



المؤتمر الدولي: "قانون العقوبات والتدابير البديلة:
تجربة نوعية في التشريع الجنائي"

International Conference: "Alternative Sanctions and Measures
Law: Qualitative Experience in Criminal Legislation."

2022 سبتمبر 27-28 Sep. 2022

المؤسسة الوطنية لحقوق الإنسان
National Institution for Human Rights

Kingdom of Bahrain - مملكة البحرين



Working Paper

"The role of Zimbabwe in following up the implementation of Alternative Sanctions and Measure Law"

The International Conference: "Alternative Sanctions and Measures Law: Qualitative Experience in Criminal Legislation"

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27 - 28 September 2022

Manama - Kingdome of Bahrain

1.0 BACKGROUND AND INTRODUCTION

The Zimbabwe Human Rights Commission (ZHRC) is the National Human Rights Institution of Zimbabwe, established in terms of section 242 of the Constitution of Zimbabwe.¹ It is one of the Independent Commissions Supporting Democracy in the country. Its functions include among others, the protection, promotion and enforcement of fundamental human rights and freedoms. It plays an advisory role to the government in matters relating to human rights and freedoms. In line with international human rights standards, the Constitution of Zimbabwe provides that all persons have the right to personal liberty which includes the right not to be deprived of their liberty arbitrarily or without just cause. In the course of performing its advisory role, the ZHRC recommends to the relevant government institution, the imposition of intermediate commensurate sanctions in deserving cases.

The Zimbabwean criminal justice system allows the imposition of intermediate sanctions aimed at fully replacing prison sentences as well as alternative measures aimed at reducing the intensity of imprisonment. Measures aimed at reducing the duration of a prison sentence are also employed. The sentencing guidelines are set out in section 334 of the Criminal Procedure and Evidence Act.²

¹ Constitution of Zimbabwe Amendment (No.20) Act,2013

² Criminal Procedure and Evidence Act, Chapter 9:09 (CPEA)



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2.0. INTERMEDIATE (OR ALTERNATIVE) SANCTIONS

Aimed at fully replacing prison sentences.

2.1. Fine

- ❖ The law provides that a person liable by law to be sentenced to pay a fine may be sentenced to pay a fine of any lesser amount unless a minimum imprisonment penalty is prescribed³

2.2 Caution and Discharge

- ❖ In lieu of imprisonment, a convicting court may warn and caution an offender especially where the offence is deemed be a minor or trivial one

2.3 Wholly suspended sentences.

- ❖ A court may wholly suspend an imprisonment sentence on condition that an offender shall not commit a related offence within a specified period.

2.4. Partially suspended prison sentences (with conditions attached)

- ❖ On condition of performing Community service

A court may order the offender to perform community service as an alternative to imprisonment.⁴ Community Service is any service for the benefit of the community or a section thereof which an offender is required to render in terms of a community service order. Offenders are often ordered to perform community service at public institutions such as schools, hospitals and clinics.

- ❖ On condition of restitution.

Part of a sentence may be suspended by the court on condition, the offender is ordered to pay restitution to the complainant in lieu of imprisonment.

2.5 Recognisance

- ❖ In lieu of imprisonment, a court may order a person convicted of an offence to give recognizances, to keep the peace and be of good behaviour for a specified period.⁵

2.6 Special provisions for young offenders

- ❖ A court may order that a convicted juvenile be placed in a **training institute** in Zimbabwe or in a **reform school** in the Republic of South Africa⁶

³ Section 344 of CPEA.

⁴ Section 347 of CPEA.

⁵ Section 354 of CPEA.

⁶ Section 351(2) (b) of CPEA.



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- ❖ A court convicting a person between 19 and 21 years of age for offences other than murder, treason or rape may (in place of imprisonment or fine) order that he shall be placed under the **supervision of a probation officer** or any other suitable person. ⁷
- ❖ **Whawha Young Offenders Prison** is an institution specifically designed for convicted juvenile offenders in Zimbabwe. The young, convicted offenders do various educational and vocational training programmes such as metal work, engine mechanical work, carpentry and electrical repairs. The ZHRC has monitored the facility, in terms of section 243(1)(k) to access the conditions under which the young offenders are kept and produced reports with recommendations for improvement of the same.
- ❖ **A Pre-trial diversion Program** was adopted to keep children who commit offences from the harmful effects of the formal criminal justice system, address the reasons behind their offenses; and to provide victims of crime with re-dress and rehabilitative interventions that allow them to re-integrate into society. ⁸

3.0 ALTERNATIVES WHICH AIM AT: REDUCING THE DURATION OF A PRISON SENTENCE, REDUCING THE INTENSITY OF IMPRISONMENT.

3.1 Periodical imprisonment

- ❖ A court may, in lieu of any other punishment, sentence a convict to undergo periodical imprisonment for a period between 96 and 2000 hours. ⁹

3.2 Open Prisons

The Constitution of Zimbabwe provides that detained persons including sentenced prisoners have the right to conditions of detention that are consistent with human dignity, including the opportunity for physical exercise and the provision, at State expense, of adequate accommodation, ablution facilities, personal hygiene, nutrition and appropriate reading material.

- ❖ Zimbabwe has two open prisons which are focused on rehabilitation, counselling and re-integration. These are Connemara Open Prison for males and Marondera Open Prison which accommodates females only. The latter is the first of its kind in the Southern African Development Community (SADC) region. Benefits enjoyed by prisoners at the two open prisons include wearing their own clothing,

⁷ Section 351(3) of CPEA.

⁸ <https://www.unicef.org/zimbabwe/press-releases/zimbabwe-launches-pre-trial-diversion-programme>

⁹ Section 345 of CPEA



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preparing their own food and pursuit of academic and professional studies. Inmates are also permitted to visit their families through a home leave facility.¹⁰

3.3 Presidential pardon

- ❖ The President may exercise prerogative of mercy in respect of offenders under sentence of imprisonment and suspend the operation of the whole or any part of such sentence¹¹

ZHRC interaction with the Criminal Justice System

Justice Law and Order Sector (JLOS)

The ZHRC is a member of the Justice Law and Order Sector (JLOS), which plays a crucial role in administering justice, maintaining law and order, and protecting human rights. It aims to build public confidence in the rule of law and the justice system. The sector is made up of organisations that play a role in the justice delivery system such as the Ministry of Justice, Legal and Parliamentary Affairs, Zimbabwe Republic Police (ZRP), National Prosecution Authority (NPA), Attorney General (AG), Zimbabwe Prisons and Correctional Services (ZPCS), Judicial Services Commission (JSC), and likeminded CSOs through their umbrella bodies i.e. Law Society of Zimbabwe, None- Governmental Organisations (NANGO) and others. Partners in the sector are trained on effective justice delivery to beneficiaries through quarterly capacity building workshops and review meetings.

Monitoring and Inspection of Prisons

The ZHRC monitors and inspects places of detention including police cells and prisons to assess the conditions under which detained persons are kept. This is provided for in terms of the Constitution of Zimbabwe Section 243(1)(k). The reports with recommendations compiled following these inspection and monitoring visits assist in improvement of places of detention and humane treatment of offenders. Recommendations have included decongestion of prisons through use of alternative sanctions including fines and community service as well as periodic Presidential amnesties.

¹⁰ <http://www.zpcs.gov.zw/open-prison/>

¹¹ Section 378 of CPEA



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