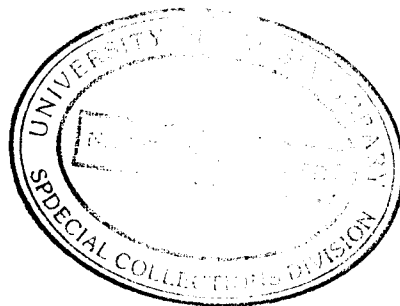


THE APPLICATION OF DEATH PENALTY LAW IN ZAMBIA: WHAT IS THE JUSTIFICATION?



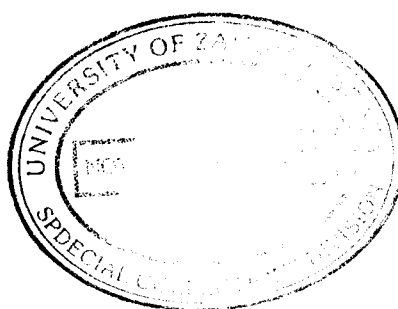
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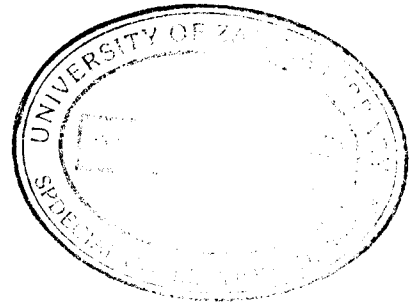
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**THE APPLICATION OF DEATH PENALTY LAW IN ZAMBIA: WHAT IS THE
JUSTIFICATION?**

BY

MARTIN CHINYAMA

(26065118)



An obligatory Essay submitted to the School of Law of the University of Zambia in partial fulfillment of the requirements for the award of the Degree of Bachelor of Laws (LLB).

April, 2012.

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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(COMPUTER NUMBER 26065118)

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Ms. M. Lwatula.

DEDICATION

To my mother Veronica Sawila, Sister Francina, late elder brother Jackson, wife Mirriam and four children Martin, Veronica, Chikomba and Chizhika. God bless you all for the loving care and understanding shown at the time of doing this research. I give thanks to my mother for looking after me in hardship. God knows the reward for your suffering. Be blessed here on earth and for all eternity for your sacrifice for me is beyond my contemplation. I LOVE YOU ALL.

ACKNOWLEDGEMENTS

First and foremost I would like to thank my Heavenly Father, the Creator of Heaven and Earth for the gift life and salvation. To God be the Glory, Mighty, Honour and Blessing for ever more. He is my life, light and salvation.

I wish to extend my profound gratitude to my supervisor Ms. Lwatula, who was very understanding and quiet patient with me during the period of this Study and provided valuable guidance and also for approving the proposal for this study. May God preserve and bless her abundantly.

To my late father Mr. Chinyama, late brother Jackson, late sister Josphine, sister Janet, my mother Veronica my only daughter Kapya, sons Martin Junior, Capt. Chikomba, Chizhika, my dear wife Mirriam, my best friends, Luka Layton Chiwowa, Malunga Siwela, Yuma Zacks, Timothy Daka, Mr. Andrew Chisala and Gilbert Mwamba, Lupiya Simusokwe, Clement Mweemba, Nickson Solochi and Mrs. Milimo Muyeke. I am exceedingly grateful for all the untiring support I received from you all.

To all those I have not mentioned but contributed in every way however small, God bless you all.

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ABSTRACT

The life of every person is very fundamental and the principle of Law in this aspect is to ensure protection of the Right to Life. However, Zambia and other jurisdictions have promulgated legislation that allows the State to invoke a death sentence for specific offences. The death penalty Law is applicable in the Zambian criminal justice system.

This dissertation was seized with the task of ascertaining whether or not the application of death penalty Law has any justification. The death penalty Law has in the past and recent times been a subject of debate far and wide among various sectors of society. The death penalty debate has proponents and opponents from the Religious, Political, Legal and Human Rights fraternity.

This study endeavoured to provide reasons that the death penalty has no justification. The study analysed the Law and looked at the Zambian Constitution and the Penal Code. The study revealed that the offence of Murder, Aggravated Robbery and Treason attract a death sentence. This death sentence is allowable by the Zambian Constitution if it is in execution of a sentence of a Court for an offence for which a person has been convicted. This study established that the application of the death penalty Law in Zambia has no justification in that it is a violation of Human Rights, particularly the God given right, the Right to Life.

The study revealed that the death penalty does not serve any purpose in so far as protection of society from criminals is concerned. The death penalty is not a deterrent to the offences for which it is applied as there is no proven evidence to that effect. Zambia has ratified but not domesticated International Instruments that prohibit the death penalty. While the Courts in Zambia continue to hand down the death sentence, there are no executions taking place because each sitting Head of State had been reluctant to sign death warrants. The study established that the Right to Life is non derogable and therefore the Constitution and the Penal Code should be amended and the death penalty abolished. The study recommended life imprisonment for the offences of Murder, Treason and Aggravated Robbery. The study further recommended that Zambia ratifies and domesticates the second option protocol to the ICCPR to make the Right to Life justiciable in an event of a violation to human rights. The study recommends capacity building for Judges, Lawyers and Law Enforcement Officers in relation to offences that attract death Penalty. The infrastructure for the Prisons Services should be expanded to cater for those serving long custodial sentences including life imprisonment.

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CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.0 INTRODUCTION

This study examined the continued application of the death penalty Law in Zambia and found out whether or not there is any justification for preserving the death penalty Law in the Zambian statute books. The Right to Life is inherent, inalienable and is universally accepted. The Universal Declaration of Human Rights provides as follows:

Everyone has the right to life, liberty and security of person.¹

Zambia is party to this International Instrument. The Right to Life has also been recognised in the International Covenant on Civil and Political Rights to which Zambia is also a party.

The International Covenant on Civil and Political Rights provides as follows:

Every human being has the inherent right to life. This right shall be protected by Law. No one shall be arbitrarily deprived of his life.²

Be that as it may, the Right to Life is treated as a derogable one in this Instrument because it allows for death penalty in certain instances in Countries where death penalty is allowed.

The Instrument provides that a sentence of death may be imposed only for the most serious crimes in accordance with the Law in force at the time of the commission of the crime.

¹ Article 3, UN General Assembly, *Universal Declaration of Human Rights*, (10 December 1948). 217

² Article 6, UN General Assembly, *International Covenant on Civil and Political Rights*, (16 December 1966). United Nations, Treaty Series, vol. 999 171

Further, the sentence should not be contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent Court.³

Nonetheless, the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty⁴ expressly forbids parties to it to execute any one and the right to life is non derogable. The Second Optional Protocol to the United Nations Provides as follows:

No one within the jurisdiction of a State Party to the present Protocol shall be executed.⁵

Zambia is a signatory to the International Covenant on Civil and Political Rights. However, Zambia has not signed the Second Optional Protocol and therefore still maintains death penalty in its statute books. Zambia has entrenched the protection of the Right to Life by putting a clause in the Constitution⁶ which is the supreme Law of the land. The Constitution⁷ bans cruel, inhuman and degrading treatment or punishment. This study looked at the protection of the Right to Life and analysed whether the application of the death penalty is a violation of this fundamental Human Right, the Right to Life. The Constitution which has provided for the protection of the Right to Life has another provision that allows the Right to Life to be taken away as provided in article 12. Article 12 (1) of the Constitution⁸ permits death penalty if it is in execution of the sentence of a Court in respect of a criminal offence under the Law in force in Zambia of which a person has been convicted.

³ Article 6, UN General Assembly, *International Covenant on Civil and Political Rights*.

⁴ Article 1 of the UN General Assembly: *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty*, (15 December 1989).

⁵ Ibid.

⁶ Chapter 1 of the Laws of Zambia.

⁷ Article 15 Chapter 1 of the Laws of Zambia.

⁸ Chapter 1 of the Laws of Zambia.

This study looked at the various statutes that have provisions for death penalty for specific offences to determine whether or not there is justification of such statutes in light of Fundamental Human Rights particularly the Right to Life.

1.1.0 Background of the Study

Zambia became independent from Britain in 1964 and adopted the death penalty which was promulgated by the British Parliament. The successive Constitutions have maintained the death penalty. Zambia now has the 5th President. Each President sworn in promises to protect the Constitution which protects the Right to Life. Courts in Zambia have continued to apply the death penalty Law⁹ in offences where death by hanging is the prescribed punishment. The Penal Code has provided specific offences for which if a person is convicted that person should suffer death. Treason is punishable by death as provided for in section 43 of the Penal Code.¹⁰ Section 200 of the Penal Code criminalises the cause of death of another person with malice aforethought.¹¹ Murder is punishable by death. Under section 294 of the Penal Code¹² the penalty for Aggravated Robbery where a Firearm is involved or grievous bodily harm has been caused is death.

There are certain categories of persons who can commit the offence of Murder, Treason and Aggravated Robbery but do not suffer death. These include pregnant women and persons below the age of eighteen years.¹³

⁹ Fredrick Ngandu. *The Death Penalty in Zambia*. http://www.biicl.org/file/2305_country_report. Website accessed on 10/27/11

¹⁰ Chapter 87 of the Laws of Zambia.

¹¹ Chapter 87 of the Laws of Zambia.

¹² Chapter 87 of the Laws of Zambia.

¹³ Section 25 of Chapter 87 of the Laws of Zambia.

This study also examined whether or not the Law in this instance is discriminatory. The death penalty Law has been widely opposed in many jurisdictions on account of it being inhumane in a civilised society. In the Republic of South Africa, the death penalty was declared unconstitutional and thereby abolished.¹⁴

Zambia is fairly civilised but still applies the death penalty. There have been arguments for and against death penalty with a number of jurisdictions such as the Republic of Kenya declaring the death penalty unconstitutional.¹⁵ Many of those that are sentenced to death are not immediately or as soon as possible executed. They stay in incarceration waiting for the day when they would be executed.¹⁶ This is because the Head of State has to sign a death warrant before a prisoner is executed.¹⁷

Therefore, the Court's pronouncement of death sentence is in itself not compelling to the President to sign a death warrant.

This study revealed whether Judges follow principles of sentencing and theories of punishment or indeed they have no choice of punishment for those crimes that attract a death penalty.

¹⁴ *The State v T. Makwanyane and M. Mchunu* (1995) ZACC 3.

¹⁵ *Godfrey Ngoto Mutiso v The Republic*, (2010) Kenya Law Reports.

¹⁶ *Constitutionalism and Human Rights: State of Human Rights in Zambia, Human Rights Commission Report*, (2008) 86.

¹⁷ Section 305 Chapter 88 of the Laws of Zambia.

1.1.1 STATEMENT OF THE PROBLEM

The death penalty Law is still in force in Zambia. It has been applied in serious crimes of Murder, Aggravated Robbery and Treason. Those sentenced to suffer death have remained on the death row without being executed some since 1997.¹⁸

They eventually get presidential pardon or have their sentences commuted.

In many jurisdictions, the death penalty has been described as unconstitutional and in some instances abolished. The Zambian Highest Court has been asked before to declare the death penalty Law unconstitutional but they upheld its Constitutionality when two prisoners sentenced to death challenged the decision of the High Court to hang them.¹⁹

The Mvunga Constitutional Review Commission indicated that the death penalty posed many questions and that further debate was to continue. Mwanawasa's stance was that he would not sign any death sanction as long as he remained President.

The National Constitution Review Commission had a protracted debate but maintained the death penalty.²⁰ The death penalty continues to attract debate among politicians, civil society, the academic fraternity and general public. The death penalty is viewed as a deterrent to heinous crimes²¹ and yet the heinous crimes continue to be committed. However, the number of death sentences is higher than actual executions²² and those sentenced to death do not even know when they would be executed.

¹⁸ <http://www.amnesty.org/en/news-and-updates/news> Website accessed on 10/27/11

¹⁹ *Benjamin Banda and Cephas Kufa Miti v the People* (unreported).

²⁰ National Constitution Conference: *Initial Report of the National Constitutional Conference*, Mulungushi International Conference Centre, (2010).

²¹ John Hatchard & Muna Ndulo. *Readings in Criminal Law and Criminology in Zambia* (Lusaka: Multimedia Publications.1984)115

²² Simon Sibanda, *Death Penalty*. <http://ipsnews.net/print.aspxidnews>. Site accessed on 10/27/11

They continue to languish in fortified cells, which is a punishment in itself while waiting for another punishment by way of execution. On one hand the death penalty is being imposed by the Zambian Courts while on the other, each sitting Head of State has been unwilling to sign any death warrants thereby opposing the death penalty. Since 1997²³ there has been no execution and yet the list of death sentences continues to congest prisons.

The condemned prisoners living under the gallows for a number of years suffer excessive strain as they do not know whether they will suffer death or otherwise.²⁴ The Prison infrastructure for inmates in the condemned section is insufficient as Courts continue to impose death sentences without any execution taking place at all.

While Zambia still applies the death penalty, it has been argued that causing death even by the State does not reform the criminal nor does it offer sufficient compensation to the victims of the crime.²⁵ The Zambian Constitution protects the Right to life but the same Constitution contradicts itself by allowing violation of the protected right through Court process. The Constitution is equivocal as it protects and unprotects the right to life at the same time. The imposition of death penalty leaves a dilemma to the criminal justice system as to whether it is justified or not.

This study endeavoured to find out whether or not there is any justification in the continued application of the death penalty Law in Zambia.

²³ Fredrick Ngandu. The Death Penalty in Zambia. http://www.biicl.org/file/2305_country_report. Website accessed on 10/27/11.

²⁴ Hatchard and Muna. *Readings in Criminal Law & Criminology in Zambia*, 115.

²⁵ Report on the 2nd Annual EU Forum on the Death Penalty in Zambia, Mulungushi International Conference Centre (2010)

1.1.2 Rationale of Study

Every civilised society has established Law as a yard stick of the conduct of its members. Those who exhibit anti social behaviour suffer punishment.

It has been said that everyone who breaks the rules of Criminal Law without lawful excuse is guilty and is liable to be penalised as by Law prescribed.²⁶ This study examined whether death penalty is justified punishment.

Punishment is a reaction on behalf of the Society to an accused that is judged of his wrongful behaviour.²⁷

Be that as it may, it is important that legal punishment must be justified especially to ensure that the verdicts of Courts are founded on sound legalistic reasons to avoid excess or miscarriage of justice.²⁸

The rationale of this study was to assess whether death penalty is indeed justified in Murder, Treason and Aggravated Robbery cases especially that it involves the taking away of someone's precious life.

1.1.3 Purpose of the Study

The general objective of the study was to determine whether or not there is any justification in the continued application of the death penalty Law in Zambia.

1.1.4 Specific Objective

1. To determine the future of death penalty Law in Zambia.

²⁶ Simon E. Kulusika. *Text, Cases and Materials on Criminal Law in Zambia*: (Lusaka: Unza press, 2006). 796

²⁷ Simon E. Kulusika. *Text, Cases and Materials on Criminal Law in Zambia*: (Lusaka, Unza press, 2006). 796

²⁸ Ibid.

1.1.5 Research Questions

1. What purpose does the death penalty serve in Zambia's Criminal justice system?
2. Is the Law abrogating the Right to Life in Zambia a sound one to be maintained?
3. What alternative punishment can be applied to the offences of Murder, Treason and Aggravated Robbery?
4. Can a convicted person of an offence which attracts death penalty in Zambia be reformed and contribute positively to the social well being of his Country?
5. How does Zambia as a State view Human Rights vis-a-vis Death Penalty?
6. If death penalty Law was abolished what would be the repercussion in relation to crimes for which it is applied?

1.1.6 Significance of the Study

This study endeavoured to explore the justification or unjustification of the death penalty Law in Zambia which is still in force.

There has been protracted debate on the application of death penalty Law in Zambia, and this Law has escaped its abolition in successive Constitutions including the latest draft Constitution where as other jurisdictions have abolished death penalty.

The protection of the Right to Life while upholding death penalty Law is attracting a contradiction in modern society. The study endeavoured to analyse the protection of the Right to Life by the State which at the same time provides for the killing of the protected life.

1.1.7 Methodology

This was a qualitative research. The researcher analysed the provisions of the successive Constitutions and International Instruments that deal with death penalty. Other relevant information both in print and electronic media was also analysed.

Structural questions were administered to Human Rights activists, the Zambia Police Service, Zambia Prison Service and Parole's Board. Oral interviews were also conducted to randomly selected individuals.

1.1.8 Organisation of the Study

Chapter One gave a background of the study in relation to death penalty Law. This chapter also gave the rationale of the study, Methodology and synopsis of the research. Chapter Two analysed existing local Laws and how the Courts have given effect to them.

Chapter Three reviewed the write ups of other people on the subject matter. In this vain it reviewed earlier writings on the subject to determine the gap that still exists and bring about something novel. This chapter also looked at four major perspectives of death penalty namely, Human Rights, Religion, Politics and Law.

Chapter Four looked at the existing issues that relate to death penalty in Zambia and stated emphantically whether its continued application is with or without any justification.

Chapter Five then dwelt on recommendations and conclusion of the research.

CHAPTER TWO

THE CURRENT STATUS OF DEATH PENALTY LAW IN ZAMBIA

2.0 INTRODUCTION

Chapter one defined the key concepts that were employed in this study. The succeeding chapter will dwell on the current status of death penalty Law in Zambia.

2.1 A DISCUSSION OF THE CURRENT STATUS OF DEATH PENALTY LAW IN ZAMBIA.

Every civilised state has a legal system which creates the foundation upon which justice is built. The Law must be relatively certain in order to have a successful legal system.²⁹ One of the functions of Criminal Law is punishment for an indicated activity.³⁰ Zambia has written Laws which provide for offences and punishments under Public Law. The death penalty Law has its sources in the State books.

2.2 THE CONSTITUTION

This is the most fundamental Law in the land.³¹ This position was emphatically stated in the case of *Thomas Mumba v the people*.³² In this case, the applicant was charged with an offence under the Corrupt Practices Act. Section 53(15) of the same Act requires that where such an accused elected to say something in his defence he had to say it on oath thus, excluding the option to make an unsworn statement.

²⁹ Margaret M. Munalula. *Legal Process:Zambian Cases, Legislation and Commentaries*. (Lusaka:Unza Press. 2004) 76

³⁰ Ibid.

³¹ Ibid.

³² (1984)2R38

The defence submitted that the provisions of the said section were in contravention of Article 20(7) of the Constitution.

The subordinate Court referred the issue to the High Court. Justice Chirwa (as he then was) stated thus:

‘In countries like Zambia where there is a written Constitution, the Constitution is the Supreme Law. Any other Laws are made because the Constitution provides for them to be made; and are therefore subject to it...

Article 12(1) of the Constitution³³ provides for Death Penalty if it is in the execution of the sentence of a Court in respect of a criminal Offence under the Law in force in Zambia of which a person has been convicted. This position has also been clearly interpreted by the Supreme Court in the case of *Benjamin Banda and Cephas Miti v Attorney General*.³⁴ In this particular case, Kelvin Hangandu a prominent Lawyer and Human Rights activist had argued that because the death penalty was a mandatory sentence in Zambia, it violated Article 15 of the Constitution which proscribes subjection to inhuman and degrading punishment. It was held that the use of the death penalty was trite Law as article 12³⁵ of the Constitution specifically allows it. The death penalty is provided for in the Constitution and it is a mandatory sentence. The Right to Life is therefore a qualified Human Right and the death penalty is Constitutional in Zambia. However, in other jurisdictions the Courts have emphatically declared that mandatory death penalty is unconstitutional. In Uganda, in the landmark judgment in the case of *Kigula & Others v Attorney General*,³⁶ the majority of the Constitutional Court declared the death sentences passed on all the petitioners unconstitutional.

³³ Chapter 1 of the Laws of Zambia.

³⁴ (2008) Supreme Court of Zambia (unreported).

³⁵ Chapter 1 of the Laws of Zambia.

³⁶ (Un Reported).

The Court found that the mandatory nature of the application of death penalty was unconstitutional because it did not provide the Court with the opportunity to analyse certain factors that would help to arrive at a different decision.

The Justice system in Uganda gave the Government two years period to understand the judgment and give it effect. The Court in this matter passed a ruling that all prisoners who had been on the death row for a period of three years or more would have their sentences commuted to life imprisonment.

2.3 THE PENAL CODE CHAPTER 87 OF THE LAWS OF ZAMBIA

This is the principal Act of Criminal Law in Zambia. It provides for crimes and their punishments for persons who are convicted for such crimes.

There are crimes of which the Criminal Law imposes severe penalties because they are viewed to be anti social and the offender must suffer punishment because they have failed to be responsible.³⁷ The Penal Code provides for mandatory death sentence for specific offences. The Penal Code conforms to the provision of Article 12 of the Constitution for death penalty for specific offences. The offences that attract death penalty are Murder, Treason and Aggravated Robbery. These offences are now discussed.

2.4 MURDER.

In common parlance, murder can be understood as the killing of a person by another person. It has been stated that Murder has not been defined by the Penal Code.³⁸ One of the definitions of Murder is that of Chief Justice Coke³⁹ (as he then was).

³⁷ Simon E. Kulusika. *Text, Cases and Materials in Criminal Law in Zambia*, (Lusaka:Unza Press 2006) 449

³⁸ Ibid.

³⁹ Ibid.

According to Coke Inst 47 murder was defined as:

When a man of sound memory and the age of discretion unlawfully killeth... Any reasonable creature in *rerum natura* under the King's peace, with malice afore thought... so that the party wounded or hurt⁴⁰ etc dies of the wound or hurt...⁴¹

The current Law in Zambia proscribing Murder is section 200 of the Penal Code.⁴²

The following provisions from the Penal Code elaborate the Law relating to Murder:

Section 200: Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.

201 (1): Any person convicted of murder shall be sentenced

(a) to death; or

(b) Where there are extenuating circumstances, to any sentence other than death...

(c) An extenuating circumstance is any fact associated with the offence which would diminish morally the degree of the convicted person's guilt;

(d) In deciding whether or not there are extenuating circumstances, the court shall consider the standard of behaviour of an ordinary person of a class of the community to which the convicted person belongs.⁴³

The Penal Code⁴⁴ is therefore in conformity with the Constitution⁴⁵ which provides for death penalty.

2.4.1 Extenuating Circumstances in Murder

Extenuating circumstances have been used by Courts of Law to substitute sentences of a person accused of Murder. In the case of *Mbomena v the people*⁴⁶ it was held that believing in witchcraft by many communities in Zambia is very prevalent and is held to be an extenuating circumstance.

⁴⁰ Simon E Kulusika. *Text, Cases and Materials in Criminal Law in Zambia*(Lusaka:Unza Press,2006) 448.

⁴¹ Ibid.

⁴² Chapter 87 of the laws of Zambia.

⁴³ Chapter 87 of the Laws of Zambia.

⁴⁴ Chapter 87 of the Laws of Zambia.

⁴⁵ Chapter 1 of the Laws of Zambia.

⁴⁶ (SCZ) No.35 of 2000.

Similarly, in the matter between *Nelson Bwalya and the People*,⁴⁷ the Supreme Court varied the sentence of death imposed by the High Court to 15 years of imprisonment because the appellant had killed the deceased because of the fact that the deceased had killed his wife through witchcraft, which was an extenuating circumstance.

Youthfulness of an offender has also been considered an extenuating circumstance. An accused person who was convicted of murder in the case of *Joseph Mwandamina v the people*⁴⁸ had his sentence varied from death to 15 years imprisonment because of his youthfulness. The youthfulness of the offender is also an exception to the death penalty for Countries that are party to the International Covenant on Civil and Political Rights of the United Nations.⁴⁹ This is only for Countries such as Zambia which still met out death penalty for specified crimes.

2.5 TREASON

Treason is a capital offence. It has been observed that treason causes threats not only to the Head of State but also to Law Enforcement Agencies, Political Parties, Political Systems and generally the life of the people.⁵⁰

Treason has been classified as an offence of a serious nature and the Penal Code provides for its punishment. The Penal Code provides as follows:

Section 43 (1) A person is guilty of treason and shall be liable to suffer death ...

A leading case is that of *Edward Jack Shamwana and others v the people*.

⁴⁷ (SCZ) No. 29 of 2010

⁴⁸ (SCZ) No.5 of 1996.

⁴⁹ Article 6 UN General Assembly. *International Covenant on Civil and Political Rights*, (16 December 1966, United Nations, Treaty Series, vol. 999). 171

⁵⁰ Simon E. Kulusika. *Text, Cases and Materials in Criminal Law in Zambia*. (Lusaka: Unza Press ,2006) 725

The 1997⁵¹ Coup attempt also resulted in Captain Steven Lungu and 54 others being convicted of Treason and sentenced to death in 2003.⁵² In 2011, 24 persons were charged with the offence of Treason but were later pardoned by the Head of State following change of Government while undergoing trial. The death sentence under section 43 (1) is a mandatory one if a person is convicted of Treason. For this mandatory sentence to apply a person convicted must have behaved in a manner that would have resulted in the alteration of the Law or the Policies of the Government by unlawful means.⁵³ It should be noted that no one in Zambia has ever been executed for the offence of Treason.

Even Edward Shamwana who was convicted during the Kaunda error was released under the prerogative of mercy or Presidential pardon. The Prisoners convicted of Treason and condemned to death have had to wait for a long time without being hanged. The convicts receive commutation of sentence and eventually come out of prison through the prerogative of mercy exercised by the President. Edward Jack Shamwana as well as Captain Steven Lungu are notable examples of those who were set free on Presidential pardon. It is clear that although Treason is trite Law in Zambia and carries a mandatory death sentence, in practice the execution does not take place. Treason is also not prevalent in Zambia and the Courts have had only few occasions to determine the cases of this nature and sentenced to death those found guilty.

2.6 AGGRAVATED ROBBERY

This is another serious offence which carries a mandatory death sentence. Aggravated Robbery is an offence of a serious nature as it leaves the victim traumatised.

⁵¹ Times of Zambia, October 28, 1997

⁵² Zambia Daily Mail, December 19, 2003.

⁵³ Simon E. Kulusika, *Text, Cases and Materials in Criminal Law in Zambia* (Lusaka: Unza Press) 597

To establish the offence of Aggravated Robbery which carries the death penalty, the prosecutor has to prove the use of a firearm⁵⁴ within the meaning ascribed to a firearm by the Firearms Act.

The Penal Code provides as follows:

Section 294 (1) Any person who, being armed with any offensive weapon or instrument, or being together with one person or more, steals anything... uses or threatens to use actual violence to any person or property to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony of aggravated robbery ...

(2) Notwithstanding the provisions of subsection (1), the penalty for the felony of aggravated robbery under subsection (1) shall be death-

(a) Where the offensive weapon or instrument is a firearm...

(b) Where the offensive weapon or instrument is not a firearm and grievous harm is done to any person in the course of the offence...

(3) In this section "firearm" has the meaning assigned to it in section two of the Firearms Act.

Section 2 of the Firearms Act defines a firearm.⁵⁵

This position was emphatically postulated in the case of *John Timothy and Feston Mwamba v the people*.⁵⁶ The Courts have consistently applied the death penalty to Aggravated Robbery where a firearm has been used. The following case further illustrates the law:

Patrick Chitalu Kayamba and Albert Kapopo v the People.⁵⁷

The appellants were convicted of armed Aggravated Robbery and were sentenced to death.

The particulars of the case were that the appellants on 5th October 1995, at Kabwe in the Kabwe District of the Central Province of the Republic of Zambia, jointly and whilst acting together and being armed with a gun did rob Maxwell Kasonde of a motor vehicle...

The facts as found by the learned trial Judge were not in dispute.

⁵⁴ Chapter 110 of the Laws of Zambia.

⁵⁵ Chapter 10 of the Laws of Zambia.

⁵⁶ (1977)2R394.

⁵⁷ (SCZ) Judgment No. 32 of 2000.

The issue in the appeal was that the firearm used was not a firearm within the meaning of the Firearm Act Cap 110, of the Laws of Zambia. It was held that the pistol was capable of firing and the pistol falls squarely within the definition of a firearm. (*Lunda v The People*⁵⁸ followed).

The Courts have also postulated that the question is not whether any particular gun which is found and is alleged to be connected with the offence is capable of being fired, but whether the gun seen by the eye witness was so capable. This was held in the case of *Timothy Mwansa v the People*.⁵⁹

In this matter, the Court further stated that even where no gun is found but a magazine with new rounds traced on the route used by the robbers can lead to a conclusion that the alleged gun seen by the complainants though not found qualifies to be a firearm within the meaning of the Firearms Act.⁶⁰ This is so because only an instrument that can discharge a pellet qualifies to be a firearm and this excludes a toy gun.

The relevance of this case is that if the witness or complainant saw the accused with a firearm but the firearm has not been recovered, other factors that point to the firearm can be material to the case.

This statement was also used as trite Law in the case of *Christopher Mbewe Banda v The People*⁶¹ where there was no ballistic report but the accused was convicted because there were empty cartridges of the calibre of AK 47 cartridges picked and the witness stated that he saw an AK 47 rifle with the accused. It should be noted that where the instrument used looks like a firearm but is not capable of discharging a pellet or live ammunition such as a toy gun, then it is not a firearm within the meaning of the Act.

⁵⁸ (SCZ) Appeal Number 64 of 1996.

⁵⁹ (1977) ZR 394.

⁶⁰ Chapter 110 of the Laws of Zambia.

⁶¹ (SCZ) Judgment of 2010.

The Firearms Act defines a firearm as follows:⁶²

- (a) any lethal barreled weapon of any description from which any shot, bullet, bolt or other missile can be discharged or which can be adapted for the discharge of any such shot, bullet, bolt or other missile;
- (b) any weapon of any description designed or adapted for the discharge of any noxious liquid, gas or other thing;
- (c) any barrel or any frame or body to which a barrel may be attached, incorporating a mechanism designed to cause controlled detonation or discharge of any shot, bullet, bolt or other missile and any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing such weapon; but does not include...

Although the death penalty is seen as a deterrent in Aggravated Robbery cases, it is in reality not the case as Willer Mung'omba observed:

It is not by having stiff penalties that crime can be curbed. The bottom of the crime of Aggravated Robbery should be established through a good system of investigations and research.⁶³

This position has been further strengthened by the fact that stiffer punishment cannot exist in isolation but should be complimented by crime control methods.⁶⁴

It has been argued before by the Zambian Government that the death sentence is the right one in Aggravated Robbery because the victim goes through a traumatic experience. For this reason even if the crime does not result in the death of the victim death penalty is an appropriate sentence since the Armed Robberies are prevalent. This position was stated in the case of *Lubuto v Zambia*.⁶⁵

⁶² Section 2 of Chapter 110 of the Laws of Zambia.

⁶³ Musonda Francis. *Controlling Armed Robberies in Zambia. The University of Zambia*, (Lusaka:1991)4

⁶⁴ Ibid.

⁶⁵ (2001)ACRLR 37(HRC 1985)

Despite this argument, the Human Rights Court was of the view that since there was no loss of life or injury occasioned in the crime, the imposition of the death penalty was a violation of Human Rights and urged the state party to order commutation of the sentence.

However, one committee member in this case while agreeing with the view of the committee was of the opinion that even if the use of a firearm did not result in death or injury, death sentence was appropriate in certain crimes. The member cited bombing of busy quarters, destruction of reservoirs.... as justifying death sentence even if the acts do not result in loss of life or injury.⁶⁶

2.7 METHOD OF EXECUTION

The death penalty Law in Zambia also prescribes the method to be used in killing a convicted person. The following section from the Penal Code⁶⁷ provides thus:

Section 25 (1) When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck until he is dead.

The Courts stress that a person sentenced to death must hang until pronounced dead. The Daily Mail reported that when sentencing Mr. Mwanza to death for Murder, the High Court Judge stated that the offender would face the hangman's noose.⁶⁸

A noose is a loop of a rope at one end, with a knot that allows the loop to be tightened as the other end of the rope is pulled.⁶⁹ The expression to 'face the hangman's noose' means to be hanged.⁷⁰ The pronouncement of death is done by a certified medical Doctor.

⁶⁶ *Lubuto v Zambia* (2001)ACRLR 37(HRC 1985)

⁶⁷ Chapter 87 of the Laws of Zambia

⁶⁸ Daily mail Monday, January 2,2012

⁶⁹ *Oxford Advanced Learner's Dictionary, International student's Edition* (8th Edition Oxford University press) .1001

⁷⁰ *Ibid* 839

The death penalty Law also provides for exemption from death sentence due to want of age and also for pregnant women.

The penal Code provides as follows:

Section 25 (2) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that, at the time when the offence was committed, he was under the age of eighteen years; but in lieu thereof the court shall sentence him to be detained during the President's pleasure...

(4) Where a woman convicted of an offence punishable with death is found in accordance with the provisions of section three hundred and six of the Criminal Procedure Code to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of a sentence of death.

The Law is silent on the reason for excluding pregnant women from execution. Convicted prisoners for death sentence are not executed immediately. The gestation period of a human being is nine months and after delivering a baby if the death sentence serves a purpose, the woman could still be subjected to execution. Although the death penalty is still applied to women convicted of offences to which it applies, no female condemned to death has ever been executed in Zambia. This raises the question of discrimination in application of the death penalty Law.

The observance of the age limit is also contained in the International Covenant of Civil and Political Rights to which Zambia is a party.

The forbearance of death penalty in relation to pregnant woman by the Penal Code is in pari materia with the provision of the International Covenant on Civil and Political Rights⁷¹ to which Zambia is a party and has domesticated this provision of the International Instrument.

⁷¹ Article 6, UN General Assembly, *International Covenant on Civil and Political Rights*, (16 December 1966, United Nations, Treaty Series, vol. 999) 171.

It should be noted that the offence of Aggravated Robbery was initially not punishable by death. The Penal Code went through a number of amendments to stiffen punishment for Aggravated Robbery.

The Legislature felt that by stiffening punishment for Aggravated Robbery, the prevalence of the offence would be curtailed.⁷² The amendments therefore reached the stiffest punishment of death penalty in 1976.⁷³ Despite these amendments the Courts are still overwhelmed by cases of Aggravated Robbery. The offence of Aggravated Robbery is a prevalent one despite the death sentence which it attracts.

2.8 CUSTOMARY LAW

Zambia has a two tier system of Law. These are Customary Law which is unwritten and the Written Law. Death penalty was practiced by the Tonga people for specific offences.⁷⁴ These included sorcery, witchcraft, murder and treason or political offences.⁷⁵ Treason was in relation with acts that endangered the Traditional Leadership. The method of execution was by drowning the perpetrator of a specific offence.⁷⁶

The Lunda and Luvale people would administer a concoction with poisonous substances to a person suspected of bewitching another person. If the person who was administered with the staff was a witch, that person would then die as a punishment.⁷⁷ This Custom is no longer practiced.

⁷² John Hatchard & Muna Ndulo, *Readings in Criminal Law and Criminology in Zambia* (Lusaka Multimedia Publications)84

⁷³ Ibid.

⁷⁴ T.O Elias. *The nature of African Customary Law*: (Manchester University Press 1956 215)

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Interview with Mr. Kakoma, traditional assessor, held on 20 January, 2012 in Lusaka.

There is no more practice of death penalty under Customary Law and the Local Courts which administer Customary Law do not have the jurisdiction of trying cases that attract death penalty in Zambia.

The offences that attract death sentence are provided by written Law and only the High Court or upon appeal the Supreme Court determine capital offences and met out death sentence.

2.9 CONCLUSION

This chapter looked at the various provisions of the statute books in Zambia on the death penalty Law. These statute books are the Constitution which is the Supreme Law of the Land, Penal Code which provides for Offences and Punishments. The chapter looked at the three offences which attract death as a mandatory sentence. These offences are Murder, Treason and Aggravated Robbery. The chapter also looked at how Customary Law of death penalty was applied in Zambia.

CHAPTER THREE

A DISCUSSION ON PERSPECTIVES OF DEATH PENALTY IN ZAMBIA

3.0 INTRODUCTION

This chapter is seized with the factors that in one way or the other are concerned with the existence of death penalty Law in Zambia. There are may be various factors however, for the purpose of this work, four major factors have been chosen and analysed. These are Law, Human Rights, Politics and Religion.

3.1 THE LEGAL PERSPECTIVE OF DEATH PENALTY

The application of the death penalty Law in Zambia is constitutionally recognised and is also provided for by Laws that derive their efficacy from the Constitution. However, the same Constitution of the Republic of Zambia which guarantees the right to life also provides for derogation from the right to life. The Zambian Constitution recognises the significance of the right to life but also gives the State the power to take away the safe guarded life. Hence Lawrence Silas Zimba has observed that the rights and freedoms in the Zambian Constitution are qualified including the more direct God given right, the right to life is subject to a number of exceptions.⁷⁸ The Constitution provides as follows:

“A person shall not be deprived of his life intentionally except in the execution of the sentence of a Court of a criminal offence under the Law in force in Zambia of which he has been convicted.”⁷⁹

The Constitution of Zambia further provides as follows:

A person shall not be subjected to torture or inhuman or degrading punishment or other like treatment.⁸⁰

⁷⁸ Zimba Lawrence Silas. *The Constitution protection of fundamental Rights in Zambia: A historic and comprehensive study. A thesis presented for the internal Degree of Doctor of Philosophy in the faculty of Laws of the University of London School of Oriental and African Studies.* (June 1979). 349.

⁷⁹ Article 12(1) Chapter 1 of the Laws of Zambia.

⁸⁰ Article 15 Chapter 1 of the Laws of Zambia.

This is a sound provision protecting the citizens. Nonetheless, because the Constitution gives the State power to deprive an individual's life as long as it is in execution of a sentence of a Court, the State has promulgated the Penal Code⁸¹ which prescribes punishment for the offence of Murder⁸², Treason⁸³ and Aggravated Robbery involving a Firearm.⁸⁴ The Penal Code provides for death sentence for these crimes.⁸⁵

This is a clear contradiction of the Constitutional protection against subjection to inhuman and degrading treatment. The Courts have always said death penalty is a mandatory sentence and their hands are tied. However, it has been observed that the Court's hands are tied with outdated Laws which provide for death sentence. These Laws need to be abolished.⁸⁶ When the Supreme Court of Zambia confirmed the death sentence of Captain Steven Lungu and others for an attempted Coup, there were negative feelings about the death sentence. Ms Constancy Lewanika who was then Women in Law and Development in Southern Africa (WILDAF) Country Co-coordinator condemned the death penalty.⁸⁷

A Human Rights Activist Ngande Mwananjiti also observed that the Courts were tied by Zambian Laws which apply death sentence which sentence he described as barbaric.⁸⁸ This was a reaction to the death sentence of Captain Steven Lungu and others who were charged for Treason for an attempted coup in 1997⁸⁹ and were sentenced to death in 2003.⁹⁰

⁸¹ Chapter 87 of the Laws of Zambia.

⁸² Sec 200 of Chapter 87 of the Laws of Zambia.

⁸³ Sec 43 (1) Chapter 87 of the Laws of Zambia.

⁸⁴ 294(2)(1)(a)Chapter 87 of the Laws of Zambia.

⁸⁵ Sec 25(1) Chapter 87 of the Laws of Zambia.

⁸⁶ Zambia Daily Mail, Friday December 19, 2003.

⁸⁷ Zambia Daily Mail, Friday December 19, 2003.

⁸⁸ The Post News paper, Friday, 19 December 2003.

⁸⁹ Times of Zambia, 29th October 1997.

⁹⁰ The Post News paper, 19 December 2003.

3.2 HUMAN RIGHTS PERSPECTIVE OF DEATH PENALTY

The right to life is inherent and inalienable as contained in The Universal Declaration of Human Rights.⁹¹ It is not the State to determine who should live and who should die. It is submitted that the right to life is foremost of all rights.

If there was no right to life, there would be no one to enjoy the rest of all the rights because there would be no human beings. Historically and before the evolution of the modern Constitution, civil and political rights or natural rights as they were then called were considered as limits on the State's power. As rightly put by Professor Alfred Chanda, they draw a distinction between higher norms of the divine power and the commands of the State⁹². The International Covenant on Civil and Political Rights provides for the right to life to be protected.⁹³ The right to life falls within the civil and political rights. It is the first human right and it existed before the modern Constitution.

The Constitution is therefore not supreme to life but the right to life is Supreme to the Constitution. The Constitution should only provide safe guards to the right to life. The Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty⁹⁴ expressly forbids parties to it to execute any one and the right to life is non derogable.

⁹¹ Article 3 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, p. 217

⁹² A.C Chanda. *Case study in Human Rights in Commonwealth, Africa: Thesis submitted to Yale University*.(1992)

⁹³ UN General Assembly, *International Covenant on Civil & Political Rights*, (16 December 1966, United Nations Treaty Series, Vol. 99). 171

⁹⁴ Article 1 of the UN General Assembly, *Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty*: 15 December 1989

The Second Optional Protocol provides as follows:

No one within the jurisdiction of a State Party to the present Protocol shall be executed...⁹⁵

The Constitution must only provide safe guards to the right to life. A Judge of South African Constitutional Court Stated in the celebrated case of *Makwanyane*⁹⁶ when banning the death penalty under the new South African Constitution that the rights to life and dignity are the most important of all human rights. The state must therefore demonstrate in everything it does including the way it punishes a criminal, that the right to life and dignity are the most important ones. It has also been observed by the Zambian Human Rights Commission which is created by the Constitution that it is highly unlikely that one will promote a rights Commission which will promote capital punishment.⁹⁷

Further, the United Nations observed that in respect of the right to life it was opposed to capital punishment in the cases of war crimes, crimes against humanity and Genocide.⁹⁸ The State has a duty to enact Laws that protect the rights of the citizen and not to enact Laws that destroy these rights. The provision in the Zambian Constitution protects the right to life.⁹⁹ However, it back paddles on this protection of the right to life and allows the State to met out death penalty in execution of a sentence of Court.¹⁰⁰ The Courts have attested and justified the death penalty.

⁹⁵ Article 1 of the UN General Assembly: *Second Optional Protocol to the International Covenant on Civil and Political Rights*.

⁹⁶ *The State v T. Makwanyane and M. Mchunu* (1995) ZACC 3.

⁹⁷ Samuel Kasanka. *Revising the death penalty, whose rights, anyway:* (Human Rights Commission of Zambia . 2012).

⁹⁸ Zambia Daily Mail, Monday 30, 2012.

⁹⁹ Chapter 1 of the laws of Zambia.

¹⁰⁰ Chapter 1 of the Laws of Zambia.

This position was justified in the case of *Cephas Miti v Attorney General*.¹⁰¹

It had been stressed by Samuel Kasankha a Human Rights Activist and Information Officer of the Zambia Human Rights Commission that the Universal Rights norms prohibit torture, inhuman or degrading treatment and punishment and this is reprecated in the Zambian Constitution.¹⁰² Kasankha argues that executing a person is inhuman and degrading and falls within the category of punishment and contravened parts of the Zambian Constitution.¹⁰³

The same argument was also advanced by Kelvin Hang'andu, a prominent Lawyer in the case of *Cephas Miti v Attorney General*¹⁰⁴ but the Supreme Court justified the death sentence because the Constitution provides for it. Meanwhile, the National Constitution Conference retained the death penalty in Article 40 stating that those who kill others should also lose their lives.¹⁰⁵ However, this is only in reference to Murder and it remains unclear what the National Constitutional Conference thought about Treason and Aggravated Robbery which also attract death sentence.

In one case where an accused person who had raped and murdered a pregnant woman was sentenced to death¹⁰⁶ by the High Court, the Chairperson of the Human Rights Commission observed that no one had the right to take the life of another human being regardless of the circumstances and that the right to life is dear to every human being and must be protected and therefore opposed the death sentence.

¹⁰¹ (Unreported).

¹⁰² Zambia Daily Mail, Monday January 30, 2012.

¹⁰³ Zambia Daily Mail, Monday January 30, 2012.

¹⁰⁴ (Unreported).

¹⁰⁵ *Initial Report of the National Constitutional Conference*: (Mulungushi International Conference Centre, 2010).

¹⁰⁶ Times of Zambia New paper December, 12, 2011.

However, it has been observed that at the time of this research, the Law Association of Zambia had not taken a position yet but the Vice Chairperson indicated that the letter of the Law must be fulfilled. In his reaction to the death sentence, he added that the full extent of the law had to be felt.¹⁰⁷

3.3 THE POLITICAL PERSPECTIVE OF DEATH PENALTY

There is a likelihood that political orientation of the Government in power matters on whether the death penalty law is maintained or abolished. There are various reasons why politicians make Laws. Some reasons are indeed political so as to protect one's position in power yet others are to promote social justice in society. It has been observed that politicians see human nature as fixed and believe that the most vicious criminals cannot be reformed and that they must be executed so that they can no longer harm innocent citizens.¹⁰⁸ In determining sentences the legislature plays a crucial role.¹⁰⁹ This is so because the legislature is the body that determines the conduct that attracts the maximum sentence. Politicians also determine the level of democracy of a particular state. A Country with a mature democracy will appreciate the limitation of power which includes limiting the power on any punishment used more than a premature democracy. Politicians can insist that justification for death penalty is the response to and prevention of serious crimes in society. Politicians can also use capital punishment or death penalty as a tool against political opponents and other citizens considered troublesome.¹¹⁰

¹⁰⁷ Times of Zambia New paper December, 12, 2011.

¹⁰⁸ Katrine Anne Mortensen, *Abolition of Death Penalty :Master Thesis, Department of Comparative Politics*.(University of Bergen. September 2008).

¹⁰⁹ John Hatchard & Muna Ndulo. *Readings in Criminal Law and Criminology in Zambia*. 115.

¹¹⁰ Mortensen Anne, *Abolition of Death Penalty*.

In Zambia the responsibility to sentence lies with the judiciary. In capital punishment or death penalty Law the Judges of the Court can hand it down because it is mandatory and in case of the Supreme Court there is no appeal. The Chief justice of the Republic of Zambia after confirming the conviction and sentence of Captain Steven Lungu and others said that the Court had done its job and what was left was the President's prerogative.¹¹¹ The President therefore retains the power to sign the death warrant, pardon or commute death sentences as provided by Section 305 (4) of the Criminal Procedure Code.¹¹²

When Fredrick Chiluba became President of the Republic of Zambia, he signed a death warrant of 8 Prisoners who were executed and yet pardoned 600 Prisoners. Since then, the succeeding Presidents Levy Mwanawasa and Rupiah Banda declined to sign death warrants.¹¹³ Zambia has now a new Ruling Party and a new Republican President. Zambia's new President has indicated that he would rule the Country in accordance with the Ten Commandments.¹¹⁴ The Ten Commandments proscribe the killing of a person by another person.¹¹⁵ President Sata is a strong believer of the Catholic doctrine and the Catholic position on the death penalty is that life is sacred and is opposed to death penalty.¹¹⁶ When President Chiluba released 600 Prisoners, Michael Zulu the then Zambia Independent Monitoring Team (ZMT) President welcomed the release but indicated that the President could have done more by also considering the abolition of the death penalty.¹¹⁷

¹¹¹ Zambia Daily Mail, Friday December 19, 2003.

¹¹² Chapter 88 of the Laws of Zambia.

¹¹³ Times of Zambia, December 27, 2011.

¹¹⁴ Times of Zambia, December 27, 2011.

¹¹⁵ Exodus 20:13 The Holy Bible, King James Version, Thomas Nelson Publishers Nashville 1980 86.

¹¹⁶ Simon Mwale, *Jesuit centre for theological reflection, Zambia's constitutional review; what sorts of principles and issues?* www.jctr.org.zm site accessed on 20 January 2012.

¹¹⁷ Times of Zambia 27 January, 1997.

3.4 RELIGIOUS PERSPECTIVE

It is not the concern of this work to cover all the various religions on this topic of death penalty because the State in which this work was being carried out is predominantly a Christian community. Be that as it may, reference has been made to some of the comments of Religions which are non Christian. The Constitution of Zambia provides for the right to worship. Although the Constitution declares Zambia to be a Christian nation, the Government generally respects the right of all religious groups to worship freely. As such, some citizens are Muslims and others are Hindus. However, the majority are Christians of Protestant Churches or indeed Roman Catholic followers.

3.4.1 ISLAMIC FAITH

Muslims apply Islamic Law which is also called the Shari'a Law. The sources of Islamic Law are the Qur'an and Sunna consisting of the sayings and deeds of the prophet Mohammed.

The popular verse in the Quran is 5:32 which states that:

If anyone kills a person it be for murder or for spreading mischief in the land, it would be as if he killed all people and if any one saves a life it would be as if he saved the life of all people.

While Muslims support the death penalty especially for a few crimes such as adultery, in some instances it also provides for other forms of punishment such as compensation. The Qur'an actually deems victims' compensation as preference over death penalty as punishment for Murder. While death penalty is widely supported by Muslims, there are some Muslims although few, who oppose death penalty. They also argue on the basis of the Qur'an.

This scripture is adjudged to mean that the judicial department of any state when it functions justly is an instrument in God's hand demonstrating his opposition to evil and participating in his judgment on it while anticipating its final demise.

The Christian proponents of abolition of death penalty also argue that the Old Testament cannot be used to support today's justification of death penalty. The proponents of abolition of death penalty contend that a closer look at the sayings and deeds of Jesus Christ reveal that he was not in favour of death punishment. Those who oppose death penalty refer to the woman caught in adultery in *John 8 verses 3-11*.¹¹⁹ In this context, the teachers of the Law and the Pharisees wanted to stone her to death, as recommended in the Law of Moses. Only because Jesus objected was the woman not executed by the crowd. Christ released the woman after telling her that she should not repeat the deed. The anti death penalty proponents argue that in this scene, Christ clearly demonstrated his disapproval of death as punishment for sexual offences, if not for all offences. If anything, as was his nature, he emphasised forgiveness of sin and repentance. Jesus Christ denounced the "an eye for an eye" Law and promoted love and reconciliation. Cain killed his brother Abel but God did not execute him. In fact He forgave him and put a mark on him which served as protection from others killing him. The researcher would like to add that Apostle Paul was a persecutor of Christians when his name was Saul. He changed his life and became one of the renowned and faithful followers of Jesus Christ and the Christian doctrine. This indicates the ability for human beings to reform and become useful people in society despite their past offences and condemnation. In this respect Paul the Apostle of Jesus¹²⁰ who was initially a persecutor and later changed his life by becoming an ardent Christian is an example that every human being, including a condemned prisoner has the propensity to reform.

¹¹⁹ The Holy Bible king James Version, 1310.

¹²⁰ Ibid.

It has been noted that the increase of the number of convicts on the death row as compared to the reluctance by heads of State is an indication that the death penalty is not supported. The Catholic Church has stressed¹²¹ that life should be chosen and that life is sacred. The Church has observed that every human life is sacred and demands greatest respect and protection at every stage of development. This human life includes the life of offenders. The Church calls for abolition of death penalty in the Constitution making process.

It would appear that Courts in Zambia prefer deterrence by imposing death sentence, but Kulusika has observed that it remains to be seen whether deterrence can produce desired results as far as crime reduction is concerned.¹²² A deterrent sentence could be necessary in the interest of the public but it is clear that a more lenient sentence could otherwise be imposed which could give the offender a deserved second chance.

3.5 CONCLUSION

This chapter looked at the various perspectives of death penalty in Zambia. These include legal, human rights, politics and religion. The chapter looked at the divergent views on death penalty and how these views are perceived whether to justify or denounce death penalty in Zambia. The Chapter analysed the views on death penalty in four different perspectives.

¹²¹ Simon Mwale, *Jesuit centre for theological reflection, Zambia's constitutional review; what sorts of principles and issues?* www.jctr.org.zm site accessed on 20 January 2012.

¹²² Kulusika .*Cases and Materials* 802.

CHAPTER FOUR

4.0 INTRODUCTION

This chapter has dwelt on the findings of the research based on the various aspects of the application of the death penalty Law in Zambia. The chapter reveals whether the application of the death penalty Law in Zambia in relation to the offences of Murder, Treason and Aggravated Robbery with a firearm is justified or not justified.

The chapter has also further revealed the findings based on oral interviews in relation to the application of the death penalty in Zambia.

4.1 INTERNATIONAL INSTRUMENTS THAT PROTECT THE RIGHT TO LIFE

The right to life which is foremost of all rights is internationally protected by the International Instruments of the United Nations.

4.2 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

This is an international instrument that recognises and protects the right to life.¹²³ The right to life is well protected in this instrument and is fundamental in all aspects.

The UDHR or some of its provisions have began to be recognised as part of Customary International Law so that torture or other inhuman or degrading treatment or punishment amounts to gross violation of the internationally recognised human rights.¹²⁴

¹²³ UN General Assembly, *Universal Declaration of Human Rights*.(10 December 1948), 217.

¹²⁴ Enoch Mulembe. *Human Rights Orientation Workshop presented to Members of Parliament in Siavonga* . (October 2007).

The application of the death penalty in Zambia is a violation of Human Rights because the UDHR to which Zambia also belongs forbids inhuman torture and degrading treatment. The charter also protects the right to life.

4.3 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The right to life is also firmly protected in this instrument. Zambia is a signatory to the ICCPR although it violates the right to life by derogating from it in its Constitution. The right to life is firmly protected by Article 6 of the ICCPR. To ensure that the right to life is protected, Article 4 (2)¹²⁵ disallows derogation with respect to the right to life. All State parties are prohibited from derogation and have a duty to safeguard the right to life. The spirit of the UN is to completely abolish the death penalty because it is a violation of human rights, hence the Second Optional Protocol to that effect.

4.4 SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH PENALTY.

The Second Optional Protocol on the abolition of the death penalty is in consonant with Article 6 of the ICCPR which protects the right to life. According to Article 1 of the Second Protocol, no one should be executed if such a one is within the jurisdiction of state party. The Protocol ensures that state parties abolish the death penalty. Zambia is not a state party to the Second Optional Protocol. As at July 2006, there were 57 states that had become parties to the Second Optional Protocol.¹²⁶

¹²⁵ UN General Assembly: *International Covenant on Civil and Political Rights*.

¹²⁶ Enoch Mulembe. *Human Rights Orientation*.

4.5 LOCAL STATUTORY LAW

While Zambia has made steps of Human Rights protection as enshrined in the foregoing international instruments, it is in theory and not in practice as regards the right to life vis-à-vis the death penalty. Article 36 of the Bill of rights in the Zambian Constitution protects the right to life from the moment of conception. Be that as it may, clause 3 under the same Article provides an exception that a convicted criminal can have his life taken away through execution of a Court sentence. Professor Zimba has rightly observed in respect of exceptions that even the right to life which is directly a God given right is subject to a number of exceptions.¹²⁷ This is in conflict with the ICCPR. It is unjustified to guarantee the right to life and then give exceptions.

Indeed the lamentation by a Nigerian commentator as echoed by Professor Zimba that the exceptions are so complex that a bill of rights secures a bill of exceptions is a true one.¹²⁸ The proposition that the right protected in the Zambian Constitution contains many exceptions simply because it has been said that it is impossible to provide rights in a Constitution in absolute terms is unjustified because it is in violation of the right to life, it should be absolute and non derogable.

4.6 THE PENAL CODE

Since the Constitution provides for death penalty in execution of a sentence of a Court, the legislature has promulgated Laws for which the death penalty is applicable to certain offences. These offences are Murder, Treason and Aggravated Robbery using a firearm.

¹²⁷ Lawrence Silas Zimba. *The Constitution protection of fundamental Rights in Zambia*.

¹²⁸ Ibid.

Criminals convicted of these offences suffer death by hanging. The Judges have made pronouncements that their hands are tied by the law for offences that attract mandatory death sentences and the Judges have no discretion.

4.7 THE APPLICATION OF DEATH PENALTY LAW IN ZAMBIA: WHAT IS THE JUSTIFICATION?

The death penalty Law in Zambia has continued to be applied by the Judiciary in Zambia. The Judges state that their hands are tied by Law in cases where the sentence is mandatory. In these cases, the Court has no discretion to rule otherwise. Lusaka High Court Commissioner Anthony Nyangulu (as he then was) stated while sentencing two men to death that Zambian Law required that anyone who is found guilty of Murder should be sentenced to death and the Court had no discretion to pass a different sentence.¹²⁹ This statement has been used by other Judges when handing down death sentences for Murder, Treason and Aggravated Robbery where a firearm is involved.

4.8 THE LAW AND THE JUDGES

While the death penalty law is trite, emanating from the Constitutional provisions and subsequent provisions in the Penal Code, it is unjustified Law in that this death penalty Law was inherited from Britain which has since abolished it. The British Government abolished the death penalty law in 1965. This was done through the enactment of the Murder (Abolition of Death Penalty) Act of 1965, a year after Zambia attained her independence. Zambia is a sovereign state and jurisprudence and development of Law should entail that if what was inherited was repealed, then Zambia can also repeal the Law.

¹²⁹ The Chronicle (Lusaka) January 10-13, 1997.

The law on death penalty has been described as barbaric.¹³⁰ The death penalty is an outdated Law because the British Government which applied it before Zambia started applying it had abolished the death penalty a long time ago.

The Judges have a residue of powers not only to interpret the law but can also say something about the Law in the negative or positive. The Courts in Zambia have always said their hands are tied by the mandatory death penalty Law. They have declined to state whether it is a good or bad Law. Pronouncements in Courts about a particular Law whether it be good or bad give the legislature and the public an insight about a particular Law, provoking their thinking in a particular direction.

Where the Courts are highly critical of an unjustified Law, the Legislature is jogged to see the need for amendment. For instance, corporal punishment was lawful as it was provided for by the Constitution at that time.¹³¹ However, because the Courts frowned upon corporal punishment as amounting to inhuman and degrading treatment although upholding it, the Court's sentiments opened a way towards abolition. In *Berejena v The People*¹³² The then Chief justice Silungwe stated thus:

As Corporal punishment is a form of inhuman or degrading punishment; it is our view that it should only be imposed very sparingly, but even then, this should only be done in the most serious outbreak of crime, the mere prevalence of crime is not enough. We think that in this day and age, this form of punishment should be discouraged in Zambia. Indeed the legislature itself has moved towards this direction by its recent repeal of mandatory caning in stock theft cases. In any event, Corporal punishment should be regarded as uncalled for when a long custodial sentence is passed.

Such sentiments from Courts are progressive and lead to amendment of outdated Laws. Indeed Corporal punishment was declared unconstitutional and thereby struck out from the

¹³⁰ The Post News paper, Friday, 19 December 2003.

¹³¹ John and Muna. *Readings in Criminal Law and Criminology in Zambia*.

¹³² (1984) ZR 19.

Zambian statute books. Judges have not been bold enough to state that despite the death penalty being mandatory, it was not a good Law in this day and age. In the *Cephas Kufa Miti* case, the Supreme Court should have said even in dictum that in other jurisdictions, it had been declared unconstitutional and therefore also amounts to inhuman and degrading treatment and urge parliament to amend it.

The mere statement that their hands are tied is not good enough for the development of Law in the Country. In other jurisdictions Courts have been bold enough to hold that that death penalty is unconstitutional. The Courts in Uganda held that mandatory death sentence is unconstitutional. This holding also influenced the Courts in Kenya in the Mutiso case. The ruling on the unconstitutionality of death penalty had positive results. On 3 August 2009, President Kibaki announced that he was to commute the sentences of all those on death row in Kenya. Had the Supreme Court in Zambia declared the mandatory death sentence unconstitutional like their brothers in Kenya and Uganda did, the death penalty would have been abolished. However the decision of other jurisdictions is only persuasive to Zambian Courts.

4.9 PRESIDENTIAL DISCRETION

After the Judge has handed down the death sentence, it is not an end in itself that the convicted person will be executed. The Judge has no power to sign a death warrant. This is a preserve of the Head of State. The final pronouncement of the sentence of death is the signing of the death warrant by the president. Interestingly, in Zambia the last ones were signed in 1997 by President Chiluba. The succeeding presidents, Patrick Levy Mwanawasa and Rupiah Bwezani Banda had refused to sign death warrants on human rights and Christian grounds. While Presidents are refusing to sign death warrants, Courts continue to hand down death sentences. The death penalty is then seen in theory and not in practice and

is not justified. Zambia now has the 5th president who stated that he would rule according to the Ten Commandments.

The Ten Commandments also prohibit killing of any person by another person. The Catholic Church has correctly observed that quiet evidently defacto evidence (increasing statistics of people on death row) dejure evidence (reluctance of sitting presidents to sign death warrants) provides a solid basis for which Zambia should do away with death penalty.¹³³

4.10 DEATH SENTENCE NOT DETERRENT

There are various theories of punishment and deterrence or in common parlance prevention of the commission of crime is one of them. The death penalty is one of the punishments whose proponents contend that by hanging convicted criminals, other potential criminals would be prevented from committing crimes. This is not true because in 1997, 8 criminals who were on the death row were executed and in that same year Captain Steven Lungu and others committed the offence of Treason which attracts a death sentence. The execution that took place prior to the commission of Treason did not deter the soldiers from committing Treason. In the case of Aggravated Robbery involving a firearm, initially it was not punishable by death. However, in 1976, the penalty of Aggravated Robbery was raised to death sentence with a view to deter offenders. However, Muna Ndulo has observed that there was but a temporal reduction because in 1976, the number of aggravated robberies was 1,315 but in 1986, the number of aggravated robberies rose to 4,426.¹³⁴

¹³³ Simon Mwale. Jesuit centre for theological reflection, Zambia's constitutional review; what sorts of principles and issues? www.jctr.org.zm Site accessed on 20 January 2012.

¹³⁴ John Hatchard and Muna Ndulo, *Readings in Criminal Law and Criminology in Zambia*: (Lusaka: Multimedia publications 1995) 84.

Muna Ndulo observes that therefore, increasing the penalties for an offence cannot solve the problem and emphasises that something more is done in the prevention of crimes.¹³⁵ The penal policy has seen that the deterrence doctrine has not succeeded in Zambia.

Muna Ndulo also postulated that other than the emphasis on deterrence, the Government should look at crime prevention in the light of the criminal justice system vis-a-vis social, economic, cultural and political development of the nation and consideration placed at the highest level of politics. This is a sound proposition in the light of the abolition of the death penalty especially that every sitting President has been reluctant to sign execution warrants for death penalty. The deterrence theory is unjustifiable. Simon Kulusika has also observed that the prevention or deterrence theories as an imposition of punitive sanctions and the infliction of suffering is unjustifiable unless it can be shown that more good is likely to result from the imposition of such punishment. This goodness is the prevention and reduction in crime but statistics have not shown any reduction. Therefore, it is not justifiable.

According to Professor Hansungule, the death penalty is discriminatory because it is mostly applicable to the poor.¹³⁶ The application of the death penalty Law is unjustifiable because it cannot act as deterrence to crime of Murder, Aggravated Robbery and Treason.

4.11 DEATH SENTENCE: A HUMAN RIGHTS VIOLATION

The death sentence is a violation of Human rights. This is so even where derogation is sparingly allowed such as in war crimes. There are a lot of restrictions on application of death penalty Law even in International Human Rights Instruments.

¹³⁵ John and Muna. *Readings in Criminal Law and Criminology in Zambia*.

¹³⁶ Interview with Professor Hansungule on 8 April 2012 in Lusaka.

This is a clear indication that it is an undesirable kind of punishment. The local statutory Law excludes a pregnant woman and a person of young age from being punished by death.

This is an indication that it is discriminatory because the right to life is the same regardless of sex or age. It is unjustifiable punishment even for convicted adults.

Once sentenced to death, the victim's mind begins to think that on a certain day, but to be determined by the Government, they will be hanged. One victim of the death penalty stated that the death sentence was like a sledge hammer on his head.¹³⁷ The victims are kept for a long time without knowing their fate. According to Peter Kunda, a former death sentence convict,¹³⁸ the condemned prisoners are referred to as chickens for slaughter by prison authorities.¹³⁹ This is inhuman and degrading treatment and is a violation of human rights.

The right to life according to Mulembe exists independent of the law.¹⁴⁰ According to the Roman Catholic, the right to life includes the life of an offender. The death penalty is also a human right violation because it is inherently cruel. This cruelty is by the termination of life by Law when in fact life cannot be given through Law. The death penalty is also said to be discriminatory. It is mostly for the poor. Professor Hansungule observed that even in the United States of America, most of the people on death penalty row are from the black race because of poor legal representation.¹⁴¹

This position is also true in that even in Zambia, most of those convicted and sentenced to death cannot afford to find legal representation and rely on the Legal Aid from the Attorney General's chambers which are mostly overwhelmed by cases.

¹³⁷ The Post Newspaper Sunday, 03 October, 2010.

¹³⁸ Ibid.

¹³⁹ The Post Newspaper Sunday, 03 October, 2010.

¹⁴⁰ Enoch Mulembe. *Human Rights Orientation Workshop*.

¹⁴¹ Interview with Professor Hansungule on 8 April 2012 in Lusaka.

The legal fees in Zambia are so high that most of the people cannot afford legal representation. The death penalty is also a violation of human rights because of the possibility of miscarriage of justice.

When there is a possibility of miscarriage of justice in the justice system which is possible in every justice system, an innocent person can be executed. In the Zambian justice system, there are instances where a convict sentenced to death by the High Court may end up being acquitted or the sentence reduced by the Supreme Court on appeal. In the event that the convict does not appeal for lack of legal representation or knowledge to appeal, they can be hanged. In the matter of *Nelson Bwalya and the People*,¹⁴² the convict would have been hanged had it not been for the appeal to the Supreme Court. The death penalty can therefore lead to the execution of innocent citizens and it is a violation of human rights.

4.12 PUBLIC SENTIMENTS

The sentiments from the public on the death penalty Law are reactions tilted against the commission of the crime of Murder. Whenever a Murder case is committed, the feelings of the public are that the perpetrator should be killed as well. However, the reactions are emotional and if they were not so, life imprisonment would be contemplated. In an oral interview with Mr. Mainda¹⁴³ a Public Prosecutor, he revealed that calling for death is a reaction that comes emotionally but after reflection, life imprisonment is ideal in relation to Treason and Aggravated Robbery. Mr. Mainda indicated that there is no need to hang the perpetrator but they should be jailed for life Mr. Lungwangwa¹⁴⁴ who is a Police Officer and followed proceedings at the National Constitution Conference indicated that Murderers

¹⁴² (Un reported).

¹⁴³ Interview with Mr. Mainda on 7 March, 2012 In Lusaka.

¹⁴⁴ Interview with Inspector Lungwangwa on 12 March 2012 in Lusaka.

should be punished by death as for Treason and Aggravated Robbery, life imprisonment was a preferred sentence.

Public sentiments on the death penalty are not a reflection of the Law but are results of emotionally charged citizens. Following defilement and strangulation to death of a 12 year old girl in Chibombo District of Zambia,¹⁴⁵ there were emotional calls for the death of the perpetrator. Before he was even arrested and tried to determine his mental capacity and other factors, the death sentence was already invoked by the public.

Women and Law in Southern Africa (WLSA) Regional Coordinator Matrine Chulu stated that if the offender in the matter of the 12 year old girl was found to be guilty, the death sentence should be considered.¹⁴⁶ In the same matter, Law Association of Zambia President James Banda indicated that the offender should face the full sanctions of the Law.¹⁴⁷ Although he did not indicate the application of the death penalty, it can be deduced that he referred to the death sentence because of the Murder involved in the matter. The Republican President Michael Sata hoped that justice would prevail over the offender in the matter of the 12 year old girl so that would-be offenders could be deterred.¹⁴⁸ He did not expressly refer to the death sentence but left it to the justice system, which justice system is tied to the Law of death penalty which is mandatory. The Evangelical Fellowship of Zambia called for the imposition of the death sentence on the offender and that the death penalty should be extended to the defilement cases whose levels were high in the Country. The parents to the deceased girl also indicated that the killer of their child should face the hangman's noose. From these sentiments, it is clear that the public does not take into account all circumstances but react emotionally and invoke the death sentence particularly in the case of Murder.

¹⁴⁵ Zambia Daily Mail, Wednesday 22nd February 2012.

¹⁴⁶ Zambia Daily Mail, Wednesday 22nd February 2012.

¹⁴⁷ Zambia Daily Mail, Wednesday 22nd February 2012.

¹⁴⁸ Zambia Daily Mail, Wednesday 21st February 2012.

4.13 CONCLUSION

This chapter looked at the application of the death penalty in Zambia and whether it is justified or not. The chapter revealed that the application of the death penalty in Zambia has no justification. It is a violation of human rights especially the right to life. The death penalty is not a deterrent to heinous crimes and that public sentiments are biased towards Murder and are not a reflection of careful thought but emotionally charged feelings.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 CONCLUSIONS

The focus of this research has been to ascertain the justification of the application of the death penalty Law in Zambia. The paper established that there is no justification for the application of the death penalty Law in Zambia. Further, the paper established that the provisions in the Constitution and the Penal Code on the deprivation of life in the execution of a sentence of a Court are outdated and further violate the right to life. The Constitution protects the right to life but the right to life has been marred by a lot of exceptions. These exceptions dilute the guaranteed right to life.

The paper has also established that Judges always claim that their hands are tied and therefore had no discretion in capital offences of Murder, Aggravated Robbery involving a firearm and Treason. The Judges do not state that the deprivation of life by the State is a violation of human rights. The Courts continue to hand down death sentences although each sitting President has been reluctant to sign death warrants and opt to commute death sentences or pardon by invoking the prerogative of mercy.

The application of Death Penalty is not justified as it does not operate as a deterrent to would be offenders. The research has shown that while death sentences are being handed down, crimes that attract the death sentence continue to be committed. It has been established that the death penalty is discriminatory in that the majority of those sentenced to death are poor and have no legal representation. The paper has also shown that there can be miscarriage of justice where the Judges can error in Law and in fact and convict an innocent person.

This possibility has been demonstrated by the fact that at High Court level, accused persons are convicted and sentenced to death and on appeal, they are acquitted or have their sentence varied from death sentence to life or lesser sentences. The public sentiments have been established to be a result of emotions and not a reflection of the whole process of the justice system. The death penalty is also applied in a discriminatory manner in that it excludes certain categories from execution. The death penalty does not apply to persons below eighteen years or youths and pregnant women. It is submitted that life is the same whether it be of a young person or an adult. If the death penalty was to serve any purpose it would apply to all categories of condemned persons. If the life of a young person and pregnant woman cannot be terminated by Law, the life of a condemned male adult and an unpregnant woman should also not be terminated because life is the same and given to all gender and age by God. Zambia is a signatory to a number of International Instruments that protect the right to life but has not domesticated them and therefore are not justiciable. Zambia has also not ratified the Second Optional Protocol which abolishes death penalty in member states.

5.1 RECOMMENDATIONS

Having discussed the application of the death penalty in Zambia and the conclusion that it has no justification, the right to life has to be cherished and protected at all costs. The right to life which is a God given right must not be taken away by the State using the Law or otherwise. It is therefore against this background that the paper recommends measures to be taken to protect the right to life.

There is urgent need for amendment and implementation of the Constitution by removing derogation clauses pertaining to the right to life.

The amendments should be included in the Bill of Rights so that they become anchored and entrenched. Ratification and domestication of International instruments should be urgently done so that the breaches or violations of the right to life can become justiciable in order to attain and sustain the protection of the right to life. This approach will help prisoners who have their right to life violated to have access by invoking the local justice system in matters where the right to life is likely to be or has been violated by the state. The delay in the ratification and domestication of International Instruments that protect against the violation of the right to life is a grave impediment to the abolition of the death penalty Law. Local statutory laws such as the Penal Code, Criminal Procedure Code and the Prisons Act need urgent reform because many issues have evolved since society is dynamic.

There is urgent need to enhance Zambia Police Service officers' training in so far as crime prevention is concerned. It is said that prevention is better than cure. The Police Service should be adequately funded so that both institutional and human resource capacity building is attained at the highest level in order to allow for modern policing. An efficient and effective Police Service can prevent crimes of Murder and Aggravated Robbery so that citizens live in peace and harmony. It is regrettable that the Zambia Police Service can hardly conduct effective patrols and citizens have to wait until they are robbed because the Police are either very few or where they are available, there is no transport. This demotivates Officers and also erodes citizens and foreign investors of confidence because of fear of commission of heinous crimes such as Murder and Aggravated Robbery. The Government should also establish the causes of the crime of Murder, Aggravated Robbery and Treason in order to come up with measures that can mitigate the commission of the crimes. The social and economic imbalances have to be resolved so that citizens can have access to resources and embrace the dignity of work so as to avoid the commission of heinous crimes for personal benefit.

The criminal justice system which includes the Courts, the Police and Prisons Services should be adequately developed in knowledge and other resources so that justice is done and not seen to be done only. The regular training of Judges, Prosecutors, Lawyers and Investigators in relation to Murder, Aggravated Robbery and Treason can help expedite the logical conclusion of such cases. This can also help the Courts to save time and other resources when cases are effectively and urgently concluded for the benefit of the State and the accused persons. The infrastructure for prison services should be improved so that those found guilty of Murder, Treason and Aggravated Robbery are sentenced to life imprisonment in places where reformation can be attained effectively. Overcrowding inmates in small cells is also a violation of human rights.

Zambian Courts should by now understand that the death sentence does not operate as a deterrence to would be offenders. The Courts should instead call for a robust prevention of the crimes that attract this penalty and call for its abolition and invoke other sentences. The Courts should not only be tied by the old Law of the death penalty but they have a duty to help wheels of justice to rotate according to changing times by expressing the unconstitutionality of the death penalty. The Courts have aided greatly in changing the Law. For instance, the Courts helped to protect the freedom of assembly by declaring the Public Order Act unconstitutional. In the same vein, the Court helped to abolish Corporal punishment.

Training Zambia Prisons Service Officers in counseling and production skills should be done so that the condemned prisoners who serve life sentences can be looked after by well skilled and competent persons. This will help to reduce the stigma that the prisoners carry because being in prison is not the end of life. Prison Officers call Prisoners on death row as

chickens for slaughter.¹⁴⁹ This has a chilling effect on the reformation process of the prisoners because they feel detached from being human beings and are equated to Chickens. Therefore, need for appropriate training of Prison Officers should be seriously considered in order to avert violation of the right of condemned Prisoners. The Government must also prioritise the improvement of infrastructure of prisons across the Country. This will help to transfer prisoners serving life or long custodial sentences for Murder, Treason and Aggravated Robbery to other prisons across the Country. This action will in turn reduce the congestion in condemned cells at the Mukobeko Maximum Prisons.

The Education Sector should include in its Curriculum the basic programmes of crime prevention from early childhood up to Tertiary and University Education so that from child to adult age the dangers of crime are inculcated in the citizens. It is said that charity begins at home. Thus, the prevention of commission of crimes should be started at the earliest stage just like Religion is instilled in children by adult followers including Christians who promote Sunday school for children. The Agricultural and other skills within the Prison Services should be up scaled so that the prisoners have adequate food and other requirements for those on life and long custodial sentences.

¹⁴⁹ The Post News paper, Sunday 3 October, 2010.

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