

Kenya's Penal System Vis-À-Vis the Theories of Punishment :Analysis

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Thank you

WESONGA J.G.

DEDICATION

My academic achievements are a product of the efforts by my maternal grandmother. I cannot therefore fail to dedicate this dissertation to her. I also dedicate it to my maternal aunties especially Angela and Pamela for their encouragement and advise. I cannot also forget to dedicate this dissertation to Carlos Oodoro who ensured that this script is typed and printed. Lastly, I have to dedicate it to my Love Polly for the encouragement she has been giving me all the time of my academic career.

TABLE OF CASES

1. R v SARGENT
2. R v NICHOLLS
3. NDURUGO S/O KARUGA v R.
4. JOSEPH BOIT KEMEI & ANOTHER v R
5. MAIN v PARRY
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TABLE OF STATUTES

- i. Penal Code (Chapter 63).
- ii. Prisons Act (Cap 90).
- iii. Probation of offender Act (Cap).

INTRODUCTION

Punishment plays a very important role in society and therefore, all societies have stipulated in their legal systems the various punishments that an offender is likely to endure whenever he commits an offence. The concept of punishment has been there since a long time ago before even parliaments were clothed with the responsibility of lawmaking. It must have been realised therefore by societies that meting out punishment to an individual offender helps that society achieve a given goal.

It has been argued that any attempt to understand the rules of criminal law must involve some function of those rules. Most definitions of crime or criminal law emphasise that there are crucial and distinguishing characteristics is that it may be followed by punishment. The criminal law is not simply a series of moral commandments: thou shalt not steal, etc. It is a series of legal commandments backed up with the threat of punishments. Thus an understanding of the function of the criminal law involves understanding the concept of punishment. Why do we punish? What do we hope to achieve thereby? Once the answers to these questions have been discovered one can understand why we have a body of rules called the criminal law and the purpose of these rules.

Different punishments are imposed on offenders for different offences. The question that remains begging is what objective do we achieve by such sentences? All advanced legal systems have vested judges or magistrates with the mandate to mete out sentences on convicts and it is argued that every judicial officer has his own objective in imposing a particular sentence. For instance, a perusal of the English reported cases on sentencing confirms that judges often have several different objectives in imposing a particular sentence.

There are a number of theories that explain the purpose of punishment. The question that now follows is, is the Kenyan penal system fashioned to fit in any of the theory and which of the theory should be the one applicable under the Kenya law? This and a number of issues will be dealt with in the coming chapter.

THEORIES OF PUNISHMENT: ANALYSIS

“Punishment is an evil affliction by a public authority on him that has done or omitted that which is adjudged by the same authority to be a transgression of the law, to the end that the will of men may thereby be better be disposed to obedience.”

This statement by Thomas Hobbs clearly explains who and why a person is punished and the authority that is vested with the power to punish an offender. It therefore follows from this statement that only an offender should be subjected to punishment. In the book of Exodus 20: 4-6 it is provided “..... I bring punishment on those who hate me and on their descendants down to the third and fourth generation. But I show my love to thousands of generations of those who love me and obey my laws”². The concept of punishment is therefore an old one which could be said to date back to the time earth was created because even God our creator acknowledges the fact that anyone who does not obey his laws should not go scot-free but be punished for whatever inequity he might have committed.

Despite the fact that there are various perceptions on the concept of punishment, a number of theories have been promulgated to attempt and explain the role and purpose of why offenders are punished in our societies. There are four main theories, which include:

1. Retribution
2. Deterrence
3. Incapacitation
4. Rehabilitation

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¹ Thomas Hobbes, *Leviathan*, New York : EP Dutton & Company (1950) 266-269

² Exodus Chapter 20, verse 4 –6.

1. RETRIBUTION.

The principle of retribution is generally used to indicate one of the: vengeance, denunciation or reprobation and, atonement or expiation.

i. Vengeance.

“ The infliction of punishment by law gives definite expression and a solemn ratification and justification to the hatred which is excited by the commission of the offence, and which constitutes the moral or popular as distinguished from conscientious sanction of that part of morality which is also sanctioned by the criminal law. The criminal law thus proceeds upon the principle that it is morally right to hate criminals and it confirms and justifies that sentiment by inflicting upon animals, punishments which express it.....”³ .

It is asserted by punishing an offender, the punishment ^{satisfies} the victims desire for vengeance and the state merely exacts vengeance on the victims' behalf of prevent private retaliation. Upon the offender being punished therefore, the victim can have no reason to retaliate because in doing so, he would himself be committing an offence. The fact of a public authority intervening and imposing a punishment on the victims behalf help to bring some order in the society because ea society which lacked an authority to carry out such a duty would be anarchic and order less.

ii. Denunciation and Reprobation

Under denunciation, it is argued that punishment expresses attitudes of resentment and indignation, and of judgements of disapproval and reprobation on the part either of the

punishing authority himself or in those in whose name the punishment is inflicted. Legal

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punishment therefore brings out the expression of the community's condemnation of the offender. Henry M. Hart while emphasising this point says:

“ What distinguishes a criminal from a civil sanction and all that distinguishes it, it is ventured, is the judgement of community condemnation which accompanies.....its imposition”⁴.

By punishing a criminal, the community expresses its hatred, fear or contempt for the convict's which alone characterises physical hardship as punishment. In this context , a crime is therefore, conduct which, if duly shown to have taken place, will incur a formal and solemn pronouncement of the moral condemnation of the community. Kant says that all wicked acts should be punished because in failing to punish wicked acts, society endorses them and thus becomes *participis criminis*. Kant emphasises the importance of punishment by saying that even if a desert island community were to disband, its members should first execute its last murderer left in its jails, ‘for otherwise they might well be regarded as participators in the unpunished murder....’⁵.

Denunciation thus shows that the offender had no right in committing the act because such act cannot be tolerated by the society and it is therefore through denouncing such person that society expresses discontent with the offender and his act. Society will only tolerate those acts which it sanctions and those that are deplorable will definitely be disproved.

iii. Expiation

The essence of this view is that in suffering his punishment, the offender has purged his guilt, and that his account with society is clear. This principle is regarded as a species of retribution in that the offender is “paying his debt” owed to society, and, in so doing, becomes reconciled with that society. Punishment therefore cleanses the offender and

³ Stephen, A History of the Criminal Law of England (1983) 81-82.

⁴ Joel Feinberg, The Expressive function of Punishment, (1965) Volume 49 No. 3, The Monist 379-423.

⁵T & T Clark The Philosophy of Law, (1887), 198.

helps restore his reputation. The society cannot insist or demand expiation because the will or desire for the expiation must proceed from the defendant himself. This principle largely stems from religious influences and our culture but there is also a deeper psychological explanation underlying an offender's need for expiation because from the time we are children we are conditioned to expect punishment when we have done wrong. The wrong committed induces a feeling of guilt in a person which in turn gives rise to tension that should be removed. Punishment therefore brings about the relief.

Expiation therefore enables reconciliation of the criminal and the victim by appeasing the and the community and by catering for the deficiencies caused by the crimes.

2. DETERRENCE.

Deterrent theories are forward-looking in that they are concerned with the consequences of punishment. Their aim is to reduce further crime by the threat or example of punishment. Deterrence operates at three levels:

- i. Individual deterrence.
- ii. General deterrence
- iii. Education.

In the case of individual or specific deterrence, it is hoped that the experience of punishment will be so unpleasant that the offender will not re-offend. The deterrence is therefore supposed to look to the future select the sentence which is likely to have most impact on the individual.

Under general deterrence, the threat of punishment deters people from committing crimes. At the legislative level parliament lays down penalties to threaten those who might contemplate crime. At the sentencing level, offenders are punished in order that others will be discouraged from committing crimes; the punishment is held up as an example of what will happen if the others engage in similar activities. In case of general

deterrence therefore, punishment must be imposed to keep the threat of punishment live and when a specific type of crime is on the increase or has attracted much publicity, then excessively severe penalties may be imposed to try and prevent that particular crime. A person who is thus contemplating committing a crime is deterred therefrom by the positive threat that he will suffer the same punishment that others have suffered.

In the case of education, the process of punishment results in a more profound subconscious effect on society. Punishment of criminals builds up in the community over a period of time the habit of not breaking the law. It creates unconscious inhibitions against committing crimes and thus serves to educate the public as the proper distinctions between good conduct and bad. For instance, every time someone is punished for rape, the public morality that rape is wrong is strengthened and our habit of not raping is reinforced. If therefore suddenly nobody were to be punished for rape and the state of affairs were to obtain for a considerable period of time and our inhibitions against raping and our moral view that raping was wrong would start breaking down. The habit would be broken and people might start raping with impunity. J. Andenaes, talking about the educational purpose of punishment on his essay on "General Prevention" says that:

“ the idea is that punishment as a concrete expression of society’s disapproval of an act helps to form and to strengthen the public’s inhibitions against committing crime. Unconscious inhibitions against committing forbidden acts can also be aroused without appealing to the individual’s concepts of morality. Purely as a matter of habit, with fear, respect for authority or social imitations as connecting links, it is possible to induce favourable attitudes towards this or that action... To the lawmaker, the achievement of inhibition and habit is of greater value than mere deterrence. For these apply in cases, where a person need not fear detection and punishment, and they can apply without the person ever having knowledge of the legal prohibition.”⁶

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⁶ J Andenaes, *The General Preventive Effects of Punishment*, (1966), 114

Conclusively, the educative theory is exclusively forward-looking because punishment is used as a means of preventing crime and maintaining obedience to the law. The educative theory rests upon the premise that public morality and inhibitions against committing crimes are created and / or preserved by the regular punishment of others.

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3. INCAPACITATION.

This theory acknowledges the limitations of other aims of penal policy in practice. The sentencer is therefore required to make a decision that the defendant is a persistent danger or nuisance to others and therefore be kept away from the society. The society is to be protected by preventing the re-emergence of the offender for as long a period as s deemed necessary or acceptable given the severity of the defendant's present offence. **LAWTON L.J** in the case of **R V. SARGENT**⁷ said that in order to prevent the commission of offences by persons to whom deterrence or rehabilitation measures cannot work ,long periods of incarceration should be imposed to protect the public because if this is not done ,such persons will go on committing crimes as long as they ^{are} ~~are~~ able to do so.

Andrew Ashworth commenting on persistent offenders in his essay on 'Sentencing and Penal Policy' says that,

"In general..... persistent offenders are more blameworthy because they have lost all trace of mitigating circumstances –they know the law only too well, they know what to expect if caught offendingIt is not that to flout the law three is necessary more than three times as harmful to society –indeed, from the point of view of society and of the victims of the **damage** is the same whether the offences are committed by one person or by **three** separate persons .It is that the

⁷(1975) 60 Criminal Appeal R74 (Court of Appeal Criminal Division)

⁸individual offender is generally more blameworthy on the third occasion than he was on the first.”⁸

In the case of **R V. NICHOLLS**,⁹ **SACH, L.J.** observed that,

“... The court appreciates it may be a tragedy in the individual case for a person who cannot restrain himself from actions which make him a menace to have a characteristic that necessitated him being as a danger to the public but a danger he is and in those circumstances, the only proper course which a court can take is to see that he is not a danger that is allowed to roam about. There is no hope in these cases, as experience has shown, from courses such as probation or allowing the man to be under the care of relatives and so forth. They can only be visited by the maximum custodial sentence, appreciating those prospects which may be of help to the man should the time come for parole.”

In the Kenyan case of **NDURUNGO S/O KARUGA V. REPUBLIC (1950) 17 EACA 50**,¹⁰ The appellants had been convicted of stealing one cow and the court sentenced him to 10 years imprisonment and hard labour. He appealed against both the conviction and sentence. The conviction was upheld but the sentence was reduced to five years imprisonment. The appellate judges said that the appellant was the kind of person who if let loose would commit more serious offences. He had committed 21 offences previously. The sentence was meant to disable him in order to ensure the security and protection of the community's property.

What seems to emerge from the principle of incapacitation or disablement is the fact of disabling a persistent offender from committing further crimes and thereby averting any danger that he would cause to society. This theory therefore focuses on the persistence by a person of committing offences especially offences belonging to the same class.

4. REHABILITATION

⁸ Andrew Ashworth, *Sentencing and Penal Policy*, (1983), 211.

⁹ (1970) Criminal Appeal R150 (Court of Appeal Criminal Division).

¹⁰ (1950) 17 East Africa Court of Appeal.

Under this theory, the penal system aims to scare conformity, not through fear but through some inner positive motivation on the part of the offender. The process of rehabilitation is geared towards improving the offender's character so that he is less often inclined to commit offences again even when he can do so even without fear of the penalty.

The origin of the rehabilitative ideal are linked with the humanitarian movement for prison reform because as the institutions were to be reformed so too were the inmates. The object here is to make the offenders better persons capable of being re-integrated into society. Under this principle, the sentencer does not look to the offence committed but concerns himself with the future needs of the offender. He should then choose a sentence which has the best chance of bringing about the desired change; thus the principle of treating like cases in a like manner has no part to play. Each case has to be determined on its own merits.

Commenting about rehabilitation, the Gladstone Committee said, ".....Prison treatment should be effectively designed to maintain, stimulate, or awaken the higher susceptibilities of prisoners whenever possible and turn them out of prison better men and women, both physically and morally, than when they came in."¹¹ This statement could therefore be strengthened by the fact that in some countries, convicted prisoners are trained to encourage and assist them led a good useful life.

The theory of rehabilitation has received immense support from several scholars:

M. Cohen, in his essay on 'Moral aspects of the Criminal Law' says that, "The most popular theory today is that the proper aim of criminal procedures is to reform the criminals so that they become adjusted to the social order.With the spread of humane feeling and the warming of faith in the old conception of the necessity for inflicting pain in the treatment of children and those suffering from

¹¹ Gladstone Committee (1895) C7702 Paragraph 25

¹²mental disease, there has come a revulsion at the hard heartedness of the old retribution theory. The growing belief in education and in the healing powers of medicine encourages people to suppose that the delinquent may be re-educated to become a useful member of society. Even from the strictest economic point of view, individuals are the most valuable assets of any society. Is it not better to save them before they entered?.....¹².

In essence, rehabilitation principle is forward looking and aims at controlling future crimes by reforming the individuals who have been involved in crime commission. Since rehabilitative sentences focus on the needs of the offender, rather than to the character of their crimes, it allows different sentences for similar offences. The sentencer thus has the onerous task of looking at the offender carefully and then choose the right sentence for him which is likely to make him refrain from any further crime commission.

SHORTCOMINGS OF THE THEORIES.

1. RETRIBUTION.

Retribution is based on the principle 'an eye for an eye and a tooth for a tooth'. Modern penologists however argue that punishment based on the retributive measures represents the breakdown of human intelligence, as well as goodwill. It perhaps shows the ugliest phase of our human nature. The Zambian High Court in removing the corporal sentence from their statutes argued that the presence of such sentences showed lack of civility and humanity in the society because the sentence is very much degrading and does not help reform an individual. The court therefore argued that laws should incorporate punishment measures with reformation elements which will help in re-integrating the individual to the society. This position has been embraced by most of the modern penologists.

Secondly, in a system which employs retributive measures, there is a likelihood of sentence in an innocent person to penalty which he does not deserve thereby causing

¹² M. Cohen, Moral Aspects of the Criminal Law, (1940) Yale L.J. 987 at 1012 –1014.

undue injustice¹³ and harm on him. For, instance a person may be accused of murder and sentenced to death but later on, facts may prove that the accused person did not commit the alleged murder. In such circumstances, the accused person will have suffered and cannot be brought back to life.

This theory antiquated an obsolete. **H. WEIHOFEN**, in his article 'Retribution is Obsolete', says that a good criminal administration system is one that employs rational and rehabilitative approaches instead of irrational and punitive approaches.¹³ In this regard also, human rights lobbyists are averse to a system that embraces punishments which involve physical torture and therefore fighting for the abolition of such sentences.

Under this theory, there is a difficulty because what happens if the victim is not interested in revenge? It is therefore argued that if revenge is carried out by the state or the victim's family, society's moral balance is not restored.

That this theory does not put in consideration the factors that might have made the person to commit a crime. There is therefore a likelihood of imposing stiffer penalties on undeserving persons for instance a poor person who resorts to steal some food. In such situations, it is argued that the sentencer should before meting out the sentence look at the economic status of the accused and what prompted the person to commit the offence.

2. DETERRENT

While this theory is based on the fact that the imposition of a sentence tends to deter an individual and the entire community or persons of likely mind, evidence has shown that this is not the so. Today, if deterrent were an effective means of curbing crimes, then no crime would be taking place. However, the rate and sophistication of crime is increasing day after day. The foregoing could be supported by the fact that at individual level, recidivism shows the failure of deterrence as an effective way of stopping people from

¹³ H. Weihofen, *Retribution is Obsolete*, National Probation and Parole Association News, XXXIX, (1960)1, 4.

committing crimes. There is also so much criminal activity at the general level, which therefore is a clear manifestation of the fact that the imposition of punishment to an individual does not deter people of likely mind.

Studies have shown that the deterrent effects of sentence differ according to an individual. It does not therefore follow that when person A steals and is sentenced to six years imprisonment and this eventually makes him stop stealing due to the unpleasant experience, this might not have the same effect to person B. Individuals thus respond differently to sentence. It is my argument that though there may be some small degree of individual deterrence, general deterrence is however negligible.

The effectiveness of deterrent sentences is based on their certainty and the information system. The public therefore needs to be educated about what is likely to happen to them if one committed an offence. Where this is lacking, general deterrence cannot be achieved because of ignorance on the part of the society.

3. INCAPACITATION

Incapacitation targets persistent offenders who pose a great danger to the society. It therefore aims to keeping such offenders away from the society and it thus achieves this though long periods of incarcerating the offenders. The reliance on the prison system however renders the theory to have shortcomings, which entail:

- i. The prison system is unworkable because it is not the best place. The offender might end up being hardened and if he is released might engage in more criminal activities than before he went to the prison.
- ii. There are also crimes which occur within the prison. It therefore follows that the fact of keeping an offender in prison does not stop him from his criminal tendencies.

- iii. This is just a postponement of crisis because one is not assured that if the offender completes his term of imprisonment he will become a reformed person.

4. REHABILITATION.

Despite the noble objective of the need to reform an offender so that he (offender) could be reintegrated into society, a number of shortcomings have been exposed. First, it is argued that a rehabilitation programme is impracticable due to its great cost, because to maintain such a programme a tremendous expense has to be involved. The truth is therefore that few states have facilities to implement a rehabilitation programme at the level at which their policy insists on treatment under terms of confinement. Further, that rehabilitation has been a cover for neglect because persons put into penal incarceration in the name of social reform have been left there interminably because they are being "cured". The result is therefore far worse than an entirely punitive system whose sanctions are carefully measured out by law.

Secondly, that it is hard to reform an individual where the rehabilitation programme incorporates prison life. This is so because most state prisons lack the relevant atmosphere of humanity and they therefore foster hatred and bitterness on the convict. A good programme is one that takes place outside the prison environment.

Thirdly, it is argued that human beings are not putty that they can be remoulded at will by intentions. This could be attested by the fact that special reformatories for young offenders have not been effective to reform young people so that they will stay reformed for any length of time.

Finally, an argument is made that all science in the world cannot really rehabilitate a person whose attitudes are antisocial. The only way to change a man is from the inside out beginning with the heart. The sentencer is therefore required when prescribing a

sentence to prescribe a sentence, which will be most appropriate in making then offender a better person upon completion of his term.

CHAPTER TWO

There are various sentences provided for under Kenya law that may be imposed on a person who has been convicted of an offence. The penal code, (cap 63) of laws of Kenya which is the major penal statute stipulates in section 24 a number of punishments that may be inflicted by a court to include: death, imprisonment, corporal punishment, fine, forfeiture, payment of compensation, finding security to keep the peace and be of good behaviour. Despite the numerous sentences provided for under his section this discourse will focus on punishments, which the writer thinks, have some close relation with the theories of punishment discussed in the first chapter.

1. DEATH SENTENCE

Capital punishment as it is known is imposed on persons who are deemed to have committed serious offences. In Kenya, death can only be imposed on persons who have committed treason under Section 40(3), murder under section 204 and robbery with violence under section 296 (2) and administration of unlawful oaths to commit capital offences (under S.60) of the penal code respectively. Apart from the penal code, the Armed Force Act provides for offences which if committed by a member of the force and he is proved guilty, he shall be committed to death penalty. These include communication with the enemy, misconduct in action by a person in command, mutiny and insubordination and civil offences committed by members of the armed forces.

Certain persons under Kenyan Law are exempted from the death sentence. S.25(2) of the Penal Code provides that "Sentence of death shall not be pronounced on or recorded against any person convicted of an offence if it appears to the court that at the time when the offence was committed, he was, under the age of eighteen years..."¹ S.211 of the Act also provides that "where a woman convicted of an offence punishable with death is found in accordance with the provisions of section 212 to be pregnant, the sentence to be passed on ^{her} ~~him~~ shall be a sentence of imprisonment for

¹ Section 25 (2) of the Penal Code (Cap 63)

life insisted of sentence of death".² Under the code, a person who commits an offence and who it is proved that at the time of the commission he was insane, will not be sentenced to death but will be detained at the presidents pleasure.

A person who is convicted of an offence that carries a death penalty has no other recourse apart from appealing against the conviction because as it is provided in the statute, the sentence is mandatory. This is illustrated by the use of the word "shall" in every provision where the sentence appears. Section 40 (3) for instance provides that: "Any person who is guilty of the offence of treason SHALL be sentenced to death".³ It therefore follows that once a court finds a person guilty of an offence whose penalty is death, its hands become tied and since it bears the noble obligation of dispensing justice by following the law to the letter, it cannot substitute a death penalty with any other penalty. All it has to do is to impose the penalty as provided for by the law. In

JOSEPH BOIT KEMEI AND ANOTHER - v - REPUBLIC⁴

The trial magistrate had convicted both the accused of robbery with violence under section 296(2) of Cap. 63. Instead of imposing the mandatory death sentence as prescribed by the law, the magistrate imposed on each of the accused persons a sentence of ten years imprisonment with 10 strokes of the cane and a police supervision order of 5 years after release arguing that the accused had not used a lot of violence. On appeal to the High court by the accused against conviction and sentence, the judge dismissed the appeal and on further appeal to the Court of Appeal. It imposed the proper mandatory sentence of death in the place of the sentence of imprisonment which had been imposed by the magistrate. The Court of Appeal judges agreed that the only sentence upon conviction under section 296(2) was that of death. As far as the decision of the Court of Appeal was concerned in this case, it was guided through the use of the word "SHALL" under section 296(2). What therefore emerges is that where the word "shall" is used, the sentence is mandatory and the Court cannot purport to impose any other sentence which is not stipulated by the law.

² Section 212 of the Penal Code (Cap 63)

³ Section 40 (3) of the Penal Code (Cap 63)

⁴ Court of Appeal, Criminal Appeal No. 7 of 1995(Unreported).

The manner of executing the death sentence is provided for under section 69 of the Provision Act (Cap. 90) of laws of Kenya and it states that "when any person is sentenced to death, he shall be hanged by the neck until he is dead and the sentence shall be carried out in such manner as the commissioner shall direct".⁵

The sentence of death as I can see from the foregoing embodies the element of retribution and deterrent. It is retributive in the sense that the state through courts of law upon proving a person guilty and imposing the sentence is carrying out revenge on behalf of the victim and his family and the society at large. It is therefore an indication of vengeance and denunciation of what the offender did. It is deterrent because it completely stops the accused from ever committing further crimes and the society is generally deterred by such sentence because people will be informed that anytime they commit an offence carrying a death penalty, they will hang.

CORPORAL PUNISHMENT

This sentence is provided for under section 27 of the Penal Code, which provides that "A sentence of corporal punishment shall be to receive such number of strokes with a cane as may be specified by such sentence. However, before corporal punishment can be carried out, there are a number of conditions that have to be fulfilled. First, the sentence cannot (and this is a mandatory condition), be imposed on a person sentenced to death. This sentence shall not be imposed in default of payment of a fine. Under S. 27(5), no corporal punishment shall be inflicted on a prisoner unless, immediately before such infliction a medical officer has examined the prisoner and has certified that in his opinion the prisoner is physically fit to undergo such punishment. It is also required that the punishment be inflicted in the presence of a medical officer. Such infliction is normally carried out by a rod or a cane or other instrument of a type approved for the purpose by the minister who may approve different types of rods, cane or other instrument for different ages of persons.

It appears from the Penal Code that corporal punishment is inflicted on persons who have committed offences against morality such as rape, indecent assaults on females,

⁵ Section 69 of the Prisons Act (Cap90)

defilement of girls under fourteen years, defilement of idiots or imbeciles, indecent assault of boys under fourteen years of age. Indecent practices between males, attempted rape, and committing unnatural offences such as having carnal knowledge of an animal.

The minimum and maximum number of canes or strokes that could be inflicted on a person is not stipulated which therefore gives the court a wide discretion to decide the number to be inflicted depending on the gravity of the offence in question. It is my contention that this represents flaw in the law because such discretion could be subject to abuse and thus resulting in situation where the judge inflicts so many canes, which may be unjustified in the case in question. The law should therefore be amended to provide for the number of strokes that should be administered in each case.

Corporal punishment is also administered in addition to another sentence, invariably imprisonment and hard labour. It is therefore rare for a court to impose this sentence singly as the main sentence. What theory of punishment does corporal punishment embrace? From the above analysis of the nature of corporal punishment it is my contention that this form of punishment is deterrent because when strokes are inflicted on an individual, they induce in him a feeling of not committing an offence in future. The punishment also deters the general public because the public becomes aware that in case one of them commits the same offence, he will suffer the way the offender suffered. In such a way therefore, the rate of committing similar offences of that kind tends to drop.

Notwithstanding the fact that corporal punishment is deterrent, it has some features, which represent it as not being the best sentence. Modern penologists argue that corporal punishment is inhuman and degrading and that it should therefore be abolished. Today, the focus of most penologists is to advocate for forms of punishment which uphold human dignity and which are therefore likely to help in improving the offender so that despite being subjected to punishment, he does not have bitter feelings against anyone in the society but instead the punishment gives him an impetus to become a good member of the society.

It is argued that corporal punishment is inhuman and degrading and that it does not reform criminals but could make them more hardened. Most jurisdictions, which were

British colonies, regard this form of punishment as a brutal relic of British rule, which had only been used against black people. The Zambian High Court for instance used the above position to throw this punishment out of the window. Is this an issue of reform in Kenya?

IMPRISONMENT

Imprisonment is the most common form of punishment in Kenya after the fines and it is covered under section 26 of the Penal Code. This form of punishment involves the detention of the offender in an isolated area- prison for a period of time depending on the gravity of the offence and other circumstances taken into consideration by the presiding Judge or Magistrate e.g. age of the criminal. The maximum period of time that a person can be jailed for life and minimum is one day. This sentence aims at first incapacitation because the offender in being kept away from the society, he is made unable to commit further crimes during that period that he serves his jail term, which thereafter provides some relief and protection to the society. Secondly, there is also a deterrent element in imprisonment because the experience that one undergoes in while in jail leads him to realising that it is bad to commit an offence which therefore deters him from committing offences upon the completion of his term of jail. It is my contention that imprisonment has some retributive features because when a person is sentenced to serve a given term, his guilt is purged and therefore the society is ready to accept him.

✓ In Kenya, however, there has been a protracted debate and criticism about the efficiency of our prison system in handling and taking care of inmates. It is evident that with the current system, there is no single objective of punishment that can be achieved because our prisons are burdened and chronically overcrowded. These conditions therefore lead to the hardening of inmates instead of reforming them and thus upon release, the bitter experiences they underwent while serving their jail terms leads them to engaging in more serious crimes than ever before. That also our prisons cannot help eradicate crimes because first offenders are let to stay in the same place with hardened offenders or jail birds which has the effect of the former being exposed to sophisticated ways of committing crimes by the latter and therefore if the first offender is released instead of desisting from criminal activities, he takes up crime as

*Introduce
Proposals
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a profession. Further, it is argued that the conditions in Kenyan prisons are degrading and inhuman in relation for instance diet, sleeping conditions, general sanitation etc. This argument has been put forward by human rights groups and even the A.G of Kenya acknowledges this fact and it is due to these pathetic conditions that he preferred drafting a bill that provided for a non custodial sentence i.e. community service that would enable convicts to serve their sentences outside the prison environment. Such non-custodial sentences would also help in eradicating torture, which is prevalent in our prisons.

PROBATION

Probation is a non-custodial sentence, which is provided for under the Probation of Offenders Act (Cap. 64 Laws of Kenya). David Dressler defined probation as "it is a treatment programme in which jail action in an adjudicated offenders case is suspended, subject to conditions imposed by or for a court, under the supervision and guidance of a probation officer".⁶

Under this punishment, the offender is set free, but he has the probation officer to guide him. The basic assumption underlying probation treatment is that by counselling, guidance and assistance in the context of his social environment, the offender, should at the end of the probation period have adjusted to the normal society from which he had been 'uprooted' by crime and thus become a law abiding citizen.⁷

For one to maintain his status as a probationer, he/she must report regularly to the probation officer and obey the conditions of probation given out when the sentence is read. If the probationer violates these conditions the court may revoke probation and send him to prison; or in case of a juvenile, the court may make an order for the juvenile to be sent to a borstal institution.

Probation is non-punitive and this can be construed from the wording of section 4(2) of the Probation of Offenders Act (chapter 64 of the laws of Kenya);" When any

⁶ Dressler, D. Practice of Theory of Probation and Parole 1969 pg 16.

⁷ Kathryn Haapala & Diana Gordon : Probation in New York City pg 9.

person is convicted of an offence by the High Court and the court is of the opinion that...it is expedient to release the offender on probation, the court may in lieu of sentencing him to any punishment, make a probation order..."

Professor Dawson argues that probation is not a kind of punishment but a reward to informants in their investigation as most informants are persons who have engaged in a criminal activity themselves.⁸ The informant is duly awarded for his services. Thus probation is a non-punitive treatment of crime. Therefore, no other form of punishment is supposed to accompany a probation order for if that happened, then the purpose of probation will be defeated and therefore become meaningless. Thus in *MAIN v PARRY*,⁹ it was held that a person cannot be both fined and put on probation at the same time. If one was placed on probation and then he had to pay some fine, he would make a bad starter, and may be a hostile probation, for he feels that he has already been punished. In *R v NJUE*,¹⁰ a magistrate at Embu convicted an accused aged 17 years, of arson and ordered that he be placed on probation for 2 years and to receive seven strokes. On appeal, the court held that an order of probation couldn't be combined with an award of strokes. It observed that section 4 of the probation of offenders Act empowers courts to release an offender on probation that he may prove himself. It is not satisfactory that a person who is released to prove himself shall, first receive corporal punishment or any other punishment for that offence.

Before a court grants a probation order, the probation department has to conduct an investigation on the person in question. It will then have to submit a report and recommendations on whether the defendant should be placed on probation or sentenced to a term of incarceration. The department bases its recommendations almost exclusively on its assessment on the defendant's probable adjustment on probation. Normally first offenders are considered as opposed to recidivists. The recommendations are not binding on the court but are only meant to aid the

⁸ Dawson, R.O, Sentencing, pg 96.

⁹ (1951) 1KB 590.

¹⁰ (1978) KLR pg 14.

judge/magistrate in reaching a decision as to whether to incarcerate the offender or place him on probation.

The role of probation is best stated in the Bartley Committee report, thus

"The essence of the system is that certain offenders, instead of being fined or imprisoned, are placed in probation after a probation order has been made by the court and the offender undertakes to be bound by it, the order depends for its effectiveness the voluntary cooperation of the offender. The system is based on the belief that many offenders are not experts or dangerous animals but are weak characters that have surrendered to temptations or through misfortune, have been brought within the operations of the police and the courts. In consigning the type of offender to the care of the probation officer, the court not only saves him the possible contamination of the prison, but also encourages him to use his common sense of responsibility for his future. Such a practice not only assists the offender and has a social value to the community but also relieves the prison of large numbers of first offenders, short-term prisoners and other classes of guest-criminal offenders and allows the prison service to apply themselves to their true function - that of segregation or providing suitable treatment for vicious and dangerous criminals".¹¹

The foregoing discussion on probation shows that it is totally different from other modes of punishment such as death penalty, corporal punishment and imprisonment. The spirit of probation is to help in rehabilitating an individual offender by keeping him away from the harsh prison environment that is the characteristic feature of Kenyan prisons and by letting an individual undergo a probation order, he is helped to change from criminal tendencies and therefore becomes a good member of the society. Modern penal scholars, penologists, human rights instruments and lobby groups embrace this noble objective of probation. It is therefore highly advocated that most jurisdictions should incorporate in their penal laws, probation orders instead of the inhuman and degrading punishment named above.

¹¹ Report of Committee appointed to consider the advisability of introducing a system of probation to the colony, 1941, pg 10.

EXTRA-MURAL PENAL EMPLOYMENT (EMPE)

Although this sentence has been repealed by the community service order Act its inclusion is meant to show how it worked and its effect on prisoners.

This is a non-custodial sentence, which was adopted in Kenya in 1963, and it is provided for under section 68 of the Prisons Act Chapter 90 laws of Kenya. It applies to lesser offences e.g. where one is convicted for being in possession of African spiritual liquor. The offenders' reports for community-based jobs at a particular place in some specified times but leave for home in the evening. This reduces prison population and the economic burden of maintaining such offenders in prison. It has the elements of public education and deterrence. EMPE is however, not widely used as a sentencing option in Kenya and where it is used, it is abused by chiefs who make working on their private shamba as public community based projects. The sentence is quite reformatory given its communal base.

A court in case of a person sentenced to imprisonment for not more than six months, or sentenced to prison for non-payment of a fine, costs or compensation or sentenced to detention can order EMPE.¹²

Once an order has been made under S.68 (I) of the Prison Act (Cap. 90), the court is then required to order the person in respect of whom the order is made to report forthwith to an authorised officer of the district in which it is sitting or to any other specified officer under the control of such authorised officer.¹³ The authorised officer to whom the person reports in pursuance of the order, must notify or cause him to be notified of the hours, place, nature and any other necessary detail of the public work to be performed by that person.¹⁴

According to rule 114 of the Prison's rules where a person ordered to perform public work reports to the officer that officer should ensure that the person is medically examined. S.68(4) is to the effect that if that person is found by a medical officer to be

¹² Vyas, Yash: Sentencing of Criminal Offenders in Kenya in the sentencing Workshop Report publications unit Victoria falls, Zimbabwe 1994, pg 56.

¹³ Ibid S. 68 (2) Cap 90.

¹⁴ Ibid S. 68 (3) Cap 90.

medically unfit to perform such work he shall be removed to prison or a detention camp to which he shall suffer the imprisonment or detention to which he is liable subject to a deduction of the number of days on which he has completed his daily task.

Under this form of sentence, the Act at S.68(5) provides that any person who has been ordered to perform public work may be industry and good conduct earn a remission of one-third of the term of imprisonment or detention to which he had been sentenced or for which he had been committed. If the offender breaches the EMPE order he may suffer the imprisonment or detention to which he is liable or the authorised officer may award as punishment loss of remission not exceeding 28 days or order both such imprisonment or detention and award as punishment loss of remission not exceeding 28 days. Breach of an order to perform public work is an offence and the offender may be liable to a fine of not more than two thousand shillings or an imprisonment of not more than six months or both fine and imprisonment depending on the circumstances of the case.

From the foregoing analysis of EMPE, a number of merits come out. Firstly, EMPE attempts to import the aspect of community based corrective training under the prisons. If the scheme were carried out as envisaged it would be of enormous penological advantage not only to the offender, but also to the victim, the courts and the community as a whole.

Secondly, EMPE reflects a hybrid of the theories of treatment of offenders. It is retributive since the offender is made to pay for his wrongs by working in the very society he wronged. Individual and general deterrence may be achieved. As judge Walter William of the US put it in February 1995:

"You get retribution, and you get deterrence, because others see what happens when you break the law".¹⁵

The offender is given a chance to reform and fit in the society without the risk of contamination by hardcore criminals as would be the case if he were to be imprisoned.

¹⁵ Newsweek , (New York) February 6, pg 16.

EMPE is restitutionary since the offender provides service to the very community he has wronged.

COMMUNITY SERVICE.

This form of treating offenders is embodied in the Community Service Orders Act. It is a non-custodial sentence, which was intended to reduce prison congestion, and the degrading and inhuman conditions that prevail in our prisons. Under S.3(1) of the Act, where any person is convicted of an offence punishable with imprisonment for a term not exceeding two years, with or without the option of a fine, or imprisonment for a term exceeding two years but for which the court determines a term of imprisonment for two years or less, with or without the option of a fine, to be appropriate the court may, subject to this Act, make a community service order requiring the offender to perform community service. Community service entails unpaid public work within a community for the benefit of that community, for a period not exceeding the term of imprisonment for which the court would have sentenced the offender.

Before a court makes a community service order, it shall direct community service officer to conduct an inquiry into the circumstances of the case and of the offender and report the findings to the court. Further, that before the court makes such order and the court should be present and consent to the making of the order and the court should be satisfied that the order will be executed and the offender is a suitable person to perform community service under the order. Such provision guards against making an order in vain. all matters pertaining to the order such as the purpose, effect, obligations, consequences for failure to comply with the order and the power of the court to review the order on application either by the offender or by a community service officer have to be explained to the offender in a language that he understands.

A person who is subject to a community service order shall report to the supervising officer for assignment of work and perform for the period specified in the order. such work, at such times and at such place as the supervising officer may instruct him. Section 4 of the Act is to the effect that a supervising officer shall avoid giving instructions which conflict with the offender's religious beliefs.

Section 5 of the Act deals with breach of community service orders. That whenever there is any breach, the court may, on the application of the area community service officer or supervising officer, issue summons to the offender to appear before the court or issue a warrant of arrest for the offender to be arrested and brought before the court and the court may often after hearing the offender, caution the offender and require the offender to comply with the order; or amend the order in such manner as may suit the circumstances of the case; or revoke the order or impose any other sentence under the law as the court deems appropriate.

For the management and enjoyment of community service orders, the Act establishes the National Community Service orders committee, an executive committee, National Community Service orders coordinator, District, Divisional and locational community service orders committee and community service officers who play different roles as provided for under the Act.

In the memorandum of objects and reasons for the enactment of the bill, the Attorney General of Kenya clearly stated that the principal object of the Bill was to introduce a non-custodial sentence option for the courts as a serious alternative to imprisonment and for a coordinated and efficient implementation system. The Bill proposed that offenders be sentenced to perform community work or service. It sought to enjoin courts sentencing persons convicted of offences for which the punishment would be two years imprisonment or less to consider making community service orders instead. It was intended that it would lead to the reformation and social rehabilitation of the offenders, benefit the community and ease the pressure on the prisons which are currently overcrowded. The Act thus amends section 24 of the Penal Code to make community service orders an alternative to imprisonment. It also proposed to repeal PART XII of the Prisons Act and the Detention Camps Act.

COMMUNITY SERVICE IN OTHER JURISDICTIONS: A BRIEF COMPARATIVE STUDY

BRITAIN

Community service was introduced in the United Kingdom in 1972 following the proposals of the Wootton Report, 1970 on the non-custodial sentence.¹⁶ The Criminal justice system in Britain makes use of community service as a non-custodial sentence. In Britain, a community service order is imposed by either a magistrate or a crown court on an offender. The purpose of the order is to have the offender repay the community for the offence that he has committed which is against the community.

Before a person is placed on this scheme, a report prepared by either a probation officer or a social worker is presented to the court. The aspect considered in the report is whether or not the offender is a suitable person for community service. Just as in Kenya, the sentencer must read the order to the offender and explain to him all that appertains to it. The offender must first consent to the community service order being made. He must report to the probation officer in charge of the project and must notify him of any change of address and he must perform the work he is instructed to do.

In the UK, work is arranged in such a way that it does not conflict with the offender's employment. The work arranged should not also conflict with one's religion beliefs or education. All the work is unpaid being one normally undertaken by voluntary efforts. The type of work undertaken is purely community based and is seen as a correction. PERLSTEIN thus appreciates that:

"Community based correction recognises the importance of working with the offender in his home community, or near it, where he is with family and friends can be used to advantage in his rehabilitation".¹⁷

If the offender breaches the order, he is returned to court and may be fined but the order may remain in force. Where the offender has re-offended and is sentenced for

¹⁶ Briggs, A. The Longman Encyclopaedia, (Essex, Longman 1989) pg 24.

¹⁷ Perlstein, G. Alternative to Prison (California: Good Year Publishing Co. 1975, pg 223).

the second case the order is revoked. The breach must be proved before the court grant revocation of the community service order.

U.S.A.

In the USA, community service is administered as unpaid part-time work in the community, carried out by a committed offender as an alternative to imprisonment. Like in the UK, community service in the USA involves some work in the community that allows the offender to be engaged in constructive tasks, while repaying his/her debt to society.

In all its major inputs, this scheme is carried out in the similar way and serves the same function as in Britain. However, community service is much more developed in the USA so much that in the recent years, it has involved the offender doing work for the victim of the crime, thus involving an element of compensation.

ZIMBABWE

In Zimbabwe, community service as an alternative form of punishment is not only an official authorised form of punishment but is in fact being increasingly applied and awarded by the courts so more and more facilities and schemes for its operation are developed and improved.¹⁸ Community service was introduced in Zimbabwe due to overcrowding in prisons, and drastic increase in prison costs and need to reform the prison system.

A national committee on community service (NCCS) was set up by the government whose responsibility is to sponsor, foster, supervise and promote community service nationwide. Under the NCCS, there are distinct committees ~~under the~~ chairmanship of the provincial magistrate. The district committees work at suitable ~~institutions~~, which are able to create placements for community service in the district.

¹⁸ Mcmillan, A.R. : Sentencing Policy : Zimbabwean Perspective in the Sentencing Workshop Report. September 1-5 1993. (Victoria Falls: Publication's Unit of the legal resource foundation, 1994, pg 60.

Under the Zimbabwean scheme, contact persons to whom the convicted person must report are nominated and all his information is made available to the courts so they can award community service when a suitable case arises. There is a national guidance circular issued to all stations by NCCS setting out the objectives and purposes of community service and guidelines as to what type of offenders and offences it is suitable for community service runs for one year in Zimbabwe.

The effectiveness of our community service as a non-custodial sentence and therefore an alternative to imprisonment is still under test because it was introduced in our laws recently. Its introduction has been lauded as a step forward towards the promotion of modern penal objectives i.e. treating offenders in a humane manner and it is therefore hoped that everything shall be done to ensure that it saves most convicts the wrath that they would normally face in our overcrowded and degrading prisons.

The author has attempted to analyse the various sentences provided for by the Kenyan law. His analysis has also tried to show the theory of punishment to which a given punishment is attached to. In the next chapter therefore, the writer will attempt to show the theory of punishment which was dominant in Kenya before the introduction of community service order Act and then the position that obtains today.

CHAPTER THREE

THE DOMINANT THEORY OF PUNISHMENT PRIOR TO THE COMMUNITY SERVICE ORDER ACT.

The analysis of theories of punishment shows that some punishments can have a positive effect on the offender while others a negative one. The choice of punishment therefore largely depends on the objective the statements want to achieve by committing a person to suffer a sentence.

Prior to the introduction of community service as a form of treating offenders, there used to exist a number of punishments in our laws whose effects on the offenders were different. The death sentence, imprisonment and corporal punishments as embodied in the Penal Code have devastating effects on the offender and have therefore been criticised by penal reformers and human rights activists. Imprisonment for instance under Kenyan prison conditions defeats the original objectives of a prison set up (reforming criminals) and instead plays the role of hardening and dehumanising individuals so that a person comes out of the prison a bitter individual who is determined to carry on with his criminal tendencies. Imprisonment under Kenyan law, it can be argued embraces the theory of retribution and incapacitation but not individual deterrence.

Death sentence on the other hand has also been criticised as a reflection of state barbarism due to its dehumanising nature. The penalty is inappropriate in modern days because modern penologists advocate for humane sentences. It is the worst sentence because there is a possibility of hanging a person who is innocent which might have been caused by miscarriage of justice.

Corporal sentence is retributive and deterrence due to the suffering experienced by the offender. But does this really work? JAMES P. S. sensibly remarks that:

"Long experience has shown that harsh punishment (especially for petty offences) does not always create respect for law and modern times, there has been increasing tendency to replace punishment by various methods of reformatory training"¹

¹ James, P.S. An Introduction to English Law. (London: Butterworths, 1962) pg 208

It therefore follows that a sentence will not necessarily help improve the offender by imposing a harsh sentence. A harsh sentence may just increase the offender's disobedience for the law.

The EMPE which the community service order Act intended to repeal although embracing non-custodial elements suffered the problem of it being administered under the prison environment. It is the author's submission that the part of running the scheme under the prisons department does not obviate the stigma of custodial punishment and the resentment of the institution itself. This is because the atmosphere in the prisons and the attitude of the prison officers to all offenders and the treatment they offer more often than not fall below the humanitarian expectation. The EMPE scheme itself was intended to lean on the philosophy of non-custodial treatment rather than that enshrined under the prisons department - a department which jealously nurses the philosophy of custodial punitive sentencing.

The EMPE could thus be said to embrace the theories of reformation due to the aspect of community based corrective training under the prisons. It also reflected retribution since the offender was made to pay for his works by working in the very society he wronged. Individual and general deterrence could also be achieved. As judge Walter William of the US put it in February 1995.

"You get retribution, and you get deterrence, because others see what happen, when you break the law"²

Probation as administered under the probation of offenders Act Cap 64 of the Law of Kenya is the most important was of treating offenders that has been there for some time and which basically is reformative because an individual is saved from the harsh prison atmosphere and is allowed to serve his sentence from outside. Probation also help the offender in avoiding the overcrowded prison environment and young or first offenders coming into contact with hardened criminals. Probation therefore finds a place in the society due to the fact that the prison is seen as a dungeon in which the enemy of the society is dumped till called upon after a period of time and while inside

² Newsweek (New York , February 6, 1995) pg 16

there, he is supposed to suffer for his offences. WINFRED EKIN aptly portrays the picture of how our prisons operate when she says:

"The prisons seem to be devised with the avowed intention of making life hard and humiliating. The prisons serve as a place where the prisoners are brutalised and demoralised by their experiences. The prisons are in fact the breeding grounds of crime"³

The provision of probation as a mode of treating offenders was therefore a big step forward for a rehabilitative way of treating offenders.

It therefore follows from the foregoing that in Kenya prior to the introduction of community service, it can be safely said that our penal system embraced forms of punishment, which could not be said to have a positive impact on the offenders. The sentences were hardening and dehumanising in nature, which could not accord the offender an incentive to stop his criminal tendencies. Different persons have variously described the imperfections of prisons.

OSBORNE says:

"As criminals can neither be coerced nor bribed into a change of a purpose, there is but one way left; they must be educated- we must provide a training which will make them not good prisoners but good citizens, a training which will fit them for the free life to which, sooner or later, they are to reform...they should be educated, not for the life inside but for the life outside. Not until we think of our prisons as educational institutions shall we come within the sight of a successful system".⁴

Our prisons thus tend to obliterate one's individuality and personality. The effect of such dehumanisation is that even after being released, one cannot choose what to do in life due to its psychological damage. Cross captures a prison scene very graphically when he says:

³ Elkin, W. A. The English Penal System < Penguin Books Ltd, Hammonds Worth Middlesex (1975) pg 43.

⁴ Osborne, T.M., Prisons and Common Sense, London, 1965, pg 127

"Self-respect is systematically destroyed and self expression prevented in every phase of prison existence. The buildings in them have a deadening effect. The labour is mostly mechanical and largely wasteful and every indication of a craftsmanship or creative ability is suppressed. The meals are distributed through momentarily open doors as though the prisoners are caged animals, the sanitary arrangements are degrading and filthy and the cloth is hideous, slovenly and humiliating"⁵

The above citation clearly describes the situation of Kenyan prisons and which cant therefore be used as reformative grounds but when bitterness is bred and individuals are subjected dehumanising conditions.

The other sentences such a death, and corporal all are retribution in nature which therefore do not must the modern days' objectives of punishment.

Conclusively therefore, the Kenyan penal system has been largely, if not retributive and far from attaining the objectives of today's punishment. This is due to the fact that our laws embodied so many dehumanising sentences and which were or are normally inflicted on individuals. The other sentences, which are rehabilitative such as probation suffered enforcement problems hence, they could not save the situation.

THE POSITION OF KENYA'S PENAL SYSTEM AFTER THE INTRODUCTION OF COMMUNITY SERVICE.

Community service in Kenya as a mode of treating offenders is a recent phenomenon and whose effectiveness is still under test. However, its introduction is laudable and he helped improve our penal system through the fact that it will ease the congestion that is normally the characteristics of our prisons. The part of offenders also serving the sentences within the community shows the commitment of our laws to incorporate the objectives of a modern penal system, one that employs non-punitive humane forms of treating offenders. This sentence together with probation if carried out effectively will save the government some of the problems that dog the prisons. It can therefore be said that currently, the position of our penal system has improved to the better.

⁵ Cross, R. Punishment, Prison and the Public. London Stevens (1971) Pg 22.

RECOMMENDATIONS FOR FURTHER IMPROVEMENT

Despite the incorporation of the community service in our laws, there is need for the abolition of some sentences such as the death sentence and corporal punishment from our penal laws. These sentences—as it has been observed are dehumanising and don't help reform the criminal. It is the author's submission that it is time our laws were totally overhauled so that they can conform to the modern days requirements. These pieces of legislations are a legacy of the colonial oppression and suppression towards Africans and which therefore should be done away with.

Secondly, our prisons should be improved so that conditions are provided which could help in making an individual a better person when he comes out often serving his term of imprisonment. As O'DONNELL and WEIHRICH, speaking on personal dignity and how to handle individuals in order to get the most production out of them say:

"certainly results are important but in achieving them, the means must never violate the dignity of the people. The concept of individual dignity, derived from ethical philosophy means that people must be treated with respect, no matter what their position.. each is unique.. to be sure but all are human beings and all deserve to be treated as such"⁶

Our prisons should therefore treat offenders, with the respect they deserve so that best results can be achieved out of them. Treatment of individuals as animals does not help our sentences in achieving anything out of the prisoners but only the worse.

Finally, the reformative means of treating offenders should be effectively implemented so that best results could be achieved. Such sentences do change individuals and as PARKER observes, the essence of probation is the nature of

⁶ Koonth, H, Odonnell, C. and Wehrich H. Management, *8th Edition pg 611.

change, if the primary goal personal and social protection is to be achieved and that such a treatment ought to be corrective and non-punitive.⁷ Such observation equally applies to community service.

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⁷ Parker Young, A sociological Analysis of the Early History of Probation BJLS Volume 3 1976.