

POLICY MONITORING AND RESEARCH CENTRE

SUBMISSION TO THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS

THE ADMINISTRATION OF PAROLE AND CORRECTIONAL SUPERVISION VIS A VIS THE DECONGESTION OF CORRECTIONAL FACILITIES IN ZAMBIA

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BACKGROUND

Zambia Prison Service was changed to Zambia Correctional Service, necessitated by prison reforms to move the outlook of punitive to rehabilitative and correctional. Decongestion of prisons was the main objective for transformation. Over-incarceration and overcrowding are a common phenomenon in prisons and have attracted attention of the Office of the High Commissioner for Human Rights as stated in Resolution 24/12 of the Human Rights Council on the Human rights of Persons Deprived of their Liberty. Prison populations and inherent overcrowding have been a concern as this leads to system failures – non-segregation of inmates, increased health risks as well a strain on resources for the correctional service to provide food, uniforms and transport. Overcrowding also hinders effective rehabilitation, as the ratio of inmates to officers is unbalanced.

The ultimate effect is that it is basically a violation of rights, the most affected right being the right to liberty; it is inhuman and degrading treatment. This must however be seen through the lens of the need to protect society and attendant sanctions for lawbreakers. In a Policy Brief on Improving Africa's Prisons, Simon Robins (2009) states that the rights-based approach should be at the centre of prison systems. In this way, promotion of rehabilitation and correction is assured. This is reflected in the prison reforms undertaken in Zambia, including legislative reforms that reflect the thinking that the Zambia Correctional Service should seek to rehabilitate, reintegrate and prepare inmates for employment once they have served their sentences.

Criminal justice systems need to be re-oriented to truly reflect a commitment to reform and rehabilitation of offenders. This demands greater emphasis on non-custodial sentences, where possible, on sentencing policy in general, and on ensuring effective bail and parole systems. In order to better understand the applicability of parole in Zambia, we need to look at the definition. It is defined differently in different countries, but for our purposes it is broadly the period of time following release from prison, when the offender is given help to reintegrate into society. During this time, a probation or parole officer may supervise the offender. In a nutshell, it is the conditional release of a prisoner who agrees to certain conditions prior to the completion of the maximum sentence period.

It has been generally recognised that judicial and penal systems should be premised around the concepts of reform and rehabilitation.

LEGAL FRAMEWORK

The legal framework governing the administration of parole and correctional supervision comprises the following pieces of legislation:

1. The Constitution, Amendment Act No.2 of 2016

This guarantees civil and political rights to every citizen, including those deprived of their

liberty under an order or sentence from a court of competent jurisdiction.

2. Zambia Correctional Service Act No.37 of 2021

This is the principle legislation governing prisons and their operations. It continues the existence of the National Parole Board as a unit of the Zambia Correctional Service; it sets out functions of the Zambia Correctional Service (ZCS) and most importantly, domesticates the United Nations (UN) Minimum Standard Rules for the Treatment of Prisoners. It provides a definition of parole as the “conditional release of a convicted inmate from a prison or correctional centre to serve the remainder of the sentence in the community under supervision. The Parole Rules further stipulate how parole is to be administered, the procedure for granting of parole; how parole is to be supervised and monitored; the duties of extension services and parole officers.

3. Probation of Offenders Act, Chapter 93 of the Laws of Zambia

This provides for the probation of offenders, mainly by way of probation orders granted by the court.

The key international instruments are the Tokyo Rules and the Nelson Mandela Rules, discussed below:

The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)

These are a set of basic principles to promote the use of non-custodial measures as well as minimum safeguards for persons subject to imprisonment. The Rules are intended to promote among offenders a sense of responsibility to society. They make provision for the legal standards for non-custodial measures and for supervision of offenders. Some of the Rules are set out here for ease of reference:

Rule 1.5 mandates Member States to develop non-custodial measures within their legal systems to provide other options thus reducing the use of imprisonment and to rationalise criminal justice policies, taking into account observance of human rights, the requirements of social justice and rehabilitation needs of the offender.

Rule 3.2 provides that selection of a non-custodial measure shall be based on an assessment of established criteria in respect of the nature and gravity of the offence; the personality and background of the offender; the purposes of sentencing and the rights of victims.

Rule 10.1 provides for supervision with the purpose of reducing re-offending and to assist the offender’s integration into society in a way which minimises the likelihood of return to crime.

Rule 15.2 refers to the need for suitability, professional and practical expertise of staff engaged to supervise offenders.

Rule 16 sets out the modalities for application of non-custodial measures.

Rule 17.1 is notable for its recognition that public participation is an important resource for the success of non-custodial measures. It attaches importance to the need to improve ties between offenders undergoing non-custodial measures and families and the community.

United Nations Minimum Standard Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

These rules are the normative standard for the treatment of prisoners and they establish that provision of meaningful rehabilitation in prison is critical to reducing recidivism. Therefore, parole has to be viewed through the lens of the aims of imprisonment, the importance of serving the objectives of justice and diversion of some offences from the criminal justice system. In tandem with the Tokyo Rules, emphasis is on alternatives to imprisonment.

The two sets of rules complement each other in terms of ensuring that the rights of prisoners serving sentences in correctional facilities are protected and they are governed by agreed upon principles. The same applies to those serving non-custodial sentences.

EFFICIENCY OF PAROLE AND CORRECTIONAL SUPERVISION

Supervision of parole falls under the mandate of the ZCS but it's also a joint effort involving the Ministry of Community Development and Social Services. Together they provide the necessary mechanisms for the serving of sentences for offenders. ZCS and the Ministry of Community Development collaborate on probation and supervision of offenders but as to whether this collaboration is yielding results, more inquiries need to be conducted. In the performance of its parole supervision and monitoring function, the Commissioner of Prisons may appoint extension officers from among the prison officers who are qualified in social welfare to administer the extension services programme and compulsory after care orders.

In order for the conditional release of offenders to be successful, there is need to address the legal and sentencing issues aimed at reducing the numbers being detained and put rehabilitation at the centre of justice systems. With this in mind, the system will deliver on the objectives of non-custodial measures.

Under the Parole Rules (2008), a prisoner cannot be released on parole unless he has accepted the conditions of his parole. The fact that the granting of parole revolves around conditions to be agreed to by the offender, including restrictions on liberty, requires that there is sufficient man power to supervise and ensure adherence. However in the Zambian context, there is every danger that one will agree to conditions for the sake of being released. The framework of the law, policy and practice needs to be reviewed from time to time to ensure that it is meeting the aspirations of the system in this regard.

Considering that parole is granted to a prisoner who has 6 months left of the sentence, this is a good timeframe to start discussing the conditions for release so that the potential for breaching the conditions is minimised.

ROLE OF CIVIL SOCIETY AND NON-STATE ACTORS

Rehabilitation and reintegration is a specialised area and capacity needs to be spread across a wide area of actors. The Tokyo Rules are instructive in this regard and Rule 22.1 recommends linkages with relevant agencies to facilitate establishment of services relating to social development, social welfare to enable a well-rounded system. The role of civil society (CSOs) should be in coordination with prisons administration and premised on guidance and advisory services which are based on the Mandela Rules as the normative compass aforementioned. Zambia currently has several CSOs working in the area of advocacy for prisoners and one example is the Prison Care and Counselling Association (PRISCCA), founded by ex-prisoners in 1997 to complement government efforts to promote a balanced humane system of imprisonment and the reintegration of prisoners into society. AIDS Alliance and Rights Alliance for Southern Africa (ARASA) supports civil society actors to advance a human rights-based response to HIV in southern Africa. These organisations together and severally operate in the area of advocacy for human rights, continued reforms and rehabilitation and reintegration of inmates back into their communities. Socio-economic activities are one of the key ways to prevent reoffending and this is one area the CSOs can assist by lobbying for resources to carry out skills training and education. Government may not have the capacity to provide teachers, instructors, workshop material and equipment but this can be supported through partnerships with CSOs and non-state actors.

CHALLENGES IN ADMINISTRATION OF PAROLE AND CORRECTIONAL SUPERVISION

A number of challenges were identified in a report of the Auditor General (2014) which are still largely the position presently. It was stated that the objectives of parole, namely rehabilitation and reintegration, were not being achieved. The reasons for this assertion are set out here below:

- Most measures imply some restrictions in liberty and some offenders may fail to comply. This automatically results in a breach of conditions to be observed by the offender and may result in the modification or revocation of the non-custodial measure. Minor transgressions may be exempted.
- Prisons remain overcrowded because, despite putting in place the parole system, not all who applied for it are granted parole. Parole hearings are reportedly delayed because on non-payment of allowances for parole board members, leading to apathy.
- The National Parole Board is not an independent or final arbiter in the administration of parole. It makes recommendations to the Commissioner of Prisons who, in turn, approves or disapproves the conditional release of prisoners. According to Mwanza (2014) this makes the board a mere extension of the Zambia Correctional Service.

- Lack of **presence** of the National Parole Board in the provinces, despite provincial NPBs being provided for in the Zambia Correction Services Act.
- Inadequate human and institutional capacity; Parole officers are not trained in the administration of parole and training is further hampered by the high staff turnover in the service; lack of permanent officers in parole administration.
- Lack of funding has also been identified as the reason compounding the challenges.
- It was indicated that there are no monitoring reports of prisoners released on parole despite this being a duty under the Parole Rules (2008). This renders it difficult to determine the efficacy of the system and ultimately to gauge the success rate of rehabilitation and reintegration programmes. As a result more resources are spent of custodial sentences.
- Failure to comply with international standards or to domesticate into national legislation the provisions of relevant regional and international conventions that have been ratified
- The apparent lack of a comprehensive policy on internal security for direction on how to deal with prisoners and to address rehabilitation and reintegration needs.

ENHANCEMENT OF PAROLE AND CORRECTIONAL SUPERVISION

Upon reviewing the shortcomings of the parole and correctional supervision system, the PMRC offers the following recommendations to enhance the administration of PAROLE correctional supervision:

- Provide psychological counselling as part of the correctional services; this will entail engaging more qualified psychologists. This is against the objective of correctional services being to reform and not punish. Of course it is understood that there is need to balance the needs of society, the needs and rights of offenders and those of victims.
- The fact that the Zambia Correctional Service is short of trained staff is an opportunity to strengthen its collaboration with the Ministry of Community Development and Social Services, which has Probation Officers and Social Welfare Officers who principally deal with children in conflict with the law. Shared expertise can help the correctional services without necessarily burdening the officers with added responsibilities. It is recognised that the Probation of Offenders Act aforementioned stipulates that the supervisory function will be by order of the court. This is sufficient impetus to enter into a memorandum of understanding that they be considered to supervise parolees, depending on the severity of the offence for which the sentence was imposed in the first place. The conditions for parole may be determined by the Parole Board and sanctioned by the sentencing court. The training can be used as an incentive. Tanzania uses probation officers to facilitate the supervision of offenders who are eligible for parole and affords a best practice model.

- In terms of policy formulation, non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system. An essential part of the planning process is the involvement of both public and private bodies in the organisation and promotion of research on non-custodial treatment of offenders. According to Rule 20, research and information mechanisms should be built into the criminal justice systems for the collection and analysis of data and statistics on the implementation of non-custodial measures.
- The National Parole Board would function better as an independent administrative tribunal with exclusive authority to grant, deny or revoke parole without interference from any political or bureaucratic structure or external pressure.
- Public education and sensitisation on the benefits of parole needs to be part of the communication strategy of the Zambia Correction Service through the National Parole Board. Since parole is a community based correctional model, community involvement is critical for the success of parole and information dissemination is a key component of this success. The benefits of parole are not appreciated by society and the early release of prisoners is perceived as failure on the part of the criminal justice system. This may lead to rejection of the prisoner, which may in turn lead to re-offending.

SELECTED REFERENCES

1. Mwanza, Tobias "Parole as a way to reduce overcrowding in Zambian prisons: a Communicative and participatory approach." Degree Thesis, University of Zambia 2012
2. Robins, Simon (2009). Policy Brief on Improving Africa's Prisons.
3. Office of the Auditor General; Report of the Auditor General on the Rehabilitation and Reintegration of Prisoners by Dr. Anna Chifungula 2014



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