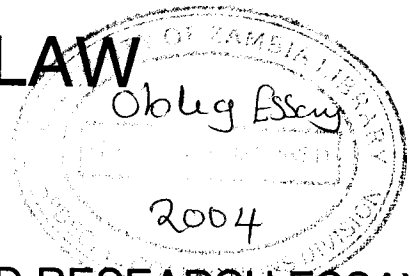


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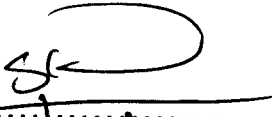
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**COMMUNITY SERVICE AS AN ALTERNATIVE TO
CUSTODIAL SENTENCING, IS IT WORKING IN
ZAMBIA?**

BY

FYDES MASOSA HAMAUNDU

A dissertation submitted to the faculty of law of the
University of Zambia in partial fulfillment of the
requirements for the award of the degree of Bachelor of
Laws (LLB)

**FACULTY OF LAW
UNIVERSITY OF ZAMBIA
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DEDICATION

This paper is dedicated to the Almighty God, my Husband Evans and my Children Silume, Mweembani, Mbikusita and Katukula who have been supportive during my academic endeavours. May God continue to bless you.

ACKNOWLEDGEMENTS

I generally thank all persons that assisted me in the accomplishment of this rather laborious piece of work. In particular, I convey my profound gratitude to my hard working supervisor, Mr. Simon Kulusika. I appreciate and treasure his words of encouragement tht he gave me through out the academic year whilst supervising my work.

I should also remember to render my utmost appreciation to my family for their cooperation during this agonizing period, especially to my dear Husband, Evans who has always been my source of inspiration. More thanks to my four Sons Silume, Mweembani, Mbikusita and Katukula, who repeatedly complained of my absence from home. May I also show my indebtedness to the Judiciary's Central Administrtation, Interim National Committee for Community Service and Ministry of Home Affairs for availing me the opportunity to research from their offices. Without their assistance, my paper would not have been produced.

Finally, I acknowledge the nature of my elder brother Leonard who assisted me with accommodation and reduced my academic stress of fatigue by attending to my problems and made every thing possible to make my stay in his house comfortably. I also acknowledge the tireless efforts of typing this essay by Shupe Tembo.

DECLARATION

I, Fydes Masosa Hamaundu, Computer Number 99357429, do solemnly declare that this work represents my own ideas and is not a production of any other work produced or submitted by any person to the University of Zambia or to any other institution.

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METHODOLOGY

The research has utilized two sources of data, namely primary and secondary. The primary sources include interviews with officers from Ministry of Home Affairs, Judiciary and some Members of the Interim National Committee for Community Service. The secondary sources include library materials, Statutes and International Instruments and documents. These were evaluated. Chapters proceeded from one to five which contains recommendations

PREFACE

The theme for the obligatory essay is “Community Service as an alternative to custodial sentencing, is it working in Zambia under the present law?” It opens with an introduction on the subject, which is chapter one.

The second chapter states the source of community service scheme and its advantages.

Chapter three deals with the role of National Committee and Officers of Community Service scheme in the implementation of the scheme

Chapter four ventures into the present law Act No. 12, 13 and 14 of 2000 and as to why this law has not been operative in Zambia compared to other countries in the region that have successfully implemented the scheme.

Chapter five is about general discussions and recommendations

ABSTRACT

They are so many ways of punishing offenders who would normally attract a short sentence and who do not pose a risk to society. Such punishments are suspended sentences, fines, absolute discharge and prison sentences. Prison sentences should be used as a last resort because prison regimes in many jurisdictions are characterized by severe over crowding, a major problem faced by prison administration. Zambia has introduced Community Service scheme in addressing the over crowding. However since the provisions to introduce Community Service Scheme were enacted non of the stakeholders have utilized the scheme. In order to appreciate the benefits of the scheme, stakeholders should revisit the provision of Community Service Scheme to iron out the problems as to why the Community Service provisions are not applied.

CHAPTER ONE

INTRODUCTION

The main object of this paper is to analyse and evaluate the Community Service amendment laws of Act No. 12, 13 of 2000.¹ This will embrace the manner the law introducing community service was amended, to determine appropriateness of community service in its present form and operative. It will also be imperative to examine as to why Community Service as an alternative sentencing under the present law has not been practically operative in Zambia. This study therefore aims to look at the amended laws cited above with a view to understand why community service has not started to operate in Zambia and to determine the problems in the law as to why community service as an alternative sentencing is not working in Zambia and why courts are not committing offenders to community service. The significance of the study therefore is that the findings will be relevant to policy formulation and implementation with regard to Community Service Scheme.

HISTORICAL BACKGROUND

Prisons regimes in many jurisdictions are characterized by severe overcrowding. Over crowding is one of the major

¹ Act No. 12 of 2000 an Act amending the Penal Code Cap. 87 Act. No 13 of 2000 an Act amending the criminal procedure code Act No 14 of 2000 an Act amending Prison Act Cap. 97.

problems facing prison administration in ensuring that human rights of prisoners and those who keep them are adhered to. In addressing the problem of overcrowding the international community thought of introducing alternatives to custodial sentences.² One of the instruments adopted by the United Nations in this regard was the United National Minimum Rules for Non-custodial Measures (The Tokyo Rules) of 1990. The Rules were adopted by the United National General Assembly.³ The basic aim of these rules is to promote adoption and use of non-custodial measures and to provide minimum safeguards for convicted persons subject to various alternatives to imprisonment. These were also intended to promote greater community involvement in the management of criminal justice and particularly the treatment of offenders and on the other hand to promote among offenders a sense of responsibility towards society. At a regional level in Africa two important instruments were adopted. These are the Kampala Declaration and the Kadoma Declaration. The Kampala Declaration emanated from a Seminar on "Prison conditions in Africa" held in Kampala, Uganda in 1996. Apart from reasserting human rights principles, the Seminar, which was attended by government representatives of various African Countries that included Zambia, came out with a number of recommendations which member states were encouraged to

² Minja Prison Commissioner Tanzania (2002), Regional Conference Report on "Addressing over crowding in prisons in Tanzania.

³ Limited National Resolution No. 45/110 of 14th December 1990

observe. Participants also made specific recommendations on remand prisoners, prisons staff and alternative sentencing.⁴

The Kadoma Declaration of 1997, on the other hand came out as a result of an “International Conference on Community Service orders in Africa” held in Kadoma, Zimbabwe. The Declaration was focused on the use of community service as an alternative to imprisonment. The declaration reminds African States that imprisonment should be strictly used as a measure of last resort and that overcrowding in our prisons requires positive action through the introduction of Community Services.

In Zambia, there is mounting pressure on courts of Law, which for many years have used imprisonment as a form of a penalty to offenders. This has been so even in cases where minor offences not deserving custodial sentence have been committed. This has therefore resulted in pressure for change stemming from the growing desire to divert offenders from custodial sentences. Most prisons in Zambia are overcrowded because these prisons were built in colonial days and were meant for a small population, which have now to accommodate five times the number originally intended. Overcrowding has rendered most prisons unable to carry out

⁴ Kampala Declaration on prison conditions in Africa (1996)

successfully segregation and classification of prisoners.⁵ Due to this increase there are no sufficient resources for prisoners basic necessities including proper bedding and clothing, good sanitation, safe and enough water medical services etc. Overcrowding has generated psychosocial tensions among both prison staff and prisoners making it difficult to organize and implement meaningful rehabilitation programme for prisoners. There is not doubt that overcrowding is the worst feature of our prison system, not just because of its interference with treatment and training goal, but also its treatment to security and its adverse effect on the morality of the penal system.

INTRODUCTION OF COMMUNITY SERVICE TO ZAMBIA

With the help of Penal Reform International, Community Service scheme was introduced to Zambia in 1996. Penal reform International and the World Bank funded the first seminar for Magistrates on the “implementation of Community Service in Zambia in April, 1997. ⁶ At this seminar representatives from Police, Prison, and Social Welfare Departments were invited. The participants at the seminar overwhelm supported the idea of introducing Community Service as one way of decongesting prisons. At this seminar it

⁵ Ngulube Mathew Chief Justice's speech on launching National Committee for prison Reform in Zambia on 8th April (1996).

⁶ Justice Muzyamba paid tribute to PRI and World Bank for funding the seminar for Magistrates on “The implentation of community in Zambia” in his opening speech (April 1997 Reform)

was resolved that government should enact laws which recognized United Nations Instruments and conventions on the prevention of crime and treatment of offenders and that the implementation of Community Service orders programme should be vested in the National Committee of the Community Service orders chaired by a Judge of the High Court and representation of personal from Police, Prisons, Community Development and Social Welfare, Non-governmental Organizations such as (The Church, Prison Fellowship), Law Association of Zambia, Law Development Commission and Judiciary. The seminar resolved to create an interim National Committee involving Stake Holders, to educate others on the new scheme and to start pilot projects on Community Service scheme at courts in all Districts.⁷ From the reports that were received by the interim National Committee from the districts the pilot projects at courts were very successful though the law on community service was not yet in place.⁸ It was also resolved that the Interim Committee should visit countries practicing community service and see how community service was implemented in those countries.

WHAT IS COMMUNITY SERVICE?

Community Service is an option the court may use when it has decided that a person's offending is serious and that she/he is suitable for making reparation by constructive

⁷

Ibid

unpaid work in the community. Community Service should be physically and emotionally demanding of the offender in that it is a restriction of liberty, involves self-discipline and a respect for others and should engage the offender in tasks or situation that challenge his/her outlook, experience and ability. Community Service can therefore be a positive way of making an offender make reparation for offences and it can encourage personal growth that the community is affected by criminality and the community can see that offenders can make a constructive rather than destructive contribution to the community.

OBJECTIVE OF COMMUNITY SERVICE

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

- Enforcing the discipline of positive and demanding unpaid work.
- Ensuring that the work provides reparation to the community, making good the damage done by offending.

Further to this a community service may achieve: -

- a reduced risk of recidivism or repeat offending
- An increased chance of rehabilitating the offender to acceptable social standards.⁸

⁸ Community Service in practice document published by Penal Reform International and Zimbabwe Committee on Community Service in 1994 and was adopted in November

In the United Kingdom, the Home Office circular⁹ concerning National Standards for Community Service Orders, states that an order has three main purposes: -

- Punishing the offender by requiring him/her to perform unpaid work, by the discipline of punctual reporting for work and loss of free time;
- Reparation to the community by requiring the offender to do work which is socially useful, which repays the community for what the offender has done and which, if possible, makes good the damage done by offending,
- Benefiting the community by providing work which otherwise would not be done.

The Home Office document goes on to acknowledge that, while a byproduct of these aims is social integration, this should not take precedence over the need to comply with the requirements of the court order encapsulating the three aforementioned aims. The aim of community service then is to provide a viable, disciplined and worthwhile community based sentence, which may also induce rehabilitation and reduce re-offending. However, community service is not appropriate for every offender. Ensuring that the offence, the offender and the

1997 in Kadoma Zimbabwe at the International Conference on Community Service by all the African states.

⁹ United Kingdom circular No. 18 of 1989 concerning National Standards for Community Service Orders.

sentence are compatible within the principles of sentencing is one of the tasks required of a Magistrate. A Zambian News Paper SUNDAY POST dated 6th June 2004 Prison Service Commissioner Jethro Mumbwa was reported to have said that sentencing wrong doers to community service will help decongest prisons countrywide. He further said in an interview that sentencing prisoners with petty crimes to long jail terms was contributing to congestion in the prisons. The Commissioner urged the Judiciary to review the sentencing policy that does provide for sentencing to community work. He stated that this type of sentencing has many advantages, not only decongestion but also helps to reduce on the prison budget. He said the offenders would also give back to the community, what he offended through the offering of his services. He stated further that community service would also enable the prisoner to keep in close touch with their families and friends. The Commissioner confirmed that a lot of prisoners had been incarcerated in prison for long years when they had committed petty crimes. He said community work system had worked in countries such as Malawi, Uganda, Tanzania, Kenya and Zimbabwe and hoped that the system would be introduced in Zambia soon.

CHAPTER TWO

SOURCE OF COMMUNITY SERVICE LAW AND REGULATIONS.

In 1996 when Community Service Scheme was introduced in Zambia, the then Chief Justice Mathew Ngulube declared the National Committee for prison Reform in Zambia officially launched and the Interim National Committee was formed.¹ The National Interim Committee was chaired by the Judge of the High Court The late Justice Ruth Zulu who was elected to chair the National Committee, by the Interim Committee. The Interim Committee included 16 other members, one member each from other stake holders such as Police, Prisons, Community Development and Social Workers Department, Non-Governmental Organisation such as (the Church, Prison Fellowship, Good Samaritan) Law Association of Zambia, Law Development Commission, Human Rights Commission and Judiciary.² Members of the National Committee attended

¹ This was said in a speech delivered by the Chief Justice His Lordship Justice Ngulube on 2nd April 1996 at the first meeting of the Interim Committee held from 8th April 1996 to 10th April 1996 on page 8 of the minute

² Judiciary Justice R.H. Zulu Chairperson, Mr. Choonga Secretary, Mrs Chawatama and Justice Bwalya, Police – Mr. Nkole, Prisons – Mr. S.J. Tembo and Mr. J. Mumbuwa, Law Practicing Institute – Dr. J.L. Kanganja, Good Samaritan Centre – Fr. F. Mc auliffe and Mr. E. Chikopela, Zambia Civic Education – Ms. C. Kunda, Prison Fellowship of Zambia – Mr. L. Tenfwe, Law

International Conferences on the subject, visited Community Service Programmes in other Countries such as Zimbabwe and Uganda and sought information from many sources. When the Committee was convinced of the value of the scheme, the next question was how to implement it within the Zambian context, and in a way that was effective and yet suitable. The Interim National Committee held a number of meetings where they recommended to the government that establishment of Community Service should start with sensitization of the public on the whole philosophy and benefits of the arrangement so as to include acceptance and cooperation. This was then to be followed by Penal Law reform to do away with the existing rigid laws inhibiting flexibility on alternative sentencing and Judicial discretion. The other recommendation was the enactment of legislation on Community Service, formation of a National Committee to oversee the setting up of the basic social and institutional infrastructure and policy making. The proposed institutional set-up was ideally to have District level committee with coordinators who would be responsible for day to day running of the program at their respective jurisdictions, including community collaborations. On the same vein the former Republican President Dr. F.T.J.

Association of Zambia – Mr. S. Sikota, Ministry of Home Affairs – Dr. K.T. Mwansa, Ministry of Community Development and Social Services – Mrs S. Chinsense, Ministry of Legal Affairs – Mr. Konsolo, Unza School of Law – Dr. E.M. Simalwani, Law Development Commission – Dr. Kabanje, Human Rights Commission – Justice Kamazi.

Chiluba while opening the 1st Parliament Sessions in January 2000 called upon the Judiciary and Ministry of Home Affairs to propose to the government legal measures to be taken by the government whereby people convicted of minor offences can go to serve their sentences in the community by doing unpaid work for the benefit of the community and to reduce government expenditure on Prisons.³ The Interim National Committee recommended to the government through Ministry of Home Affairs that the existing rigid laws inhibiting flexibility on alternative sentencing should be repealed and a separate Act on Community Service should be enacted to provide for the formation of National Committee on Community Service and the Secretariat who would from time to time advise the government on the success of Community service. The Interim Committee also recommended to the government that in order for Community Service, attain its objectives successfully, the scheme must be placed in Judiciary and not in Home Affairs.⁴ The Government welcomed the scheme and promised to enact the Community Service law as recommended by the Interim Committee that adopted the style from other countries that has implemented Community Service Scheme successfully. The Interim National Committee sent a draft of proposed law on Community Service and project proposal to Penal Reform International for approval in order to

³ Speech reported in the post Newspaper dated 22nd January 2000.

⁴ The resolution was made by the Interim Committee at the meeting held from 8th to 10th April 1996 on page 14 paragraph 3.

fund the scheme for two years from the enactment of the law. Both the proposed law and the project proposal were approved by Penal Reform International. Success reports from Courts all over the Country were received on pilot projects that were conducted in line with the guidelines that were formulated by the Interim National Committee for Magistrate on how to commit an offender on Community Service. The Government promised to enact the law at the following Parliamentary Session in July 2000.⁵ In September 2000 the amendments were done to Section Four and Twenty-Four of the Penal Code to include Community Service as a form of punishment. An addition of Section 26A was included in the Penal Code as a new Section by Act No. 12 of 2000. In the Criminal Procedure Code “Cap 88 before Section 307, New Sections 306A, 306B, 306C, 306D and 306E were inserted empowering the court to make Community Service order by Act No. 13 of 2000. The Prisons Act Cap 97 Section 135 was amended and an insertion of new Sections 135A and 135B were included by Act No. 14 of 2000. From the above enactment, the proposal that were made to have Community Service Law be enacted on it’s own was not accepted and from the present law a National Committee and Secretariat was not provided for. With the

⁵ On 12th June 2000 the Interim Committee Members together with a three-man delgation from PRI, Dr. Othmani, Justice Mutegha and Justice Garwe met Dr. P. Machungwa the Minister of Home Affairs then who was in company of his Deputy Minister and Permanent Secretary and Prison Commissioner who promised to work hand in hand with Ministry of Legal Affairs to put community service Legislation in place, page 5 of the visiting report dated 9th to 12th June. On the same report on page 6 the then Chief Justice Ngulube promised to push for the same legislation.

outcome of the present Community Service Law Penal Reform International could not release funds to kick start the scheme because the present law was not enacted according to the agreed proposal which have proved to be successful in the rest of the region. Penal Reform International wrote to the Director Zambia Law Development Commission in a letter dated 28th June 2001 asking the Director to convince the relevant institutions to review the legislation, for the implementation of a proper Community Service Scheme. From the present law Community Service has been housed in the Ministry of Home Affairs where it is the Police to recommend for Community Service to Court and after the Court makes an order the offender is sent to an authorized officer appointed by Prisons Department under the Regulations made by their Minister of Home Affairs.

As I already stated when, during the introduction of Community Service in 1996, the National Committee on Community service was Judiciary driven when it was chaired by Judge of the High Court with representation from the Police, the Judiciary, Probation Office, the Prisons and other Civil Society Organisations. Several workshops and seminars were conducted for Magistrates and other Stakeholders and resolutions were made to strictly follow the regional model law

that has proved to be successful so far.⁶ When the Penal Reform International introduced Community Service through the Interim National Committees the Committee did not encounter any problems on the way to make Community service a reality. District Committee were introduced country wide and even started sending returns to the National Committee for Community Service.⁷ The present Law in Zambia have proved ineffective and has made no improvement in the Criminal Justice system. Statistics on Community Service have dropped to zero. The present law under Section 135B (2) Prisons amendment Act No. 14 of 2000 empowers the Minister of Home Affairs by statutory instrument, to make regulations for the process of applying to court for Community Service. To date despite the present law empowering the Minister to make regulation, the Minister of Home Affairs have not exercised the powers conferred upon him by Act No. 14 of 2000.

IMPLEMENTATION.

From 10th to 12th January, 2000 Penal and Prisons Reform in African (PRI) on Community Service in Africa sent PRI programme Officer in charge of Community Service projects Ms Cecile Marcel to visit Uganda, Kenya and Zambia. ⁸ The

⁶ The resolution was made by the Interim Committee in the minutes dated 8th to 10th April 1996 on page two paragraph two.

⁷ Returns dated 1998 from Kaoma

⁸ Penal and Prison reforms in Africa News letter No. 12 of March 2000 on page 4 under the head of Community Service in African Mission to Zambia.

aim of the visit was to meet with Stakeholders involved in the process of introduction of Community service in each Country, to discuss the advancement of the scheme, the difficulties met and the next steps for the implementation. Her findings were that in Uganda the Interim National Committee on Community service had organized a planning workshop on Community Service whose aims were to review progress and to identify and consider problems in the implementation of the scheme, to propose solutions and establish objectives for an implementation programme and to bring the Community Service Bill to Parliament Agenda. The Community Service Bill was passed in Parliament in February, 2000 and assented the same year as a separate Act on Community Service. After a year and 5 months on 16th July, 2001 a Statutory Instrument was signed by the Minister for Internal Affairs in exercise of the powers conferred upon him by Section 12 of Community Service Act of 2000, of the Uganda Law and after consultation with the National Committee on Community Service. The consultation was on Regulations and guidelines for Stakeholders, which were then issued on 16th day of July 2001. The signing of the Statutory Instrument finalized the implementation of the Community Service in Uganda.⁹ At the National Coordinators conference from 14th to 22nd July 2001, a report from Uganda emphasized that in order for Community Service to be quickly implemented and to be successful, there

⁹ Ibid page

was need to place Community Service under the right department. The National Committee felt the Uganda Chief Justice should be given the mandate and powers to make Rules and Regulations for Community Service Orders for the implementation of Community Service. It was feared that there would be a delay if these powers were conferred on the Minister of Home Affairs to make Rules and Regulations. The Act introducing Community Service in Kenyan Legislation was Gazetted in July, 1999. It provides for the establishment of a National Committee on Community Service and entrusts the probation and aftercare Service with the mission of supervising the orders. As a result, probation officers have been trained to be Community Service Officers. They prepared 'Work Place Profiles' in all districts and supplied a list of suitable placement institutions. After this phase of preparation, the probation services started practical implementation of the scheme in August 1999. On 3rd to 5th November 1999 the probation services organized a workshop for probation officers. This workshop produced a community service training manual, "a supervisors manual and minimum standard rules" on Community Service. The Community Service in Kenya was officially launched by the Chief Justice in his Chambers on 29th December, 1999 in the presence of the Attorney General and other high ranking officials from Judiciary and Home Affairs and Prison Services. PRI was represented by Adam Stapleton. According to Mr. Joshua K.

Terer Permanent Secretary Ministry of Home Affairs in Kenya, 3,400 offenders were at the time serving a Community Service Order and he expressed the hope that development of the Community Scheme should reduce the prison population by one third and contribute to the rehabilitation of petty offenders. The inaugural meeting of the National Committee took place on 14th January 2000. This date was chosen to coincide with the visit to Nairobi of Justice Garwe, Chairperson of the Zimbabwe National Committee on Community Service. This meeting allowed the new members of the committee to discuss the Zimbabwe experience, to express their concerns and seek the way forward.¹⁰ In Zambia, at the time PRI's Programme Officer-In-Charge of the Community Service Project visited Zambia, she found that the Government of Zambia had just decided to amend the Penal Code, the Criminal Procedure Code and the Prison Act to allow for the introduction of Community Service, rather than drafting a separate Act on Community Service. According to her the amendments did not provide enough or more provisions on Community Service in order to be understood, to work effectively by the stakeholders.¹¹ According to Kenya, Zimbabwe, Uganda, Malawi, Tanzania's Country Reports of 22nd to 26th August 2002, implementation of Community Service Orders Programme is vested in the National Committee

¹⁰ Kenya Country report at African Regional Coordinators Conference on Community Service from June 22 to 26th 2002 in Uganda on page 3 of the report.

¹¹ PRI dews letter No. 12 of March 2000 on page 3 under the heading Mission of Zambia.

of the Community Service Orders, Chaired by Judge of the High Court. The Membership of the Committee is a reflection of the diversity of the stakeholders involved in Community Service Orders who include the Judiciary, Probation, Police, Prisons, NGO's Civil Society, Religious Leaders, Members Representing the Community. From among the members of the National Committee a smaller committee known as the Executive Committee is formed comprising the Chairman, Vice Chairman, National Coordinator, Secretary and three other members. This Committee which should be meeting monthly generally supervises the work of the Secretariat and makes recommendations to the National Committee. Membership on these committees is voluntary and no payment is made for the work they take on. In Zimbabwe in the first two years between January 1993 and December 1994, over 3,000 people were placed on Community Service. They worked in Hospitals, Schools, Children homes, and undertook environmental work among other tasks or placements as they were called.¹²

FINDING RESOURCES. Though Community Service is voluntary, the National Committee cannot successfully continue to run without resources. PRI has been more than ready to assist the National Committee to source funds for training sentences, Probation Officers, Supervisors, Police

¹² Community Service in practice book published by penal reform international and Zimbabwe National Committee on Community Service with the support of Norwegian Agency for Development Co-operation (NORAD) and European Union on page 8 and 9 under the heading implementing solution.

Officers and raising public awareness, to produce forms for use in courts and institutions to monitor the offenders performance under the terms of the order and to produce guidelines for Magistrates and others working in the Justice system for the purpose and operation of the Community Service Scheme.¹³ The role of Penal Reform International (PRI) is that it is an international organization committed to reducing the use of imprisonment in countries around the world and the promoting international norms and standards on good prison practice PRI has been working in Sub-Sahara Africa since 1992. Its aim is to assist governments by working closely with local NGO's and individuals to establish their own Penal Reform Programmes, sharing the experience and expertise of other related countries. PRI offers technical advice and assistance with raising funds for projects. It does not establish its own structures in specific countries preferring to work in partnership with National NGO's. PRI does not normally take direct responsibility for long – term projects. PRI usually provides funds for the first two years and if government is committed and finds benefits in the implementation of Community Service Scheme, then after two years government will be required to take over the project.¹⁴

¹³ Dr. Othmani the Chairman of PRI assured the Chief Justice and the Minister of Home Affairs that PRI was more than ready to secure funds for Nation Committee for training as soon as the law was in place. This assurance is contained in a Report on visit to Zambia of Penal Reform International Chairperson from 9th to 12th June 2000.

¹⁴ Brochure on Community Service as an alternative to custody on page 10 under the heading the rule of Penal Reform International published by Penal Reform International

Since the Act on amendments was passed in Zambia in 2000 the government of Zambia have not budgeted for the Community Service Scheme nor have the Ministry of Home Affairs formulated Rules and Regulations. The failure by Ministry of Home Affairs to formulate regulations and to budget for Community Service Scheme shows that the Ministry Home Affairs have no capacity and do not understand the present amendments to accommodate Community Service Scheme. In the letter written to the former Chairman of the Interim National Community Service Committee dated 27th June, 2001, Dr. Ahmed Othmani Chairperson Penal Reform International stated in the second Paragraph that, PRI believes that the legislation on Community Service would need to be revisited in order to be effective, and agreed that the concerned institutions and decisions makers should be sensitized to this problem. It is in this letter that PRI refused to assist in the implementation of the project in question unless the legislation was revisited. The same letter was copied to the Director of Law Development Commission and the Delegation of European Union in Zambia. The Chairperson of PRI stated in the letter that he hoped that the institutions that have expressed concern about the implementation of the amendments will continue to work in favour of reviewed legislation on Community Service and he reaffirmed PRI's

and Zimbabwe National Committee on Community Service with the support of NORAD and European Union

willingness to provide a technical expertise and support in that sense.

CHAPTER THREE.

THE ROLE OF COMMUNITY SERVICE OFFICES, DISTRICT COMMITTEES AND MEDIA.

The Interim National Committee for Community Service was inaugurated by the Chief Justice on 8th April, 1996. According to the minutes of the National Committee on Community Service of Zambia held from 8th to 10th April, 1996 to plan for Community Service, it was resolved that the Zimbabwean model on community service should be adopted in Zambia. It was at this meeting where it was resolved by the Interim Committee that the Committee should be called "National Committee on Community Service of Zambia" comprising of 22 members.

The aims and objections of the National Committee for Community Service in Zambia which was presented by Dr. Simaluwani and adopted by the Committee are that, the National Community Service of Zambia seeks to harmonize the operations of each component to the criminal justice system; i.e. the Police, the Judiciary and the prison, and probation services and doing, aims to promote the ideas of community services as an alternative form of sentencing. The committees aims and objectives therefore are:-

- 1) To develop ways and means of reducing the use of imprisonment and enhance the use of none custodial sanctions, which encourage, rehabilitation, social re-integration and take into account the interest of the victims and the community.
 - 2) 2) To develop methods of operation which encourage and promote involvement and cooperation of all relevant Ministries and Departments at a high level and all components of the criminal justice system in Zambia and in the region;
-

- 3) To advocate and ensure enactment of all necessary amendments to the Law that will facilitate the Development of Community Service as an alternative form of sentencing.
- 4) To promote ideals of community service and undertake educational and training programmes on community service for the general public and concerned government Departments an Non-governmental organizations;
- 5) To lay down the foundation of a community programme and issue guidelines to generally promote community service;
- 6) To promote cooperation between government and non-governmental organizations in the field of community service;

- 7) To carry out research on Zambia's' cultural norms and values that will strengthen the community oriented sentencing;
- 8) To advocate and promote the strengthening of those Departments and institutions with a role in the monitoring and implementation of community service programmes;
- 9) To devise mechanisms for the proper implementation of a scheme of Community Service and to form organizations structures at National, Provincial and District levels that would be autonomous and would amalgamate government and non-governmental Institutions, all on voluntary basis,
- 10) To build a healthy financial reserve for the continued running of the committee by raising funds nationally and internationally and
To take any other steps that seeks to further the foregoing aims and objectives.

The Chairperson Justice R. Zulu informed the Chief Justice that the Committee was formed with the blessing of the Executive with a view to try and alleviate the sufferings the convicts go through in Prison. The same committee also agreed that the Committee should be chaired by the personnel from Judiciary and also that it should be complete autonomous though it would reside with the Judicial while the

other ministries and Department cooperate. It was also resolved that the Committee should have control of Finances, Assets, Staff and all other Administrative Controls. The Committee resolved that the same committee should continue as an interim and that elections be deferred at the next meeting that was to be held from 13th to 15th May 1996. The committee made recommendations to the Government to provide the legislation of Community Service Law and the duties of the National Committee. The Committee drafted a bill and in March 1997 a cabinet memorandum was submitted to the government Ministry of Legal Affairs for approval. Minutes of National Committee on Community Service of Zambia held at Holiday Inn from 8th to 10th April 1996 on Page 6. The same National Committee also agreed that the Committee Should be chaired by the Personnel from Judiciary and also that it Should be complete autonomous though it would reside with the Judicial while the other Ministries and Department cooperate.

NATIONAL COMMITTEE FOR COMMUNITY SERVICE OF ZAMBIA

The Act is supposed to create the National Community for Community Service whose duties include the following:-

- a) Advice the Minister generally on the proper Implementation of the provisions of the Act;

- b) Co-ordinator, direct and supervise the work of community Service officers;
- c) Collect and collate data on the operation of the Act for the purpose of improving the national policy on Community Service Orders.
- d) Issue guidelines on Community Service to those concerned in the administration of justice and those concerned with supervising offenders. Major activities of the National Committee are carried out by the executive committee consisting of:-
 - a) The chairman of National Committee who shall be the Chairman;
 - b) The vice-chairman of the National Committee;
 - c) The National co-coordinator
 - d) The Secretary
 - e) The Treasurer
 - f) and two other members

All the members of the executive committee are nominated from the National Committee. The Executive Committee is responsible for the supervision of the day to day running of the Secretariat:-

1. The collection, storage and dissemination of data relating to the implementation of Community Service Orders;
2. Transmitting to and advising the Community Service Orders Committees on the policies formulated by the National Committee,
3. Undertaking educational activities aimed at sensitizing members of the public and criminal Justice agencies on the role and purpose of Community Service Orders.
4. Co-ordinating with other agencies on matters relating to and beneficial to Community Service and
5. Any other duties that may be assigned to it by the National Committee from time to time.

The Interim Zambia National Committee on Community Service established a list of thirteen essential conditions as critical factors for success of a Community Service Scheme, which they put forward and recommended to the government. These are as follows:-

- a. Political willingness to have and actively support a Community service Scheme.
- b. Involvement and co-operation of all relevant Ministries at a high level, particularly the ministries concerned with social welfare, Local government, Home affairs and Ministry of Legal Affairs as it was called then.

- c. Complete autonomy of the committees, free from government constraints and controls, especially if the National Committee is Judiciary driven and fully trusted by the government.
- d. Control by the National Committee on Community of Finance assets, Staff and implementation of the scheme and the prerogative to issue guidelines and set up administrative controls.
- e. A reasonably efficient and responsive court structure country wide to actively promote the system.
- f. Ability to form District Committees National-wide amalgamating government and non-governmental organizations all on a voluntary basis with a willingness and ability to implement the control policies.
- g. Involvement of Supreme Court and High Court in encouraging the system i.e. through agreement of Supreme Court and High Court as to the grid (showing the correlation between imprisonment and community service in hours) and guidelines as well as constant issue of review Judgments by High Court for guidance of Magistrates.

- h. Willingness of heads of institutions to participate in the scheme and properly supervise offenders placed at their institutions.
- i. Commitment of the Executive Committee to ensure that all funds are honestly expended on the programme.
- j. Co-operation between government and non-governmental organizations.
- k. Effective controls of employment contracts of staff engaged in the scheme by National Committee on Community Service thereby avoiding government bureaucracy.
- l. Effective use of the media in providing positive Publicity at appropriate and opportune times.
- m. Community Service in Zambia should not fall under The Prison Services because people would confuse Community Service as Prison Service. There is also likelihood that it will impose budgetary constraints on the prisons department

GUIDELINES

The guidelines for Magistrates are formulated by the National Committee and recommended to the Minister. Clear guidelines must be followed by all concerned persons if community service is to be efficiently implemented. To avoid arbitrariness, it is important that the guidelines are put in written form and well known by the Offender, Prosecutor, the

Victim and Complainants. The Magistrate guidelines will make it easier for all to know where to start from in applying Community Service as an alternative to imprisonment and criteria to be considered when sentencing an accused person to do Community Service.

DISTRICT COMMITTEE.

The functions of a District Committee are:-

- a) to embark on activities and public campaigns that would make the programme popular and acceptable in the area of its jurisdiction;
- b) to supervise, monitor and evaluate the implementation of Community Service in the District.
- c) To visit institutions to monitor the performance of offenders;
- d) To advise the National Committee on the failures and progress of the programme;
- e) To submit monthly reports to the National Committee on Community implementation;
- f) To identify placement institutions;
- g) To carry out such other activities as may be necessary for the better implementation of the programme in the District. District Committee are supposed to hold monthly meetings and to keep records of minutes of meetings. The District Committee is supposed to be chaired by the Resident Magistrate of the District and the

District Committee need have a representation of a Probation Officer, Prison Officer, Police Officer, Religious Leader, Council Officer and a member of any NGO. The Act on Community Service formulates the District and appoints its members and District coordinator. The Clerk of Court keeps an up-to-date register of offenders performing Community Service

- h) Orders with details of such Offenders where the order is being performed in each district.

The Role of Staff of the Community Service Scheme.

National Co-ordinator

The National co-ordinator is to be the Chief Executive of the scheme and will report directly to the National Committee. He is to be responsible for the day to day running of the scheme. His mandate should be within the statute. The National coordinate is to be a full time employee for the scheme. The function of the National Co-ordinator are:

- a) That the national co-ordinator is the implementing agent for the National Committee; and the National Executive Committee, to ensure the smooth implementation of policy on behalf of the National Committee.

- b) Co-ordinates, communicates and co-operate with all Stakeholders e.g. (Courts, Placement Institutions, Community Service Officers, National Service Committee, General Public, Government, NGO's, Religious Leaders, Donors, Media etc).
- c) is a go between the Judiciary and the implementing agency.
- d) is supervisor for Community Officers and Supervising Agencies.
- e) is in charge of monitoring the effective implementation of the scheme on the ground including visiting placement institutions, and the Courts etc.
- f) is in charge of sourcing funds for the scheme.
- g) is in charge of the general administration and accounting officer.
- h) is in charge of training stakeholders and sensitizing the public
- i) is in charge of research and eradication
- j) to Monitors the database and which are circulated does t he Net working and
- k) is the Ch ief editor of the publications.

Above all, there must be a proper job description for a National co-coordinator that allows some flexibility.

ADMINISTRATIVE SECRETARY

The Administrative Secretary is to act both as a Secretary of the National Committee and also as an assistant to the National Co-ordinator. The Administrative Secretary's mandate should be within the statute.

FULL TIME EMPLOYEE ACCOUNTANT.

The Accountant is to be responsible for all the financial matters of the scheme. Accountant must be full time employee of the scheme.

PROVINCIAL COMMUNITY SERVICE OFFICERS.

These are to be nine in number and are to ensure that the scheme is implemented smoothly and effectively in their respective provinces. They will be required to submit reports to the National Co-ordinators and are supposed to be employees of the scheme provided for in the statute.

PROSECUTORS AND INVESTIGATORS.

Prosecutors and Investigators play a vital role in pre-sentencing reports and should receive training in this area of community service scheme. Before making a community service order the court shall under take an inquiry as to the general suitability of the offender for Community Service. This is a preliminary requirement to making an order and it is imperative that every court has to do so.⁹ During this inquiry, the sentencing court has to look into the following:-

⁹ S. 306 A (2) Act No. 13 of 2000

- a) Does the offender have fixed place of abode
- b) Character of the offender
- c) Acceptable from the offended community
- d) Understanding community service order, aims, and Objectives, implications and consequences
- e) Offenders willingness to perform community service Orders
- f) Availability of placement institution and willingness to accept an offender.

The scheme is supposed to train prosecutors, investigators Probation Officers or Social Workers, Religious Leaders so that they can get as much information as they can for offenders which courts should use before passing the orders. It is that information that helps the Magistrate to make correct Community Service Orders. According to the present Law, Pre-sentence report under Section 306(a) (2) of the Penal Code is a must. Another purpose of this detailed pre-sentence report is to avoid abscondment of offenders. According to the June 2002 Country report on Malawi Community Service at Regional Co-ordinators Conference, it was stated that since the Malawi Law did not provide for a must pre-sentence report it was discovered that, where in cases the court did not consider pre-sentence report, there was a record of abscondment by offenders*. It was for this reason that the scheme in Malawi developed a simple pre-sentence report

called “SUITABILITY” to be used to making Community Service Orders which could be completed by Investigators, Prosecutor, or Community service Officer*.

SUPERVISING OFFICERS ROLE

- a) identify suitable work placements
- b) oversee the work and progress of offenders
- c) ensure that Community service Orders are complied with and that the scheme works smoothly
- d) apply to the court for review of order facilitate or promote reconciliation of offenders and the community.
- e) Ensure that safety conditions are satisfactory for both the community and the offenders serving under Community Service Orders;
- f) Guard against discriminatory practices in dealing with offenders;
- g) Maintain confidentiality of information on or relating to offenders;
- h) undertake counseling of offenders for rehabilitation and liaise with any other persons or organization dealing with similar problems.
- i) Keep an up-to-date record of offenders’ performance and appraisal of the same;
- j) Submit periodic reports to appropriate or relevant Community Service Orders committees and the co-ordinator in respect of offenders;

- k) Provide pre-sentence report to the court where necessary and
- l) Co-ordinate the activities of the Community Service Orders.

Supervisors must have guidelines, which they should follow.

NON-GOVERNMENTAL ORGANISATIONS:-

In determining the role of non-governmental organizations in the Community service Programme, it is necessary to distinguish between the government's motivation for the programme and the non-governmental organizations motivation for participation in the programme. This would remove many of the traditional objections that has been put forward in this debate.

1. The governmental motivation is to bringing down to the
 - acceptable numbers of the prison population,
 - budgetary constraints and cost control,
 - rehabilitation of offenders.

The non governmental motivation is humanitarian concern for the beneficiaries of the service. In this case the offenders and the community. This puts the non-governmental organizations on a par with the Government in terms of their main purpose. While there are motivated Civil Servants, bureaucratic procedures and budgetary constraints often make non-

governmental organizations to surpass governments in terms of their concern for the beneficiaries of public service. From this perspective it becomes clear that governments and non-governmental organizations need to work together.

Where as non-governmental organizations can provide specialist or community viewpoint, their involvement in supervision of the programme is advantageous. This is especially true of alternatives to custody, an increasing number of which now take a more holistic view of the offender and attempt to put together a package of measures which address the offending behavior. For example, Prison Fellowship can gets involved in supervising, monitoring those offenders on Community service, visiting them at work sites and their homes encouraging them to comply with the orders and helping them with their moral development. Prison Fellowship can also be involved in helping in identifying possible work sites and assisting in allaying of fears from would be beneficiaries of the programmes.

Benefit from non-governmental organization involvement can be that of testing the ground in anticipation that government will take over the programme as a department after the programme has proved successful workable. There are slim balances of the police or prisons taking a supervising role without serious consideration to budget constraints. Non-government organizations can do more once motivated.

This gives sufficient time for government to avoid embarrassment should the initiative fail as it has happened since the law was put in place in September, 2000.

PERFORMANCE – non-governmental organizations have a reputation of providing a highly professional service of higher quality, more responsive to real needs and cheaper than their government. On the whole, non-governmental organizations are small and personal organizations with the potential to be dynamic, to perform well in terms of effectiveness, quality of service and with considerable motivation to achieve results.

Non – governmental organizations if involved supplement the capacity of the government. From the perspective of government, where statutory provision is not comprehensive, non governmental organizations can assist the government with fulfilling their legal and moral obligations to provide service. There will be those who believe that one of the advantages of non-governmental organizations is that they can through independent funding, operate outside government policy when this is felt to be inadequate or misguided. By operating in this way non-governmental organizations can offer an independent, testing ground providing an opportunity to influence government policy by demonstrating effectiveness.

THE MEDIA AND PUBLIC RELATIONS.

The need for good public relations and handling the media are important topics, which every community service officer will

need to be familiar with. The media plays a crucial role in the administration of justice hence procedure for dealing with the media should be established. The procedures should set out the roles and responsibilities of the National Committee, the National Co-ordinator and the Community service Officer. Community Service personnel should be educated on how to handle publicity so that they could actively and confidently promote Community Service through the media in order to increase awareness of the objectives of this sentencing option amongst public and those in decision making positions. Because the scheme is not always understood by the public and unlike most other similar schemes, Community Service Scheme relies on the public for implementation. It's success or failure will largely depend on how members of the public perceive it. Community Service is a Community -based sanction, in the sense that offenders sentenced to perform community service not only do so in the community but are also supervised by the members of the same community.

For this reason, it becomes even more important that the general public and in particular community leaders and those in decision making positions understand what this new option is all about. This is where the media comes in. Only through the media are we able to reach out to the public and explain what community service is all about. Through the media we can highlight the advantages of the scheme. The need for

positive media coverage cannot be over emphasized. If the scheme, for any reason, were to get bad publicity, then there would be a very real possibility that the scheme could grind to a halt. For this reason, it is necessary that there be clearly laid down procedures for dealing with the press, particularly at the stage when most people are still learning about the programme. There is need to avoid a situation where one community service officer says something to the media which has the potential to wipe out all the good work being done by the others.

The role of the Community Service officers is not to publicly contradict or question government policy on the matter. The role of the officers is to educate the general public on the objectives of the scheme, contact local media in order to provide details about how the scheme is operating locally, take the local media to local institutions to see how the programme is progressing, draft bulletins for the National Communities to be incorporated in any National press releases, attend local meeting and conferences to explain the programme to further public meeting of the scheme. Good public relations will need to be maintained with heads of institutions, Members of the District Committee, Magistrates and Members of the Public.

CHAPTER FOUR

WHY COMMUNITY SERVICE HAS NOT BEEN IMPLEMENTED UNDER THE PRESENT LAW.

In the year 2000 September, 1st the government of Zambia amended the Penal Code Cap 87, the criminal procedure code cap 88 and the prisons Act Cap 97 and enacted Act No 12, 13 and 14 to provide for community service as a form of punishment as a condition of suspension of a sentence of imprisonment requiring an offender to perform unpaid work within the community where the offender resides for the period specified in the order for community service (1). Since Act No 12, 13, and 14 of the year 2000¹ were enacted no community service order has been made by the courts under this law. Act No 14 of 2000 empowers the minister of Home Affairs to make regulations for the process of applying to the court for Community Service by a prisoner serving punishment of imprisonment in respect of a misdemeanor six months after September 2000. A part from this provision there is no other provision to empower any minister to make regulations on how community service in general is going to operate. This lacuna was high lighted in a letter dated 1st August, 2002 that was written by the commissioner of prisons Mr. Jethro Mumbuna to Mr. Dennis Lubasi the Chief Administrator Judiciary on the subject of operation of

¹ Cap. 87 S. 4 & 24 as amended by Act No. 12 of 2000

community service scheme in Zambia in which he stated that arising from observations made at the National co-ordinations conference held in Entebbe in Uganda it was discovered that the community service scheme in Zambia was not functioning effectively because of the following weakness.

- i. There is no Regulations to guide the schemes' operations.
- ii. The existence of three different Legislations embodied in the prisons Act Cap 97, the Penal Code Cap 87 and the criminal procedure code cap 88 creates a problem of smooth implementation of the scheme.
- iii. There is no provision for the existence of the National Committee which is the body that is supposed to administer the execution of the community service scheme in the country and
- iv. That the scheme as of now is not housed.

WHY PRE-SENTENCE REPORTS HAVE NOT BEEN SUBMITTED TO COURTS

In finding out as to why the police service was not recommending offenders for community service orders to courts as provided for under Act No 13 of 2000 amending the Criminal procedure Code Cap 88, an interview was conducted on 9th November, 2004 with the Assistant Secretary (projects) Ministry of Home Affairs Mrs. MONTY M. MULIKITA. Mrs

Mulikita in reply stated that in her ministry both the police and prison service has no enough manpower to deal with pre-sentencing process and supervising of offenders serving community service orders. She further said that this was the reason why her ministry was scouting for funds to hold a workshop with stakeholders before the end of the year 2004 to review Acts No 12, 13 and 14 of 2000 to find out as to who was going to implement or manage the community service considering the low level of staff at prisons department and taking into account one of the aims of community service that states that during the period of serving a community service order an offender should be divorced completely from the prison and it's personnel to avoid the stigma of imprisonment in an offenders mind. She said the workshop should also find out as to what really the problem is with Act No 12, 13 and 14 of 2000² why stakeholders are not complying with the present law and where necessary to make recommendation for amendment of the said Acts.

The Registrar of the High Court in charge of court operations Mr. Mukulwamutiyo in an interview stated that the courts could not make orders of community service provided for in Act No 13 of 2000 because according to Section 326A (2) before making an order for community service, the court shall consider a report submitted by a superior police officer or

² Cap. 88 of the Laws of Zambia as amended by Act No. 13 of 2000.

other person or institution, to which the Police have not been able to do. The Registrar of the High Court Mr. Mukulwamutiyo stated that magistrates have no regulating and no guideline to follow in the making of an order for community service and that placement centers have not been gazetted as appropriate places to send offenders to serve the community service order. He said Act No. 13 of 2000 is silent as to who should make Regulations in a statutory instrument.

Pre -sentencing report have not been submitted to courts because even those who have been authorities to make pre-sentencing reports have no guidelines on how they should make reports on offenders which reports are submitted to court. He also stated that the supervising officers of community service offenders have no guidelines on how they were going to supervise the offenders and how to make reports on the performance of the offenders. Community Service officers play an important role in the placement and supervision of offenders to ensure that community orders imposed by the courts are carried out properly without unauthorized deviations or modifications. The Community Service officers are the representatives of the National Committee on community service at local level, it is through them that the National Committee is viewed by the Community. In that light, therefore, it is important that they

have organized and efficiently run offices that are expressed in the regulations provided for by an Act.

It is in this regard that the law introducing community service scheme should be clearly regulated to avoid some of the pitfalls and problems common to all Jurisdictions and to manage the scheme in a way that is both highly effective in terms of costs to government and benefit to the community.

In order to redress the numerous problems faced by the penal system in this country, it was found appropriate to introduce community service orders as an alternative to imprisonment. However its implementation has been done in a haphazard manner, resulting in its benefits not being seen and appreciated by the community. Community service introduced under Act 12, 13 and 14 of 2000 has not been fully utilized as an alternative to imprisonment. The community service scheme has suffered a lot of setbacks despite having made a good start. This is mainly due to non-existence of a well established and properly defined administrative structures and infrastructure and non-availability of appropriate logistics. This has resulted in a failure to adequately supervise and monitor the project. There has been no training for probation officers and placement officers except the 1997 training for magistrates. This created a gap between the sentencing authorities and other players. The solution to

the above cited problems is only by provision of the regulation and funds for the establishment of the National Secretariat and appointment of National Co-coordinators and Administrative Secretary, setting up of an administrative infrastructure, provision of necessary logistics and conducting of Seminars and Training programmes. The absence of a National co-ordinator who is supposed to supervise the scheme is an impediment to its smooth operation. The non-existence of an administrative infrastructure and necessary logistics renders the work of the scheme difficult. The non-acceptance of the scheme by both the public at large and officials from placement areas will jeopardize its implementation. The scheme needs co-ordination, monitoring and support from the key players and stakeholders. The implementation of the scheme requires proper co-ordination between courts and other stakeholders. In view of the above it is therefore justifiable that Act No. 12, 13 and 14 of 2000 are reviewed, and necessary regulations are made for the successful implementation of the scheme.

CHAPTER 5

GENERAL DISCUSSIONS

Community Service is an option the court may use when it has decided that a person's offending is serious and that she/he is suitable for making reparation by constructive unpaid work in the community. Community Service should be physically and emotionally demanding of the offender in that it is a restriction of liberty, involves self-discipline and a respect for others should engage the offender in tasks or situations that challenge, his/her outlook, experience and ability. Community Service can therefore be a positive way of making an offender make reparation for offences and it can encourage personal growth and self-respect. It shows the offender that the Community is affected by criminality and the community can see that the offender can make a contrastive rather than destructive contribution to the community.

The basic principles of community service, including its purpose, nature, appropriateness and effectiveness detailed

above support, the culture to develop a scheme which will provide the court with a viable option for the treatment of offenders. Internationally, community service has been proven to be an effective, efficient and economic method of dealing with the offender (i) and, in applying it to Zambia Criminal Justice System it is worth remembering that this is not new

- (1) 2002 Uganda National Co-coordinators Conference reports on Uganda, Zimbabwe and Tanzania remembering that this is not new Custody as a reaction to offending was a **phenomena** imposed during the colonial era. Prior to that, Community Service and reparation were employed as the societal response to criminality. Community service therefore reflects traditional justice, far more than incarcerating those who could be rehabilitated. It represents sentencing within a frame work of national interest and cultural integrity.

WHY ZAMBIA NEEDS COMMUNITY SERVICE

Prisons are expensive to maintain. So much public money is spent on feeding thousands of people, house and cloth, and

care for their basic needs. Secondly most of people in prison are not dangerous criminals from whom society expects to be protected. They are often poor people who have committed offences at the lower end of the criminal scale (simple theft, damage to property) and who are not professional criminals. The government incurs additional expense, neither the victim nor society is compensated and prison population grows more congested. The rationale emerges that by placing the offender in an institution where she/he can do some useful work on behalf of the community, a more positive result is obtained. Persons working under community service order are sent to a public institution such as schools, hospital, etc to carryout voluntary work for a number of hours. They carry out much needy work than no one else is employed, so they do not take away jobs Prior to the colonial era the community deals with its offenders within the community therefore, prisons did not exist in Africa.

RECOMMENDATIONS

The success of community service scheme in Zambia lies in the appropriate and adequate provisions enacted to introduce the scheme and in the implementation of the scheme by the stakeholders. By introducing community service scheme through Acts No 12, 13 and 14 the Zambian government is convinced that Zambia needs a more effective and humane system of Penal Sanctions, which would promote most custodial measures and strengthen community involvement in criminal Justice. Such a system would have the further effect of decreasing, the number of prisoners to reduce over crowding and redress the harm done to the victims of the crime by providing the means of rehabilitating offenders in society through useful community work. At present, the tendency to impose imprisonment as a principal penal sanction rather than other forms of punishment appears to stem from the anxiety of the public that holds the view that no justice is done if offenders are not sufficiently secured in custody. Hence, if they are not imprisoned, the public feels deprived

when they return to live within society with the added risk of insecurity. Therefore, there is need to sensitize the public on the advantages of community-based sanctions. This situation has been exacerbated because the probation service does not function fully and needs to be strengthened. The lack of an effective probation service has deprived the courts of information upon which they would safely pass non – custodial sentences and indeed, array for supervision or help with regard to payment of fines and compensation, in addition to mediation and reconciliation. However there are good reasons for advocating the promotion of non–custodial measures, including community service, as penal sanctions. First, non– custodial measures have considerable potential value for the community. Crime and its' effects are a great financial burden to Zambia. The administration of criminal justice is expensive. Many non-custodial measures include community service, cost less to implement than custody. Specifically the cost of enforcement of the sentence may be less than the cost of imprisonment. In addition, indirect financial beneficiaries

may result from a reduction in the social costs of imprisonment and reduction of crime, not to speak of community development and victim redress. This would also be in line with traditional customs and practices of conflict resolution.

Secondly, custodial measures may have negative effects on those subjected to them. Imprisonment cannot be considered an appropriate sanction for a wide variety of offences and many types of offenders, in particular those who are not likely to repeat offence, those convicted of minor crimes and those needing medical, psychiatric and social help. Imprisonment severs community ties and hinders reintegration into society. It reduces the offender's sense of responsibility and their ability to make own decision. Avoiding custodial measures therefore enhances the prospect of better reintegration of offenders into society and better internalization of social values as well as active involvement of the local population in the rehabilitation of offenders. A range of non – custodial measures, including

community service, have the unique advantage of making it possible to exercise control over an offenders behaviour while allowing him or her to involve under natural circumstances. This offers opportunities for the development of the offenders' sense of responsibility, reducing the likelihood of further crime and helping offenders to become responsible citizens who benefit society. The existence of Local Councils in Zambia provides an excellent basis for the introduction of community service.

Positive experience with the introduction of community service have been made in many countries in Africa and all over the world. Exchange of experience and a process of learning from each other are highly desirable and should be encouraged.

In order to implement community service effectively, there is need to provide the law to establish a National Committee comprising of persons from all the stakeholders. The National committee should have full autonomy, serve on the committee on voluntary basis and should be free from

government constraints. Since community service orders are made by the courts, the committee should be judiciary driven and fully trusted by the government. If the committee is chaired by the judge of the High Court, it would be easier for the Judge as a Chairperson to monitor magistrates so that orders are made according to the guidelines or rules made by the Chief Justice. The National Committee should control financials, assets and implementation of the scheme, and the prerogative to issue guidance, and set up administrative control. The Committee should also ensure that all funds entrusted to it are honestly expended on the programme and accounted for. The Committee should further exercise control on employment contracts of staff engaged in the scheme.

As the scheme expands, regional and district committees should be established, national-wide amalgamating government and non – governmental organizations all on voluntary terms with a view to implementing the contract policies. These committees should be chaired by Senior Judges or Magistrates and comprise those representatives

of organizations represented at the National Committee. They should further include local council leaders and other influential persons in the local community who should be co-opted into the scheme. These committees should hold regular meetings and shall be tasked with identifying suitable placement institutions and ensuring the smooth running of the scheme in their areas.

Effective steps, including appropriate training and publicity should be taken to actively promote the community service scheme with the Judiciary countrywide and to ensure the commitment of provincial and District Magistrates.

In order to enhance the prospects of better re-integration of offenders into society and better internalization of social values, the local population, in particular the local councils should be effectively involved in the rehabilitation of offenders through community service and counseling.

In order to sensitize the community and bring positive change of societal attitude towards the advantages of the community service scheme, effective use of the media

should be used in providing adequate publicity at appropriate and supportive times.

Non – governmental organizations (NGO) should be involved in the implementation of the community service scheme at all level. They should be involved in policy decision in an advisory capacity. With a view to ensuring legal basis, the law introducing community service as a penal sanction in Zambia should embrace the above-mentioned recommendation as soon as possible. It is therefore recommended that Act No. 12, 13, 14 of 2000 should be revisited to provide regulations to guide the schemes operations, appoint a body such as National Committee to implement the scheme and provide for an appropriate institution to drive the scheme.

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