

**IMPRISONMENT IN THE 21<sup>ST</sup> CENTURY AS A MEANS OF CRIME-  
CONTROL IN ZAMBIA: IS IT EFFECTIVE?**

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Being a Directed Research essay submitted to the University of Zambia Law Faculty in  
Partial fulfillment of the requirements for the Award of the Bachelor of Laws (LLB)  
Degree.

## DECLARATION

I, CHITALU CHALI, do hereby declare that this Directed Research Essay is my authentic work and to the best of my knowledge, information and belief, no similar piece of work has previously been produced at the University of Zambia or any other Institution for the award of Bachelor of Laws Degree. All other works in this essay have been duly acknowledged. No part of this work may be reproduced or copied in any manner without the prior authorization in writing of the author.



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## **DEDICATION**

This is dedicated to the two most important people in my life, whom I love more than life itself. Thank you for loving me through and through, even when I did not deserve your love. What more can a child ask for?

## ABSTRACT

People are sent to prison as a symbol of the community's disapproval of their conduct, to deter others from crime, to protect the public, as well as to reform the offender. Whereas deterrence seeks to reduce crime rates and recidivism, rehabilitation seeks to help the ex-offender function effectively and productively once he returns to society. These two principles are neither mutually exclusive nor mutually inclusive. If we have accepted that a cardinal purpose of punishment is the reformation of the offender, why then are crime rates still on the high? This paper provides an answer to this question. The high crime rates and levels of recidivism indicate that so far, imprisonment has not been an effective tool of crime control.

Chapter one begins with an introduction to the concept of punishment. The importance of punishment is acknowledged and reference is made to some theories justifying punishment. A general history of the evolution of imprisonment as a form of punishment is given, in view of the fact that imprisonment was initially used merely as a form of detention of those who breached the laws while they awaited the actual punishment. Imprisonment in itself was not a punishment.

Chapter two examines provisions of the Prisons Act and other national statutes, as well as international instruments that confer certain rights on prisoners. From the analysis, the conclusion is drawn that Zambia is in breach of most of her international obligations relating to the treatment of prisoners. Although imprisonment necessarily entails deprivation of certain rights such as liberty, urgent steps need to be taken to avail prisoners of the minimum standards of treatment, financial constraints notwithstanding.

An insight on how prisons currently operate is given in chapter three. An overview of the current state of prisons in terms of population, food, medical care, treatment by officials, education and training, etc reveals that prisons are overcrowded, lacking in basic nutritional, medical, sanitation and rehabilitative facilities. The result is that as things stand, imprisonment is not an effective means of crime-control because most of those who are sent to prison do not reform because they are not offered rehabilitative programs, nor taught skills that can assist them earn a living through lawful and legitimate means (for those who commit crimes to sustain themselves due to the prevailing unfavourable economic conditions), rather than relapsing into a life of crime.

Following the case study in chapter four of how other countries have dealt with the problem of crime, it can be seen that countries such as Sweden and Canada have reduced their use of short prison sentences in preference of non-custodial sentences. Consequently, chapter five recognizes the need for the Zambian penal system to reduce its reliance on imprisonment as it has the tendency to make prisoners more dangerous and anti-social. As a method of crime control, imprisonment is wrought with many challenges and is often ineffective. There is need to improve prison conditions, but more importantly to utilize other non-custodial punishments fines, probation, parole, suspended sentence, community service etc. The penal system must be reformed to make it more conducive for the reformation of the criminal.

## **LIST OF ABBREVIATIONS**

ACHPR:	African Charter on Human and Peoples Rights
ARASA:	AIDS and Rights Alliance for Southern Africa
ART:	Aggression Replacement Training
CAT:	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
LAZ:	Law Association of Zambia
PRISCCA:	Prisons Care and Counseling Association
SIDA:	Swedish International Development Cooperation Agency
UDHR:	Universal Declaration of Human Rights
VCLT:	Vienna Convention on the Law of Treaties

## **TABLE OF STATUTES**

The African Charter on Human and Peoples Rights (ACHPR)

The Constitution of Zambia, Chapter 1 of the laws of Zambia

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The Declaration on the Protection of All Persons from Being Subjected To Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The International Covenant on Civil and Political Rights (ICCPR)

The Juveniles Act, Chapter 53 of the Laws of Zambia

Penal Code, Chapter 87 of the Laws of Zambia

Prisons Act, chapter 97 of the Laws of Zambia

Standard Minimum Rules for the Treatment of Prisoners

United Nations Standard Minimum Rules for the Administration of Juvenile Justice  
("The Beijing Rules")

Universal Declaration of Human Rights (UDHR)

Vienna Convention on the Law of Treaties (VCLT)

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## CHAPTER ONE

# INTRODUCTION TO THE CONCEPTS OF PUNISHMENT AND IMPRISONMENT

### 1.1 Introduction

Every society needs social order, and in achieving this, mechanisms are put in place to encourage approved social behavior and deter behavior seen as bad in the eyes of society.<sup>1</sup> Punishment and sanctions are ways in which society responds to crime and anti-social behavior. Such methods include fines, community service and imprisonment. Offenders are sent to prison as a symbol of the community's disapproval of their conduct and in order that they and others are deterred from crime, to protect the public, as well as to reform them. Whether imprisonment does indeed serve its purposes is a question that this paper seeks to answer.

### 1.2 Statement of the Problem

The importance of punishment cannot be overemphasized. It dissuades people from conduct prohibited by law.<sup>2</sup> The effectiveness of laws depends on the existence of punishment. The attachment of sanctions to orders results in obedience of these orders and laws.<sup>3</sup> The relationship between law and punishment is evident as far back as the 18<sup>th</sup> century when John Austin (1790-1859), a Positivist philosopher, defined law as 'a command of a sovereign backed by sanctions.'<sup>4</sup> According to Austin's theory popularly referred to as 'the command theory of law', a sanction refers to the infliction of physical pain or the deprivation of liberty of the individual who has disobeyed the commands (laws). It is some evil which is imposed in the event of non-compliance with the command.<sup>5</sup>

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<sup>1</sup> C Anyangwe, *An Outline of the Study of Jurisprudence*, Unza Press, Lusaka, 2005. Page 125

<sup>2</sup> J D McClean and J C Wood, *Criminal Justice and Treatment of the Offenders*, Sweet & Maxwell, London, 1969. Pages 80-81

<sup>3</sup> H L A Hart, *Law and Morality*, Oxford Press, London, 1966. Page 20

<sup>4</sup> A M Chinhengo, *Essential Jurisprudence*, Cavendish Publishing Ltd, London, 1995. Page 39

<sup>5</sup> I McLeod, *Legal Theory*, Palgrave Macmillan, New York, 2007. Page 73

If a cardinal purpose of punishment is the reformation of the offender and deterrence of potential offenders, why then is crime rates still on the high despite the existence and imposition of these measures? This paper seeks to provide an answer to this question and determines whether today in the 21<sup>st</sup> Century, imprisonment is still a useful and effective tool to crime control in Zambia. The high crime rates and levels of recidivism indicate that so far, imprisonment has not been an effective tool of crime control.

The use of prisons as a method of crime control has now come under serious attack in countries such as the Canada, UK and Sweden, which were thought to have the best penal systems in the world. This is due to the high maintenance costs, and the high levels of recidivism and the poor results achieved. Prisons are even considered training ground for more sophisticated crimes, and the prison environment itself has a degrading effect on the offenders. The high prison populations make it difficult for any meaningful rehabilitation exercise to function properly. As a nation, Zambia should take positive steps to find alternatives to imprisonment. This paper looked at how the current prison system can be improved, as well as at alternative forms of punishment such as fines, probation, community service, suspended sentence, parole etc. It also examined the need to educate and teach the prisoners trade skills such as carpentry, brick-laying, plumbing, mechanics in order to encourage and assist them to lead useful lives once they return to society, rather than relapsing into a life of crime.

### **1.3 Objectives of the Research**

The ultimate objective of this study was to critically analyze the effectiveness of imprisonment in the 21<sup>st</sup> Century as a means of crime-control in Zambia. The following were the specific objectives of the study;

- i. Consider the role of punishment in the administration of criminal justice by giving an introduction to the concept of punishment and the theories justifying it.
- ii. Give a general history of the evolution of imprisonment as a form of punishment.

- iii. Give an insight on how prisons currently operate (in terms of population, food, medical care, treatment by officials, education and training).
- iv. Examine provisions of the Prisons Act, Chapter 97 of the Laws of Zambia and other international instruments that confer certain rights on prisoners with a view to determine the extent to which the Zambian regime conforms to the international standard.
- v. Analyze how other countries effectively deal with the problem of crime and recidivism. This will be done by carrying out a comparative study of how other countries such as Sweden has dealt with crime by examining their penal systems.

#### **1.4 Specific Research Questions**

- i. What is the role of punishment in the administration of criminal justice?
- ii. What methods must be employed in the penal system to make it achieve the intended purpose, namely deterrence and reformation?
- iii. Is there a need to utilize other forms of punishment, and only resort to imprisonment in the fewest instances involving the severest crimes?
- iv. How have other countries effectively dealt with the problem of crime?
- v. Is imprisonment an effective and relevant tool of crime control in the 21<sup>st</sup> Century in Zambia?

#### **1.5 Research Methodology**

The research was qualitative in nature as the mode of data collection involved both desk research and field investigation. The research mainly consisted of desk work whereby relevant literature on the issue at hand was analyzed. Secondary sources of information included statutes, judicial decisions, textbooks, articles and reports from institutions such as the Human Rights Commission which regularly publish reports detailing the conditions in

Zambian prisons. Other information was sourced from reports compiled by the Prisons Care and Counseling Association (PRISCCA), AIDS and Rights Alliance for Southern Africa (ARASA) and Human Rights Watch which visited six prison facilities between September and October 2009, and the Swedish International Development Cooperation Agency (SIDA).

## **1.6 Concept of Punishment**

Modern civilized societies have laws that govern the conduct of affairs in society. Everyone who breaks the rules of the criminal law without lawful excuse is adjudged guilty and is liable to be punished by imprisonment, fine, suspended sentence, loss of property or community service.<sup>6</sup> This is necessary to maintain law and order in the society.

According to Dias, the principal function of the law is to prescribe how people ought or ought not to behave. Conduct which amounts to breach of a duty is always disapproved and there is in place machinery for dealing with disobedience.<sup>7</sup>

Punishment is a sanction assessed against a person who has violated the law.<sup>8</sup> B. F. Skinner says the most common technique of control in modern life is punishment.<sup>9</sup> Punishment is the infliction of some form of pain or deprivation on the person of another.<sup>10</sup>

Professor Hart defines punishment in terms of the following elements:

- i. It must involve pain or other consequences normally considered unpleasant;
- ii. It must be for an offence against legal (as opposed to moral) rules;
- iii. It must be of an actual or supposed offender for his offence;

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<sup>6</sup> S E Kulusika, Texts, Cases and Materials on Criminal Law in Zambia, Unza Press, Lusaka, 2006. Page 796.

<sup>7</sup> R W M Dias, Jurisprudence, 5<sup>th</sup> Edition, Butterworths, London, 1985. Pages 227 and 248

<sup>8</sup> B A Garner (Ed) Black's Law Dictionary. 8<sup>th</sup> ed. (St. Paul Thompson West Publishing Co.) 2004

<sup>9</sup> B F Skinner, Science and Human Behaviour. 1953 ed. Pages 182-193

<sup>10</sup> M Ndulo, Punishment as a Technique of Control. A paper written for the Administrative Committee on Prison Reforms. Page 1

- iv. It must be intentionally administered by human beings other than the offender;
- v. It must be imposed and administered by a legal system against which the offence is committed.<sup>11</sup>

Pollock argues that a sanction is the appointed consequence of disobedience. He justifies punishment in the following terms:

‘The rationale and justification for punishment lies in the social contract theory. Under this theory, people enter into an agreement with the State so that the State can provide protection . . . Hence, the State has the right to punish any wrong doer.’<sup>12</sup>

In order to be part of society, and to enable it function, man surrendered his rights to society (represented by the state). The social contract therefore, represents the relationship between the individual and society.<sup>13</sup> Through this contract, man yielded to society only the power to preserve order and enforce the law. Under the social contract, individuals give up their autonomy and sovereignty in return for the guarantee of their rights and freedoms, their protection and the proper functioning of society. This necessarily entails that the State has the power to maintain law and order, and punish those that threaten the same.

Packer writes that punishment plays one or both of the two main roles, namely the prevention of undesired conduct, and retribution for perceived wrongdoing.<sup>14</sup>

### **1.7 Forms of Punishment**

The Penal Code<sup>15</sup> confers power on the Courts in the exercise of their criminal jurisdiction. Among the punishments that may be inflicted by a court, the following are some examples:-

- (a) Imprisonment
- (b) Fine
- (c) Forfeiture

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<sup>11</sup> H L A Hart, *Punishment and Responsibility*, Oxford Press, Oxford, 1968. Pages 4-5

<sup>12</sup> J M P Pollock, *Ethics and Crime*, Wadsworth, New York, 2007. Page 289

<sup>13</sup> C Anyangwe, *Introduction to Human Rights and International Humanitarian Law*, UNZA Press, Lusaka, 2004. Page 12

<sup>14</sup> H L Packer, *The Limits of Criminal Sanction*, Stanford University Press, Stanford, 1969. Page 32

<sup>15</sup> Chapter 87 of the Laws of Zambia

- (d) Payment of compensation
- (e) Finding security to keep the peace and be of good behavior,
- (f) Deportation (in the case of aliens)
- (g) Death
- (h) Any other punishment provided by law.<sup>16</sup>

The commitment of a convicted person to prison is the most common type of punishment for adults under the Penal Code. Depending on the nature of the offence, the person sent to prison may be confined for several months or years. Shorter periods of imprisonment are imposed on those who commit minor offences, such as common assault, or first offenders. Longer periods are imposed on repeat or persistent offenders and first offenders who committed serious offences. The rationale for imposing long periods of imprisonment is the need to deter potential offenders, and lock up dangerous persons to prevent them from causing harm to the community.

### **1.8 Justification of Punishment**

Where an act or omission is committed, or an event or state of affairs occurs, which is prohibited by the criminal law of a Country or State and the perpetrator is successfully prosecuted by, or in the name of the State, punishment of the perpetrator is a natural consequence.<sup>17</sup> There is also the view that the proper goal of the criminal justice system is the prevention of anti-social behavior. Punishment generally seeks to control anti-social behavior by imposing punishment on people found guilty of crimes. It is useful to remember that to inflict pain or deprivation on another or subject a person to forced labor is inherently immoral. It must be justified on the ground that it is a lesser evil than the evil it seeks to prevent: crime.<sup>18</sup> Because punishment inflicts harm, it can be justified if some benefit accrues from punishing which outweighs the misery inflicted.

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<sup>16</sup> Section 24, Penal Code, Chapter 87 of the Laws of Zambia

<sup>17</sup> J N Sianyambo, Alternatives to Imprisonment as a Punishment for Less Serious Criminal Offences in Zambia. Obligatory Essay submitted to the School of Law in partial fulfillment of the award of the Bachelor of Laws degree (2007). Page 5

<sup>18</sup> Ndulo, Punishment as a Technique of Control. Page 1

A punishment ought to exhibit a characteristic of possessing the ‘conventional reprobative symbolism.’<sup>19</sup> The general principle underlying the operation of the criminal justice system in all mature legal systems is that it is desirable, and within limits, possible to ensure that those convicted of crimes are punished fairly in accordance with rules explicitly designed to achieve societal goals, such as social control.<sup>20</sup>

Foucault M., writing on discipline and punishment argues that society is built around a model whereby ‘the powers that be’ attempt to regulate our behavior, and place us where we belong in this model.<sup>21</sup> By analogy, the prison system also fits into this model because it can be utilized to mold individuals to fit the individual requirements depicted by society.

When the Court passes an imprisonment sentence or any other punishment, they must clearly state the purpose of the punishment imposed, that is, reformation, rehabilitation, deterrence or restraint. The following theories seek to provide a justification for the imposition of punishment:

### **1.8.1 Retributive Theory**

This theory holds the view that punishment of the morally derelict is its own justification. A man is a responsible moral agent to whom rewards are due when he makes right moral choices and to whom punishment is due when he makes wrong ones. It entails that punishment is the right, natural and logical response to wrongdoing. The primary justification for punishment is always to be found in the fact that an offence has been committed which deserves punishment.<sup>22</sup> It is morally fitting that a person who does wrong should suffer in proportion to his wrongdoing. That a criminal should be punished follows from his guilt, and the severity of the appropriate punishment depends on the depravity of the act.<sup>23</sup>

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<sup>19</sup> J Feinberg and H Cross, *Philosophy of Law*, 3<sup>rd</sup> Ed, Wardsworth, Belmont, 1986. Page 587

<sup>20</sup> W Wilson, *Criminal Law: Doctrine and Theory*, Sweet & Maxwell, London, 2003. Page 47

<sup>21</sup> M Foucault, "Discipline and punishment - The Birth of Prisons", Penguin books, 1991

<sup>22</sup> A C Ewing, *The Morality of Punishment*, Kegan Paul, London, 1929. Page 13

<sup>23</sup> J Rawls, 'Concepts of Rules,' *The Philosophical Review*, 1955. Pages 4-5

## 1.8.2 Prevention/Deterrence Theory

Here, the role of punishment is to prevent the criminal from inflicting harm on members of the public, and deterring others from similar acts. For the period that a prisoner is imprisoned, he is prevented from committing further crime. Deterrence seeks to dissuade the offender from committing crimes in the future and discourage would-be offenders. This theory is based on the fact that when punishment is harsh and severe, criminals and would-be criminals are frightened and therefore desist from committing crime.

The deterrent theories have two notions, the first being the restraint of the person to be punished.<sup>24</sup> This is referred to as specific or individual deterrence. The aim here is for the experience of punishment to be unpleasant so that the offender does not repeat the offence because he will always remember the unpleasantness of the punishment and be deterred from further commission of crime. Imprisonment should be punishment, not only by depriving the individual of his liberty but also by imposing painful conditions under which the prisoner must live within the walls.<sup>25</sup> The second notion of the deterrent theory is called general deterrence, whereby the threat of punishment deters other people from wrongdoing. The infliction of punishment on a person convicted of wrongdoing instills a sense of apprehension that they too may be punished if they commit an offence. This apprehension or fear of punishment deters them from committing crimes.

The Report on the Scottish Prison System by the Scottish Advisory Council on the Treatment of Offenders<sup>26</sup> stated:-

‘In our view, the shame attached to a prison sentence, the loss of freedom, the separation from family and friends, the difficulty of being accepted as a normal member of the community after release constitute a heavy punishment and will always be a deterrent to potential offenders and the ex-offender himself.’

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<sup>24</sup> H L Packer, *The Limits of the Criminal Sanction*. Pages 4-14

<sup>25</sup> G M Sykes, *The Society of Captives*, Princeton University Press, New Jersey, 1958. Page 9

<sup>26</sup> (1949) at page 445

### 1.8.3 Reformation/Rehabilitation Theory

Under this theory, the punishment must strive to improve the character of the offender so that he returns to society a better person after bearing the consequences of his actions. Change of the personality of the offender is one way of reforming him and turning him into a useful member of the society after discharge from prison. The primary concern of the institution of punishment must be the individual's moral and physical well-being, with facilities intended for and adapted to guidance, care, education and training.<sup>27</sup>

Once punishment is administered, the reality of the punishment experienced may lead to change in the prisoner's evaluation of the behavior that led to his confinement. The experience of punishment may act as a 'moral eye-opener', bringing home to the offender the fact that his behavior is considered seriously wrong and thereby reducing the probability that the offence will be repeated.<sup>28</sup> The experience of punishment may make it clear to the offender that the disadvantages that accompany the offence are not favorable.

The theory of reformation or rehabilitation suggests that some forms of threatened consequences afford the opportunity to reorient the values of offenders by discouraging commitment to anti-social values and encouraging loyalty to social norms.<sup>29</sup> The reformatory theory is a realization that even though a prisoner has committed an offence, he is still a member of the society and must be treated as such. The society may have even contributed to the events which led to his offence, i.e. the alarming crime rates is in part a direct consequence of our economic malaise. Mbaio argues that crime is largely due to the unfavorable social and economic conditions prevailing in the country.<sup>30</sup>

Reformation calls for a change in the prisoner. This can be achieved by teaching them trade skills while they are in prison, such as carpentry, plumbing, tailoring, bricklaying, farming etc, so that they can earn a living through honest means upon release. The end sought by

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<sup>27</sup> White v. Reid, 125 Fed. Sup. 647

<sup>28</sup> F E Zimring and G J Hawkins, Deterrence, the Legal Threat in Crime Control, 1976. Page 229

<sup>29</sup> Zimring and Hawkins. Deterrence, the Legal Threat in Crime Control, page 231

<sup>30</sup> M L Mbaio, Legal Aspects of Uncontrolled and unplanned Urban Settlement in Zambia: A Comment on the Housing (Statutory and Improvement Areas) Act, 1974. (Zambia Law Journal, Vol. 15, 1983)

rehabilitation is a stable individual incapable of crime and capable of constructive participation once he returns to the community.

The Gladstone Committee in Britain recommended in its 1985 report that:-

“For the future, reformation and deterrence should be treated as primary and concurrent objects of punishment, and that prison discipline and treatment should be effectively designed to maintain, stimulate or awaken the higher susceptibilities of prisoners and turn them out better men and women, both physically and morally, than when they came in.”

The high crime rates and levels of recidivism is a clear indication that the prison system is not operated properly and efficiently. It is the writer’s view that if reformation is made the focus of imprisonment or any other punishment and pursued concurrently with deterrence, crime rates are likely to lower. The prison system must be restructured to make it more conducive for the reformation of the prisoner. There is also need to explore alternative forms of punishment rather than concentration on imprisonment.

### **1.9 History of the Evolution of Imprisonment as a Form of Punishment**

Prisons have existed in human society for many years. A prison is any institution or device that holds a captive in custody.<sup>31</sup> Before the birth of the prison system, individuals were punished for their wrongs through direct physical pain. As recently as the eighteenth century, criminals had to endure a variety of suffering through many different tortures including the stocks, the whipping post, dunking stools, branding, joughs (iron collar), the brank (metal face masks), mutilation, dismemberment, hanging, drowning, burning and being boiled to death. All of these took place in front of the public eye in an almost theatrical reproduction of the crime. At times, the death of individuals was prolonged for hours or even days on end, depending on the severity of the crimes that had taken place and were intended to produce extreme pain.

Another form of punishment was transportation, whereby criminals convicted of offences were shipped to colonies and protectorates of countries such as Britain.<sup>32</sup> When this

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<sup>31</sup> Prisons: History - Early Jails And Workhouses - Persons, Crime, and Imprisonment  
<http://law.jrank.org/pages/1770/Prisons-History-Early-jails-workhouses.html#ixzz16Dbxsnut> accessed on 23/08/2010

<sup>32</sup> <http://www.howardleague.org/history-of-prison-system/> accessed on 23/08/2010

practice was abolished at the end of the 18<sup>th</sup> Century, alternative forms of punishment had to be found.

The prisons of the middle ages had only one purpose, namely to keep suspects in custody until they could be tried or while awaiting punishment, after which they were either sent to the gallows or set free. In the fourteenth century and 400 years thereafter, the gaols (as jails were traditionally referred to) were not built as such and were not used as a form of punishment in itself. They were simply castle towers and dungeons kept by private persons whose only concern was to keep the inmates safely locked up and make money out of them and their friends and family who wanted to alleviate their suffering.<sup>33</sup>

A “poor-relief system” was established which introduced houses of correction which were used to correct minor malefactors in their habits by laborious discipline. Those sent to these houses of correction mainly included vagrants, petty offenders and the disorderly. The first of these was established at Bridewell in London in 1553.<sup>34</sup>

It was during the 18<sup>th</sup> century that reformists came to the realization that punishment had become problematic in the sense that the more society resorted to violence, the more violent and barbaric society would become (an eye for an eye would ultimately lead to a blind society). It was agreed that another form of punishment was needed for crimes that were not directly connected to the taking of another’s life (which would still be punishable by death, but in a more humane way). Murder was still punishable by execution albeit administered in the most painless manner possible, for instance use of tranquilizers to minimize the pain, or use of such things as lethal injections and electric chairs to ensure that death is instant so as to alleviate the suffering. Among the reformers who called for change in the penal system was Jeremy Bentham. He believed that although a prisoner should suffer for his wrong, his punishment should not be detrimental to his health.<sup>35</sup> A criminal was not to be tortured, but treated with an element of humanity so that he paid for the harm he caused to society by such penalties as forced labor. It was realized that prisons

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<sup>33</sup> C H Rolph, *Common Sense about Crime and Punishment*, Victor Gollancz, London, 1961. Page133

<sup>34</sup> C H Rolph, *Common Sense about Crime and Punishment*. page 134

<sup>35</sup> <http://www.howardleague.org/history-of-prison-system/> accessed on 23/08/2010

ought to be made more orderly, humane, productive and efficient. This is necessary in order to mould the prisoners into better citizen, which is essential since most of them will one day be released.<sup>36</sup> Thus began the prominence of the penitentiary.

The first decades of the nineteenth century saw the rise of the full-blown prison system and along with it, the idea of prison reform. Prisons have evolved from the rowdy and squalid English jails of the 1700s, in which prisoners and visitors ate and drank together, to the sober and stark nineteenth-century penitentiaries, whose inmates were forbidden to speak or even to see one another, and finally to the "big houses" of the current prison system.<sup>37</sup>

In 1870 at Cincinnati in the USA, the first National Prison Congress agreed upon a declaration of principles to the effect that the moral regeneration of prisoners through hope, not fear, should be the primary aim of imprisonment, and all unnecessary pain and humiliation should be abolished. That Congress assumed international importance, calling itself the International Penal and Penitentiary Commission. At its twelfth Congress at The Hague in 1950, the Congress handed over its functions to the United Nations.

With time, prisons took on the role of disciplining as well as training the individual. Through less cruelty and pain, and in general more kindness, it was hoped to rehabilitate prisoners by educating and showing them the error of their ways.

Current day prisons seek to punish the offender, incapacitate him from committing further crime, reform him and deter him as well as other potential offenders from committing crimes in the future. Imprisonment can be seen as the ultimate form of punishment. The duration of sentences is made to fit each particular crime appropriately. If a person breaks the law unintentionally with no guilty mind (*mens rea*), they would get a shorter sentence as compared to a person who intentionally breaks the law. Generally, the more severe the crime, the longer one spends locked away from society. In this way, the punishments are made to not only fit the crime, but also fit the criminal's guilty mind. Each case is treated differently based on all the factors specific to it. For instance, if a person was mentally ill at

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<sup>36</sup> [http://findarticles.com/p/articles/mi\\_m2005/is\\_n3\\_v30/ai\\_19409252/](http://findarticles.com/p/articles/mi_m2005/is_n3_v30/ai_19409252/) accessed on 23/08/2010

<sup>37</sup> N Morris and D J Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998. Page 55

the material time, they will be placed in a psychiatric institution, whereas a crime involving a juvenile entails that the juvenile be sent to a reformatory prison, etc. The reason for this allocation depending on factors of each case is so that the criminal is not only punished, but will at the same time receive special attention suited to him in a hope to reform them, and ultimately persuade him to desist from committing crime in future.

The state's recourse to imprisonment is its conviction that imprisonment has a deterrent effect on the convicted person and other potential offenders. While imprisonment serves the interests of the public by isolating dangerous individuals, it also has its own costs. It is very expensive both materially and psychologically, in addition to the loss of the productive capacity of the prisoners. The other adverse effect of imprisonment is the long-term stigmatization that the prisoner will face for the rest of their life. Even attempts at reintegration in the community may be difficult and the offenders may develop the tendency of relapsing in criminal activity rather than earning a living through honest and legitimate means. This propensity to criminality may explain the rapid increase in the prison population in Zambia.

Punishment is meant to awaken a person's inner susceptibilities so he knows right from wrong. The prison system is supposed to ensure this by taking the offender out of society to stop further problems, and putting him through a redevelopment program with the intention of reintegrating him into the world again at a later stage.

### **1.10 Conclusion**

Despite the best of intentions, the ideals of the eighteenth-century reformers that prisons ought to be made more orderly, humane, productive and efficient in order to mould the prisoners into better citizens are no closer to fulfillment than they were three centuries ago.

Punishment, be it in the form of imprisonment or otherwise, is necessary in any civilized society. There is need to rid society of deviant or dangerous conduct and people. Experience of punishment normally strengthens fear, and this fear deters any future criminal activities on the part of the ex-offender. For others, experience of punishment may make the prisoner callous to the punishment and thus less sensitive to threats. And once a

person has lost a considerable amount of standing in the community, he will have less to fear from a new conviction since his reputation is already tarnished. Punishment may either increase or decrease the anxiety its subjects experience about future punishment. Therefore, punishment ought to be administered very cautiously if it is to be effective and produce meaningful results, namely reforming the individual offender as well as reducing crime rates. There is need for reformation and deterrence to be pursued simultaneously since they are mutually inclusive goals, striving to achieve a common goal namely peace, security and order in society.

The prison population has increased at an alarming rate, begging the question “Is imprisonment an effective means of crime control in Zambia in the 21<sup>st</sup> Century?” The next chapter examines provisions of the Prisons Act and other national and international instruments that confer certain rights on prisoners with a view to determine the extent to which the Zambian regime conforms to the international standard. It also looks at how prisons currently operate in terms of population, food, medical care, treatment by officials, education and training and how all these factors impact on the effectiveness of imprisonment as a method of crime control.

and removal of prisoners. Part X provides for the employment of prisoners either within or outside the precincts of the prison. Prisoners ordinarily receive token wages for work performed in prison. Part XIII provides for the discipline of prisoners, outlining the different offences that a prisoner can be charged with while he is serving his sentence and the punishments that can be imposed on such offending prisoner. There are limitations on the use of corporal punishment, such as the need for certification by a medical officer of the physical fitness of the prisoner to undergo such punishment.<sup>42</sup>

### **2.2.3 Juveniles Act<sup>43</sup>**

It makes provision for the custody and protection of juveniles in need of care, as well as the correction of juvenile delinquents. Instead of being sent to prison, juvenile offenders are either placed on probation, sent to an approved school or a reformatory, ordered to pay a fine, damages, etc.<sup>44</sup> One such school where juveniles are sent is Katombora Reformatory School in Livingstone. Here, they are taught academic work and skills. There is need for improved funding, accommodation, training facilities and training staff.

### **2.2.4 The Zambia Police Act<sup>45</sup>**

The Zambia Police (Amendment) Act No. 14 of 1999 provides for Custody Officers who are in charge of custodial places. The role of the Custody Officer is to ensure that a person in police custody is treated in a decent and humane way, those requiring medical attention have access to medical facilities, custodial places are in clean, hygienic and habitable condition, etc.<sup>46</sup>

## **2.3 Regional and International Instruments that Confer Rights on Prisoners.**

There are various regional and international instruments that expressly or tacitly confer certain rights on prisoners. Some of these include the following:-

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<sup>41</sup> Section 17 (1) of the Prisons Act, chapter 97 of the Laws of Zambia

<sup>42</sup> Sections 99 to 104 of the Prisons Act

<sup>43</sup> Chapter 53 of the Laws of Zambia

<sup>44</sup> Section 73 (1) of the Juveniles Act, Chapter 53 of the Laws of Zambia

<sup>45</sup> Chapter 107 of the Laws of Zambia, as amended by Act No. 14 of 1999

<sup>46</sup> Section 18B of the Zambia Police Act, Chapter 107 of the Laws of Zambia

### **2.3.1 The African Charter on Human and Peoples Rights (ACHPR)**

It was adopted by the Eighteenth Assembly of Heads of State and Government in June 1981 and came into force on 21<sup>st</sup> October, 1986. Zambia acceded to the Charter on 10<sup>th</sup> January, 1984. Article 5 of the Charter states:-

‘Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.’

The Charter also guarantees the right to the best attainable state of physical and mental health, mandating State parties to take necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.<sup>47</sup> The Charter has no derogation clause and the only legitimate reasons for limitations of the rights and freedoms of the African Charter are found in Article 27 (2), namely, that the rights of the Charter ‘...shall be exercised with due regard to the rights of others, collective security, morality and common interest.’<sup>48</sup> This entails that a prisoner is also entitled to the right to health since the ACHPR does not restrict the persons entitled to the right to health.

### **2.3.2 The Universal Declaration of Human Rights (UDHR)<sup>49</sup>**

The UDHR was adopted as a common standard of achievement to promote respect for human rights and freedoms.<sup>50</sup> Although not intended to have any legal force, the principles proclaimed in the UDHR have acquired international customary law status, thus binding on all states.<sup>51</sup>

Article 2 guarantees all the rights and freedoms set forth in the Declaration to all persons without distinction of any kind. Article 5 prohibits torture or cruel, inhuman or degrading treatment or punishment without qualification. Further, Article 7 guarantees equal protection against any discrimination in violation of the Declaration.

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<sup>47</sup> Article 16

<sup>48</sup> *Civil liberties v Nigeria*(2000) AHRLR 186 (ACHPR 1995)

<sup>49</sup> Adopted by General Assembly resolution 217 A (III) of 10 December 1948

<sup>50</sup> UDHR Preamble

<sup>51</sup> N Rodley, *Treatment of Prisoners under International Law*, Clarendon Press, London, 1987. Page 257

### **2.3.3 The International Covenant on Civil and Political Rights (ICCPR)**

Article 7 of the ICCPR prohibits torture or cruel, inhuman or degrading treatment or punishment. Further, Article 10 of the same states that ‘All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.’ It is therefore expected that detention centers are in a condition that does not subject an individual to inhuman conditions. Prisoners are to be treated with humanity and respect for the inherent dignity of the human person. Penal systems must aim to ensure the reformation and social rehabilitation of the prisoners.<sup>52</sup> The ICCPR in Article 26 prohibits any form of discrimination in the enjoyment of the rights contained therein.

### **2.3.4 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>53</sup>**

Article 1(1) of CAT defines *torture* as acts of public officials that intentionally inflict severe physical or mental pain or suffering in order to fulfill a certain purpose, such as the extortion of information or confessions, or the punishment, intimidation or discrimination of a person. Article 4 charges state parties to outlaw torture in their national law. Those involved in the custody, interrogation and treatment of prisoners must be informed of the prohibition against torture.<sup>54</sup>

### **2.3.5 Standard Minimum Rules for the Treatment of Prisoners**

The first United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955 adopted these rules. The Congress aims to strengthen international cooperation against crime. The rules seek to set out minimum standards in the treatment of prisoners and the management of penal institutions. In terms of Rule 8, prisoners are to be categorized and separated on account of their sex, age, criminal record, legal reason for their detention and the necessities of their treatment. This means that men

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<sup>52</sup> Articles 10 (1) and 10 (2)

<sup>53</sup> Adopted by General Assembly resolution 39/46 of 10 December 1984. Zambia acceded to this Convention in 1998

<sup>54</sup> Article 10

should be detained separate from the women, the young prisoners kept separate from the adults, detainees from those already convicted, and persons convicted of civil offences from those guilty of criminal offences.

Rules 9 to 14 set out the provisions relating to accommodation. Where dormitories are used (as is the case in most Zambian prisons), prisoners must be carefully selected as being suitable and compatible with each other in those conditions.<sup>55</sup> Such rooms must meet health requirements in terms of floor space, lighting, heating and ventilation.<sup>56</sup> Sanitary and bathing installations must be adequate, clean and decent.<sup>57</sup> Prisoners must be provided with facilities such as water and toiletries necessary for health and cleanliness.<sup>58</sup> They are also to be provided with an outfit of clothing suitable for the climate and adequate to keep them in good health,<sup>59</sup> as well as a separate bed and beddings.<sup>60</sup>

In terms of food and nutrition, Rule 20 (1) provides that ‘Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.’ Sick prisoners are to be given medical care and treatment by a qualified medical officer. Prisoners are also to be examined by a medical officer with a view to discover any physical or mental illnesses and take necessary measures, which will also determine the physical capacity of every prisoner to work.<sup>61</sup> The medical officer is to inspect the suitability of the premises in terms of ventilation, lighting, heating etc.<sup>62</sup> Rule 31 prohibits the infliction of corporal punishment and all cruel, inhuman or degrading punishments as punishment for disciplinary offences.

The treatment of prisoners must aim to instill the will to lead law-abiding and self-supporting lives after they are released. Means to be employed to this end should include

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<sup>55</sup> Rule 9(2)

<sup>56</sup> Rule 10

<sup>57</sup> Rules 12 and 13

<sup>58</sup> Rules 15 and 16

<sup>59</sup> Rule 17 (1)

<sup>60</sup> Rule 19

<sup>61</sup> Rule 24

<sup>62</sup> Rule 26(2)

education, vocational guidance and training, employment counseling, physical development and strengthening of moral character.<sup>63</sup>

### **2.3.6 Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>64</sup>**

Article 5 provides that the training of law enforcement personnel and others who may be responsible for persons deprived of their liberty should ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. State parties are to review interrogation methods and practices, as well as arrangements for the custody and treatment of prisoners to prevent any case of torture.<sup>65</sup>

### **2.3.7 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)<sup>66</sup>**

The juvenile justice system must aim to promote the well-being of the juvenile, ensuring that any reaction to juvenile offenders is in proportion to the circumstances of both the offender and the offence.<sup>67</sup> The identification of young persons resulting from the publication of information about the case such as names of the young offenders may result in stigmatization. Juvenile offenders are not to be imprisoned, but placed in institutions separate from adults. The training and treatment they are given must aim at providing them with care, protection, education and vocational skills with a view to assisting them to assume socially constructive and productive roles in society.<sup>68</sup>

## **2.4 Prison Conditions**

Prison conditions vary among countries. In some countries, prisoners have very little food to eat, inadequate beddings and poor clothing. In others, the physical discomforts and

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<sup>63</sup> Rules 65 and 66(1)

<sup>64</sup> Adopted by the General Assembly resolution 3452 (XXX) of 9 December, 1975

<sup>65</sup> Article 6

<sup>66</sup> Adopted by General Assembly resolution 40/33 of 29 November 1985

<sup>67</sup> Rule 5.1

<sup>68</sup> Rules 26.1 and 26.3

indignities of imprisonment are reduced to a minimum.<sup>69</sup> The nature and extent of the privileges afforded to prisoners is very limited. Professor Ndulo attributes much of our crime to the inhumanity of our prisons, and our failure to rehabilitate those we send to them.<sup>70</sup>

The conditions of our police and prison cells show that despite the provisions of the law, the operation of the penal system and most custodial places subject prisoners to inhuman and degrading conditions, and deprive them of the rights guaranteed to them. The Data Analysis Report for The Law Association of Zambia (LAZ) Human Rights Committee<sup>71</sup> was an assessment of the general conditions of the prisons. It revealed that the conditions of 'squalor, overcrowded cells, disease, poor diet, lack of legal representation, frequent adjournments and the painfully slow criminal justice system' are among the major complaints among prisoners.<sup>72</sup>

Prisoners generally complain about congestion, disease and poor diet. Despite every prisoner being entitled to food in amounts adequate to sustain an average person, meals often comprise of insufficient and poorly prepared food which they have once a day on average. The Report on Prison and Police Cell Visits revealed that prisoners had a daily ration of *nshima* and beans for their combined lunch and supper and a breakfast of plain rice.<sup>73</sup> The most common illnesses reported include malaria, pneumonia (due to lack of proper heating and warm clothes during cold weather), swelling of limbs (attributed to the inadequate sleeping spaces), diarrhea, dysentery, T.B, asthma, sexually transmitted diseases (STD's) especially HIV/AIDS and urinary tract infections. Sick prisoners are allowed access to treatment but it is usually after long hours before they can reach the hospital in cases where the medical officer recommends that the illness may not be adequately treated at the prison clinic. Prisoners have to walk long distances to get to the hospital as transport is not always readily available at the prison to transport prisoners.

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<sup>69</sup> Ndulo, Punishment as a Technique of Control. Page 2

<sup>70</sup> Ndulo, Punishment as a Technique of Control. Page 8

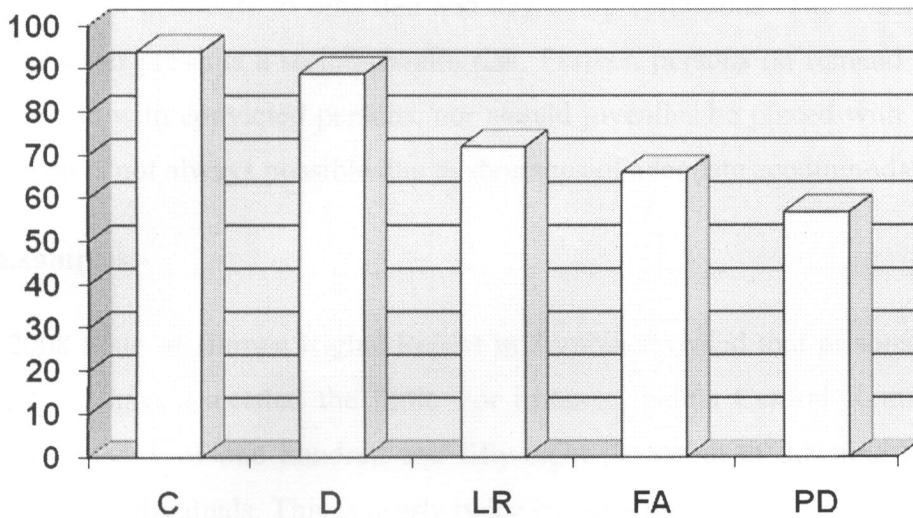
<sup>71</sup> A Chanda, An Assessment Of The General Conditions At The Lusaka Central And Kamwala Remand Prisons (December 2005)

<sup>72</sup> At page 3

<sup>73</sup> Human Rights Commission, Report on Prison and Police Cell Visits, Lusaka Province. June 2004. Page 3

The following chart outlines the major complaints amongst prisoners:-

**Chart 1: Prominence of Major Complaints**



Source: LAZ Human Rights Committee, Data Analysis Report, 2005

The above graphic expression reads as follows: C-Congestion ninety-four percent, D-Disease eighty-eight percent, LR-lack of Legal Representation seventy-two percent, FA-Frequent Adjournments sixty-six percent, and PD-Poor Diet fifty-six percent.

The widespread disease, poor diet, and congestion degrade Zambian prisons to levels far short of the required international standards. The deplorable prison conditions manifest prominently in congestion. This fuels air and water-borne diseases and those caused by contact such as diarrhea and scabies. At Lusaka Central Prison, as many as 100 prisoners are crammed up in a cell intended for only 15 inmates. As a result, they suffer long, painful and sleepless nights because they have little or no space to lie down properly. The Post newspaper<sup>74</sup> of Tuesday November 10, 2009 reported that central province prisons have

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<sup>74</sup> 10 November 2009

3,394 inmates. Of this number, Mukobeko Prison had 1,714, Mpima State Prison had 235, Kabwe Medium Security had 672, while Mumbwa had 332.<sup>75</sup>

The succeeding paragraphs show that despite the provisions of the law, most custodial places subject prisoners to inhuman and degrading conditions. The absence of toilets and running water presents a serious health risk. Further, persons on remand are not supposed to be mixed with convicted persons, nor should juveniles be placed with adults. However, separation is not always possible due to shortages of adequate accommodation.

## **2.5 Examples:-**

The 2008 State of Human Rights Report in Zambia revealed that prisons are either at full capacity or have exceeded the limit. For instance, Ndola Central Remand Prison has a holding capacity of one hundred and fifty-eight (158) but at the time of the report was holding 284 individuals. This is nearly twice its capacity.

In Chipata, individuals on remand are held together with convicted prisoners in Chipata Central Prison because there is no separate remand prison or a separate section for remandees within the prison. The prison had a holding capacity of 300 but was holding 612 (number inclusive of both remandees and those serving custodial sentences).<sup>76</sup>

Some prisoners allege that prison authorities turn a blind eye to assault or rape of prisoners, failing to take sufficient steps to protect prisoners, or even allegedly arranging for prisoners to be assaulted or raped by other inmates as a form of punishment.<sup>77</sup> Others complain about the failure of prison authorities to provide sufficient treatment for serious medical conditions, or properly feeding and clothing the prisoner.

The constant use of imprisonment as a solution to social disorder has led to a number of problems, such as overcrowding which compromises the health and safety of the prisoners.

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<sup>75</sup> Serenje had 109, Mkushi had 173 and Kalonga had 63 inmates. Kabwe female Prison had 69

<sup>76</sup> Constitutionalism & Human Rights: Perspectives on the Judiciary and the Police in Human Rights Protection, Individual Rights & Democratic Governance in Zambia. State of Human Rights Report in Zambia. 2008. Page 54

<sup>77</sup> <http://www.answers.com/prisons> accessed on 27/08/2010

The conditions inside prisons often contribute to the creation of a culture of violence that spills out beyond the prison walls. As a result, prisons are considered a training ground for criminals. Violence, guard brutality, poor medical care, unbalanced and irregular meals, and intolerable living conditions are common features of prisons.

## 2.6 Conclusion

Zambia has acceded to a number of international instruments that guarantee certain rights to prisoners and minimum standards of treatment. The preceding chapter has shown that in spite of the numerous statutes and instruments guaranteeing rights and minimum standards of treatment to prisoners, Zambia is still far from implementing most of the provisions. By international law standards, Zambia is in breach of its international obligations to respect and ensure to its prisoners the rights recognized under international instruments. By signing a treaty or ratifying it, a country assumes an obligation to amend its national laws so as to make them conform to the provisions of the particular treaty signed.<sup>78</sup> Even if Zambia has merely signed and not domesticated these instruments, she is still obligated to respect them, by virtue of Article 18 of the Vienna Convention on the Law of Treaties<sup>79</sup> which provides that:-

‘A state is obliged to refrain from acts which would defeat the object and purpose of a treaty when... it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty....’

The next chapter analyzes statistics of prison populations as well as the role, if any, that the law plays in achieving the purpose of punishment, namely deterrence and rehabilitation. It will analyze the role that Prison authorities play in achieving the purposes of punishment.

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<sup>78</sup> C Anyangwe, Introduction to Human Rights and International Humanitarian Law. Page 207

<sup>79</sup> The Vienna Convention on the Law of Treaties (VCLT) is a treaty concerning the customary international law on treaties between states. It was adopted on 22 May 1969 and opened for signature on 23 May 1969. The Convention entered into force on 27 January 1980. Most nations, whether they are party to it or not, recognize it as the preeminent "Treaty of Treaties"; it is widely recognized as the authoritative guide vis-à-vis the formation and effects of treaties.

## CHAPTER THREE

### THE EFFECTIVENESS OF IMPRISONMENT

#### 3.1 Introduction

Zambia has a total of 86 prisons. Of these, 53 are standard prisons while 33 are open air prisons. One is dedicated exclusively to juveniles (Katombora Reformatory School in Livingstone) and another exclusively to women (Kabwe Female Prison).<sup>80</sup> In determining the effectiveness of imprisonment as a method of crime control in Zambia in the 21<sup>st</sup> Century, this chapter outlines the general overview of the current state of prisons. It also examines statistics of prison populations and the role played by the law as well as prison authorities in achieving the objectives of imprisonment. When all these factors have been analyzed, the conclusion drawn is that in fact imprisonment has not been an effective means of crime control in Zambia in the 21<sup>st</sup> Century as it does not lead to the rehabilitation of prisoners and deterrence of crime.

#### 3.2 A General Overview of the Current State of Prisons

The general state of prison cells and dormitories falls below international standards. The cells are “filthy, congested and unfit for human habitation.”<sup>81</sup> Prisoners do not have enough space to sleep comfortably and often spend the nights in sitting positions. Jones Kababa, the Officer-in-Charge at Lusaka Central Prison confirmed that because of the congestion, prisoners cannot all sleep at once and instead they take turns in sleeping.<sup>82</sup> Classification of prisoners is often impossible due to the problem of accommodation. This results in the first-time offenders mixing with the hardcore ones from whom they may learn more bad habits. This hinders the process of rehabilitation. Furthermore, the congestion results in the easy spread of air-borne and water-borne diseases such as tuberculosis (TB) and scabies.

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<sup>80</sup> PRISCCA, ARASA and Human Rights Watch, “Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons.” 2010. Page 15

<sup>81</sup> Human Rights Commission. Report on Prisons and Police Cells Visits. Lusaka Province. 2004. Page 2

<sup>82</sup> Interview: Jones Kababa, Officer-in-Charge at Lusaka central Prison, 03/10/09 PRISCCA, by ARASA and Human Rights Watch

The food given to prisoners is inadequate both in quality and quantity. However, Mwembeshi Open Air Prison proved to be an exception. Here, the food supply is generally satisfactory with prisoners receiving three meals in a day.<sup>83</sup> Similarly, Mkushi State Prison was reported to having had adequate food stocks.<sup>84</sup>

### **3.3 An Analysis of Prison Population in Terms of Capacity Levels**

At independence, prisons nationwide were meant to accommodate a total of 5,500 prisoners. The number of prisoners increased from 3,000 in 1964 to 14,427 in 2005.<sup>85</sup> In 2009, the country's prisons housed 15,300 prisoners.<sup>86</sup> Zambian prisons are among the most overcrowded prisons in the world, and were at over two hundred and seventy-five percent of capacity by 2009.<sup>87</sup> The Zambian Government has itself admitted that Zambian prisons have for a long time experienced numerous problems including congestion and general lack of rehabilitation facilities, and that existing prison population levels cannot be sustained by the current prison infrastructure.<sup>88</sup>

International monitors have also criticized the high levels of overcrowding in Zambian prisons. For instance, in 2007 the United Nations Human Rights Committee expressed concern at the high levels of congestion and poor conditions in places of detention and called upon the Zambian government to develop alternatives to imprisonment. The Committee further recommended that:-

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<sup>83</sup> Human Rights Commission. Report on Prisons and Police Cells Visits. Lusaka Province. Page 9

<sup>84</sup> Human Rights Commission. Report on Prisons and Police Cells Visits. Central Province. 2005. Page 14

<sup>85</sup> 8,568 convicted prisoners, 4,938 remand prisoners, 273 condemned prisoners, 25 mentally sick, 294 prohibited immigrants, 79 convicted juveniles, and 230 remand juveniles. Human Rights Commission. Report on Prisons and Police Cells Visits. Central Province. Page iii

<sup>86</sup> PRISCCA, ARASA and Human Rights Watch, "Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons." 2010. Page 4

<sup>87</sup> PRISCCA, ARASA and Human Rights Watch, "Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons." Page 28

<sup>88</sup> Government of Zambia, "National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: Zambia," U.N. Doc. A/HRC/WG.6/2/ZMB/1 (2008), Para. 61

'To the extent that the State party is unable to meet the needs of detainees, it should immediately take action to reduce the prison population.'<sup>89</sup>

Most of the prisons in Zambia were built in the colonial days and are now dilapidated structures in need of major refurbishment or replacement. During its tour of prisons and police cells, the Human Rights Commission found that although the prison population has grown immensely, this growth has not been met with an extension of the physical structures and capacity of the prisons to accommodate the increased numbers.<sup>90</sup>

The Prisons Care and Counseling Association (PRISCCA), AIDS and Rights Alliance for Southern Africa (ARASA) and Human Rights Watch visited six prison facilities between September and October 2009. Their findings indicate that prisons are well over their capacity. The following table shows the basic statistics for prisons visited by PRISCCA, ARASA and the Human Rights Watch in terms of prisoner population:-

**Table 1: Prison Population of Prisons visited**

	<b>Lusaka Central Prison</b>	<b>Mukobeko Maximum Security Prison</b>	<b>Kamfinsa State Prison</b>	<b>Mumbwa Prison</b>	<b>Mwembeshi Open Air Prison</b>	<b>Choma State Prison</b>	<b>Overall (among six prisons)</b>
<b>Prisoner Population</b>	1145	1731	1494	354	342	251	5317
<b>Capacity</b>	200	400	1000	150	55	120	1925

Source: ARASA, PRISCCA and Human Rights Watch Report, 2010

<sup>89</sup> UN Human Rights Committee, "Consideration of Reports Submitted by State parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Zambia," U.N. Doc. CCPR/C/ZMB/CP/3 (2007), Page 6-7

<sup>90</sup> Human Rights Commission. Report on Prisons and Police Cells Visits. Central Province. Page iii

Apart from the prisons represented in the table above, the following are the findings regarding some of the prisons that were visited by the Human Rights Commission:-

**3.3.1 Kamwala Remand Prison** was constructed in 1958 with a holding capacity of 200. By 2004, it was holding 814 prisoners.<sup>91</sup> It was reported that cells intended for 10 prisoners held 90 prisoners, whereas cells meant for 70 prisoners housed 300 or more prisoners.<sup>92</sup>

**3.3.2 Kalonga State Prison** has a holding capacity of 50 but was holding 119 prisoners in 2005. The prison aims to prepare prisoners about to be released by teaching them skills such as crop farming, chicken rearing and cattle keeping.<sup>93</sup>

**3.3.3 At Mukobeko Maximum Security Prison**, cells for prisoners condemned to death hold about 6 prisoners instead of one prisoner per cell as prescribed by Section 120 of the Prisons Act.<sup>94</sup> Rehabilitation and training activities such as carpentry and joinery, shoe repairing and tailoring have been abandoned due to lack of equipment and funds.<sup>95</sup>

The following chart illustrates the characteristics of the prison population, i.e. the legal reason for their detention as was found by the Data Analysis Report for The Law Association of Zambia (LAZ) Human Rights Committee<sup>96</sup>:-

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<sup>91</sup> 666 Remandees, 58 convicts, 35 juveniles, 55 prohibited immigrants.

<sup>92</sup> Human Rights Commission. Report on Prisons and Police Cells Visits. Lusaka Province. Pages 4-5

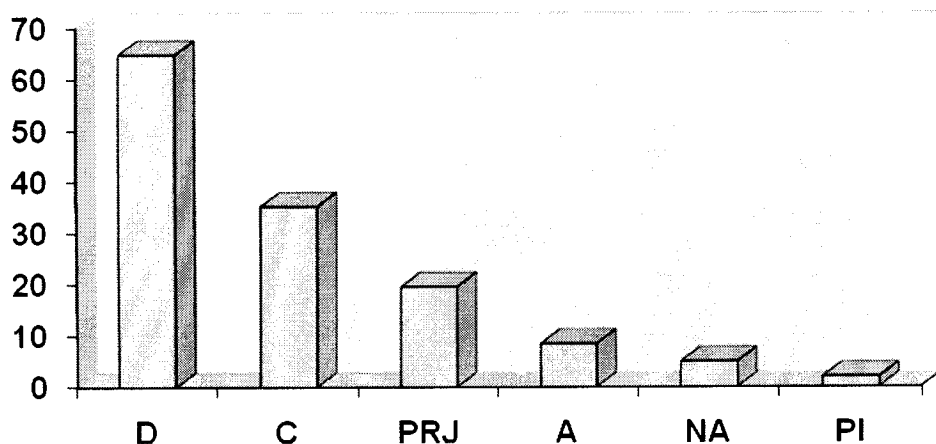
<sup>93</sup> Human Rights Commission. Report on Prisons and Police Cells Visits. Central Province. Page 5

<sup>94</sup> Chapter 97 of the Laws of Zambia

<sup>95</sup> Human Rights Commission. Report on Prisons and Police Cells Visits. Central Province. Pages 6-8

<sup>96</sup> A Chanda, An Assessment of the General Conditions at the Lusaka Central and Kamwala Remand Prisons.

**chart 2: Characteristics of Prison Population**



Source: LAZ Human Rights Committee, Data Analysis Report, 2005

The graphic illustration above shows percentages as follows: D-Detainees sixty-four percent, C-Convicts thirty-five percent, PRJ-Pending Ruling or Judgment nineteen percent, A-Appeal eight percent, NA-not appeared in Court five percent and PI-Prohibited Immigrants two percent.

### **3.4 The Role Played by the Law in Achieving the Purposes of Punishment**

According to international law, the penal system must aim to reform and rehabilitate prisoners.<sup>97</sup> The Standard Minimum Rules for the Treatment of Prisoners provide that the treatment of prisoners must aim to instill the will to lead law-abiding and self-supporting lives after they are released. Means to be employed to this end should include education, vocational guidance and training, employment counseling, physical development and strengthening of moral character.<sup>98</sup> Educational, recreational and cultural facilities must be provided for the benefit of the mental and physical health of the prisoners.<sup>99</sup>

<sup>97</sup> ICCPR, art.10; UN Human Rights Committee, General Comment 21, Para. 10

<sup>98</sup> Rules 65 and 66(1)

<sup>99</sup> Rules 77 and 78

The Zambian government has committed itself to uphold the rights of prisoners and take measures necessary to ensure their rehabilitation through its assumption of regional and international obligations. As a state party to numerous regional and international instruments, Zambia has an obligation to ensure that its criminal justice system and prison standards comply with regional and international standards.

The National Parole Board which is provided for under section 113A of the Prisons Act<sup>100</sup> is empowered to coordinate activities related to, and recommends the release of prisoners on parole.<sup>101</sup> Parole is the conditional release of a convicted offender from a penal or correctional institution, under the continued custody of the State, to serve the convicted offender's remainder of the sentence in the community under supervision.<sup>102</sup>

Section 117 (1) of the Prisons Act<sup>103</sup> empowers the Commissioner of Prisons to make a "Compulsory After Care Order", providing for the compulsory care of the prisoner for a period not exceeding one year after his discharge from prison.

It is clear that the law through national legislation as well as international instruments makes adequate provision for the rehabilitation of prisoners. But in reality, very few rehabilitative programs are offered at prisons or trade skills taught to prisoners. Financial constraints notwithstanding, greater priority is needed for prison funding in order to improve the general prison conditions and be able to offer rehabilitative facilities and programs to prisoners.

### **3.5 Role Played by Prison Authorities in Helping to Achieve the Purposes of Punishment**

The role of the prison is, among other things, to provide correctional services to prisoners. Article 10 (3) of the International Covenant on Civil and Political Rights (ICCPR) provides that 'The penitentiary system shall comprise treatment of prisoners, the essential aim of

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<sup>100</sup> Amendment Act No. 16 of 2004

<sup>101</sup> Section 113B (a)

<sup>102</sup> Section 2

<sup>103</sup> Chapter 97 of the Laws of Zambia

which shall be their reformation and social rehabilitation...’ International standards encourage prison authorities to take steps to reintegrate the prisoner into society prior to his release. Prisoners must be taught life skills that will enable them earn a living through lawful and legitimate means once they are released. Otherwise they are likely to revert to their old criminal ways.

Unfortunately, Zambian prisons make little, if any attempt at reintegrating prisoners into society. There are no programs for pre-release or re-entry for prisoners. Once prisoners are released, they have no means of starting a new life. Life as they know it suddenly changes. They face a lot of stigma from their communities. One may be safe to attribute the rate of recidivism to these factors.

Prison conditions should not be aimed at deepening criminality but should be aimed at instilling a sense of responsibility in the minds of the prisoners. Among Sir Alexander Paterson’s famous aphorisms, none is more widely quoted than his insistence that men do not go to prison *for* punishment but *as* a punishment.<sup>104</sup>

The Report on the Scottish Prison System by the Scottish Advisory Council on the Treatment of Offenders<sup>105</sup> stated that:

‘The sentence and all it implies is the punishment: the object of prison treatment should not be to increase the punishment but to reform the prisoner.’

For some, experience of punishment may deter any future criminal activities on the part of the ex-offender. For others, it may make them callous to the punishment and thus less fearful of future punishment. Therefore, punishment ought to be administered very cautiously if it is to be effective, otherwise imprisonment may be self-defeating. Punishment must strive to improve the character of the prisoner so that he returns to society a better person after discharge from prison.

Mbao attributed much of our crime to the unfavorable social and economic conditions prevailing in the country.<sup>106</sup> Many prisoners commit offences because they have no other

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<sup>104</sup> Rolph, *Common Sense about Crime and Punishment*. Page 132

<sup>105</sup> (1949) at page 445

ways of earning a living. If they are not equipped with skills to help them earn a living through lawful and legitimate means, they are likely to revert to criminal activities. The prison system must be restructured to make it more conducive for the rehabilitation of prisoners. This can be achieved by teaching them trade skills, such as carpentry, plumbing, tailoring, bricklaying, farming etc, so that they can earn a living through honest means upon release. Professor Ndulo argues that when this is done, that section of the population that commits crime simply because no honest alternative means of earning a living is available to them will be cut out.<sup>107</sup> Unfortunately, most Zambian prisons lack workshop tools and farming equipment to help in teaching prisoners skills such as farming, plumbing, carpentry, tailoring etc. Prisoners participating in academic and literacy classes are unable to access up-to-date and prescribed books from the prison libraries. In terms of rehabilitation facilities, Lusaka Central Prison (Chimbokaila) offers literacy and academic classes. The workshop is also fully functional, helping the prisoners to acquire trade skills such as upholstery. Similarly, Mwembeshi Open Air Prison is engaged in mechanized agricultural production and these facilities offer the prisoners an opportunity to acquire farming skills which they can utilize upon release.<sup>108</sup>

The quality of relationships between prisoners and prison officials is also important in achieving the purposes of punishment. The 1964 Prison Report observed that the prison staff are the chief agents in the rehabilitation of prisoners.<sup>109</sup> Therefore, they should be properly trained so they have the proper standards of discipline, knowledge and efficiency. These factors ultimately play an important role in the effectiveness of the imprisonment. Prison personnel must be subjected to periodic specialized training with an emphasis on human rights or on the prohibition regarding the use of force and physical restraint.

Despite the numerous provisions of the law prohibiting torture and other forms of cruel, inhuman and degrading treatment or punishment, cases of the same are still wide-spread. The UN Human Rights Committee has admonished Zambia for reports of torture and ill-

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<sup>106</sup> M L Mbao, Legal Aspects of Uncontrolled and unplanned Urban Settlement in Zambia. (Zambia Law Journal, Vol. 15, 1983)

<sup>107</sup> Ndulo, Punishment as a Technique of Control. Page 5

<sup>108</sup> Human Rights Commission. Report on Prisons and Police Cells Visits. Lusaka Province. Pages 7-9

<sup>109</sup> At page 4

treatment of prisoners.<sup>110</sup> Corporal punishment, dark cells and other cruel, unusual and degrading punishment are prohibited but are practiced in certain cases. The Zambia Prisons Service should reform disciplinary systems to discontinue abusive practices.

### 3.6 Conclusion

The preceding chapter has shown that the incarceration of detainees is a major contributing factor to the high levels of congestion. Overall, 35% of the Zambian prison population is composed of remandees.<sup>111</sup> These detainees are held for long periods of time before they appear before Court and their matters finally disposed of. Some are held for as long as four years.<sup>112</sup> These large numbers make it impossible for any meaningful rehabilitative program to be carried out to help the prisoners. Given the inadequate prison conditions, moves should be made to avoid pre-trial detention by increasing the use of bail. Section 24 of the Penal Code<sup>113</sup> provides different forms of punishment, imprisonment being only one and it is the author's submission that moves should be made to utilize other forms of punishment stipulated in the Penal Code. Frederick Chilukutu, Deputy Commissioner of Prisons confirmed that although the law has provided for the parole system, it has been under-utilized until 2009.<sup>114</sup>

The preceding chapter has also revealed that current prison conditions defeat the purposes of rehabilitation. The high levels of congestion and inadequate funding make it impossible for any meaningful rehabilitative programs to be carried on. The next chapter looks at how other countries have dealt with the problem of crime by examining their penal systems in order that the Zambian system can draw some lessons from them.

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<sup>110</sup> UN Human Rights Committee, "Concluding Observations of the Human Rights Committee: Zambia," U.N.Doc.CCPR/C/79/Add.62(1996), <http://www.unhrc.org/refworld/type,CONCOBSERVATIONS,,ZMB,zae6bo324,o.html>(accessed March 3, 2010), para.12

<sup>111</sup> PRISCCA, ARASA and Human Rights Watch, "Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons." Page 7

<sup>112</sup> Interview: Rodgers, 42, Lusaka central Prison, by PRISCCA, ARASA and Human Rights Watch. 03/10/09

<sup>113</sup> Chapter 87 of the Laws of Zambia

<sup>114</sup> Interview: Frederick Chilukutu, Deputy Commissioner for Prisons, by PRISCCA, ARASA and Human Rights Watch, 12/10/09

## CHAPTER FOUR

### A CASE STUDY OF HOW OTHER COUNTRIES HAVE DEALT WITH THE PROBLEM OF CRIME

#### 4.1 Introduction

The problem of crime is common all over the world and is not peculiar to Zambia alone. Countries the world over are equally affected and have all developed criminal justice systems that aim at ensuring law and order, and punishing those that violate laws. Different societies respond to crime in different ways. For instance, a person who commits a wrong under traditional society may be expelled from the community. On the other hand, punishments common in Islamic states for wrong-doing include whipping, dismemberment and stoning to death. The aim of this chapter is to examine how some countries credited for having among the best penal systems have dealt with the problem of crime, namely Sweden and Canada. This will be followed by a look at some of the lessons that Zambia can draw to make the national penal system more effective in achieving the purposes of punishment.

#### 4.2 Sweden

In Sweden, the overarching goal for the criminal justice system is to reduce crime and increase the security of the people.<sup>115</sup> They aim to encourage offenders to live better lives after serving their sentences.<sup>116</sup> The development of Swedish penal law has over the years aimed at reducing the use of shorter prison sentences by utilizing alternative forms of punishment that do not entail the deprivation of a person's liberty. The Penal Code prescribes that in all cases, the Court must prefer to impose other sanctions in lieu of a prison term.<sup>117</sup> As a result, probation, community service, contract treatment, suspended sentence and fines are preferred to imprisonment. In 2007, about 125,500 people were found guilty of crimes. The sanctions imposed were as follows: 65,100 fines; 15,000 prison sentences; 1,100 contract treatment; 10,500 probation orders; 12,000 penal warnings

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<sup>115</sup> <http://www.kriminalvarden.se/sv/English/> accessed on 26/12/2010

<sup>116</sup> <http://www.kriminalvarden.se/sv/English/Prison+ProbationService/> accessed on 26/12/2010

<sup>117</sup> P. Lindstrom and E. Leijonram, The Swedish Prison System. Ministry of Justice. Page 559

(suspended sentence); and about 300 committals to psychiatric care.<sup>118</sup> The sentences listed in the penal code include the following<sup>119</sup>:-

#### 4.2.1 Prison

The *Kriminalvården* or Swedish Prison and Probation Service is tasked with incarcerating suspects during pre-trial and trial, and convicts after sentencing. Sweden prides itself in treating prisoners humanely and running a prison system that values rehabilitation over punishment. Prisons are modern and humane institutions, able to facilitate treatment programmes. Prisoners participate in different programs such as vocational training and can spend time outside the prison for reasons such as studies. Prisoners are allowed to receive visitors and there are special rooms where families can spend time together.<sup>120</sup> Prisoners can request off-campus leaves accompanied by staff members.<sup>121</sup>

The Prison Treatment Act of 1974 is based on four principles which seek to promote the inmates adjustment to the community and counteract the detrimental effects of imprisonment, namely:-

1. Imprisonment as a last resort, i.e. the usual punishment should be a fine or community service since imprisonment has detrimental effects;
2. Normalization, i.e. the same rules concerning medical care and other forms of public service should apply to prisoners just as they apply to ordinary citizens;
3. Vicinity, i.e. the prisoner should be placed in a prison as close to his home town as possible; and
4. Co-operation, i.e. all aspects of the correctional system should work closely together.<sup>122</sup>

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<sup>118</sup> Crime and Criminal Justice Statistics 2007 and Correctional Statistics

<sup>119</sup> <http://www.kriminalvarden.se/sv/English/Crime+Punishment/> accessed on 26/12/2010

<sup>120</sup> <http://www.kriminalvarden.se/sv/English/a+day+in+prison/> accessed on 26/12/2010

<sup>121</sup> [http://fondationinternationalepenaleetpenitentiaire.org/Site/documents/Stavern/29\\_Stavern\\_Report%20Sweden.pdf](http://fondationinternationalepenaleetpenitentiaire.org/Site/documents/Stavern/29_Stavern_Report%20Sweden.pdf) accessed on 26/12/2010

<sup>122</sup> Lindstrom and Leijonram. The Swedish Prison System. Page 564

#### **4.2.2 Conditional release**

A prisoner serving a fixed-term sentence may be conditionally released when two-thirds of the sentence has been served. Those released are subject to a probation period corresponding to the remaining term of their sentence.<sup>123</sup>

#### **Non-custodial care**

A basic concept in the Swedish penal system is to avoid imprisonment. This is why there are more people serving non-custodial sentences than in prison. Those serving non-custodial sentences number about 14,000 compared with just over 5,000 prison inmates.<sup>124</sup>

#### **4.2.3 Probation**

Probation is the most common non-custodial sanction whereby the convicted person is placed under supervision, normally for one year. There is a trial period during which serious breaches of probation rules and regulations can lead to the sentence being served in prison instead. Probation can also be combined with a shorter prison sentence, community service or a fine. A person sentenced to probation or one who has been released from prison on probation is assigned a supervising probation officer with whom the prisoner must meet regularly.<sup>125</sup>

#### **4.2.4 Contract treatment**

Where the commission of a crime can be linked to substance abuse (alcohol or narcotics), the convicted person may sign a "contract" with the court to undergo a treatment programme instead of serving their sentence in prison.<sup>126</sup>

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<sup>123</sup> <http://www.kriminalvarden.se/sv/English/Sanctions/Conditional+Release> accessed on 26/12/2010

<sup>124</sup> <http://www.kriminalvarden.se/sv/English/Non-custodial-care-/> accessed on 26/12/2010

<sup>125</sup> <http://www.kriminalvarden.se/sv/English/Non-custodial-care/probation/> accessed on 26/12/2010

<sup>126</sup> <http://www.kriminalvarden.se/sv/English/Non-custodial-care/contract-treatment/> accessed on 26/12/2010

#### **4.2.5 Community service**

This entails that a person is sentenced to probation instead of prison and also performs unpaid work. The duration is dependant on the nature of the crime. The work can include cleaning public areas.<sup>127</sup>

#### **4.2.6 Intensive supervision with electronic monitoring**

Persons sentenced to a maximum of six months can apply to serve their sentence at home instead of in prison. The convicted person may only be outside their residence at certain times and for specific purposes. Compliance checks are made with the aid of an electronic monitor worn around the prisoner's ankle. The convicted person is monitored 24 hours a day. In 2006, 3,500 individuals served their sentence through electronic monitoring.<sup>128</sup>

#### **4.2.7 Day-Fine System**

Offenders may be required to pay a certain amount of money for a specific period of time. In deciding the number of day-fines, the Court considers the nature of the offence. The amount of the fine is correlated with the general financial status of the offender. The Court determines what amount per day the fined person can raise without financially crippling him. These day-fines can be paid in monthly installments, usually within a one-year period.<sup>129</sup>

#### **4.2.8 Youth and crime**

The Swedish Welfare Service is responsible for dealing with juvenile offenders. Juveniles below the age of 15 years who have committed serious crimes can be sentenced to detention at special youth detention centres instead of prison. The aim is to reduce the

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<sup>127</sup> <http://www.kriminalvarden.se/sv/English/Non-custodial-care/community-service/> accessed on 26/12/2010

<sup>128</sup> Lindstrom and Leijonram. Page 569

<sup>129</sup> B Botein and H J Sturz, Report on Pre-Trial Release Practices in Sweden, Denmark, England and Italy to the National Conference on Bail and Criminal Justice. Journal of the International Commission of Jurists. Volume 2, 1964. Page 215

harmful effects of time spent in a prison, therefore, they are placed under the supervision of the Children's Welfare Board.<sup>130</sup>

#### **4.2.9 Program activities**

The Swedish penal system tries to ensure that time spent in prison is used to acquire knowledge and experience that reduces the risk of crime after release. The aim of the activities is to improve a prisoner's chances on the labor market and in society following release. Prisoners are taught a variety of trades such as woodworking, assembly and agriculture.

Practically all prisons have study facilities, enabling prisoners to study at high school level or pursue university studies through distance learning. Prisoners serving time in open air prisons may be allowed to pursue employment or education during the day outside of the prison. They are also granted furloughs, or short-term leave, outside of the prison on a regular basis.<sup>131</sup>

#### **4.2.10 Treatment Programs**

Substance abuse and criminality are closely related social factors. The Prison and Probation Service has developed validated programs aimed at reducing recidivism and substance abuse. Programs are offered to all offenders according to assessed risk and needs. For instance, the Aggression Replacement Training (ART) is a program for offenders sentenced for violent offences, and who have problems controlling and managing their anger and aggressive behavior. The outcome of the program has been very good and it has been accredited by the scientific panels at the Home Office, England and in the Swedish Prison and Probation Service.<sup>132</sup>

All prisoners are provided with a sentence plan that encourages good conduct and personal development. Re-offending is prevented through effective release plans and collaboration

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<sup>130</sup> Botein and Sturz. Report on Pre-Trial Release Practices, page 214

<sup>131</sup> Lindstrom and Leijonram. Page 566

<sup>132</sup> [http://www.kriminalvarden.se/sv/English/Treatment\\_Programs/](http://www.kriminalvarden.se/sv/English/Treatment_Programs/) accessed on 26/12/2010

with appropriate authorities to provide a linked chain of treatment help.<sup>133</sup> An example of a release plan is work release, whereby the prisoner is allowed to spend time outside the prison during the day to work, participate in educational or vocational programs.<sup>134</sup>

## 4.3 Canada

Canada's goal to concentrate more on rehabilitating and educating criminals has been effective in eradicating crime.<sup>135</sup> The criminal justice system aims to balance the goals of crime control and prevention on one hand, and equity, fairness and protection of individual rights on the other.<sup>136</sup>

### 4.3.1 Canada's perception of imprisonment as a form of punishment

In Canada, the invocation of imprisonment has been punctuated over the course of two centuries by a succession of crises. This has led to commissions of inquiry and reports cataloguing the prison's pervasive tendency to make prisoners more dangerous and anti-social. Time and again, these reports lamented the demonstrated failure of imprisonment to improve those subjected to its toils.<sup>137</sup> For instance, the Archambault Commission, set up to investigate the penal system in Canada reported:

‘The undeniable responsibility of the state to those held in its custody is to see that they are not returned to freedom worse than when they were taken in charge. This responsibility has been officially recognized in Canada for nearly a century but, although recognized, it has

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<sup>133</sup> Vision and core values of the Swedish Prison and Probation Service.

<http://www.kriminalvarden.se/upload/English/Documents> accessed on 26/12/2010

<sup>134</sup> Lindstrom and Leijonram, Page 570

<sup>135</sup> <http://www.oppapers.com/essays/Comparative-Legal-Systems-Canada-Vs-Usa/76515> accessed on 26/12/2010

<sup>136</sup> V Schmolka, "Principles to Guide Criminal Law Reform". Department of Justice, Government of Canada. <http://www.justice.gc.ca/en/cons/roundtable/nov102/appendixb.html>. Accessed on 26/12/2010

<sup>137</sup> The Brown Commission reported thus: ‘The vast number of human beings annually committed to prison in every civilized country, and the reflection that while there they may receive fresh lessons in vice or be led into the path of virtue that, after a brief space, they are to be thrown back on their own habits, more deeply versed than before in the mysteries of crime, or return to society with new feelings, industrious habits, and good resolutions for the future must ever render the management of penal institutions a study of deep importance. . . . In Canada, we have but one penal institution for which the aim is reformation and the little success which has as yet attended its operations, it has been our painful duty to disclose.’ Second Report of the Commissioners Appointed to Investigate into the Conduct, Discipline, and Management of the Provincial Penitentiary: Journal of the Legislative Assembly (1849), page 41

not been discharged. The evidence before this Commission convinced us that there are very few, if any, prisoners who enter our penitentiaries who do not leave them worse members of society than when they entered them.<sup>138</sup>

The House of Commons Sub-Committee on the Penitentiary System in Canada further stated:

'The persistent recidivist statistic can be related to the fact that so many in prisons have been irreversibly damaged by the system . . . Most of those in prison are not dangerous. However, cruel lockups, isolation, the injustices and harassment deliberately inflicted on prisoners unable to fight back, make non-violent inmates violent, and those already dangerous more dangerous. Society has spent millions of dollars over the years to create and maintain the proven failure of prisons. Incarceration has failed in its two essential purposes; correcting the offender and providing permanent protection to society.'<sup>139</sup>

What these official reports suggest is that the experience of imprisonment as a response to crime is self-defeating, producing the very behavior it seeks to control. The experience of imprisonment, intended to inculcate respect for the law by punishing those who breach its commands, actually creates disrespect for the very legal order in whose name it is invoked.<sup>140</sup>

It was expected that if offenders convicted of crimes were subjected to solitary imprisonment, well-regulated labor and religious instruction, they would become law-abiding.<sup>141</sup> The prospects of reform seemed bright and prisons proliferated, eventually dominating the social-control repertoire. Soon though, there was failure, and it became obvious that asylums had degenerated into mere custodial institutions; overcrowded, corrupt and certainly not rehabilitative.<sup>142</sup>

#### **4.3.2 Moves to utilize other forms of punishment**

The Fauteux Commission (1953-6) recommended the creation of a new type of correctional institution that went beyond mere detention to encompass programs designed to modify the

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<sup>138</sup> Report of the Royal Commission to Investigate the Penal System of Canada (Ottawa: King's Printer, 1938) (Commissioner: Joseph Archambault)

<sup>139</sup> House of Commons Sub-Committee on the Penitentiary System in Canada (Ottawa: Minister of Supply and Services, 1977) (Chairman: Mark MacGuigan)

<sup>140</sup> M Jackson, *Justice behind the Walls*, University of Toronto Press, Toronto, 1983. Page 2

<sup>141</sup> Jackson, *Justice behind the Walls*. Page 3

<sup>142</sup> S Cohen, *Visions of Social Control: Crime, Punishment and Classification*, Polity Press, Cambridge, 1985. Page 50

core behaviors, attitudes and habits of prisoners. The Ouimet Report (1969) and the McGuigan Report (1977) both alluded to the growing feeling of failure with respect to the use of imprisonment and cast doubt on the ability of prisons to rehabilitate inmates.

John Konrad, chairman of the Board of Parole for the province of British Columbia, Canada writes in “Justice and the Modern Penal System” that the post war era influenced the development of alternative methods of dealing with offenders. It was in this context that the use of parole and probation came to be used as viable alternatives to imprisonment.<sup>143</sup>

Parole is a concept of early release from prison. It is a mechanism whereby a portion of the sentence is served in the community under specified terms and conditions, including supervision. The Court imposes a minimum number of years the prisoner must serve before he can apply to the National Parole Board for conditional release. Parole was intended to ameliorate the excessive hardships of imprisonment, especially to deserving inmates who would be unreasonably debilitated by prolonged incarceration. The major focus is on the desire and commitment of the offender to become reintegrated into the community.<sup>144</sup>

There are also other forms of punishment which are commonly used in conjunction with or in lieu of prison terms. Monetary fines may be paid to the state or to the victims as a form of reparation. Probation and house arrest are also sanctions which seek to limit a person's mobility and his/her opportunities to commit crimes without actually placing them in a prison. Furthermore, many jurisdictions may require some form of community service as a form of reparation for lesser offences.

In the 1960s, new approaches to rehabilitation and reintegration were adopted. The first gradual release program was introduced at Collins Bay Institution. Under this program, prisoners are allowed to work outside the institution during the day and return in the evening. In 1969, an experimental living unit was opened at Springhill Institution in Nova Scotia as part of a community pilot program to help prisoners prepare themselves for life on the outside. Classification of prisoners and institutions in terms of medium and

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<sup>143</sup> J Konrad, *Justice and the Modern Penal System*. <http://www.directionjournal.org/article/?536> accessed on 26/12/2010

<sup>144</sup> <http://www.jrank.org/history/pages/7861/penal-reform.html> accessed on 26/12/2010

maximum levels of security ensures that the conditions of detention are better suited to the seriousness of their offence.

After release, religious organizations such as the Salvation Army offer refuge to former inmates. Government and community groups meet their essential needs such as accommodation and helping them find work and enrollment in school. It had been realized that by helping offenders regain their dignity and better integrate society, the risks of their re-offending were reduced.<sup>145</sup>

#### **4.4 A Move from Imprisonment to Alternative Forms of Punishment: Lessons from Sweden and Canada**

From the foregoing, it is evident that in dealing with the problem of crime, both Sweden and Canada utilize forms of punishment such as community service, fines, probation, contract treatment and conditional release especially in relation to lesser offences. This ensures that prisons are not over crowded and the prisoners housed therein are able to receive treatment that will rehabilitate them and help them live law-abiding lives.

When imprisonment is used in both countries, it is under conditions respecting the prisoner's fundamental rights and freedoms that are not curtailed by virtue of imprisonment. Furthermore, the sentence of imprisonment is carefully administered to ensure rehabilitation, not under conditions that clearly defeat the achievement of such an end.

Prisoners and criminal offenders in general are given an opportunity to be rehabilitated. Prisons offer schooling or job training to prisoners as a chance to learn a vocation and thereby earn a legitimate living when they are returned to society. Religious institutions also have a presence in many prisons, with the goal of teaching ethics and instilling a sense of morality in the prisoners.

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<sup>145</sup> History of the Canadian Correctional System. <http://www.csc-scc.gc.ca/education/media/pdf/ha-student-etudiant-eng.pdf> accessed on 26/12/2010

## **4.5 Conclusion**

The preceding chapter has shown that many nations are affected by crime and have developed penal systems to deal with the same. It has also established that the use of imprisonment as a method of crime control has inherent challenges and is often ineffective. As a result, states now prefer to employ other means of punishment either in addition to or in place of a prison sentence. Imprisonment is employed in as few instances as possible. The effectiveness of imprisonment as a method of crime control has not been attainable. Consequently, Zambia must make moves to utilize other forms of punishment and only use imprisonment in the severest cases.

The next and final chapter will, by way of conclusion, answer the question as to whether imprisonment has been an effective means of crime control in 21<sup>st</sup> Century Zambia and make final recommendations.

## CHAPTER FIVE

### RECOMMENDATIONS AND CONCLUSION

#### 5.1 General Conclusion

This paper has sought to examine the effectiveness of imprisonment as a method of crime control in 21<sup>st</sup> century Zambia. It has shown that although it has become the most common form of punishment in many societies, imprisonment was not always so. It was firstly used as a form of confining criminals while they awaited the actual punishment. Imprisonment only evolved as a form of punishment in the 18<sup>th</sup> century. Overall, imprisonment as a method of crime control in Zambia in the 21<sup>st</sup> century has proven to be ineffective.

Although the law, through various international instruments and national laws, provides for the protection of prisoners, unfortunately the minimum standards of treatment guaranteed to prisoners under the law are not accorded to them. In addition to this, conditions at most prisons make it difficult for any meaningful rehabilitative programs to be carried out, resulting in the ineffectiveness of this form of punishment. Consequently, prisoners leave prisons seemingly worse than when they entered them.

Although imprisonment should not be done away with completely, moves need to be made to improve the way they operate in order to ensure that this form of punishment does not result in the physical, moral and psychological degeneration of the prisoner. Rather, it should act as a moral eye-opener so that the prisoner realizes the error of his ways, and he undertakes to avoid similar conduct in the future. This will not only ensure that further crime is deterred, but also that prisoners are rehabilitated so that they become law-abiding citizens that do not have to resort to a life of criminal activity.

#### 5.2 Recommendations

In light of the foregoing conclusions, the following recommendations are hoped to improve the current penal system:-

## **5.2.1 Use of Alternative Forms of Punishment**

In any discussion of modern penology, the focus is almost exclusively on the use and effectiveness of prisons. The word “penal” is defined in the Concise Oxford English Dictionary as “relating to, or prescribing the punishment of offenders under the legal system.” While we view imprisonment as the contemporary response to crime, we need to be reminded that punishment for wrongdoing includes a wide range of sanctions, penalties and consequences in addition to imprisonment that the court can invoke or impose in response to criminal behavior.

Currently, prisons are over-crowded. In addition to the limited living spaces, there are a lot of inadequacies in terms of food, health care, sanitation, etc. In view of this, there is clearly a need to utilize other forms of punishment, resorting to imprisonment in as few instances as possible (and under good rehabilitative conditions) since imprisonment has been seen to have detrimental effects.

The use of imprisonment as a method of crime control has inherent challenges and is often ineffective. Although imprisonment as a form of punishment need not be done away with completely, it must be used in the fewest instances involving the severest crimes, under conditions that will enhance the prisoner’s rehabilitation.

Among the alternatives to imprisonment are:

### **5.2.1.1 Conditional release**

A prisoner serving a fixed-term sentence may be conditionally released when a certain portion of the sentence has been served. Those released can be subjected to probation for some time.

### **5.2.1.2 Probation**

Prisoners can be placed under supervision for a specific period of time whereby a prisoner is assigned a supervising probation officer with whom the prisoner must meet regularly.

Serious breaches of probation rules and regulations can lead to the sentence being served in prison instead. Probation can also be combined with a shorter prison sentence, community service or a fine. Prison authorities can help in the identification of prisoners who deserve to be placed on such regimes, especially those convicted of lesser offences.

#### **5.2.1.3 Contract treatment**

Where the commission of a crime can be linked to substance abuse (alcohol or narcotics), the convicted person may sign a "contract" with the court to undergo a treatment programme as opposed to serving a prison sentence. This program can be conducted in conjunction with health institutions that would be able to help people in overcoming their addictions.

#### **5.2.1.4 Community service**

Instead of serving a prison sentence, a person can perform unpaid work while being supervised. The duration may depend on the nature of the crime.

#### **5.2.1.5 Parole**

Parole is a concept of early release from prison whereby a portion of the sentence is served in the community under specified terms and conditions, including supervision. Parole was intended to ameliorate the excessive hardships of imprisonment, especially to deserving inmates who would be unreasonably debilitated by prolonged incarceration. Although the prison service has started utilizing this method, numbers of prisoners released on parole are still minimal. Moves need to be made to fully utilize parole as method of dealing with people convicted of minor offences with a view to reintegrating them into society. This can be achieved by reducing the eligibility requirements for parole so that more prisoners can qualify for the same.

#### **5.2.1.6 Monetary fines**

This may be paid to the state or to the victims as a form of reparation.

If the aforementioned forms of punishment are used as an alternative to imprisonment, especially in relation to lesser offences, prisons would not be over crowded and the prisoners housed therein would be able to receive treatment that will rehabilitate them and help them live law-abiding lives.

### **5.2.2 Improvement of Prison Conditions**

The use of imprisonment as a form of punishment was a progressive reform based on a desire to enhance and promote humanitarian ideals in contrast to the use of the more barbaric forms of punishment of earlier times. Unfortunately today, the use of long term confinement in prison compounded by the deplorable conditions has itself become one of the most severe and debilitating forms of punishment used by society and can be rightly termed as constituting ‘inhuman and degrading treatment’.

Despite the increase in the general population, there has been no infrastructural developments to the prisons since they were built. Initially built to accommodate 5,500 prisoners, they are well over capacity as they currently house beyond 15,300 prisoners.

Financial constraints notwithstanding, the government has an obligation to ensure basic minimum standards of treatment to prisoners. This can be achieved through increased support from Parliament and the international donor community.

Prisons should be able to offer schooling or job training to prisoners as a chance for them to learn a vocation and thereby earn a legitimate living when they are returned to society. Religious institutions should continue working with prisons, with the goal of teaching ethics and instilling a sense of morality in the prisoners. Sweden and Canada’s concentration on rehabilitating and educating criminals ensures that time spent in prison is used to acquire knowledge and experience that reduces the risk of crime after release. This improves a prisoner's chances on the labor market and in society following release. This has been effective in eradicating crime.

### **5.2.3 Cooperation between Key Institutions**

The large number of prisoners can be seen as a failure of the criminal justice system as a whole, not only the prisons service. For instance, the delays in the court process contribute to the congestion levels. In this ways, the courts also contribute to the inefficiency of the system. Institutions of governments aimed at upholding social control, deterring crime, and sanctioning those who violate laws with criminal penalties and rehabilitation efforts must cooperate in order to achieve the best results possible. The criminal justice system consists of such institutions as the police, courts and correctional facilities such as prisons and parole board. These three institutions must work together in order to effectively deal with the problem of crime. This can be done through increased use of bail, decrease of arbitrary arrests, reduced judicial delays and increased use of non-custodial sentences. It is only with cooperation between these institutions that the rights of prisoners and the goal of rehabilitation will be fully realized.

### **5.2.4 Abolition of Abusive Forms of Punishment**

The prison disciplinary system must be reformed to abolish abusive treatment such as corporal punishment, placement in penal block cells and stripping as these constitute inhuman and degrading treatment. Every person, including prisoners, has the right to be protected from cruel, inhuman and degrading treatment. Furthermore, 'cell captain justice' must be abolished as this contravenes provisions of the Prisons Act and the Prisons Rules as a prisoner is forbidden from administering any form of punishment to fellow prisoners. Furthermore, prison officials must be trained in appropriate discipline methods.

### **5.2.5 Conclusion**

Punishment plays an important role in the administration of criminal justice. People who break the law should be held accountable. Crime and breach of legal rules must be punished in one form or another. This is necessary for the proper functioning of any society, ensuring peace, law and order. Among the methods employed in ensuring social order is imprisonment of criminals. From the findings of the research, one can conclude

that imprisonment is no longer an effective and relevant tool of crime control in the 21<sup>st</sup> Century in Zambia.

Although the Prisons Act and other statutes as well as international instruments confer certain rights and minimum standards of treatment on prisoners, Zambia is in breach of its obligations in upholding the same. This can be attributed to lack of adequate financing to the prisons service to meet their needs. As a result, most Zambian prisons lack basic facilities such as adequate living space, food and medical care. Rehabilitative programs such as educational and skills training are missing at most prisons.

Time spent in prisons does not serve its rehabilitative purpose. Prisoners fail to reform and this accounts for the high crime rates and the equally high prison populations. If prisoners are not reformed and returned to society better people, prisons will continue to experience high levels of congestion. Imprisonment as a method of crime control will continue to be futile. Punishment of any kind must be aimed at rehabilitating the offender in order that he is returned to society a better person unlikely to engage in criminal activities. When rehabilitation is accomplished, crime rates will lower and another fundamental purpose of punishment will be achieved, namely deterrence. If punishment does not serve its rehabilitative purpose, it is self-defeating.

Other countries have also realized the inadequacies and ineffectiveness of employing imprisonment in dealing with crime. They have made moves to fully utilize non-custodial sentences which are seen as more effective since they facilitate an offender's reintegration into society. When imprisonment is resorted to, it is under conditions conducive for the rehabilitation of the prisoner. Similarly, Zambia must make moves to utilize other forms of punishment that are provided for under the law, more especially those that do not restrict a person's liberty as these facilitate their integration into society. Clearly, there is need to utilize other forms of punishment, such as fines, probation, parole, suspended sentence, community service etc, and only resort to imprisonment in the fewest instances involving the severest crimes.

It is clear that a prisoner should not be denied or restricted from enjoying all fundamental human rights and freedoms upon conviction, unless those incidental to conviction. This position was supported in the case of Leech v Deputy Governor of Parkhurst Prison<sup>146</sup> in which it was held that a prisoner does not shed off all of his rights at the prison gate, unless those incidental to conviction. Unfortunately, prisoners are not always accorded the full range of rights to which they are entitled.

From a human rights law perspective, this essay has shown that despite the fact of their incarceration that necessarily entails the curtailment of certain rights and freedoms, prisoners are nonetheless still human beings entitled to enjoy other rights. They are entitled to certain minimum standards of treatment. From a criminal law perspective, this essay has endeavored to show that the penal system and response to crime must not only entail the use of imprisonment, but must also make use of other forms of non-custodial sentences as imprisonment has proved to be ineffective as a method of crime control in Zambia in the 21<sup>st</sup> Century.

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<sup>146</sup> (1988) AC 533

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