs.⁵⁹ Common punishments include restitution; fines; and victim compensation for losses, pain, and suffering resulting from crimes. Furthermore, offenders perform hundreds of hours of public service work as restitution to the state in partial payment for the losses resulting from their crimes.⁶⁰

2. Deterrence:

Another goal of punishment is deterrence. There are two types of deterrence: specific and general.⁶¹ Specific deterrence refers to the preventive effect of a specific punishment, such as a large fine and a long prison sentence, on a specific individual for committing a specific crime. Many believe that imposing a sufficiently severe punishment on an offender will deter that individual from future crime. General deterrence is intended to apply to any person who contemplates committing a crime. For example, advocates of the death penalty believe that imposition of such a severe punishment on murderers will prevent others from killing people.⁶²

⁵⁵ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

⁵⁶ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

⁵⁷ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

⁵⁸ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

⁵⁹ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

⁶⁰ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

⁶¹ J. Herring, *Criminal Law: Text, Cases and Materials*, 2nd ed. Pages 76 and 77

⁶² J. Herring, *Criminal Law: Text, Cases and Materials*, 2nd ed. Pages 76 and 77

3. Incapacitation:

Another purpose achieved or meant to be achieved by punishment is incapacitation. Modern punishments thus seek to incapacitate certain offenders who are believed to pose a threat to the community. Incapacitation involves restricting offenders' movement or liberty. In contemporary practice, the goal of incapacitation is associated with attempts to punish offenders in a manner proportionate to the seriousness of the crime.

Isolating criminals from society through confinement or incarceration is the most direct method of crime prevention. Containing offenders in prisons and jails prevents them from harming others or damaging property. For many offenders incapacitation is also psychologically painful. Most people consider incarceration a sound defensive strategy to protect the public and combat crime. However, because many criminals remain undetected and unrestrained, the defensive value of incarceration may be overrated.

In the United States, for example, severe prison overcrowding frustrates efforts to incarcerate all offenders who deserve to be incarcerated. Even with new construction, it will remain impossible to incarcerate all eligible offenders.⁶³ This is also true for Zambia. In fact prison and jail construction is costly and often very difficult to be fully covered in national budgets.

4. Rehabilitation:

At least in theory contemporary criminal punishment seeks to correct criminals and transform their behavior, rather than merely penalize wrongdoers. As early as 1787 the Society of Friends (Quakers) in Pennsylvania espoused inmate reform as a major aim of prisons. Prisons became known as penitentiaries because the Quakers believed that prisons could help criminals become penitent (remorseful) and change their behavior. However, it was not until the late 19th century that rehabilitation became an acknowledged goal of criminal punishment in the United States. Rehabilitation programs of this era differed from the reform-oriented practices promoted by the

⁶³ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009.

Quakers. Rather than requiring solitary religious study, prisons began to emphasize basic education and skills training. At its first convention in 1870, the National Congress on Penitentiary and Reformatory Discipline officially recognized rehabilitation as a valid and useful function of incarceration. Shortly thereafter, American prison administrator Zebulon Brockway established the Elmira Reformatory in Elmira, New York. The reformatory's stated goals included rehabilitation and reform of inmates. Between 1876 and 1920 a fourth of the states modeled the construction and administration of their prisons on the Elmira Reformatory. These institutions provided vocational training and other programs to promote inmate rehabilitation.⁶⁴

The rehabilitation philosophy of punishment dominated in the United States through the first half of the 20th century. However, high recidivism rates among former inmates caused many experts to become skeptical of rehabilitation programs. Increasingly, the goal of rehabilitation has received lower priority in corrections.

Today the primary emphasis of punishment in the United States is ensuring that offenders receive penalties commensurate with the seriousness of their offenses. The primary philosophy of Canadian corrections is rehabilitation. Since 1992, Canada has worked to reduce its incarcerated population by implementing various alternatives to incarceration and accelerating parole release of incarcerated offenders.⁶⁵

In Zambia the idea of corrections instead of prisons is almost nonexistent. Even the concept of open air prisons are more labour intensive prisons than corrections or rehabilitation center. Educational programs too are almost nonexistent. Current prison conditions also make it impossible to pursue this path.

With the foregoing it is clear that, at least in theory, criminal justice systems exist to protect society from criminal or anti-social behavior through imposition of punishment aimed at making offenders to pay back for harm committed. The criminal justice system also exists for

⁶⁴ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

⁶⁵ Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

the purposes of rehabilitation of offenders, deterrence of offenders and would be offenders and the incapacitation which is mainly through imprisonment. However, different criminal justice systems employ various techniques to achieve the above discussed purposes.

b. The Role of Prisons in the Administration of Justice.

A prison is an institution for the confinement of persons who have been remanded (held) in custody by a judicial authority or who have been deprived of their liberty following conviction for a crime. A person found guilty of a felony or a misdemeanour may be required to serve a prison sentence. The holding of accused persons awaiting trial remains an important function of contemporary prisons, and in some countries such persons constitute the majority of the prison population.⁶⁶

There are a number of accepted reasons for the use of imprisonment. One approach aims to deter those who would otherwise commit crimes. This is called general deterrence. The same approach is also used to make it less likely that those who serve a prison sentence will commit crimes after their release from prison. This is the aspect of individual deterrence.

A second approach focuses on issuing punishment to, or obtaining retribution from, those who have committed serious crimes. Here sentences pronounced by competent tribunals will differ from one case to the other depending on the gravity of the offence for which one has been convicted. A less serious crime will usually attract light punishment in many criminal jurisdictions. This aspect focuses on pay back aspect and is obviously retributive.

A third approach encourages the personal reform of those who are sent to prison. Finally, in some cases it is necessary to protect the public from those who commit crimes; particularly from those who do so persistently. In individual cases, all or some of these justifications may apply. The increasing importance of the notion of reform has led some prison systems to be called correctional institutions. However, for this aspect to be achieved the individual must be

⁶⁶ Encyclopaedia Britannica, 2007 Software Version.

made to realize and regret the wrong committed through use of psycho-social expert techniques with sustained counseling programs. Reform is thus only possible under special conditions and in suitable institutions developed for such purposes.

In Zambia imprisonment or incarceration is the most prominent of all punishments for almost all and even less serious offences resulting into serious cases of congestion as already seen in Chapter Two (2). We already so in chapter one(1) that in most, if not all civilized nations, the Criminal Justice System involves the people and agencies that perform criminal justice functions. The three basic divisions of the criminal justice system are police, courts, and correctional institutions⁶⁷ or prisons, as the case may be, in jurisdictions like Zambia. There is no doubt that in Zambia, like in other jurisdictions world over, prisons institutions have been part of the criminal justice system and are just as important as the police and the courts. Perhaps even more important because convicted offenders actually spend more time in prison than they do at the hands of the police and the courts; once they are sentenced to custodial punishment. World over, more convicted offenders end up in prison or correctional institutions; more than they are sentenced to alternative types of punishment such as warnings, fine, community service, corporal punishment and control in freedom.

Clearly imprisonment, like other criminal sanctions must be seen as a means to an end of achieving what criminal sanctions are supposed to achieve under a given criminal justice system. The purpose of imprisonment cannot be viewed in isolation.

That said, imprisonment serves several functions, including the protection of society, the prevention of crime, retribution (revenge) against criminals, and the rehabilitation of inmates. Additional goals of imprisonment may include reintegration of inmates into the community following their sentences. Different countries place greater emphasis on one or more of these goals than others. For example, prisons in the Scandinavian countries stress rehabilitation and offender reintegration. Although prisons in the United States also include rehabilitation and

⁶⁷ E. Fairchild et. Al.. *Comperative Criminal Justice Systems*, 2nd ed. Pages 5 & 7

reintegration programs, U.S. penal philosophy emphasizes societal protection, crime deterrence, and just-deserts justice; that also means one must get what he deserves.

Differences among prison policies in various countries depend upon the society's experience with managing criminals, as well as its experiments with different ways of correcting and improving prisoner behavior. Some countries' programs foster changes among inmates better than others. Cultural differences also help explain why countries emphasize one imprisonment objective over others. For example, the prison system of Germany emphasizes strict discipline, reflecting a trait commonly ascribed to German culture. The administration of German prisons is military-like and rule-oriented. Consequently, inmates in German prisons experience a more highly regimented routine than inmates in most other prison systems in the world. For instance, until recently German prisons did not permit inmates any visitors.⁶⁸

There is no doubt that it is, therefore, imprisonment is from both the theoretical and practical point of view, societal protection and crime deterrence is achieved by imprisonment of at least those individuals convicted of crime or crimes. Locking up dangerous criminals or persistent nonviolent offenders means that society will be protected from them for the duration of their sentences.⁶⁹ Thus, imprisoning criminals temporarily incapacitates them. Additionally, people expect that prisons will cause inmates to regret their criminal acts, and that when most prisoners are released they will be deterred from committing future crimes. Incarceration of criminals may also deter other individuals from engaging in criminal behavior due to the fear of punishment.

However, it is not possible to lock up all offenders who deserve to be incarcerated. Some criminals are never captured. Due to space and budget constraints, even those who are caught cannot all be imprisoned. To some degree, rates of imprisonment indicate how much space is available to accommodate offenders, rather than how much crime is being committed. Such is

⁶⁸ Encyclopaedia Britannica, 2007.

⁶⁹ Encyclopaedia Britannica, 2007.

the case now with Zambia. Courts are being urged to be industrious in looking and using alternative sentencing methods for purposes of decongesting prisons.⁷⁰

Further, People consider imprisonment an appropriate form of punishment for committing crimes, and believe that convicted offenders should be imprisoned in accordance with societal rules. People also believe that due process requires that governments imprison offenders but only in accordance with the rule of law. In this way it is the purpose of prisons to receive and keep convicts for the duration specified in the order.

It is further the purpose of imprisonment to rehabilitate and prepare prisoners for integration. Prisons must attempt to rehabilitate inmates so that they will avoid future criminal behavior. Prisons should, therefore, have vocational and educational programs. These should include psychological counselors, and an array of services available to assist inmates to improve their skills, education, and self-concept.⁷¹ These programs in turn enable prisons to prepare inmates for reintegration into the community. This way and all things being equal or if prison institutions are properly run, imprisonment becomes an opportunity for reform and self recovery.

It means also that everything being unequal and when prisons are not being properly run the social structure of prisons and prison practices can actually impede rehabilitation and reintegration. For example, inmates acquire attitudes and knowledge from other inmates that may strengthen their desire to engage in criminal behavior and improve their criminal skills. The isolation of inmates from society also hinders attempts to rehabilitate them. Prison environments are unique and distinct from other populations. Isolated within a total institution, inmates are cut off from the rights and responsibilities of society. This lack of connection with societal norms can prevent successful reintegration into society when inmates are released. Severe conditions such as congestion hampers concentration on programs as there is no quite

⁷⁰ National Audit of Prison Conditions in Zambia. Page 103

⁷¹ Encyclopaedia Britannica, 2007.

time to reflect as all valuable time is a painful endurance. Thus more time is spent on searching for survival skills.⁷²

Whilst prisons may do their part in protecting society through incapacitation rehabilitation and integration, they must also ensure that those sent therein to undergo punishment are properly punished. Usually, such punishment must be unpleasant, and to the extent of the offence painful; yet never include inhuman and degrading treatment; notwithstanding the fact that some of our prison conditions amount to inhuman and degrading treatment.⁷³ For inmates, one of the fundamental consequences of their imprisonment is the lack of control over decisions about their activities. This lack of autonomy is evident in nearly all aspects of prison life.

Prisoners have virtually no privacy and are observed at all times by different forms of surveillance. This loss of liberty and privacy represents an extreme change from life in the community; and thus to be endured as punishment. In addition to that most prisoners are to endure hard labour.

Having seen the role that prisons play within the criminal justice system, we now turn to the impact that congestion may have on the *Zambian Criminal Justice System*.

⁷² Encyclopaedia Britannica, 2007.

⁷³ Human Rights Commission Report on Prison and Police Cells Inspection in North- Western Province, June 2008, Page 74

CHAPTER FOUR

PRESENTATION OF FINDING AND DATA ANALYSIS ON CONGESTION AND ITS IMPACT ON THE ZAMBIAN CRIMINAL JUSTICE SYSTEM

One of the hypotheses for the study was that it was a notorious fact that most Zambian prisons were heavily congested and in a sorry state; with prison conditions falling way below the recommended Standard Minimum Rules for the Treatment of Prisoners.⁷⁴ To test this hypothesis we captured the historical aspect of the phenomenon of congestion in Zambian prisons in both chapter one and two. We also documented the present reality of the phenomenon in chapter two. This is based on data obtained from field research and literature available. The present reality was especially established by visits to Mwinilunga State Prison⁷⁵ Kamwala Remand⁷⁶ and Lusaka Central Prison.⁷⁷ In addition to this the National Audit of Prison Conditions in Zambia of 2009⁷⁸ documented the national prison population statistics as follows:

Table 2: National Inmate Population Demographics

PROVINCE	Male	Female	Total	Official Capacity	%Overload
Central	3,077	67	3,144,	1,055	198%
Copperbelt	2,948	75	3,023	1,191	154%
Eastern	1,227	19	1,246	324	285%
Luapula	609	37	646	268	141%

⁷⁴ Adopted by the First United Nations on the Prevention of Crime and the Treatment of Offenders, Held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁷⁵ Visited on 20th of December, 2010 and found 79 inmates in cell with an official capacity of 20.

⁷⁶ Visited by the researcher on 3rd of February, 2011.

⁷⁷ Visited by the researcher on 7th of February, 2011.

⁷⁸ National Audit of Prison Conditions in Zambia. Page 4

Lusaka	1,774	88	1,862	435	328%
Northern	1,188	43	1,231	450	174%
N/Western	712	14	726	329	121%
Southern	1,379	40	1,419	818	73%
Western	1,058	22	1,080	395	173%
NATIONAL TOTAL	13,972	405	14,377	5,265	173%

This shows that that at the end of 2009 Zambian prisons were overloaded to the extent of total 173%. With an official holding capacity of only 5,265 the audited prisons held 14,377.⁷⁹ However, at the end of the year 2010 official statistics as confirmed by the Commissioner of Prisons at the opening of Parole Board offices at Lusaka Central Prison revealed that the situations had worsened from an overload of 173% in 2009 to a record 250% at the end of 2010; adding that the development has exerted pressure on many facilities in prison.⁸⁰

For now it is a settled fact that overcrowding conditions exist in every Zambian Prison.⁸¹ That is to say inmate population exceeds either the rated capacity, operational capacity, or design capacity of our prisons. We have also seen that where ever overcrowding occurs in the world it is associated with violent deaths, suicides, mental illness, and inmates disciplinary infractions.⁸² Overcrowding also contributes to increased litigation by inmates and dissatisfaction among prison service officers. Finally, and this is particularly true for Zambia, overcrowding increases likelihood of the spread of HIV and AIDS and other communicable diseases.⁸³ With the above empirical data and or information, we now concur with the first hypothesis as set out in chapter one that it is a notorious fact that most Zambian prisons are heavily congested and in a sorry state; with prison conditions falling way below the

⁷⁹ National Audit of Prison Conditions in Zambia. Page 4

⁸⁰ Muvi Television 18:30hrs News of Monday January 3rd 2011 also reported on <http://www.muivitv.com?p=7036> visited on 13th January 2011.

⁸¹ Muvi Television 18:30hrs News of Monday January 3rd 2011 also reported on <http://www.muivitv.com?p=7036> visited on 13th January 2011.

⁸² Contributed by Dean J. Champion Microsoft ® Encarta ® 2009.

⁸³ Decongestion of Remand Prisons in Zambia Radio Presentation on Zambia Today By the Minister of Home Affairs.

recommended Standard Minimum Rules for the Treatment of Prisoners.⁸⁴ Further that the problem already reached alarming levels and required immediate attention.

A further hypothesis was that the extent of the phenomenon was alarming and its impact on the Zambian criminal justice system is immeasurable.

In order to test this hypothesis some criterion was required to be used for purposes of making pragmatic conclusion that are capable of being acted upon. It became clear during the course of the research and compilation and an analysis that there was no specific criterion to measure the impact of the phenomenon of congestion on the criminal justice system. However, in line with the methodology adopted for this research, and in order to avoid being speculative the researcher opted to use the purposive or judgmental sampling criterion. Under this method samples for testing the hypothesis are selected based on the knowledge of the researcher of the prison population, elements and the nature of the research aims. In short the criterion is based on the judgment of the researcher and the purpose of the study.⁸⁵ This method enabled the researcher to draw qualitative conclusions based on data collected through interviews, questionnaires and discussions with a cross-section of contemporary players in the criminal justice system; ranging from Judges, Magistrates, Police, Human Rights Commission officials, Prisoners, the Prison Service officials and NGO's which are in contact with the subject matter; given the legal nature of the research.

We have discussed, in Chapter three, the role that Prisons and indeed the Zambia Prison Service must play in the Zambian criminal justice system. With the foregoing chapters as antecedents to our analysis, this chapter is dedicated to an analysis and assessment of the impact of the phenomenon of Congestion on the Zambian Criminal Justice System as a whole. We proceed as follows:

⁸⁴ Decongestion of Remand Prisons in Zambia Radio Presentation on Zambia Today By the Minister of Home Affairs.

⁸⁵ M. G. Maxfield & E. Babbie, *Research Methods for Criminal Justice and Criminology*, 4th ed. Thomson Wadsworth, UK, 2005, p.237.

1. Impact of the Phenomenon of congestion on the Criminal Justice System as Protector of Fundamental Human Rights.

In this part we have focused on constitutional rights of presumption of innocence and the right against torture.

Article 18 (2) (a) provides for the protection of the law for criminal suspects as follows: “Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.” This provision is very cardinal to our criminal justice system and saves to instruct key player institutions; that is the police, the courts and the prisons, to treat suspects as innocent persons. The more reason that the prison officials are by law not allowed to do anything to suspects whilst they are in their hands; serve for feeding them and preventing their escape.

During the research, however, it was discovered that in all Zambian prisons, remanded persons who are criminal suspects end up in congested prisons sometimes for a long period. The effect of this is that with the suffering that comes with congestion, coupled with delayed justice, criminal suspects, who by law are innocent until proved guilty,⁸⁶ are made to suffer punishment before trial and during trial which in some cases spin through a period of one to two years especially for non-bailable offences. Also in cases where bail is not possible owing to failure to prove fixed aboard or failure to meet other bail conditions, remanded suspects usually stay longer in prisons.

What this means is that with the obtaining prison conditions, even innocent citizens detained in such facilities are made to endure torturous prison conditions and therefore suffer punishment for the offences they have not committed. The implications are that the Zambian Criminal Justice System, in its current state, condemns citizen in conflict with the law to punishment before being proved guilty; thereby violating suspects’ constitutional rights of innocence

⁸⁶ 18. (2)(a) of the Constitution of Zambia, Chapter one of the Laws of Zambia.

before being proved guilty; and thus effectively infringing this constitutional and basic right of an individual.⁸⁷

The view our respondents is that prison conditions were a systemic weaknesses in the criminal justice system and a sure way of the justice being a leader in large scale violations of remand prisoners' human rights. This view is also shared by many discussants on the subject some of whom hold the view that during their incarceration many awaiting trial accused are assaulted, sodomized and at risk of contracting tuberculosis and sexually transmitted infections including HIV/AIDS and thus, due to the slow processing of cases by the courts and the resultant high prison overcrowding levels, constitutionally protected rights of many accused persons – especially the poor – are infringed.⁸⁸ The phenomenon of congestion in the Zambian Prisons contributes in this way to failure by the entire criminal justice system as a whole in respect to the protection of the constitutional rights of suspects.

The prison conditions in their congested state amount to torture chambers and thereby reducing the whole criminal Justice system to a perpetrator of torture and thus a violator constitutional right against torture⁸⁹ and the Standard Minimum Rules for the Treatment of Prisoners.⁹⁰ When it comes to human rights, therefore, and because of the phenomenon of congestion the Justice system can be described as a failed system. We saw in chapter three that the prison system is an important division of the Zambian criminal justice process. Its proper functioning is a sure way of ensuring the success of the justice system and its mal-functioning is a litmus proof of a failed system of justice. We also saw it is often said that society may be judged by its treatment of those who are at the margin; those who are somehow less able to compete in the conventional life of the society like our own criminal justice prisoners.⁹¹

⁸⁷ 18. (2)(a) of the Constitution of Zambia, Chapter one of the Laws of Zambia.

⁸⁸ Ron Paschke, South African Law Commission, Conviction Rates and other Outcomes of Crimes Reported in Eight South African Police Areas, Research Paper No 18, Project No 82 (undated) URL:<http://www.austlii.edu.au/au/journals/QUTLJJ/2003/20.html>

⁸⁹ Article 15 of the Constitution of Zambia, Chapter one of the Laws of Zambia.

⁹⁰ Adopted by the First United Nations on the Prevention of Crime and the Treatment of Offenders, Held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁹¹ E. Fairchild et. Al., Comparative Criminal Justice Systems 2nd ed. Page 247

Although no litigation has gone to our courts with regard to pre-trial detainees housed in our Zambian prisons other than remand prisons we can learn from other criminal justice systems. In other jurisdictions, such as the United States, the attitude of courts is that even if jails and corrections are overcrowded and other violations existed, the practices of mixing prisoners and pre-trial prisoners in such places were not unconstitutional punishment; adding that they were legitimate public security measures. This was illustrated by the decision of the United States Supreme Court in the case of **BELL V WOLFISH**.⁹² In this case the inmates had sued and alleged constitutional violations due to overcrowding and double banking of inmates in cells built for single occupancy at the New York City's Metropolitan Correctional Centre. Pre-trial inmates were also detained under the same conditions.⁹³ It is most probable that if remand prisoners challenged their detention on these conditions in Zambia, the Zambian courts will find nothing unconstitutional.

2. Effect of Congestion on achieving offender reformation and rehabilitation.

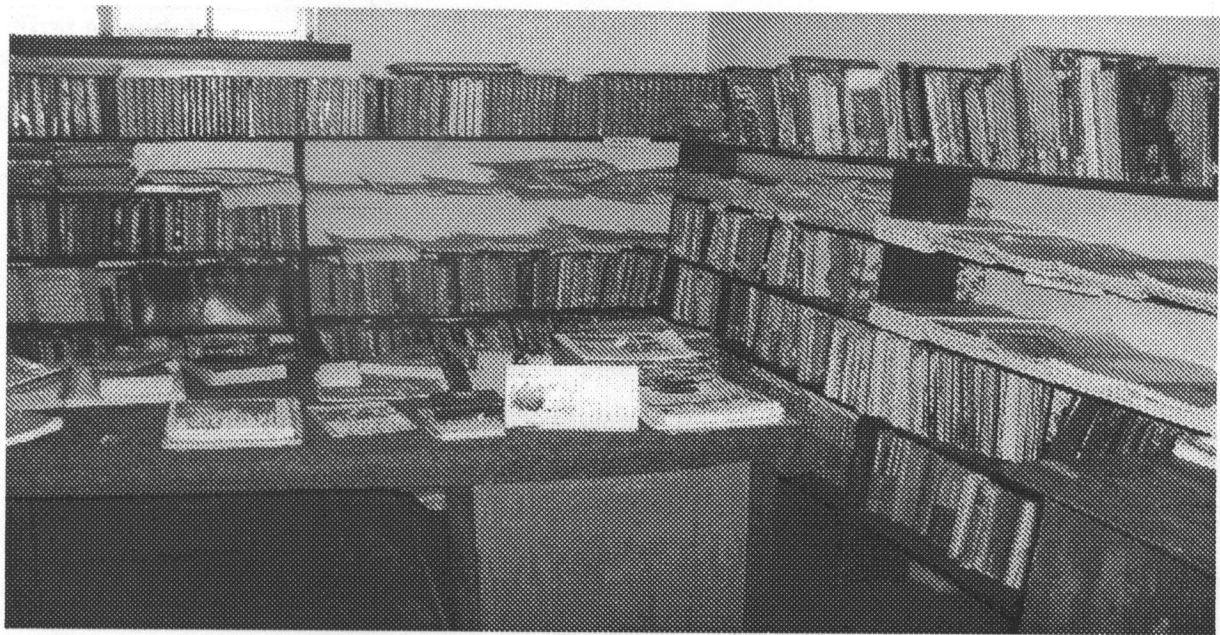
It was established that it is the purpose of punishment to reform or rehabilitate. The question is whether the current criminal justice system is able to achieve its purpose of reforming and rehabilitating prisoners for the purpose of reintegration of former inmates into society and through this means protect society from harm. It was pointed out that it is impossible to achieve this purpose in the face of torturous conditions in prisons owing to the phenomenon of congestion. The Zambian Criminal Justice System is clearly a failure on this aspect as correctional facilities and programs are equal to nonexistent in all state prisons. It is a fact that prisons lack even the most basic facilities such as educational facilities and libraries. The importance of education in the rehabilitation, reformation and empowerment system cannot be overemphasized. Also for the reasons of continued education especially for the juveniles who are arrested while attending school, education must be provided in the prisons.

⁹² 441 US 520, 99 S. Ct 1861 (1979)

⁹³ K. J. Peak, *Justice Administration: Police, Courts and Corrections Management*. 6th ed. Prentice Hall, New Jersey, 2010, Page 263.

But very few of the prisons in Zambia offer education facilities with most of them resorting to what is called “Literacy Classes” which are just an innovation where literate inmates “teach” illiterate inmates how to read and write. This is an unsustainable mode of education as when the literate inmate is discharged, therein lies the end of the “Literacy Classes”. In addition to the lack of these facilities is the lack of library facilities in the prisons. The national prison audit is testimony to this fact.

Figure 1: Adhoc Library at Livingstone Central Prison.



This ad hoc library at Livingstone central prisons is the only credible of libraries in prisons national wide. Other correctional activities such as counseling, recreation and interaction with members of society for purposes of reintegration are clearly nonexistent. All these factors are litmus evidence that rehabilitation is unachievable in Zambian prisons; with a consequence that inmates once discharged are likely to reoffend.

3. Effect of Congestion on delay of Criminal proceedings:

The implication is that once the system cannot rehabilitate its criminal offenders they will get back to their ways and commit offences. This will in turn overwhelm the courts with the

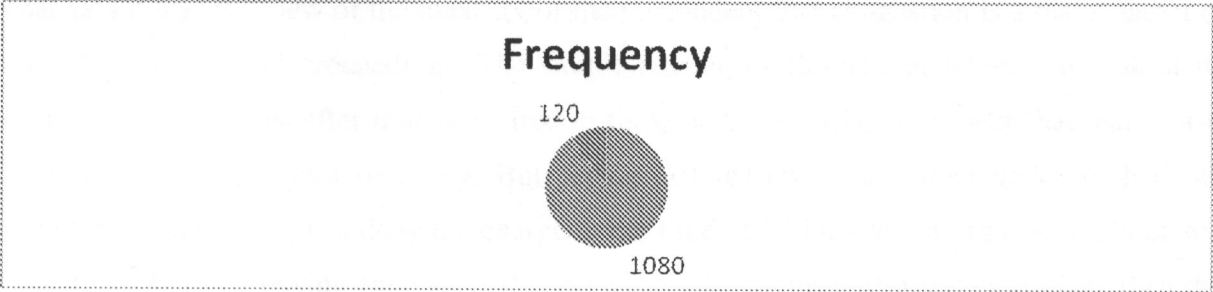
consequence of causing further delay in the delivery on justice. What is clear from information gathered during the research is that very insignificant numbers of former inmates reoffended in Lusaka Province in the year 2010. Over 90% of offences that were prosecuted and ended with a conviction were first offenders. The researcher visited 12 subordinate courts and data was compiled for the first 100 cases concluded with conviction in 2010 as follows:

Table 4: Re-offending Statistics, Frequency and Percentage for 12 Courts in Lusaka.

Type of Responses		Percentage %
First offender	1080	90
Reoffended	120	10
TOTAL	1200	100

Table 4 shows that for every 1200 cases on 120 were repeating offenders. Others numbering 1080 were first offenders.

Figure 2: Re-offending Statistics and Frequency for 12 Courts in Lusaka

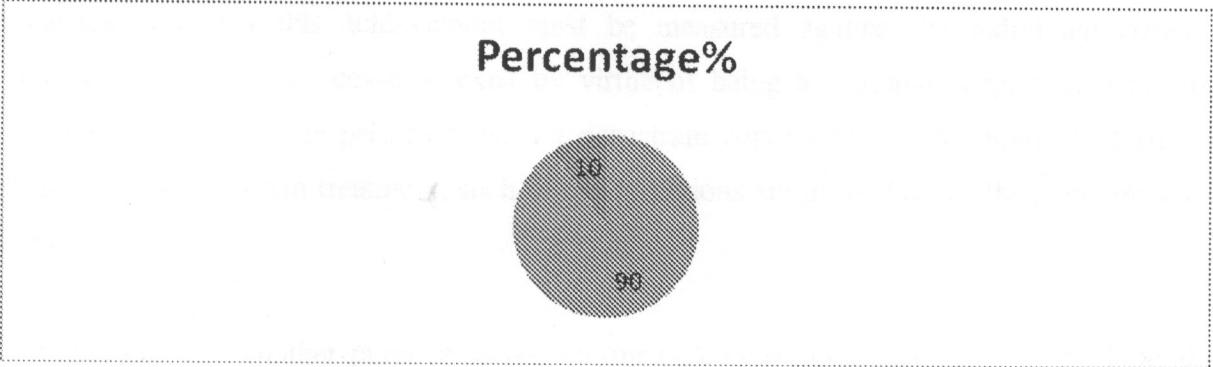


The frequency in the above pie chart shows that prisons in Lusaka cannot be said to be a significant factor on re-offending.

The percentage of repeating offenders in figure 3 below is only 10% and whilst 90% were still first offenders. Taking this as being representative of what is obtaining country wide we can then conclude that prison conditions have not contributed much to the high crime level; to which other factors such as poverty may be a factor. We have to bear in mind that the situation may be different in small districts where populations are small and same individuals tend to

have an orientation towards committing crimes. This is so because large populations like Lusaka and the copper belt may cloak or mask the reality on re-offending such that we may not be able to see the reality based on the methods we employed. However, based on this method, it could also be concluded that prison conditions may have helped prevent re-offending by former inmates.

Figure 3: Re-offending Statistics and Percentage for 12 Courts in Lusaka



The pie chart here shows the percentages of repeating offenders at 10% against first offenders at 90%.

That said it was the view of the majority of the respondent that congestion is a major factor on the delay on criminal proceedings. The simple reason for this is that when you look at the statistic of convictions after trial compared to those acquitted it become clear that many cases could have ended at plea of guilty. But because of fearing to be jailed under such prison conditions offenders opt to deny the charge at the time of taking plea in order to avoid prison. Meantime they are buying time to find other ways of dealing with their case other than due process. If prison conditions were humane and bearable, if their ware predictable alternatives for various less serious offences suspects would plead guilty when they are guilty and this will reduce significantly on the number of cases proceeding to trial. This is a sure way of implementing faster and an efficient justice system.

4. Whether prisons do achieve the purposed of Incapacitation and Deterrence and Retribution.

In the previous chapter we saw that another purpose achieved or meant to be achieved by punishment is incapacitation and that incapacitation involves restricting offenders' movement

or liberty. We also saw that most people consider incarceration as a sound defensive strategy to protect the public and combat crime. No surprise, therefore, that is an area where almost all the respondents agreed that the prisons ably provide incapacitation even though only for a short period. As a consequence society is guaranteed of protection. This is a perception that suggests that it does not matter what conditions are obtaining therein. Whether the prison is congested or not criminals are incapacitated whilst they are in prison. This way prisons serve their purpose well; that of protecting society from bad elements and criminality through incapacitation. Yet this achievement must be measured against the individual rights of prisoners which do not cease to exist by virtue of being a criminal suspect or a criminal convict. In this vein the prisons must not perpetrate conditions which amount to torture or degrading and inhuman treatment; such as the conditions are in the face of the phenomenon of congestion.

We also saw that another purpose served by our prisons is deterrence; both at the individual and general level. Thus one approach aims to deter those who would otherwise commit crimes (general deterrence) and to make it less likely that those who serve a prison sentence will commit crimes after their release (individual deterrence). Many think that the correct view is that there is no proof the punishment endured is likely to deter crime. People continue to commit crime anyway. Prison conditions such as congestion only make things worse by producing hardened criminals. However, this position stands indifferent to the fact that only 10% of convicts actually commit crime. In the face of this reality we are persuaded to side with many who believe that imposing a sufficiently severe punishment on an offender will deter that individual from future crime. For example, advocates of the death penalty believe that imposition of such a severe punishment on murderers will prevent others from killing people.⁹⁴

Another approach focuses on issuing punishment to, or obtaining retribution from, those who have committed serious crimes. In Zambia however, such terrible prison conditions do not only affect those who committed serious offences. Thus our criminal justices, through such prison conditions, impose retributive punishment of non serious offenders and even remand prisoners.

⁹⁴ J. Herring, *Criminal Law: Text, Cases and Materials*, 2nd ed. Pages 76 & 77

Most magistrate put as a reason for every sentence they pronounced that they wanted the offender to learn a lesson. They rarely have another reason for meting out punishment. It seems clear that however that with torturous conditions of congestion, the justice system does not only make the offenders pay for offences committed. The system tortures both suspects and convicts by subjecting inmates to all consequences of the phenomenon of congestion.

5. Effect Congestion on Corruption within Criminal Justice System.

Almost unanimous the respondents endorsed that prison conditions are a major factor on corruption within the criminal justice system. The attitude of offenders is that of avoiding going to prison at all costs. As such suspects will solicit to bribe witnesses, police or prosecutor, the court or court officials for an outcome in their favour. Even when one convicted try to use money, wealth or other influence to find favours within the prison systems. This reality has come to the fore in the past decade. The courts and the entire justice system are branded as corrupt and decayed. Condemnation and ridicule has become a daily endeavour in daily tabloids. This has been so especially in high profile cases such as the acquittal of Chiluba. The recent revelations in the case of murder suspect Mohan (still going on) demonstrates reality as opposed to perception. What we get from such revelations is the extent to which people can go in terms of inciting players in the Justice system with money just to avoid prison conditions. The result is that all manner of tactics are employed to avoid the due process. All such put together has exposed the players in the criminal justice system to unsolicited incidents of corruption; and thus raising the corruptions perception index especially with regard to the police and the courts.

6. Impact of Congestion on the Relationship among the Main Actors in Criminal Justice System.

What came out clearly from the research is that congestion has achieved two things; though opposites in a way. On the one hand the problem has provoked need for stake holder to act together in addressing the problem. As such there is a movement towards reform. Immediate

measures are seen being implemented by Governance Secretariat of the Ministry of Justice, creation of the Parole Board, and interventions under the access to justice programs.

On the other hand the problem of congestion has created an atmosphere of figure pointing. Even in the face of historical factors of lack of building more prison infrastructure, which is the responsibility of central government, the government blames the courts for delaying cases unnecessarily by adjournments; effectively branding the courts as being lazy. The courts also blame government for understaffing and poor conditions of service as a cause for delay in the delivery of justice and consequently leading to congestion in prisons. They also blame police for lack of seriousness and delay in carrying out investigations.

This blame game raises a lot of suspicion among actors in the criminal justice system. This in turn hinders the spirit of functioning as one single criminal justice system and prevents the achievement of the goals of the *Zambian Criminal Justice System*.

All these put together point to the fact there is really nothing positive about keeping the status quo with regard to the phenomenon of congestion. These torturous conditions do not only destroy the good work and clear intentions of having a criminal justice system. These conditions destroy those who are incarcerated in prisons and the effects are irreparable. It is a breeding ground and training environment for hard core criminals. It is a sure way of catching, infectious and or contagious and communicable life threatening illnesses. It prevents the criminal justice system from achieving even the minimum scores with regard to the purposes of having a criminal justice system. This reduces the whole justice system to a failed system.

The third and last of the study hypotheses was that despite severity of the phenomenon of congestion, not all was lost as the effects could be mitigated through a deliberate system of reforms to both the legal regime and the institutional framework that govern our criminal justice system. We will therefore make recommendations for both short term and long term measures as we propose the way forward in the next chapter.

CHAPTER FIVE

CONCLUSION

In this chapter we have summed up the study by drawing conclusions and making recommendations on the way forward. This is for the attention of government and other actors in the Zambian Criminal Justice System. It is hoped that the proposed solutions will help decongest prisons in order to mitigate on the suffering of those human beings kept therein.

This research had as its general objective to highlight the full extent of the problem of congestion in Zambian prisons and show how this problem has impacted the Zambian criminal justice system.

The problem of congestion in Zambian prisons is a reality. It is also phenomenon. As has been detailed under chapter one above, the prisons in the country were built in the fifties (50s) and sixties (60s), mostly by colonial masters for the detention and suppression of the natives; especially those who were agitating political strife against the colonial administration. Since then there has been no significant expansion. The capacity of these prisons has remained the same. Yet the population of the country was only around three (3) to five (5) million⁹⁵ and since then the country's population has increased three to four times without corresponding development in the prison space. The number of inmates has thus "swelled to astronomical levels over the years rendering heavy pressure on the poor facilities and amenities with the number of inmates in most, if not all, prisons far exceeding the recommended capacity."⁹⁶ With

⁹⁵ Decongestion of Remand Prisons in Zambia: Radio Presentation on Zambia Today By Honourable Minister of Home Affairs (Document supplied by Home affairs was without date).

⁹⁶ Ibid.

an official holding capacity of only 5,265 the audited prisons held 14,377.⁹⁷ However, at the end of the year 2010 official statistics revealed that the situations had worsened from an overload of 173% in 2009 to a record 250% at the end of 2010.⁹⁸ Indeed it was the researcher's finding that inmate population exceeded either the rated capacity, operational capacity, or design capacity of our prisons. We also found, among other things, that Zambian prisons are symbols of a failed criminal justice process.⁹⁹

We have also seen that overcrowding increases likelihood of the spread of HIV and AIDS and other communicable diseases.¹⁰⁰ With the above empirical data and or information, it is correct to conclude that Zambian prisons were operating under conditions that fall way below the recommended Standard Minimum Rules for the Treatment of Prisoners.¹⁰¹ Further that the problem already reached alarming levels and required immediate attention. It was also our finding that the phenomenon of congestion impacted greatly on the Zambian criminal justice system.

We discussed, in Chapter three, the role that Prisons and indeed the Zambia Prison Service must play in the Zambian criminal justice system; mainly the protection of society through the punishment of those who committed offences. However, congestion has made these objectives unachievable.

One aspect directly impacted by the phenomenon of congestion is the role of the Criminal Justice System as Protector of Fundamental Human Rights. We found that the justice system was in fact in violation of Article 18 (2) (a) and 15 of the Constitution of Zambia; which article provide for presumption of innocence and protection against torture respectively. It was also the researcher's finding that prison conditions affected negatively and prevented the Justice

⁹⁷ National Audit of Prison Conditions in Zambia: An assessment of the Prison Conditions in Zambia and the challenges the Prisons Authority are facing in running the Prisons. Zambia Prison Service and the Governance Secretariat with support from the Access to Justice Programme, May 2009. at p4

⁹⁸ Muvi Television 18:30hrs News of Monday January 3rd 2011 also reported on <http://www.muvi.tv.com?p=7036> visited on 13th January 2011.

⁹⁹ Fairchild, E., et. Al. Comparative Criminal Justice Systems, 2nd ed. (USA: Wadsworth Thomson Learning, 2001), p. 250

¹⁰⁰ Supra note 1

¹⁰¹ Ibid.

system from achieving offender reformation and rehabilitation and in the ultimate re-integration of former inmates into the society.

We also saw that congestion also delayed the delivery of justice as courts found themselves dealing with offenders who opted to deny the charge at the time of taking plea in order to avoid prison. If prison conditions were humane and bearable, if there were predictable alternatives for various less serious offences suspects would plead guilty when they are guilty and this will reduce significantly on the number of cases proceeding to trial. This is a sure way of implementing faster and an efficient justice system.

On whether prisons did achieve the purposes of Incapacitation and Deterrence and Retribution it was realised that these roles were being achieved by our prisons. It was however found that these achievements when measured with individual rights of prisoners which did not cease to exist by virtue of being a criminal suspect or a criminal convict, congested prisons only perpetrate conditions which amount to torture or degrading and inhuman treatment.

It was further our finding that the phenomenon of congestion in Zambian prisons was a factor on increase or prevalence of corruption within Criminal Justice System. This is because it acted as an incentive and or catalyst for soliciting bribes as a way of avoiding going to prison to endure torturous conditions. This has exposed the players in the criminal justice system to unsolicited incidents of corruption; and thus raising the corruption perception index especially with regard to the police and the courts.

We also found that Congestion in prisons had a negative impact on the Relationship among the Main Actors in Criminal Justice System. Although the problem made players in the justice system to realize the need to work together, congestion also created an atmosphere of finger pointing. This blame game raises a lot of suspicion among actors in the criminal justice system; and has an effect of cloaking the reality of the problem. This in turn hinders the spirit of functioning as one single criminal justice system and prevents the achievement of the goals of the Zambian Criminal Justice System.

RECOMMENDATIONS ON THE WAY FORWARD

Responses to Overcrowding are diverse. However, governments have devised several strategies to lessen or minimize prison overcrowding. Some of these methods are front-door solutions, meaning they pertain to policies and practices by criminal justice officials who deal with offenders before and during sentencing. Other responses are back-door solutions, involving strategies to reduce inmate populations through early release. This appears to be the more reason why the parole board was created.

One example of a front-door solution is greater use of diversion. In diversion programs, prosecutors temporarily suspend prosecution of a case for a period of time in which the offender must meet certain conditions, such as remaining employed or drug-free. If the conditions are met, the case may be dropped or the charge may be reduced. Supporters of front-door solutions advocate greater use of probation by judges and more recommendations by prosecutors for leniency.

Advocates of front-door solutions also suggest that courts emphasize restitution, community service, victim compensation (payments to the victim for losses resulting from the crime), and fines as the primary punishments, rather than incarceration. Other front-door solutions include greater use of plea bargaining; limiting incarceration to only those offenders deemed most dangerous; assigning judges a fixed number of prison spaces so that they might rearrange their sentencing priorities and incarcerate only the most serious offenders; and decriminalizing certain offenses to narrow the range of crimes for which offenders can be incarcerated.¹⁰²

Taking into account ideas from other jurisdictions and adopting some from the National Audit on Prison Conditions report the researcher now recommends the following:

1. Alternative Sentencing:

¹⁰² Contributed by Dean J. Champion Microsoft ® Encarta ® 2009

In cooperation with other justice institutions, the ZPS needs to formulate and implement alternative sentencing such as community service, arbitration and mitigation to lessen the prison population.

2. Bail Requirements Review:

There is need to review the bail requirements in relation to the location and the economic state of that location. Also the availability of working sureties should be re-considered in areas where formal employment may not be available.

3. Identification and construction of places of safety:

These places are meant to house juveniles during their remand period to lessen; the commingling of juveniles and adults, the stigma attached to the juveniles having spent time in prison and the possibility of the juveniles “learning” from the adult inmates in prison who may be repeated offenders thus having the tendency of offending.

4. Windows in the Cells:

The need for adequate illumination and ventilation in the cells is essential with the windows being fitted with glass panes for protection against the weather (wind and rain) and insects (flies and mosquitoes), and, adequate iron bars for security reasons.

5. Expansion of existing prisons:

There is need to immediately increase the holding capacity of the prisons. This is paramount to lessen the overcrowding and allow for segregation. This will entail the building of extra cells as most prisons in Zambia have yard space where new cells can be built. If possible there is need to construct individual cells.

6. Construction of new prisons:

The ultimate solution to the overcrowding in the Zambian prisons is to build new prisons and officers accommodation with bigger capacities in all the provinces.

7. Design of an Education System:

The need for an education system for the ZPS for inmates cannot be overemphasised thus the need to design an education system specifically for the prison inmates.

8. Recreation Facilities:

Prisons should be provided with recreation equipment that can be used by the inmates such as soccer balls, chess and draughts boards, music systems, T.V. sets with connection to DSTv, e.t.c.

9. Review of Parole Eligibility:

The current parole qualifications are such that parole is only for persons who were sentenced for more than two (2) years and have less than six (6) months to go. There is need to revise this to widen the target group for parole.

10. Capacity building and improvement of conditions of service:

Government must improve conditions of service for those who operate the criminal justice system.

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