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SCHOOL OF LAW

**A CRITIQUE OF THE ALTERNATIVES TO IMPRISONMENT AND ENFORCEMENT
MECHANISMS IN ZAMBIA: DRAWING LESSONS FROM KENYA AND TANZANIA.**

BY:

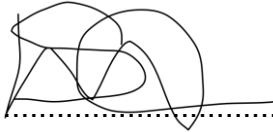
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**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY TO THE UNIVERSITY
OF LUSAKA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD
OF THE BACHELOR OF LAWS (LLB) DEGREE.**

DECLARATION

I, **SIDDAH MANDONA**, do declare that this dissertation titled “**A CRITIQUE OF THE ALTERNATIVES TO IMPRISONMENT AND ENFORCEMENT MECHANISMS IN ZAMBIA: DRAWING LESSONSW FROM KENYA AND TANZANIA**” which is hereby submitted in partial fulfillment of the requirements for the award of a Bachelor’s Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other institution. I understand what plagiarism entails and I’m aware of the University’s policy in this regard. Thus, where other people’s work is cited, I have duly acknowledged. The errors or omission in this work are solely mine.

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RECOMMENDATION

I **LUMBIWE MWANZA**, do recommend that this dissertation prepared under my supervision by SIDDHAH.M. MANDONA, entitled **A CRITIQUE OF THE ALTERNATIVES TO IMPRISONMENT AND ENFORCEMENT MECHANISMS IN ZAMBIA: DRAWING LESSONSW FROM KENYA AND TANZANIA** be accepted for examination. I have checked it carefully and I am satisfied that it meets necessary requirements pertaining to the format laid down in the regulations governing directed research.

.....
Ms. LUMBIWE MWANZA

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(Date)

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DEDICATION

This research is dedicated to the Lord Almighty, whose guidance and unconditional love have been a source of strength throughout my academic journey. To my parents Richard Nsofu Mandona and Harriet Musalwa Mandona and my siblings Nelly Mandona, Mutale Mandona and Harriet C.Mandona despite her not being able to witness my growth and coming this far in my academic journey. I am forever grateful that you believed in me and affirmed me on days I stopped believing in myself. This journey has not been the easiest but has been made possible through your tremendous love and sacrifice and for this I will forever be indebted to you.

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ABSTRACT

Zambia's heavy use of imprisonment as the main way to punish people has caused prisons to be too full, led to human rights problems, and made rehabilitation efforts not work well. This study examined how effectively Zambia's legal system uses alternatives to incarceration, such as community service, probation, suspended sentences, and fines. Additionally, it contrasted Zambia's circumstances with those of Kenya and Tanzania, which have superior non-custodial punishment systems that prioritize the community. A combination of qualitative and comparative methodologies are used in the study.

It looked at laws, court cases, how institutions work, and government policies. Most of the information comes from research done by looking at documents and analyzing themes and content from both official and other sources. The research showed that while Zambia's laws do allow for non-custodial options under different codes, these are not being properly carried out. This is because the laws are not well connected, there isn't enough support from institutions, there's not enough supervision, and people don't trust the system.

In Kenya and Tanzania, successful non-custodial sentencing comes from having clear laws, good teamwork between different parts of the system, and involving the community. The study suggests that Zambia needs big changes, like creating a new law for community service, updating probation laws, making suspended sentences include more supervision, and changing how fines are handled to be fair and just.

In the end, the study indicated that using alternatives to imprisonment can help reduce prison overcrowding, improve rehabilitation, and help Zambia's justice system meet international human rights standards, like the Tokyo Rules (1990) and the Mandela Rules (2015).

CHAPTER ONE

1.0 INTRODUCTION

Imprisonment has been the main way to punish people who break the law for a long time, and it's been a key part of justice systems around the world. But now, this method is being looked at more closely, especially in Zambia, where the bad effects of putting too many people in prison are becoming very clear. Prisons are full, there aren't enough resources, and just putting people in jail doesn't fix the real reasons why crimes happen. This shows that new ideas are needed. Trying alternatives to jail could change how the justice system works by focusing on helping people instead of just punishing them, lowering the chance of people committing crimes again, and making it easier for prisons to handle their problems.

Zambia's laws include options that can be used instead of sending someone to prison in different situations. For example, Section 8 of the ***Criminal Procedure Code Chapter 88¹*** lets people who have done a small wrong and the person they hurt come together to make things right. This helps focus more on repairing the harm rather than just punishing. Also, the Probation of Offenders Act, found in Chapter 93, lets courts put offenders on probation with certain rules, which helps them get back on track. Even though these laws exist, they aren't always used properly. This is because there isn't enough support from the systems in place, and some people don't trust these methods.

Court cases also show how hard it is and how important these options are. In ***Tembo v The People (2011)***,² the High Court said that for small crimes, judges should think about not putting someone in jail, and make sure the punishment fits the crime.

In the case of ***Zyambo v Ntharzy***³ (2014), the court talked about how to make sure that when people are given alternatives to jail, they actually follow through with the rules.

¹ Criminal Procedure Code Chapter 88

² Tembo v The People (2011)

³ Zyambo v Ntharzy

These cases show that the courts are slowly changing their approach to make sure justice is done, people are helped to recover, and the community is protected

This dissertation aims to examine how well Zambia's current alternatives to jail work, look at the systems in place to make sure people follow them, and learn from what Kenya and Tanzania have done. Using a comparison of legal systems, the research will look at laws, government structures, and real examples to understand how non-custodial sentencing works in practice. The goal is to help improve justice reforms in Zambia by promoting methods that protect the public while also supporting fairness, rehabilitation, and equal treatment.

1.1 BACKGROUND

The criminal justice system in Zambia has had more difficulties in recent years, especially when it comes to using jail time as the main way to punish people. Prisons are now so full that they can't handle the number of people in them, and there aren't enough resources to take care of everyone properly. Because of this, more people are starting to think that there should be other ways to deal with crime besides putting people in jail. These alternatives should help fix the reasons why people commit crimes, help them change their behavior, and lower the chance that they'll break the law again.

The Zambian government has started to use some of these alternative ways, like probation, community service, and fines. These options are mentioned in different laws. But even though they've been introduced, they aren't always applied or followed the same way everywhere. This has made people wonder if these methods really work and how the public sees them.

The discussion about using alternatives to jail isn't just happening in Zambia. It's a common topic across many countries in Sub-Saharan Africa. Countries like Kenya and Tanzania have also dealt with prison overcrowding and have tried new ways to handle crime without sending people to jail. Kenya's Community Service Orders Act is seen as a good example because it focuses on helping people change. Tanzania's Probation of Offenders Ordinance is meant to help people get back into society. These examples from other countries can help Zambia improve its own criminal justice system.

1.2 STATEMENT OF THE PROBLEM

In the Zambian criminal justice system, putting people in prison is the main way to punish those who are found guilty. While this method worked well in the past, it now causes several problems. A 2023 report by the Zambia Correctional Service shows that there are 27,947 prisoners, but the prisons can only hold 10,500 people. This overcrowding leads to serious issues like human rights problems, pressure on resources, and difficulties for families of those imprisoned. The Correctional Service has said the number of prisoners is way over the limit, which hurts the rights and dignity of inmates.

Even though Zambia has laws that allow for other types of punishment, such as community service, probation, suspended sentences, and fines, there are no clear rules about when these should be used. Because of this lack of guidance, these alternatives are not used properly or consistently. This makes them less effective and raises questions about whether they can really replace time in prison. Without strong laws and clear ways to enforce them, these alternatives can't help stop crime, reduce overcrowding, or help people reform.

This study looks at how well Zambia's laws support these alternative punishments, checks how they are used in practice, and learns from Kenya and Tanzania, where these methods are more clearly set up and followed.

1.3 GENERAL OBJECTIVE

The goal of this study is to closely look at how well and how effectively certain alternative punishments like community service, probation orders, suspended sentences, and fines are used in Zambia. The study will also look at how Kenya and Tanzania handle these punishments to get ideas that can help make them clearer, more useful, and more effective in Zambia.

1.3.1 SPECIFIC OBJECTIVES

- 1) To examine international legal trends in the adoption and enforcement of community service, probation orders, suspended sentences, and fines as alternatives to imprisonment.

- 2) To analyze the legal framework governing these specific alternative punishments in Zambia and determine the extent to which they deter crime while reducing prison overcrowding.
- 3) To draw lessons from Kenya and Tanzania's approaches to community service, probation orders, suspended sentences, and fines, and propose reforms applicable to Zambia.

1.4 RESEARCH QUESTIONS

- 1) What are the prevailing international legal trends in the adoption and enforcement of community service, probation orders, suspended sentences, and fines as alternatives to imprisonment?
- 2) How does Zambia's legal framework regulate community service, probation orders, suspended sentences, and fines, and to what extent do they deter crime while reducing prison overcrowding?
- 3) What lessons can Zambia draw from Kenya and Tanzania's approaches to community service, probation orders, suspended sentences, and fines to improve their clarity, enforcement, and effectiveness?

1.5 SIGNIFICANCE AND THE PURPOSE OF STUDY

With the pervasive issues of overcrowded prisons, human rights violations, and resource constraints, this research aims to provide a critical assessment of non-custodial alternatives to imprisonment and the mechanisms that enforce them. By focusing on rehabilitation, societal reintegration, and reducing recidivism, the study aspires to contribute to the transformation of Zambia's justice system into one that balances public safety with the principles of fairness and equity. Furthermore, the research will draw lessons from Kenya and Tanzania countries that share socio-economic and cultural similarities with Zambia thus offering valuable insights into effective practices that can inform national reforms.

The purpose of this study extends beyond merely critiquing existing systems; it seeks to propose actionable solutions to the challenges facing Zambia's criminal justice system. By exploring legal frameworks, enforcement mechanisms, and case studies within

Zambia, Kenya, and Tanzania, the research endeavors to identify best practices that can be adapted to Zambia's context. Through a comparative analysis, it will uncover gaps in the current system while highlighting opportunities to enhance the practicality and sustainability of alternatives to imprisonment. Ultimately, the study aims to strengthen the mechanisms that promote justice, rehabilitation, and societal reintegration, fostering a justice system that addresses the root causes of crime while mitigating the detrimental effects of mass incarceration.

1.6 SCOPE OF RESEARCH

This research looks closely at how well alternative options to prison and other ways of enforcing laws work within Zambia's criminal justice system. The main focus is on non-custodial sentences like probation, community service, fines, restorative justice practices such as victim-offender reconciliation, and parole. The study checks how much these options are actually used, how effective they are in reducing overcrowding in prisons and people going back to crime, and what challenges stop them from working properly. The study is mainly about minor and non-violent crimes, where these alternatives are most suitable.

The study also includes comparisons with Kenya and Tanzania because these countries share similar social, economic, and cultural backgrounds, and they have advanced approaches to non-custodial sentencing. For example, Kenya has the Community Service Orders Act and Tanzania has the Probation Ordinance. By looking at the laws, **systems**, and ways these countries enforce their sentences, the study wants to find out what works best and how Zambia can improve its own system.

1.7 KEY DEFINATIONS

Alternatives to jail time include options like probation, doing community service, paying fines, and restorative justice, which are used in place of actual imprisonment.⁴

⁴ Lukas Muntingh, Alternatives to Imprisonment in Africa: A Guide to Good Practice (Open Society Foundations 2011).

Criminal Justice System: A framework made up of different organizations and steps that help keep society safe and deal with crime, from police work to deciding on sentences⁵

Enforcement mechanisms are the ways that make sure people follow non-custodial sentences, such as having probation officers, community service supervisors, and using legal penalties if someone doesn't follow the rules.⁶

Non-custodial sentences are punishments that don't involve time in prison, such as suspended sentences, parole, or house arrest.⁷

Penal reform refers to changes in laws and policies to make the criminal justice system more fair, kind, and effective.⁸

Recidivism: The tendency of a convicted person to reoffend after being punished or released.⁹

Rehabilitation: The process of reforming offenders to prevent reoffending and promote reintegration into society.¹⁰

Restorative Justice: A justice approach focused on repairing harm through offender-victim dialogue, restitution, and reconciliation.¹¹

1.8 LITERATURE REVIEW

The discourse on alternatives to imprisonment has been widely examined in academic literature, especially in the context of overburdened prison systems in Africa. Scholars

⁵ Andrew Ashworth and Lucia Zedner, *Preventive Justice* (Oxford University Press 2014).

⁶ Michael Tonry, *Alternatives to Custody Revisited* (Oxford University Press 2019)

⁷ Jamil Ddamulira Mujuzi, 'Probation as a Sentencing Option in Africa: Comparative Perspectives from Uganda, South Africa and Zambia' (2015) 60 *Journal of African Law*

⁸ Penal Reform International, *Global Prison Trends 2020* (PRI 2020)

⁹ Danwood M Chirwa and Mwiza Jo Nkhata, 'The Right to Human Dignity and Penal Reform in Africa' (2016) 16 *African Human Rights Law Journal*

¹⁰ Joseph Msafiri, 'Rehabilitation versus Retribution: A Tanzanian Perspective on Non-Custodial Sentencing' (2018) 14 *East African Law Journal*

¹¹ Simbarashe Gukurume, 'Restorative Justice in African Contexts: Opportunities and Limitations' (2021) 33 *Journal of Contemporary African Studies*

and legal practitioners emphasize the importance of non-custodial measures in promoting rehabilitation, reducing recidivism, and addressing systemic human rights concerns.

Michael Tonry provides a foundational perspective, arguing that alternatives to imprisonment must be part of a broader justice reform strategy centered on proportionality and reintegration rather than deterrence alone. He asserts that non-custodial sanctions should be designed to serve as true alternatives rather than punitive add-ons to existing sentences.¹²

In the African context Professor **Julia Sloth-Nielsen and Julia Mujuzi** have examined the limited implementation of probation and community service in jurisdictions like Zambia, Uganda, and South Africa. Mujuzi highlights that although Zambia's Probation of Offenders Act provides for non-custodial sentencing, it remains underutilized due to public distrust and weak institutional support.¹³

Lukas Muntingh's work offers a comparative overview of African penal reform, including in Kenya and Tanzania. He identifies community service, probation, and restorative justice as key strategies used across the continent. However, Muntingh cautions that many of these alternatives lack effective enforcement, making them largely symbolic.¹⁴

Odhiambo evaluates Kenya's Community Service Orders Act, noting that it has significantly helped to decongest prisons while promoting rehabilitation. His research also finds that proper coordination between the judiciary and the probation department is vital for successful implementation.¹⁵

In Tanzania, **Msafiri** has examined the use of parole and early release programs under the Probation of Offenders Ordinance. The study reveals that parole and conditional

¹² Michael Tonry, *Alternatives to Custody Revisited* (Oxford University Press 2019).

¹³ Jamil Ddamulira Mujuzi, 'Probation as a Sentencing Option in Africa: Comparative Perspectives from Uganda, South Africa and Zambia' (2015) 60 *Journal of African Law*

¹⁴ Lukas Muntingh, *Alternatives to Imprisonment in Africa: A Guide to Good Practice* (Open Society Foundations 2011).

¹⁵ Martin Odhiambo, 'Community Service Orders in Kenya: Achievements and Challenges' (2020) 12 *African Journal of Criminology & Justice Studies*

releases are increasingly accepted, especially where community involvement and traditional justice mechanisms complement formal systems.¹⁶

Chirwa and Nkhata this two argue that imprisonment often violates the right to human dignity and that non-custodial sentences are more consistent with African communitarian values. They critique Zambia for not fully embracing this approach, despite ratifying international human rights instruments that promote rehabilitation and proportionality.¹⁷

As for **Gukurume** he adds to the discourse by examining restorative justice within African communities. His work explores how victim offender mediation and reconciliation can be particularly effective in societies with strong communal values provided that proper legal safeguards are in place.¹⁸

These studies reveal common themes weak enforcement structures, inadequate funding, and public skepticism hinder the effectiveness of alternatives to imprisonment in Zambia. The comparative experiences of Kenya and Tanzania offer valuable lessons on how to strengthen legal and institutional frameworks for non-custodial sentencing.

1.9 METHODOLOGY

This section outlines the methodological framework adopted to achieve the objectives of the study. It details the research approach, design, type, population, sampling methods, and data collection techniques.

1.9.1 RESEARCH APPROCH

This study adopts a qualitative and comparative approach to evaluate alternatives to imprisonment and enforcement mechanisms in Zambia's criminal justice system. It emphasizes analyzing legal texts, judicial precedents, and stakeholder insights to explore systemic challenges and propose solutions. A comparative element is incorporated by

¹⁶ Joseph Msafiri, 'Rehabilitation versus Retribution: A Tanzanian Perspective on Non-Custodial Sentencing' (2018) 14 East African Law Journal

¹⁷ Danwood M Chirwa and Mwiza Jo Nkhata, 'The Right to Human Dignity and Penal Reform in Africa' (2016) 16 African Human Rights Law Journal

¹⁸ Simbarashe Gukurume, 'Restorative Justice in African Contexts: Opportunities and Limitations' (2021) 33 Journal of Contemporary African Studies

examining Kenya and Tanzania, leveraging their similar socio-economic contexts and progressive approaches to non-custodial sentencing, such as community service and probation. Through thematic analysis and stakeholder interviews with judicial officers, policymakers, and correctional facility administrators, the study seeks to uncover patterns, gaps, and best practices. This holistic approach ensures that recommendations for reform are grounded in both theoretical frameworks and practical realities, tailored to Zambia's unique justice system needs

1.9.2 RESEARCH DESIGN

This study adopts a qualitative and comparative approach to evaluate alternatives to imprisonment and enforcement mechanisms in Zambia's criminal justice system. It emphasizes analyzing legal texts, judicial precedents, and stakeholder insights to explore systemic challenges and propose solutions. A comparative element is incorporated by examining Kenya and Tanzania, leveraging their similar socio-economic contexts and progressive approaches to non-custodial sentencing, such as community service and probation. Through thematic analysis and stakeholder interviews with judicial officers, policymakers, and correctional facility administrators, the study seeks to uncover patterns, gaps, and best practices. This holistic approach ensures that recommendations for reform are grounded in both theoretical frameworks and practical realities, tailored to Zambia's unique justice system needs.

1.9.3 RESEARCH TYPE

This study utilizes a qualitative research type, focusing on an in-depth analysis of Zambia's criminal justice system, particularly alternatives to imprisonment and enforcement mechanisms. It prioritizes examining legislative provisions, judicial precedents, and stakeholder perspectives to provide a nuanced understanding of the effectiveness and challenges of non-custodial sentencing. Additionally, it incorporates a comparative element by studying Kenya and Tanzania, enabling the identification of best practices and actionable lessons relevant to Zambia's context. By emphasizing qualitative methods, the research seeks to produce comprehensive, contextualized insights that inform practical recommendations for reform.

1.9.4 STUDY POPULATION

This research comprises key stakeholders within the Zambian criminal justice system, including judicial officers (such as magistrates and judges), probation officers, legal practitioners, law enforcement personnel, and policymakers from relevant government ministries. It also includes representatives from civil society organizations involved in justice reform, as well as selected individuals who have undergone non-custodial sentencing.

1.9.5 SAMPLING SIZE

This study will use a purposive sampling technique to select a total of approximately 30 to 50 participants. This sample will include at least 10 judicial officers, 10 probation or correctional officers, 5 legal practitioners, 5 officials from relevant government ministries (such as the Ministry of Justice or Home Affairs), and 5 representatives from civil society organizations engaged in justice reform. An additional 5 individuals who have undergone non-custodial sentencing may also be included to provide practical insights.

1.9.6 SAMPLING TECHNIQUES

This study subject will be sampled using purposive sampling technique, so as to make the study even more practical while still targeting people and work places that will help in delivering reliable results with regards to the study

1.9.7 DATA COLLECTION

Data for this study will be collected using mostly desk research that is using google, legislation, journal articles, research papers, published legal reports, text books by eminent scholars , various electronic sources inclusive of academic papers and lastly precedent.

1.9.8 DATA ANALYSIS

All the data which has been collected from primary and secondary, will be analyzed qualitatively of which will involve taking down interviews and assembling the data into themes and patterns using content analysis and thematic methods of analysis. The

objective is to acquire a deep understanding and interpretation of the data relating to scarce resources in the ICT sector.

1.9.9 ETHICAL CONSIDERATIONS

To conform with the research, the researcher shall obtain permission from University of Lusaka, participants of this research, will be informed of the nature of the study and permission and consent will be obtained, lastly, all scholarly work and information will be properly credited.

1.10 RESEARCH OUTLINE

Chapter One – stands as an introduction to this piece of writing. It introduces the background, the statement of the problem and will also provide for the significance and actual purpose of this particular study.

Chapter Two – will be aimed at analyzing the International and Comparative Legal Trends bring out the introduction, drawing lessons from international and regional instruments as well as various jurisdiction. It will also focus on the four key alternatives being community service, probation orders, suspended sentences and fines. This chapter will also bring out International Legal Frameworks as well as Universal instruments. Lastly, it will discuss the global adoption trends of the above mentioned alternatives and also factors shaping these alternatives on an effective adoption.

Chapter Three – shall focus on the examination of the Legal Framework and Practice in Zambia looking at the historical development of alternatives to imprisonment in Zambia as well as the statutory provisions on community service, probation orders, suspended sentences as well as fines. It will further look at the enforcement mechanisms and institutional roles, case law analysis and will end with challenges in implementation and enforcement.

Chapter Four – draws summary of key findings from Zambia, Kenya and Tanzania. Additionally, it will look at the critical analysis and assessment of the adequacy and effectiveness of the four selected alternatives in Zambia and lastly it will address the

proposed reforms to improve legal clarity, enforcement and public acceptance and recommendations.

Chapter Five – Summarizes the contents provided in the proceeding chapters of this dissertation. At the same time, it makes recommendations that will aid alternatives to imprisonment and enforcement mechanisms in the Zambian legal system.

CHAPTER TWO

INTERNATIONAL LEGAL TRENDS IN THE ADOPTION OF ALTERNATIVE FORMS OF PUNISHMENT

2.0 INTRODUCTION

This chapter examines international legal trends in the adoption of alternative forms of punishment, with a particular focus on four specific measures: community service, probation orders, suspended sentences, and fines. It seeks to provide a comprehensive understanding of how these alternatives have been developed, codified, and implemented in different legal systems around the world, as well as the standards established under international and regional legal instruments.

The aim of this chapter is not only to describe these trends but also to critically evaluate the factors that influence their effectiveness. By examining a range of jurisdictions, this chapter seeks to identify best practices that could inform reform efforts in other contexts. Although the focus is on international experiences, the insights gained here will serve as a comparative backdrop for assessing the Zambian situation in subsequent chapters.

2.1 INTERNATIONAL LEGAL FRAMEWORK

The adoption of alternative forms of punishment is not merely a matter of domestic policy choice; it is grounded in a network of binding international treaties, soft-law instruments, and regional human rights standards that collectively shape how states design their criminal justice systems. These instruments emphasize the need to reduce reliance on imprisonment, particularly for non-violent and low-risk offenders, and instead promote sanctions that are proportionate, rehabilitative, and respectful of human dignity.

2.1.1 UNIVERSAL INSTRUMENTS

At the universal level, the most comprehensive guidance on non-custodial measures is found in the United Nations Standard Minimum Rules for Non-Custodial Measures,

commonly referred to as the Tokyo Rules.¹⁹ Adopted by the United Nations General Assembly in 1990, these rules were developed in response to growing global concern over prison overcrowding and recognition that imprisonment often fails to achieve deterrence or rehabilitation. Rule 2.3 calls on states to develop non-custodial measures within their legal systems to provide alternatives to imprisonment, and Rule 8 specifies that such measures should be applied without discrimination.²⁰

Complementing the Tokyo Rules is the International Covenant on Civil and Political Rights (ICCPR),²¹ which Zambia has ratified. Article 9 enshrines the right to liberty and security of person, while Article 10 requires that persons deprived of liberty be treated with humanity and with respect for their dignity. While the ICCPR does not explicitly list alternative punishments, the Human Rights Committee has interpreted these provisions as encouraging states to avoid imprisonment where less restrictive sanctions are adequate.²²

The United Nations Standard Minimum Rules for the Treatment of Prisoners, the Mandela Rules reinforce the need for alternatives to imprisonment.²³ Revised and adopted in 2015, they set out minimum conditions for the humane treatment of prisoners and emphasis that overcrowding undermines those standards. Rule 58 specifically encourages the use of non-custodial measures to limit imprisonment, especially for minor and non-violent offences.²⁴

2.1.2 REGIONAL INSTRUMENTS

¹⁹ United Nations General Assembly, 'United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)' GA Res 45/110 (14 December 1990).

²⁰ Ibid

²¹ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

²² UN Human Rights Committee, General Comment No 35: Liberty and Security of Person (16 December 2014) UN Doc CCPR/C/GC/35.

²³ United Nations General Assembly, 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)' GA Res 70/175 (17 December 2015).

²⁴ Ibid

In the African context, the African Charter on Human and Peoples' Rights (ACHPR)²⁵ serves as the cornerstone of regional human rights protection. Article 5 guarantees the dignity of the person and prohibits cruel, inhuman, or degrading punishment or treatment. The African Commission on Human and Peoples' Rights has interpreted this provision as requiring member states to take measures to avoid conditions of detention that amount to ill-treatment, which includes addressing overcrowding through non-custodial sentencing.²⁶

The ACHPR's emphasis on humane treatment is reinforced by African Union penal reform initiatives, which acknowledge that prison overcrowding is often caused not by high crime rates but by sentencing practices that default to custodial measures, even for petty offences. The adoption of alternatives such as community service, probation, suspended sentences, and fines is therefore considered essential.

The Robben Island Guidelines, adopted by the African Commission in 2002,²⁷ complement the ACHPR by encouraging the decriminalization of certain offences, diversion at early stages of the criminal process, and expansion of non-custodial measures. They explicitly highlight community service and probation as preferred sanctions for suitable offenders, viewing them not simply as administrative tools but as integral to a rights-based justice system.

2.2 GLOBAL ADOPTION TRENDS

The global shift towards non-custodial sentencing has been shaped by a combination of human rights imperatives, cost considerations, and growing evidence that prison is not always the most effective means of reducing crime. Across diverse legal systems both common law and civil law traditions, community service, probation orders, suspended

²⁵ African Charter on Human and Peoples' Rights (ACHPR) (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58.

²⁶ African Commission on Human and Peoples' Rights, Prison Conditions in Africa: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa (ACHPR 1997).

²⁷ African Commission on Human and Peoples' Rights, Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (2002).

sentences, and fines have emerged as central alternatives to imprisonment, particularly for non-violent and first-time offenders.

2.2.1 COMMUNITY SERVICES

Community service has been widely adopted as an alternative sanction, particularly in jurisdictions such as the United Kingdom, Canada, South Africa, and Australia. In the United Kingdom, the ***Criminal Justice Act 2003***²⁸ consolidated and expanded community orders, allowing courts to impose unpaid work requirements ranging from 40 to 300 hours, often combined with rehabilitative elements such as drug treatment. Compliance is monitored by the probation service, and failure to comply can result in imprisonment. In ***R v Birch [1989]***,²⁹ the Court of Appeal emphasized that community service should only be imposed as a genuine alternative to custody, underlining proportionality and judicial restraint.

In Canada, community service is incorporated within probation orders under the Criminal Code³⁰ enabling courts to impose up to 240 hours of community work over a maximum of 18 months. The approach is rehabilitative, focusing on reintegration while ensuring offenders give back to the community.

South Africa adopted community service through the Criminal Procedure Act 1977 and further developed its framework via the Correctional Services Act 1998.³¹ The Constitutional Court in ***S v Williams and Others 1995***³² underscored the constitutional need for rehabilitative alternatives like community service when it declared juvenile corporal punishment unconstitutional,³³ the policy was aimed at alleviating overcrowding and providing constructive engagement for offenders. Evaluations by the Department of Justice and Constitutional Development have shown that community service can reduce recidivism when linked to vocational training.

²⁸ Criminal Justice Act 2003 (UK).

²⁹ R v Birch [1989] 11 Cr App R (S) 202 (CA)

³⁰ Criminal Procedure Act 1977 (South Africa).

³¹ Correctional Services Act 1998 (South Africa)

³² S v Williams and Others 1995 (3) SA 632 (CC)

2.2.2 PROBATION ORDERS

Probation orders are among the most established alternatives to imprisonment. In England and Wales, probation has evolved significantly since the Criminal Justice Act 1972,³⁴ with current provisions under the Offender Management Act 2007 empowering probation officers to supervise offenders in the community and ensure compliance with rehabilitative programs. The case of ***R v Patel*** confirmed that probation orders should not merely be punitive but must contain rehabilitative elements.³⁵

In the United States, probation is the most widely used sanction, with the Bureau of Justice Statistics reporting millions of individuals under probation supervision annually. Probation conditions often include mandatory employment, regular reporting, counselling, and participation in educational or substance abuse programs.³⁶ In the case of ***Robinson v California 370 US 660 (1962)*** laid the foundation for rehabilitation-focused approaches by affirming that addiction required medical rather than carceral responses.³⁷

In Canada, probation orders under the Criminal Code³⁸ may include conditions such as keeping the peace, reporting to a probation officer, and abstaining from certain activities. A breach of probation is a criminal offence, ensuring accountability.

2.2.3 SUSPENDED SENTENCES

Suspended sentences allow a custodial sentence to be imposed but not enforced unless the offender breaches specified conditions. In France, the *sursis simple* and *sursis probatoire* systems permit judges to suspend sentences either entirely or subject to probation supervision.³⁹ In ***Cour de Cassation, Crim, 19 June 2001, No. 00-84681***, the French court clarified the scope of *sursis probatoire*, illustrating how suspended sentences

³⁴Criminal Justice Act 1972 (UK).

³⁵ *R v Patel* [2006] EWCA Crim 2689

³⁶Bureau of Justice Statistics, Probation and Parole in the United States (latest edition).

³⁷ *Robinson v California 370 US 660 (1962)*

³⁸Criminal Code, RSC 1985, (Canada).

³⁹ French Penal Code (Code pénal).

can balance deterrence and rehabilitation.⁴⁰ This approach has reduced prison admissions for less serious offences.

In the UK, suspended sentence orders under the Criminal Justice Act 2003⁴¹ can include community requirements such as unpaid work or curfews. Breach of these requirements typically results in the activation of the custodial term. In ***R v Keough***, the Court of Appeal stressed that suspended sentences should be used sparingly and only where custody was otherwise unavoidable.⁴²

Norway's Penal Code also provides for suspended sentences, often coupled with supervision or program participation. The country's emphasis on rehabilitation has made suspended sentences a core component of its penal policy.⁴³

2.2.4 FINES

Fines are one of the most common non-custodial sanctions worldwide, though their structure and enforcement vary widely. Germany's day-fine system (Tagessatz), introduced in the 1970s, calculates fines based on both the severity of the offence and the offender's daily income, promoting fairness and proportionality.⁴⁴

In the UK, fines are frequently used for summary offences, with the Magistrates' Courts Act 1980⁴⁵ providing statutory authority. Unpaid fines can result in community service or, in rare cases, imprisonment. The case of ***R v Rahman*** established that fines must be proportionate to the offender's means, reinforcing fairness in financial penalties.⁴⁶

South Africa also uses fines extensively, with provisions under the Criminal Procedure Act 1977 allowing for instalment payments to improve compliance rates.⁴⁷

2.3 FACTORS SHAPING EFFECTIVE ADOPTION

⁴⁰ Cour de Cassation, Crim, 19 June 2001, No. 00-84681

⁴¹ Criminal Justice Act 2003 (UK).

⁴² *R v Keough* [2002] EWCA Crim 1931

⁴³ Norwegian Penal Code (Straffeloven).

⁴⁴ German Criminal Code (Strafgesetzbuch).

⁴⁵ Magistrates' Courts Act 1980 (UK).

⁴⁶ *R v Rahman* [1985] QB 515

⁴⁷ Criminal Procedure Act 1977 (South Africa).

The successful adoption and sustained use of alternative forms of punishment at the international level is influenced by a combination of legal, institutional, cultural, and resource-related factors. While the specific mix of these elements varies across jurisdictions, comparative analysis reveals a number of recurring themes that distinguish effective systems from those where alternatives remain underutilized or merely symbolic.

First, legislative clarity is essential. Jurisdictions with well-defined statutory provisions for community service, probation orders, suspended sentences, and fines are better able to achieve consistency in sentencing and compliance in enforcement. For example, the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)⁴⁸ stress the importance of clear legal frameworks, and countries such as Germany, Norway, and the United Kingdom⁴ have embedded these measures into detailed legislative provisions.

Second, integration with rehabilitative services strengthens the impact of alternatives. In the United Kingdom, probation orders under the Offender Management Act 2007⁴⁹ often require participation in substance abuse treatment, vocational training, or anger management courses. South Africa's Correctional Services Act 1998⁵⁰ similarly links community service with educational programs, aiming to address the root causes of offending.

Third, institutional capacity plays a decisive role. Effective delivery of non-custodial measures requires well-resourced probation services, trained personnel, and reliable monitoring systems. The Bureau of Justice Statistics in the United States⁵¹ has repeatedly emphasized that probation success rates correlate strongly with officer caseload sizes and access to support services.

Fourth, judicial and prosecutorial attitudes are critical. In some countries, judges have been reluctant to impose non-custodial measures due to concerns over perceived

⁴⁸ United Nations General Assembly, 'United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)' GA Res 45/110 (14 December 1990).

⁴⁹ Criminal Justice Act 2003 (UK).

⁵⁰ Offender Management Act 2007 (UK).

⁵¹ Correctional Services Act 1998 (South Africa).

leniency. Targeted judicial training, as recommended by the African Commission on Human and Peoples' Rights in its Prison Conditions in Africa report, has helped to address these misconceptions and promote confidence in the effectiveness of alternatives.

Fifth, public perception and political support influence the sustainability of alternatives. Norway's Ministry of Justice has run public information campaigns to explain the rationale behind community sanctions, linking them to public safety and reduced reoffending.⁵² Transparency in publishing compliance and recidivism data, as seen in Canada's Department of Justice reports, can build trust and acceptance.

Finally, resource allocation must be sufficient. While alternatives to imprisonment can yield long-term savings by reducing incarceration costs, they require upfront investment to develop infrastructure, recruit staff, and provide rehabilitative programming. The United Nations Office on Drugs and Crime's Handbook on Alternatives to Imprisonment¹¹ highlights the cost-effectiveness of such investment when compared to the high fiscal burden of imprisonment.

2.4 CONCLUSION

In conclusion the international legal trends examined in this chapter reveal a clear and consistent movement towards reducing reliance on imprisonment, particularly for non-violent and low-risk offenders, in favor of alternative measures such as community service, probation orders, suspended sentences, and fines. This shift is anchored in binding obligations under international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR)⁵³ and the African Charter on Human and Peoples' Rights (ACHPR),⁵⁴ as well as in influential soft-law frameworks such as the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)⁵⁵

⁵² Ibid

⁵³ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁵⁴ African Charter on Human and Peoples' Rights (ACHPR) (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58.

⁵⁵ United Nations General Assembly, 'United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)' GA Res 45/110 (14 December 1990).

and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).⁵⁶

Comparative experiences from jurisdictions such as the United Kingdom, Canada, South Africa, Germany, and Norway⁹ demonstrate that the success of alternative sanctions depends on a combination of precise legal definitions, adequate institutional capacity, consistent judicial application, public trust, and sustainable resource allocation.

For countries like Zambia, these international lessons underscore the need for reforms that are not only legally sound but also operationally viable. Merely legislating for alternative punishments without building the necessary enforcement infrastructure, providing judicial training, and engaging the public risks rendering such reforms ineffective.

By integrating international standards with domestic realities and ensuring that alternatives are supported by monitoring, rehabilitation, and proportionality states can address prison overcrowding while upholding human rights and improving criminal justice outcomes. This comparative foundation will inform the analysis in subsequent chapters, which will assess Zambia's current legal framework and identify opportunities for reform based on best practices from other jurisdictions.

⁵⁶ United Nations General Assembly, 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)' GA Res 70/175 (17 December 2015).

CHAPTER THREE

THE LEGAL FRAMEWORK AND PRACTICE OF ALTERNATIVES TO IMPRISONMENT IN ZAMBIA: A CRITICAL ANALYSIS

3.0 INTRODUCTION

Zambia's criminal justice system uses different options besides putting someone in prison, which are called "alternatives to imprisonment." These include things like community service, probation, suspended sentences, and paying fines. The idea behind these options is to reduce the number of people in jail, help people reform, and ease the overcrowding in prisons. These alternatives are part of the main laws and are used by courts, but there are some problems with how they are set up and used. The laws are spread out in different parts of the legal system, there isn't enough support to monitor them properly, and judges don't always apply them the same way. This chapter looks at the legal structure for these alternatives, explains the laws that govern them, and examines how the law helps or limits the use of non-custodial sentences.

3.1 HISTORICAL DEVELOPMENT OF ALTERNATIVES TO IMPRISONMENT IN ZAMBIA

Zambia's laws about punishment and court procedures mostly come from colonial legal systems that were kept and changed after the country gained independence. The Penal Code (Cap. 87) and Criminal Procedure Code (Cap. 88) are the main laws that deal with crimes and how they are punished. The Probation of Offenders Act (Cap. 93) gives the legal basis for supervising people on probation. These laws, along with later changes and newer laws like the Zambia Correctional Service Act 2021, form the current legal structure for alternatives to prison time.

In the past, Zambia mostly relied on fines and imprisonment as the usual punishment. While structured options that let people avoid prison such as, probation and community service, were not well developed in law or practice for many years. The Probation of Offenders Act (Cap. 93), which was passed in the middle of the 20th Century, first made

probation a legal option;⁵⁷ however, community service wasn't clearly set out in law until changes to the Criminal Procedure Code added specific provisions in section 306 in the late 1990s or early 2000s. In the 21st century, there have been some small changes, such as updating probation laws and passing the Correctional Service Act 2021. But the legal system is still not fully connected, with some alternatives written into law and others left to judges' decisions or other supporting rules, leading to uncertainty in how things are applied in practice.

Judicial decisions over time have acknowledged both the validity of non-custodial measures and the limitations of their effectiveness in Zambia, provided they are supported by institutional capacity. The Supreme Court and High Court have dealt with matters including the application and meaning of suspended sentences, the situations where fines ought to be applied, and the role of probation decisions, which are examined below as they shed light on statutory interpretation and enforcement practices.

3.2 STATUTORY PROVISIONS ON ALTERNATIVES TO IMPRISONMENT

3.2.1 COMMUNITY SERVICE

Statutory basis. Historically applied through judicial discretion and restorative mechanisms, community service is now explicitly provided for in the Criminal Procedure Code. After amendment, the Criminal Procedure Code includes specific provisions such as section 306 which empower courts to issue community service order, outline their terms, require reporting to an authorized officer, and provide for consequences of non-compliance⁵⁸. The statutory language contemplates a court-ordered, supervised period of unpaid work as an alternative to immediate custody for eligible offenders.

The provisions indicate that the Code allows courts to impose community service orders for misdemeanors or when deemed appropriate by the court, specify the nature and duration of community work, require the offender to report to an authorized officer and for that officer to supervise and report on compliance.

⁵⁷ Probation of Offenders Act (Cap. 93),

⁵⁸ Criminal Procedure Code (Cap. 88, Laws of Zambia).

It also provides for mechanisms to address breaches, including recalling the offender to court and potential committal.⁵⁹ In short, the Criminal Procedure Code now incorporates the structural elements commonly found in comparable statutes elsewhere (an enabling clause, content requirements, supervisory duties and enforcement processes).

While the statutory framework in section 306 is an important formal step, it brings Zambia closer to the statutory clarity observed in jurisdictions with separate Community Service Act, such as Kenya.

3.2.2 PROBATION ORDERS

Probation is one of the oldest and most structured alternatives to jail time imprisonment in Zambia. It is based on the Probation of Offenders Act, Cap. 93, which lets courts decide to release offenders under supervision instead of sending them to prison. Section 3 of the Act allows a court, after finding someone guilty, give a probation order with “such conditions as it may deem fit.” This requires the offender to be under the supervision of a probation officer for a specified period, not exceeding three years.⁶⁰ The probation officer is responsible for checking on the person’s behavior, giving advice and letting the court know if the person breaks any rules.

The Criminal Procedure Code (Cap. 88) helps support this by explaining how courts can sentence people and when they can use probation. The Correctional Service Act 2021 section 4 also backs up the idea of using non-custodial measures within the correctional system⁶¹ with a force on helping people change their ways.

Even though the law supports probation, it is not used very often. Critical studies show that the probation service has problems such as inadequate staffing, lack of transport, and not enough training, especially in rural areas.⁶² Also, there are no clear rules about how probation officers should supervise offenders or manage breaches which contributes to inconsistency. Courts often issue probation orders without ensuring that officers can

⁵⁹ Ibid

⁶⁰ Probation of Offenders Act, Cap. 93

⁶¹ Correctional Service Act 2021

⁶² Muntingh, L., Probation and Non-Custodial Measures in Africa (Penal Reform International 2018).

effectively monitor the offenders, which weakens the system's ability to prevent crime and earn public trust.

Another issue is that the Act lets courts choose any conditions they want, which can lead to different rulings by different judges. In contrast, Kenya's Probation of Offenders Act (Cap. 64)⁶³ sets clear conditions such as regular check-ins, limits on movement, reporting requirements, attendance at counselling and providing greater uniformity. While, Zambia's omission of similar explicit conditions leaves too much to judicial discretion and insufficient accountability.

In summary, Zambia's laws on probation are clear in theory, but they face problems like poor enforcement mechanisms, weak support institutions, and not enough detailed rules. As a result, probation has not been able to properly help people reform or reduce the number of people in jail as it was meant to.

3.2.3 SUSPENDED SENTENCES

Suspended sentences are another form of non-custodial punishment available within Zambia's legal system. They are outlined in both the Penal Code (Cap. 87) and the Criminal Procedure Code (Cap. 88). These codes give courts the authority to assign a jail term but to hold off its execution for a certain amount of time, provided the offender behaves well. The purpose of this approach is to prevent future criminal behavior while still keeping the offender within the community.

Section 337(1) of the Criminal Procedure Code allows the court to put a sentence on hold if it decides that putting the person in jail is not needed considers, provided the offender gives security to be of good behavior.⁶⁴ This is similar to what happens in other countries that follow common law. However, Zambian law does not say much about what conditions might be part of the suspended sentence, and there's no official way to check that the person is following the rules during the time the sentence is suspended

⁶³ Probation of Offenders Act (Cap. 64) prescribes

⁶⁴ Criminal Procedure Code

The Supreme Court has sometimes given advice on when to use suspended sentences. The Court said that suspended sentences are suitable for first-time offenders who truly regret their actions and when the crime was not violent in the case of ***Shawa v The People***⁶⁵ the Court also stressed that suspended sentences should not be used often. They should only be given if the court is sure that putting someone in prison won't help them change their ways also in the case of ***John Kanjala and Others v The people***⁶⁶ the court showed on how reducing sentences and suspending part of it where 18 months was suspended.

In Zambia, suspended sentences are often given without any rehabilitative measures like counseling, restitution, or probation supervision. This makes them function more like a warning than a real form of punishment. While the Probation of Offenders Act allows for supervision conditions to be added to suspended sentences, this is not commonly done because there is poor communication and cooperation between the courts and the probation service.

Kenya lets judges give suspended sentences, which means the person isn't immediately sent to jail, under section 26(3) of the Penal Code (Cap. 63). In practice, they often pair these with probation or community service through the Community Service Orders Act 1998. Tanzania also allows suspended sentences and links them with probation supervision under the Probation of Offenders Ordinance (Cap. 247). Which helps both punish and rehabilitate offenders.⁶⁷ Zambia, on the other hand, does not connect suspended sentences with supervision, which shows a gap in their laws making the suspended sentence less effective and less credible.

Currently, the way the law is written does not match what happens in practice. Without clear rules or proper coordination between different parts of the system, suspended sentences might be seen as too easy and not serious enough. To improve this, the law

⁶⁵ *Shawa v The People* (1985) [1987] ZMSC 83

⁶⁶ *Kanjala and Others v the people* (S.C.Z judgment 19 of 1988)

⁶⁷ Msafiri, M., *Rehabilitation and Probation Practice in Tanzania* (Dar es Salaam University Press 2020).

could be changed to set clear rules for when a sentence can be suspended and require probation officers to supervise the person during that time.

3.2.4 FINES

Fines are the most common non-custodial punishment in Zambia. They are allowed under several parts of the Penal Code (Cap. 87) and are carried out according to the Criminal Procedure Code (Cap. 88, sections 31–35). Courts can use fines as the main punishment or combine them with other penalties. In general, fines are a good way to punish someone without sending them to jail, especially for small or rule-breaking offenses.

The main problem comes from how the law is written. In Zambia, unlike some other places, the courts don't have to check if a person can afford a fine before deciding how much to punish them. The law just lets courts decide on a jail term if the fine isn't paid, without looking into whether the person can actually pay. This unfair system treats poor people worse, which goes against the idea that everyone should be treated equally. It also leads to too many people in jail.

In Kenya and Tanzania, the courts are more flexible. In Kenya, people can pay fines in parts if they can't pay all at once, as allowed by section 334 of their law. While Tanzania lets people do community service instead of paying fines if they can't afford them. Some European countries like Germany use a “day-fine” system where the fine depends on how much money the person makes each day a system Zambia could consider to make punishments fairer.⁶⁸

Even though fines are part of Zambian law, using them too much can actually make the goals of non-custodial sentences harder to reach. The fact that people might end up in jail because they can't afford to pay fines needs to be looked at carefully, and there should be changes to the processes in place.

3.3 ENFORCEMENT MECHANISMS AND INSTITUTIONAL ROLES

⁶⁸ Tonry, M., *Alternatives to Imprisonment and Penal Reform* (Oxford University Press 2019).

The successful use of alternatives to jail time relies on more than just having laws that support them. It also depends on how well the organizations in charge of watching over, organizing, and making sure these alternatives work are doing their job. In Zambia, several groups share this responsibility. These include the Judiciary, the Probation and Aftercare Service (which is part of the Ministry of Community Development and Social Services), the Zambia Correctional Service (ZCS), and the Ministry of Home Affairs and Internal Security.

3.3.1 THE JUDICIARY

The judiciary plays a key role in making sure alternatives to imprisonment work in Zambia. As the main body that explains and applies criminal laws and decides sentences, the judiciary ensures that punishments are fair, match the seriousness of the crime, and help people improve. Their role goes beyond just deciding cases. They also protect human rights and make sure that Zambia follows international rules about sentencing without using jail time.

The United Nations Standard Minimum Rules for Non-Custodial Measures, also known as the Tokyo Rules from 1990, say that courts and other legal authorities should think about using non-custodial options at every step of the criminal justice process, especially when dealing with cases that involve minor or non-violent crimes.⁶⁹ These rules highlight that putting someone in jail should only happen when all other options have been tried. They also say that helping people through community-based programs can work better for their recovery and keep them connected to their families and friends.⁷⁰ The United Nations Office on Drugs and Crime (UNODC) also says that the courts need proper training and clear guidelines through sentencing rules to carry out these alternatives effectively.⁷¹ In Zambia, the courts have the power to give non-custodial sentences because of the Criminal Procedure Code (Cap. 88) and the Probation of Offenders Act (Cap. 93). These laws together allow for options like community service, probation,

⁶⁹United Nations General Assembly, Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), UN Doc. A/RES/45/110 (1990), Rule 2.3.

⁷⁰ Ibid., Rule 8.

⁷¹ United Nations Office on Drugs and Crime (UNODC), Handbook on Alternatives to Imprisonment, Criminal Justice Handbook Series (Vienna: UNODC, 2007), pp. 5–6.

suspended sentences, and fines.⁷² Even though there is a legal foundation for these alternatives, they are not consistently applied in practice. The Zambia Law Development Commission (ZLDC) has noted that courts often rely on imprisonment because there is limited awareness of other options, unclear sentencing guidelines, and poor coordination with probation services.⁷³ This lack of consistency affects the fairness of sentencing and continues to cause overcrowding in prisons.

Furthermore, the African Commission on Human and Peoples' Rights (ACHPR), through its Robben Island Guidelines from 2002, emphasizes that judicial authorities should use their discretion in a way that respects human dignity and prevents the unnecessary loss of freedom.⁷⁴ The judiciary plays a key role in shaping and managing Zambia's prison system. It is important for the courts to regularly train their judges and set clear rules for sentencing. Working closely with groups like the Zambia Correctional Service (ZCS) and the Ministry of Home Affairs and Internal Security is also very important to make these plans work in practice.

In the end, the courts do more than just give out punishments. They must also make sure that people get fair treatment and that their rights are protected. By working with other options besides jail, the justice system can change from being mainly about punishment to focusing more on helping people recover and rebuild their lives. This matches the goals set out in the Mandela Rules (2015) and Article 10 of the International Covenant on Civil and Political Rights (ICCPR).⁷⁵ Additionally, training and educating judges and court officials are very important. The Judiciary Training Institute of Zambia (JTI) has started to include restorative justice and non-custodial sentences in its training programs. However, these new ideas are not widely known or used yet.⁷⁶ If judges do not fully understand the

⁷² Republic of Zambia, Criminal Procedure Code (Cap. 88) and Probation of Offenders Act (Cap. 93), Laws of Zambia.

⁷³ Zambia Law Development Commission (ZLDC), Report on the Development of Sentencing Guidelines for Zambia (Lusaka: ZLDC, 2021), p. 12.

⁷⁴ African Commission on Human and Peoples' Rights (ACHPR), Robben Island Guidelines for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Punishment or Treatment in Africa, 2002, Guideline 29.

⁷⁵ United Nations, Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), UN Doc. A/RES/70/175 (2015), Rule 58; International Covenant on Civil and Political Rights, 1966, Article 10.

⁷⁶ Judiciary Training Institute (JTI), Annual Report on Sentencing and Judicial Education (2022).

advantages and how these alternatives work, they will probably continue to give sentences that involve jail time.

3.3.2 THE PROBATION AND ATERCARE SERVICE

The Probation of Offenders Act (Cap. 93) gives probation officers the responsibility to supervise and enforce probation terms. They are required to keep track of offenders, report back to courts, and suggest enforcement measures if someone breaks the rules. However, in Zambia, the probation service is managed by the Ministry of Community Development and Social Services, not by the courts or the Correctional Service. This setup makes it harder to share information, manage cases properly, and hold people accountable.

A 2019 report from the Ministry of Justice showed that Zambia has fewer than 100 active probation officers nationwide. Many of these officers do not have cars or enough resources to monitor offenders, especially in rural areas. Because of this, probation and community service orders are not followed up on well. Offenders often run away or don't follow the rules because there is not enough supervision.⁷⁷

3.3.3 ZAMBIA CORRECTIONAL SERVICE (ZCS)

The Zambia Correctional Service Act No. 37 of 2021 updated the correctional system by clearly stating that rehabilitation and reintegration are important goals, as mentioned in section 4.⁷⁸ The Act requires the ZCS to work with other groups to carry out non-custodial options like parole, community service, and reintegration programs. However, the ZCS still focuses mostly on managing prisons.

According to a 2023 report by the Auditor General's Office, most of the ZCS budget is spent on prison facilities, with little money going to community-based correction programs. The lack of focus on non-custodial programs makes it hard to support offenders in staying on track after they are released or finish their community service.

⁷⁷ Chirwa, D. and Nkhata, M., Human Rights, the Rule of Law, and Development in Africa (Juta 2017).

⁷⁸ The Zambia Correctional Service Act No. 37 of 2021

3.3.4 MINISTRY OF HOME AFFAIRS AND INTERNAL SECURITY

The Ministry is in charge of making sure justice works well and checks on the whole justice system. It gives money to probation services, approves rules, and helps change how institutions work. But because there are many things the government needs to do and not enough money, programs that don't involve jail often get very little support. The government's recent plans, like the Eighth National Development Plan 2022–2026, say that too many people in prisons is a big problem, but they don't give clear ways to help more people avoid jail.

3.3.5 CIVIL SOCIETY AND COMMUNITY INVOLVEMENT

Groups like the Prison Fellowship Zambia (PFZ) and the Pan African Christian Lawyers' Fellowship have helped with awareness and helping people get back into society, often doing what the government can't. Local leaders can also help with justice and making sure people do their community service, but there are no official rules that include them in the system. This means the community doesn't fully take ownership of helping people change, which is important in places where traditional justice systems are strong.

3.4 CHALLENGES IN IMPLEMENTATION AND ENFORCEMENT

Even though Zambia has laws that allow for alternatives to jail, these options don't work very well because of problems with the law, the way institutions work, and cultural and economic issues.

3.4.1 WEAK INSTITUTIONAL CAPACITY

The biggest problem is that enforcement agencies don't get enough money or enough people. There aren't enough probation officers to cover all the areas they need to, so there isn't much supervision. Without good monitoring, people on community service or probation don't take their responsibilities seriously. A report from the Auditor General in 2023 found that less than 30% of community service orders from 2019 to 2022 were fully supervised.

This problem also affects how different parts of the system work together. Judges, probation officers, and the Zambia Correctional Service often work alone without sharing information or working as a team. This lack of teamwork leads to missing information, doing the same things over and over, and not keeping track of people who have been given orders.

3.4.2 LEGAL AMBIGUITY AND FRAGMENTATION

Even though the Criminal Procedure Code (Cap.88) has rules about community service, there's no law that's just about community service. This makes it hard to have clear and consistent rules. There are no detailed rules about who gets community service, what kind of work is acceptable, or what to do if someone breaks the rules. This leads to different courts handling things in different ways in different areas.

Similarly, suspended sentences aren't linked to supervision or programs that help people change. Courts often give them without any follow-up, which means they don't really help to stop people from doing bad things again or help them get better. The Probation of Offenders Act doesn't clearly say that probation or community service goes with suspended sentences, so these efforts are all separate and don't work well together.

3.4.3 SOCIO-ECONOMIC INEQUALITIES

Socio-economic inequality continues to be a significant structural challenge in the successful implementation of alternatives to imprisonment in Zambia. Poverty, unemployment, and the lack of access to proper legal help greatly influence how offenders go through the criminal justice system. Many offenders, especially those from poorer communities, struggle to pay fines or meet bail requirements, leading to a higher rate of imprisonment among the poor.⁷⁹ This situation, often called "poverty-based incarceration," goes against the idea of equal treatment under the law and fails to meet the goals of rehabilitation in sentencing.

The United Nations Office on Drugs and Crime (UNODC) says that fines and money penalties should be fair, not only based on how serious the crime is but also on how much

⁷⁹ Penal Reform International (PRI), Global Prison Trends 2023 (London: PRI, 2023), p. 22.

money the person can actually pay.⁸⁰ If courts don't check someone's ability to pay, the fines can end up acting like a jail sentence, because people who don't have much money get locked up when they can't pay.⁸¹ This goes against the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules, 1990), which stress fairness, proportionality, and treating everyone equally when applying punishments.⁸²

Zambia's current legal system does not require courts to assess a person's ability to pay before deciding on a fine.⁸³ Also, the Zambia Law Development Commission (ZLDC) has pointed out that this gap in the law leads to unfair treatment, as people who are equally responsible for their actions may face different consequences based on how much money they have.⁸⁴ Lastly, there is no provision for paying fines in installments or using alternatives like community service for unpaid fines, which makes the situation worse⁸⁵ which places a heavier burden on those from poorer communities and leads to more people being locked up in prisons.

To address inequality in the justice system, there is a need to change how fines are handled, in the sense that there can be an inclusion of assessments based on income, and allow for more flexible ways to pay. Countries like Germany and the Nordic nations use a system called "day-fines," where the fine is based on a person's daily income. This approach has worked well in making sure that fines are fair and that people are more likely to pay them.⁸⁶ If Zambia were to adopt similar methods, it would better follow international standards set by the African Charter on Human and Peoples' Rights and the

⁸⁰ United Nations Office on Drugs and Crime (UNODC), *Handbook on Strategies to Reduce Overcrowding in Prisons* (Vienna: UNODC, 2013), pp. 43–44.

⁸¹ *Ibid.*, p. 45.

⁸² United Nations General Assembly, *Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)*, UN Doc. A/RES/45/110 (1990), Rules 8 and 12

⁸³ Republic of Zambia, *Criminal Procedure Code (Cap. 88)*, Laws of Zambia.

⁸⁴ Zambia Law Development Commission (ZLDC), *Report on the Development of Sentencing Guidelines for Zambia* (Lusaka: ZLDC, 2021), p. 17.

⁸⁵ Ministry of Justice, *National Policy on Correctional Reform and Rehabilitation* (Lusaka: Government of Zambia, 2020), p. 9.

⁸⁶ Council of Europe, *European Guidelines on Day-Fines and Alternative Sanctions* (Strasbourg: CoE, 2019), p. 11.

International Covenant on Civil and Political Rights (ICCPR), which both stress the importance of fairness and respect in how justice is carried out.⁸⁷

3.4.4 PUBLIC AND POLITICAL WILL

Public opinions about non-custodial sentences are still not very positive. Many people think that community service and probation are too easy or not effective enough, which leads courts to choose jail time even for small crimes. Political figures also seem to favor strict punishments over helping people reform. Without a major change in national policy that shows the advantages of these alternatives, both the courts and the public will continue to lose trust.

3.4.5 DATA DEFICIENCY AND LACK OF RESEARCH

Having good data is important for knowing how well alternatives to jail work. However, Zambia does not have a complete system that records how many people are given probation, community service, or fines, and how often they follow through or end up committing more crimes. Most of the information that exists is based on personal stories or small studies.⁸⁸ This lack of data stops the government from making smart decisions based on facts and makes it hard to measure how much prison overcrowding is improving.

3.4.6 RESEARCH CONSTRAINTS

Budgetary priorities continue to favor custodial services. The Ministry of Home Affairs spends more than 90% of its correctional budget on infrastructure and security, while less than 5% is used for non-custodial programs.⁸⁹ Because of this, probation officers don't have proper transport, community service projects are not well funded, and rehabilitation programs are not reliable. This unequal allocation of funds shows that changes in laws alone won't work unless there is also more money and support for these programs.

3.5 CONCLUSION

⁸⁷ African Charter on Human and Peoples' Rights, Art. 3; International Covenant on Civil and Political Rights (ICCPR), 1966, Arts. 9 and 10

⁸⁸ ISS Africa, Alternatives to Incarceration in Africa (Policy Brief, 2021).

⁸⁹ ZCS Annual Report, 2022).

Zambia's legal system includes formal options that can be used instead of prison, like community service, probation orders, suspended sentences, and fines. But these options are not strong in how they are set up or how they are carried out. The laws that support these alternatives are spread out across many different legal documents, and there are still problems because of weak institutions, not enough supervision, and poor teamwork between the people who work in the justice system.

Probation and community service are not used much because there isn't enough money or a good way to watch over those who are under these programs. Fines often hurt poor people because they end up in jail if they can't pay. These issues show deeper problems within the system and in society that make it hard to achieve fair, balanced, and rehabilitative sentencing.

CHAPTER FOUR

FINDINGS AND ANALYSIS OF ALTERNATIVES TO IMPRISONMENT IN ZAMBIA WITH COMPARATIVE LESSONS FROM KENYA AND TANZANIA

4.0 INTRODUCTION

This chapter compares the legal systems in Zambia, Kenya, and Tanzania that deal with alternatives to jail time. It looks at four main non-custodial punishments: community service, probation, suspended sentences, and fines. The main goal is to show how Kenya and Tanzania have set up clearer laws and better support systems than Zambia.

Zambia has laws that include non-custodial options, but these are not well organized, not properly carried out, and don't involve the community enough. On the other hand, Kenya and Tanzania have more organized, helpful, and community-focused systems that work well in reducing overcrowding in prisons and helping people get back into society.

4.1 COMMUNITY SERVICE

4.1.1 ZAMBIA

In Zambia, community service as a sentencing option lacks a dedicated statutory foundation. The *Criminal Procedure Code* (Cap 88) does not expressly establish community service, though Section 306⁹⁰ allows courts to suspend sentences and substitute them with other lawful conditions. Occasionally, courts have relied on reconciliation provisions under Section 8, but these do not amount to a structured form of community service. As a result, community service in Zambia is used inconsistently and often without standardized procedures. There is no statutory guidance on eligibility, duration, or supervision. Probation officers who could play a role in oversight are already overstretched under the *Probation of Offenders Act* (Cap 93). Consequently, community service remains largely symbolic, lacking both legal clarity and institutional support.⁹¹

4.1.2 KENYA

⁹⁰ Criminal Procedure Code (Cap 88)

⁹¹ Muntingh L, Alternatives to Imprisonment in Africa (Penal Reform International, 2018).

Kenya's *Community Service Orders Act 1998*⁹² section 3 to 6 provides one of the most structured frameworks for community service in Africa. The Act authorizes courts to sentence offenders convicted of minor offences to perform unpaid work for between one and twelve months, in lieu of imprisonment. It specifies procedures for assessment, reporting, and supervision by probation officers under the Department of Probation and Aftercare Services.

The Act also establishes the *Community Service Orders Committee*, responsible for coordinating placements, liaising with local authorities, and ensuring compliance. Courts issue community service orders only after a social inquiry report confirms suitability as to the case of ***Erick Cheruiyot Kirui v Republic***.⁹³ This system has reduced Kenya's prison population by approximately 30% since its introduction, according to the Kenya Probation and Aftercare Service Annual Report 2021. The Kenyan model is strengthened by statutory clarity, accountability structures, and community engagement, allowing offenders to give back to society while avoiding unnecessary incarceration.

4.1.3 TANZANIA

Tanzania integrates community service within its *Probation of Offenders Ordinance* (Cap 247)⁹⁴ section 5. Courts may impose community work as a condition of probation, supervised jointly by probation officers and local community leaders. This model ensures that offenders remain within their social environments while contributing to the public good. A notable feature of Tanzania's approach is the formal role of community and village leaders in supervising offenders, ensuring compliance, and reporting progress. This participatory model aligns with the country's broader restorative justice ethos⁹⁵. The close relationship between probation and community service has been instrumental in reducing recidivism and strengthening offender reintegration.

4.1.4 COMPARATIVE ANALYSIS

⁹² Community Service Orders Act 1998 (Kenya)

⁹³ *Erick Cheruiyot Kirui v Republic* [2005] keh (KLR)

⁹⁴ Probation of Offenders Ordinance (Cap 247).

⁹⁵ United Republic of Tanzania, Ministry of Home Affairs Report 2020

Kenya and Tanzania have more organized and clear community service systems compared to Zambia. Kenya has a law called the *Community Service Orders Act* that sets out detailed steps, who is eligible, and how to monitor the program. Tanzania includes community service as part of probation, which focuses on making people take responsibility and involve local communities. Zambia, on the other hand, doesn't have a law that regulates community service and doesn't have a proper system to oversee it. The comparison shows that having clear laws, involving communities, and having proper supervision are key to making community service work well. These elements are missing in Zambia's current setup.

4.2 PROBATION ORDERS

4.2.1 ZAMBIA

Probation in Zambia is governed by the *Probation of Offenders Act* (Cap 93),⁹⁶ which empowers courts to release offenders on probation under conditions such as good behavior and supervision by a probation officer. However, the Act is outdated, originating from the colonial era, and lacks detailed procedures for enforcement or breach. The effectiveness of probation is hindered by institutional limitations: few probation officers, inadequate funding, and limited coordination with the judiciary. Consequently, probation orders are inconsistently imposed and poorly monitored.⁹⁷ In ***Lameck Tembo v The People***,⁹⁸ the High Court acknowledged the value of probation but noted the absence of an efficient supervisory mechanism.

4.2.2 KENYA

Kenya's Probation of Offenders Act (Cap 64)⁹⁹ section 3 to 6 provides a robust statutory basis for probation. The Act empowers courts to order supervision for up to three years, supported by pre-sentence social inquiry reports and post-sentence monitoring.

⁹⁶ Probation of Offenders Act (Cap 93)

⁹⁷ Mujuzi JD, 'The Probation of Offenders Act in Zambia: A Missed Opportunity for Penal Reform' (African Human Rights Law Journal, 2016).

⁹⁸ *Lameck Tembo v The People* [2011] ZMSC 14

⁹⁹ Probation of Offenders Act (Cap 64)

The Department of Probation and Aftercare Services, established under the Act, administers probation and aftercare programs, ensuring that probationers receive counselling, vocational training, and reintegration support. This department works closely with community volunteers and faith-based organizations. Empirical studies indicate that probation contributes significantly to reduced recidivism and improved rehabilitation outcomes in Kenya.¹⁰⁰

4.2.3 TANZANIA

Tanzania's *Probation of Offenders Ordinance* (Cap 247) similarly provides a well-defined framework for probation. Courts may release offenders under probationary supervision subject to conditions such as restitution, counselling, or community service. Probation officers collaborate with village executive officers and local elders to monitor compliance.¹⁰¹ This community-based structure enhances supervision, legitimacy, and restorative outcomes. Offenders are held accountable not only to state institutions but also to their communities a dynamic absent in Zambia's system.

4.2.4 COMPARATIVE ANALYSIS

Kenya and Tanzania exhibit well-established probation systems underpinned by comprehensive legislation and institutional frameworks. Kenya's model integrates probation with rehabilitation and aftercare services, while Tanzania's emphasizes community-based supervision. In contrast, Zambia's probation system remains underdeveloped, under-resourced, and weakly enforced. These contrasts underscore the importance of statutory modernization, institutional investment, and community integration in ensuring effective probationary sanctions.

4.3 SUSPENDED SENTENCES

4.3.1 ZAMBIA

Suspended sentences are recognized under Section 308E of the *Criminal Procedure Code* (Cap 88). Courts may suspend a custodial sentence on condition that the offender

¹⁰⁰ Odhiambo T, 'The Impact of Community Service Orders in Kenya' (Probation Journal, 2017).

¹⁰¹ Msafiri L, 'Community-Based Corrections in Tanzania' (University of Dar es Salaam Law Journal, 2019).

does not reoffend within a set period. However, these sentences are often imposed without supervision or rehabilitative obligations. In practice, suspended sentences in Zambia are treated as lenient warnings, and there are no systems to monitor offenders or enforce compliance, making them largely ineffective in reducing recidivism or promoting rehabilitation.

4.3.2 KENYA

Kenyan courts impose suspended sentences in line with Section 26(3) of the *Penal Code* (Cap 63) and relevant judicial practice directions. Suspended terms are often combined with probation or community service to ensure supervision. The Judiciary Sentencing Policy Guidelines 2016¹⁰² recommend that suspended sentences be accompanied by structured conditions such as counselling, restitution, or community work. This practice ensures that suspended sentences are not merely symbolic but serve a rehabilitative and corrective function

4.3.3 TANZANIA

Under Tanzania's *Probation of Offenders Ordinance* (Cap 247), suspended sentences are integrated into probationary orders. Courts may impose conditional suspension of imprisonment subject to compliance with probation terms such as restitution or community work. Breach results in the activation of the custodial sentence. This system ensures that suspended sentences remain enforceable and closely supervised.¹⁰³

4.3.4 COMPARATIVE ANALYSIS

Kenya and Tanzania both link suspended sentences with supervision and rehabilitative conditions, supported by statutory and policy frameworks. Zambia's law, by contrast, provides for suspended sentences in isolation, without monitoring or enforcement. This comparative difference highlights how integration with probation or community service transforms suspended sentences into credible non-custodial tools.

¹⁰² Kenya Probation and Aftercare Service, Annual Report (Government of Kenya 2021).

¹⁰³ United Republic of Tanzania, Judiciary Annual Report (Dar es Salaam, 2021).

4.4 FINES

4.4.1 ZAMBIA

Fines are provided for under the *Penal Code* (Cap 87) and *Criminal Procedure Code* (Cap 88). They are the most frequently used non-custodial sanction in Zambia, especially for minor offences. However, the lack of means assessment often results in imprisonment in default of payment. Despite this recognition, Zambia has no statutory mechanisms for instalment payments or conversion of unpaid fines into community service. Consequently, fines frequently contribute to prison overcrowding.

4.4.2 KENYA

In Kenya, Section 334 of the *Criminal Procedure Code* (Cap 75)¹⁰⁴ allows for payment of fines in instalments. Courts may also convert unpaid fines into community service under the *Community Service Orders Act 1998*. This flexibility ensures that offenders are not imprisoned solely for inability to pay. Furthermore, Kenyan courts also consider offenders' financial capacity before imposing fines, consistent with the proportionality principle as seen in the case of *Republic v Ruth Wanjiru Kamande*¹⁰⁵. This ensures fairness and equity in sentencing.

4.4.3 TANAZANIA

Tanzania's *Criminal Procedure Act* (Cap 20)¹⁰⁶ similarly allows for instalment payments and substitution of unpaid fines with community work. Courts may also combine fines with restitution, promoting restorative justice. This approach minimizes the penalization of poverty and promotes offender accountability without incarceration.

4.4.4 COMPARATIVE ANALYSIS

Kenya and Tanzania's flexible fine systems incorporating means assessment, instalment payment, and community service substitution contrast sharply with Zambia's rigid model.

¹⁰⁴ Criminal Procedure Code (Cap 75)

¹⁰⁵ Republic v Ruth Wanjiru Kamande [2018] KEHC 5237(KLR)

¹⁰⁶ Criminal Procedure Act (Cap 20)

Their approaches ensure proportionality and prevent the incarceration of indigent offenders, reinforcing the rehabilitative rationale of non-custodial sentencing.

4.5 COMPARATIVE SYNTHESIS

Kenya and Tanzania have better legal and institutional systems compared to Zambia when it comes to sanctions. Kenya has two clear laws, the *Community Service Orders Act 1998* and the *Probation of Offenders Act (Cap 64)*, which provide clear rules, supervision, and help people rejoin their communities. Tanzania also has a strong system with its *Probation of Offenders Ordinance (Cap 247)*, which brings together different types of sanctions into one organized approach, and it uses community involvement to support this. In contrast, Zambia's system is not well connected. There is poor communication and cooperation between the courts, probation services, and prisons. This lack of coordination makes non-custodial sentences less effective and leads to more people being sent to prison than necessary.

4.6 CONCLUSION

The comparison shows that Zambia's system for alternatives to prison is not as strong as Kenya's and Tanzania's in terms of laws and institutions. Kenya and Tanzania have clear laws in place, special bodies that watch over these systems, and they involve local communities in helping offenders change for the better. Because of these things, they have been able to use non-custodial punishments well, which helps make sure justice is done and people are helped to rebuild their lives.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 INTRODUCTION

This chapter presents recommendations that are based on the findings discussed in Chapter Four. It suggests changes in the legal, institutional, and policy areas to improve the use of alternatives to imprisonment in Zambia. The recommendations are informed by lessons learned from Kenya and Tanzania and are in line with international standards, such as the Tokyo Rules (1990) and the Mandela Rules (2015). The main goal is to make alternatives to imprisonment more trustworthy, fair, and effective as tools for delivering justice.

5.1 SUMMARY OF CHAPTERS

5.1.1 CHAPTER ONE

Chapter One started by introducing the study, outlining the background, research problem, objectives, and method. It pointed out that Zambia has become too dependent on imprisonment, leading to overcrowded prisons, stretched correctional resources, and poor rehabilitation results. The chapter focused on four alternatives to imprisonment: community service, probation orders, suspended sentences, and fines. It also explained why Kenya and Tanzania were chosen as countries for comparison, given their similar social and legal environment. The chapter outlined the research goals: to look into Zambia's system, evaluate its effectiveness, and learn from the experiences of other countries.

5.1.2 CHAPTER TWO

Chapter Two looked at the international and regional frameworks related to alternatives to imprisonment. It examined documents such as the Tokyo Rules (1990), the Mandela Rules (2015), and African Union initiatives, all of which stress proportionality, rehabilitation, and respect for human dignity. The chapter showed that international law encourages countries to use fewer custodial sentences and more community-based

sanctions. It also reviewed literature from other countries, showing that those that provide clear laws and strong institutions achieve better outcomes in the criminal justice system.

5.1.3 CHAPTER THREE

Chapter Three explored the legal framework in Zambia that governs alternatives to imprisonment. It reviewed laws in the Criminal Procedure Code (Cap 88), Penal Code (Cap 87), and Probation of Offenders Act (Cap 93). The analysis showed that although alternatives are present in the law, they are not well implemented in practice. Community service lacks a specific law, probation services are not well funded, suspended sentences are not applied consistently, and fines often unfairly affect the poor.

5.1.4 CHAPTER FOUR

Chapter Four outlined the findings and comparison. It revealed that Zambia's alternatives to prison are legally acknowledged but not really working, mostly because of unclear laws, weak systems, and bad public opinions. On the other hand, Kenya's Community Service Orders Act 1998 has helped cut down prison crowding by sending minor offenders to do community work. Tanzania's probation system uses community supervision and focuses on helping offenders reform. The overall comparison suggested that Zambia can take lessons from Kenya's clear laws and Tanzania's community-based approach, both of which have made non-custodial options more trusted.

5.1.5 CHAPTER FIVE

Chapter Five provides recommendation. It suggested creating a Community Service Act, changing probation laws, and adjusting suspended sentences to include mandatory rehabilitation and supervision. It also recommended changing the fines system by using means-based assessments, allowing payment in installments, and possibly using income-based daily fines. Institutional changes included growing and better funding the probation service, training judges, and improving monitoring.

Policy steps included promoting awareness and involving the community in helping offenders reintegrate. The chapter ended by saying Zambia needs major legal,

institutional, and policy changes if alternatives to prison are to be real tools for justice, rehabilitation, and reducing prison overcrowding.

5.2 GENERAL CONCLUSION

Zambia has started to accept alternatives to imprisonment but needs big changes to make them work. Making a Community Service Act, improving probation, changing suspended sentences, and reorganizing fines are key legal actions. These must be backed by better resources, trained judges, and public support. By looking to Kenya, Tanzania, and international standards, Zambia can turn alternatives from just ideas into real tools that help reduce overcrowding and support rehabilitation.

5.3 RECOMMENDATION

5.3.1 LEGAL REFORMS

Firstly, Zambia should create a Community Service Act, based on Kenya's Community Service Orders Act 1998.¹⁰⁷ This would give clear rules about who qualifies, the process, and how community service is enforced. It would change community service from something that is just decided on the spot to a planned sentencing choice. Secondly, the Probation of Offenders Act (Cap 93) should be updated to include more conditions like counseling, job training, and making things right.¹⁰⁸ Clear rules on what happens if someone breaks the rules and how to enforce them would make probation more reliable. Thirdly, suspended sentences should be reformed by requiring courts to include rehabilitative conditions that are connected to probation supervision, as is done in Tanzania.¹⁰⁹ This would stop them from becoming "empty threats."

Finally, Zambia's fines system needs to be changed. Courts should check a person's ability to pay before setting fines, allow payments to be made in smaller parts over time, and replace unpaid fines with community service. Also, it might be worth considering the

¹⁰⁷ Community Service Orders Act 1998 (Kenya).

¹⁰⁸ Probation of Offenders Act Cap 93,

¹⁰⁹ Probation of Offenders Ordinance (Cap 247, Laws of Tanzania).

“day-fine” system used in Nordic countries, where fines are based on how much money a person earns.¹¹⁰

5.3.2 INSTITUTIONAL REFORMS

The success of alternative measures relies heavily on strong institutional backing. Zambia should take the following steps:

Increase the number of probation officers and provide them with better support, including resources and logistical help. Also, bring services closer to rural areas by decentralizing operations. This will improve supervision and make the courts more confident in using probation.¹¹¹

Improve the way community service and suspended sentences are monitored. This includes setting up regular reports to the courts to ensure these measures are properly managed.

Train judges and prosecutors on the importance of non-custodial sentences. This will help change the belief that such sentences are too easy or lenient.

5.3.3 POLICY AND COMMUNITY ENGAGEMENT

Public trust is essential for the success of alternative sentencing. Zambia should run public awareness campaigns to explain how non-custodial sentences help both offenders and society by focusing on rehabilitation and deterrence. Zambia can learn from Tanzania by involving local leaders and community organizations in supervision of probation and community service. This involvement can reduce stigma, help offenders reintegrate into society, and make the rehabilitation process more accepted by the community.⁷ Involving victims in the processes can also be important. Zambia should use restorative methods, like restitution or community conferencing, to make sure that the harm caused by crime is addressed and that alternative measures are meaningful for victims.

¹¹⁰ Penal Code Cap 87.

¹¹¹ Tapio Lappi-Seppälä, *Alternatives to Custody in the Nordic Countries* (University of Helsinki 2012).

5.3.4 REGIONAL AND INTERNATIONAL LESSONS

Kenya shows the value of having clear laws and investing in institutions, while Tanzania shows how involving the community in supervision can be effective. Zambia should take these approaches and align them with international standards. The Tokyo Rules encourage the use of alternatives to reduce the number of people in prison, while the Mandela Rules emphasize treating people with dignity in the justice system.⁸ These international frameworks offer Zambia a clear path to reform and help develop a more just and effective system.

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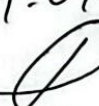
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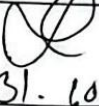
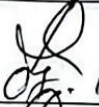
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SCHOOL OF LAW A CRITIQUE OF THE ALTERNATIVES TO IMPRISONMENT AND ENFORCEMENT MECHANISMS IN ZAMBIA: DRAWING LESSONS FROM KENYA AND TANZANIA. BY: SIDDAH. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

MANDONA LLB20121813 AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY TO THE UNIVERSITY OF LUSAKA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

DECLARATION I, SIDDAH MANDONA, do declare that this dissertation titled "A CRITIQUE OF THE ALTERNATIVES TO IMPRISONMENT AND ENFORCEMENT MECHANISMS IN ZAMBIA: DRAWING LESSONS FROM KENYA AND TANZANIA" 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

which is hereby submitted in partial fulfillment of the requirements for the award of a Bachelor's Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other institution. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

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