

**PRISONERS' RIGHT TO REMUNERATED WORK: A CASE STUDY OF MOZAMBIQUE**

**Dissertation submitted in partial fulfilment of the requirements for the degree**

**LLM (Human Rights and Democratisation in Africa) Faculty of Law, University of Pretoria**

**By**

**Armando Cuamba**

**Student no. 29650110**

**Prepared under the supervision of**

**Prof Frans Viljoen**

**University of Pretoria**

**Faculty of Law**

**Centre for Human Rights**

**29 October 2010**

## Contents

Declarations .....	4
Abbreviations .....	5
Dedication .....	6
Acknowledgement .....	7
Chapter one: The study .....	8
1.1 Background.....	8
1.2 Thesis statement .....	11
1.3 Research questions .....	12
1.4 Literature review.....	12
1.5 Methodology.....	13
1.6 Overview of chapters.....	13
1.7 Significance of the study.....	14
1.8 Delimitation of the study.....	14
Chapter two: An overview of the arrangements available at international, regional and domestic levels relating to the protection of prisoners’ right to remunerated work .....	15
2.1 Introduction .....	15
2.2 International arrangements for the protection of the prisoners’ right to remunerated work – UN system.....	16
2.3 Regional arrangements on the protection of prisoners’ right to remunerated work – African system.....	21
2.4 Domestic arrangements on the protection of prisoners’ right to remunerated work .....	22
2.4.1 The Mozambican Constitution.....	22
2.4.2 Specific Legislation on the protection of prisoners’ rights.....	23
2.4.2.2 Decree 7/2006 – establishes the National Service of Prisons (NPS).....	24
2.4.2.3 Decree-Law no. 26 643 - Prison Organisation .....	25
2.5 Conclusion .....	26
Chapter three: Mozambique’s compliance with international and domestic obligations regarding to implementation of the prisoners’ right to remunerated work .....	27
3.1 Introduction .....	27
3.2 Colonial Heritage.....	27
3.3 Post-Independence .....	28
3.4 Current practice of the prison authorities .....	28
3.5 Conclusion .....	30
Chapter four: Strategies to ensure compliance with the undertakings .....	32

<b>4.1 Introduction .....</b>	<b>32</b>
<b>4.2 Litigation strategy .....</b>	<b>32</b>
<b>4.2 Monitoring bodies – National Human Rights Institutions .....</b>	<b>35</b>
<b>4.2.1 Ombudsman.....</b>	<b>35</b>
<b>4.2.2 National Human Rights Commission.....</b>	<b>36</b>
<b>4.3 Conclusion .....</b>	<b>37</b>
<b>Chapter five: Conclusion and recommendations .....</b>	<b>38</b>
<b>5.1 Conclusion .....</b>	<b>38</b>
<b>5.2 Recommendations .....</b>	<b>38</b>
<b>Word count: 13 399 .....</b>	<b>39</b>
<b>Books .....</b>	<b>40</b>
<b>Articles/Reports.....</b>	<b>40</b>
<b>Websites .....</b>	<b>41</b>
<b>Domestic Legislation .....</b>	<b>41</b>
<b>Case laws.....</b>	<b>41</b>
<b>Law Journals .....</b>	<b>41</b>
<b>Dissertations.....</b>	<b>41</b>
<b>List of Universal and African Instruments.....</b>	<b>41</b>

## Declarations

I, **Armando Cuamba**, do hereby declare, certify and affirm that this research is my own work and that to the best of knowledge, has not been submitted or is currently being considered either in whole or in part, in fulfilment of the requirements of a Masters of Law Degree at any other institution of learning. The ideas used herein have been taken from different scholars, but have been presented in a manner that has not been taken from other literature hence it is deemed original. I assume personal responsibility to the correctness of facts contained herein and to the presentation thereof.

Signed at University of Pretoria on 29<sup>th</sup> October 2010

.....  
**Armando Cuamba**  
**(Candidate)**

I, **Frans Viljoen**, being the supervisor, have read this research paper and approved it for partial fulfilment of the requirements of the Masters of Law Degree, Human Rights and Democratisation in Africa, of the University of Pretoria.

Signed at University of Pretoria on 29 October 2010

.....  
**Frans Viljoen**  
**(Supervisor)**

## Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
Kampala Declaration	Kampala Declaration on Prison Conditions in Africa
NPS	National Prisons Service
SMR	UN Minimum Standard Rules for the Treatment of Prisoners
UN	United Nations
Universal Declaration	Universal Declaration of Human Rights

## **Dedication**

*In memory of my late parents;*

*Mr Maiva Cuamba*

*Ms Canhissane Macamo*

## **Acknowledgement**

I express my indebtedness to countless people who made this dissertation possible. My thanks go to Prof Gilles Cistac and Prof Frans Viljoen for their guidance in this work.

## Chapter one: The study

### 1.1 Background

The situation of prisoners in most African countries is very poor.<sup>1</sup> Prisoners are among the most vulnerable groups in society.<sup>2</sup> Most government policies and economic planning sectors have not addressed the rights of prisoners. It is true that a nation should not be judged by how it treats the most influential members of society but the most at risk and vulnerable members.<sup>3</sup> If the treatment of prisoners shows how the human rights of the most vulnerable group in society have been undermined, then a nation falls at human rights observance if it does not effectively protect the rights of prisoners.

One area of concern is the enjoyment of the right to work by convicted prisoners or persons awaiting trial while still in custody. Indeed, the age-old question in this area is whether work done by prisoners should be remunerated.<sup>4</sup> The work carried out by prisoners should be remunerated as this is not only fulfilling international law obligations but it is also cost-effective to most states which have failed to fully provide for the basic necessities needed by prisoners.<sup>5</sup> Most African countries have failed to provide sufficient food and treatment to prisoners.<sup>6</sup> The families and dependants of prisoners are the most affected by the fact of incarceration mainly in cases where the prisoner has been the breadwinner of the family.<sup>7</sup> The situation is more serious where the prisoners do not have anything to pay to the families of those they have caused injury or financial loss. This dissertation submits that providing employment or promoting self-employment to prisoners will have a positive impact not only on themselves, but also on their victims as the remunerated prisoner will be able to pay back assessed damages.<sup>8</sup> It seeks to depart from the traditional understanding of imprisonment and takes on a human rights-based approach which envisages prisons as institutions for effective rehabilitation and actual transformation.

---

<sup>1</sup> Preamble of the Kampala Declaration on Prison Conditions in Africa.

<sup>2</sup> As above.

<sup>3</sup> Mandela quoted at <<http://thinkexist.com/quotation/it-is-said-that-no-one-truly-knows-a-nation/348479.html>> [ Accessed on 25 July 2010].

<sup>4</sup> The ILO Conventions on Forced Labour and ICCPR seems to advocate for prison labour being part of punishment.

<sup>5</sup> 'Prisons in Mozambique: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa Series IV no. 8' 35.

<sup>6</sup> M Schönteich 'Pre-trial detention and human rights in Africa' in J Sarkin (ed) *Human rights in African prisons* (2008) 108.

<sup>7</sup> As above, 107.

<sup>8</sup> Article 279(2) of the Decree-Law no. 26 643 which provides for prison organisation, states that part of the remuneration of prisoners will be set aside to pay compensations to the victims. See also the Kampala Declaration which recommends that the work done by prisoners should also be aimed to compensate the victims.



Human rights are those rights that are inherent to the dignity of every human being, including prisoners.<sup>9</sup> Human rights are inalienable and interlinked.<sup>10</sup> Most African states, including Mozambique, have adopted and ratified most human rights instruments including the International Covenant on Civil and Political Rights (ICCPR)<sup>11</sup> and the African Charter on Human and Peoples' Rights (ACHPR).<sup>12</sup> Furthermore, Mozambique has demonstrated its intention to be guided by certain soft law standards such as the Universal Declaration of Human Rights (Universal Declaration),<sup>13</sup> which is considered to have crystallized into customary international law, the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR)<sup>14</sup>, and the Kampala Declaration on Prison Conditions in Africa.<sup>15</sup>

Prisoners have rights just like other individuals, except those which are restricted by virtue of the judicial determination.<sup>16</sup> They are entitled to enjoy, at a level equal to other individuals, the right to work, and right to be protected from slavery and forced labour. Since human rights are indivisible and equal, states should take all the necessary steps, including budget allocation to promote the rights of prisoners. In similar vein and as mentioned above, prisoners, like other individuals in society, are also entitled to, among other basic rights, the right to work that a state must fulfil towards its citizens.<sup>17</sup>

The right to work is guaranteed in many international instruments but it is comprehensively dealt with by the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 6(1) of the ICESCR<sup>18</sup> guarantees 'the right of everyone to the opportunity to gain his living by work' which he/she may freely chooses or accepts and calls upon states to take steps that include technical and vocation guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental

---

<sup>9</sup> According to the African Charter, all member States are committed to assure the rights enumerated in the Charter to all their citizens without any discrimination.

<sup>10</sup> See article 5 of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993

<sup>11</sup> Ratified by Resolution of the Assembly of the Republic no 5/91 of 12 December 1991.

<sup>12</sup> Ratified by resolution of the Assembly of the Republic no 9/88 of 25 August 1988.

<sup>13</sup> See article 43 of Mozambican Constitution which states that the constitutional principles in respect of fundamental rights shall be interpreted and integrated in harmony with the Universal Declaration of Human Rights.

<sup>14</sup> See the introduction of the Mozambican prison policy adopted by Decree no 22/2002 of 27 of August.

<sup>15</sup> As above – introduction of the Mozambican Prison Policy.

<sup>16</sup> *Woods v Minister of Justice Legal and Parliamentary Affairs and others* 1995 1 SA 703 (ZS). See also B Katurreb 'Prisons are for everybody: Report of a Pan-African Seminar' Penal Reform International Paris (1997) 18.

<sup>17</sup> Katurreb [n 16 above] 18.

<sup>18</sup> Although Mozambique has not ratified this Covenant yet, some of its provisions such as the rights to education, health and work have been domesticated through the constitution.

political and economic freedoms to the individual.<sup>19</sup> The individual dimension of the right is further developed by article 7 of the ICESCR which recognizes the right to just and favourable conditions of work which ensure 'remuneration which provides all workers as a minimum with fair wages equal remuneration for work of equal value without distinction of any kind'.<sup>20</sup> The remuneration should also provide workers with a decent living for themselves and their families. General Comment no. 18 on the right to work defines work to be both self-employment and wage dependent work. The right to work is a right that is to be progressively realized and it is to be enjoyed without any discrimination based on race, colour, sex language, social origin or any other status.<sup>21</sup> Limitations to the right are only allowed when it is determined by law and they have to be compatible with the nature of the right and solely for purposes of promoting the general welfare in a democratic society.<sup>22</sup>

Under article 1(2) of International Labour Organization (ILO) Convention No. 122, to which Mozambique is a party, the member states are obliged to ensure that 'there is work for all who are available for and seeking work' including prisoners.<sup>23</sup> The International Labour Convention Nos. 29 and 105 and the ICCPR prohibit forced or compulsory labour. However, to varying extent, they exempt from the definition of forced labour the work done by persons held in custody or detention pursuant to a court order. Therefore, the question on whether the exclusion of prison labour from the definition of forced labour under international law should be waived has been a burning issue within the international community. To answer to this, one can rely on ILO Convention no. 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour to conclude that since this Convention does not provide for any exception for children under custody to exact prison labour, the understanding should be that those clauses under ILO Conventions on Forced Labour (Conventions Nos. 29 and 105) and ICCPR which exclude the prison labour from forced labour, should be repealed once they reduce the prisoner into conditions of a slave.<sup>24</sup>

This dissertation seeks to highlight the challenges facing prisoners in Mozambique in enjoying their rights, in particular the right to remunerated work and argues that prisoners should be adequately remunerated for the work done. The study derives from the principle that all human rights are inherent and apply to all human beings including prisoners.

---

<sup>19</sup> See article 6(2) of the ICESCR.

<sup>20</sup> See article 7(a)(i) of the ICESCR.

<sup>21</sup> See article 2 of the Universal Declaration.

<sup>22</sup> See Section 36(1) of South African 1998 Constitution.

<sup>23</sup> Article 2 of the Universal Declaration provides for prohibition of discrimination at any ground.

<sup>24</sup> South Africa 1996 Constitution has abolished forced labour within the South African jurisdiction. See section 13.

## 1.2 Thesis statement

Prisons in Mozambique are overcrowded<sup>25</sup> and some of the prisoners are starving to death. The children and families of the prisoners are also hunger stricken and the children can no longer go to school since the breadwinners on whom they depend are in prison.<sup>26</sup> So, if the state cannot provide for the needs of the prisoners, why can the state not ensure the proper implementation of this statutory duty and let the prisoners practice their skills by working and earning income to support themselves and their dependants? Mozambique has put in place legislation allowing prisoners to work and get remuneration,<sup>27</sup> but it is of no use since mechanisms for its implementation on the ground are not defined yet.

Today, prisoners are being educated in prisons.<sup>28</sup> Therefore, states should put in place measures which allow them to put into practice immediately the skills acquired so that they can develop and sustain themselves while in prison and after serving their sentences. It is a modern approach to sentences where prisons are meant for rehabilitation. In the SADC region, Zambia and Malawi have developed some model practices that ought to guide other countries, including Mozambique. Based on a very progressive prison policy, the two countries are implementing programmes that allow convicted prisoners to live in 'open air' prisons growing food on state farms allocated to the Departments of Correctional Services.<sup>29</sup> According to Kaguongo<sup>30</sup> there are no specific human rights of prisoners since they are also entitled to the same rights that inhere to every human being and therefore, the so-called human rights of prisoners derive from the general principle of no-discrimination. The adoption and implementation by the states of the legislation which provides for the provision of remunerated work to prisoners emanates from the international law and it can be fit to the state obligations regarding to human rights. The terminologies 'prisoners' rights' or 'human rights of prisoners' are only used as an

---

<sup>25</sup> n 5 above, 27. For instance, the Special Rapporteur found that Maputo central prison with the capacity to accommodate 800 prisoners was by the time of the visit accommodating 2000 prisoners. At the same time, Maputo Civil Prison, with the capacity to accommodate 250 prisoners was accommodating 611 persons.

<sup>26</sup> n 6 above, 107.

<sup>27</sup> See article 4(2)(h) of the Organic Statute of the National Prison Service

<sup>28</sup> n 5 above, 17

<sup>29</sup> R Mungole 'Criminal justice system in Zambia: a case for the Zambia prison', available at <http://www.iss.co.za/uploads/26AugMungole.pdf> [accessed on 20 July 2010]. See also 'Penal Reform International: a model for good farm management in Africa' available at [http://www.penalreform.org/files/rep-2002-prison-farm-management-en\\_0.pdf](http://www.penalreform.org/files/rep-2002-prison-farm-management-en_0.pdf) [accessed on 20 July 2010].

<sup>30</sup>W Kaguongo 'Prisoners' rights; the role of National Human Rights Institutions in Africa' unpublished LLM dissertation, University of Pretoria, 2003 16.

effort to refrain prison' authorities from undermining the rights of persons under custody. According to Zellick<sup>31</sup> these terminologies are only used to define:

a penal policy or regime ... which respects the prisoner's inherent dignity as a person, recognizes that he does not surrender the law's protection on being imprisoned, and accords procedures and facilities for ensuring that his treatment is at all times just, fair and humane.

Therefore, states have to fulfil these undertakings in developing and upgrading the welfare of vulnerable people including prisoners.

### **1.3 Research questions**

The study focuses on the implementation of the prisoners' right to remunerated labour in Mozambique. It takes on a human rights-based approach to prisoners' rights, arguing for the provision of remunerated labour as a measure to enhance a fundamental right to work to the most vulnerable members of the society who are prisoners. Within this broad rubric, it will attempt to answer the following questions:

- I. What are the domestic, regional and international standards in respect of remunerated labour applicable to prisoners?
- II. Has Mozambique complied with the duties arising from these obligations?
- III. How can the enforcement of these undertakings be ensured?

### **1.4 Literature review**

Various researchers and writers have analyzed the legal status and rights of prisoners looking at prisoners' rights to property, food and medical care.<sup>32</sup> This study examines the wider interpretation of the right to work for prisoners by providing them with remunerated work that may improve their skills and help them to maintain their families. The Mozambican Constitution provides for the right to work<sup>33</sup> and the right to fair remuneration.<sup>34</sup> Corry examines the philosophy underlying prison labour in South Africa by looking at the Roman law where labour as a form of punishment existed.<sup>35</sup> Today the idea of work in prison is geared towards the reformation and rehabilitation of offenders developed from the medieval work houses. It is also pertinent to examine the implementation of the Mozambican specific legislation on the protection of prisoners' rights, which provides explicitly for remunerated labour for prisoners. The activities of Penal Reform International especially around the rights of prisoners will be consulted.

---

<sup>31</sup> Cited by Kaguongo - as above.

<sup>32</sup> G D Treverton-Jones, *Imprisonment: The legal status and Rights of prisoners*, 1989, 57.

<sup>33</sup> Article 84 of the Mozambican 2004 Constitution.

<sup>34</sup> Article, 85 of the Mozambican 2004 Constitution

<sup>35</sup> T M Corry *Prison Labour in South Africa* (1977) 17.

Most of the literature review covering the right of prisoners to work proposes the exercise of this right as a form of rehabilitation.<sup>36</sup> Other works have cautioned that the right to work should not amount to forced labour.<sup>37</sup> The Mozambican Prison Services have adopted policies related to prisoners' right to work.<sup>38</sup> It will also look into strategies that may be employed to enforce this guarantee.

## **1.5 Methodology**

The research is mainly based on desktop research with a thorough analysis of primary sources such as domestic laws and policies and international legal instruments adopted by Mozambique as well as other secondary publications. The domestic legal framework as well as the various reports on the situation of prisons in Mozambique is considered. The study is based on a literature review, relying on library research as well as the internet. Prior data gained by the researcher when working for the Law Clinic at Eduardo Mondlane University is also utilised. The research further adopts an analytical and critical approach to understand why, despite the prison legislation dispensation that provides for the prisoners right to remunerated labour, the Mozambican government has not been willing to fulfil this legislation.

## **1.6 Overview of chapters**

The study is divided into five main chapters. Chapter one provides the background, the research questions and the research process. Chapter two provides an overview of the arrangements available for the protection of the prisoners' rights to remunerated work at international, regional, and domestic levels. Chapter three looks at the implementation of remunerated labour to prisoners as required under the Mozambican legislation and international human rights instruments. The need for the provision and regulation of prison labour should aim at prohibiting abuse and exploitation of prison labour. Thus, this chapter takes on the difficulties and challenges of implementing the prisoners' right to remunerated labour as provided for by the Mozambican legislation. Chapter four focuses on the possible strategies to ensure compliance with the undertakings such as litigation and cooperation with civil society and National Human Rights Institutions. Chapter five provides a conclusion and recommendations. The conclusion is based on the practices by the prison authorities with regard to prison labour in Mozambique. The recommendations are based on the possible implementation of Mozambican laws regulating prison labour and Mozambique's adherence to international and regional human rights instruments. The recommendations propose the modalities of regulating prison labour and the forms of payment in regard to prisoners' right to remunerated labour.

---

<sup>36</sup>As above 36.

<sup>37</sup> R Smith (2005) *Textbook on International Human Rights* USA: Oxford University Press 296.

<sup>38</sup> See article 4(2)(h) of the organic statute of the National Service of Prisons.

## **1.7 Significance of the study**

This study is relevant for a number of reasons. Prisoners are a vulnerable group of people whose rights are neglected. At the same time, their own capacity to manage the situation is severely constrained. Indeed, society generally views prisons as places for physical punishment, and environments where people should have no rights and are meant to suffer. However, under international law, persons deprived of their liberty are entitled to be treated with humanity and dignity.<sup>39</sup> Furthermore, due to budget constraints or to the lack of political will, most government policies and economic planning have neglected the prison sectors which undermine the state's obligation to address the rights of prisoners. Still, under international law, prisoners are entitled to the right to work which seems to be unreasonable to the general public, taking into consideration that states cannot guarantee this right to many vulnerable people outside of prisons.<sup>40</sup> The research suggests that governments should empower this vulnerable group so that they could be self-reliant. This dissertation seeks to bring this latter fact to light in the hope that the Mozambican government's policy towards social protection of vulnerable groups in general and prisoners in particular be improved to reflect the basic needs of prisoners. The research will contribute to a human rights-based approach to the treatment of prisoners by arguing for the implementation of their right to remunerated work. This will not only have an impact in Mozambique, but also other Southern African Development Community (SADC) countries and other states to adopt penal reform policies to ensure the improved realisation of prisoners' rights and better serve the objectives of rehabilitation and self-reliance.

## **1.8 Delimitation of the study**

The study does not address all elements of the right to work as concerns to prisoners. It only discusses the challenges to the implementation of the prisoners' right to remunerated labour and analyses the Mozambican government's adherence and respect of both domestic and international laws pertaining the prisoners' right to remunerated labour.

---

<sup>39</sup> Article 10 (1) of the International Covenant on Civil and Political Rights.

<sup>40</sup> K Frimpog 'Rights and obligations in respect of prison labour' in D Smit & F Dünkel (eds) *Prison labour: salvation or slavery?* (1999) 35.

## Chapter two: An overview of the arrangements available at international, regional and domestic levels relating to the protection of prisoners' right to remunerated work

### 2.1 Introduction

The right to work for prisoners is still a controversial issue at national, regional and international level.<sup>41</sup> In order to appreciate the importance of the right to work in general and, consequently, adequate remuneration for work done by prisoners in particular, it is important to briefly look at the history of prison labour which informs the current debate on the protection of the right to work for prisoners.

Imprisonment was introduced in many European countries in early eighteenth century as an alternative to the prevailing crude methods of punishment such as death penalty for minor offences.<sup>42</sup> Accompanying this new form of punishment was hard labour as a way of inflicting physical pain to the offender for the harm that he has caused to the society by his criminal actions.<sup>43</sup> Since then prison labour has become part of many penal systems across the globe. Many penal systems have incorporated prison labour as an obligation or duty accorded to prisoners rather than right entitled to them. This duty to work is explicitly provided for under international and domestic laws and it can also be implied from practice of the prison authorities. With the change in emphasis from punishment as a form of retribution to using prison as part of inmate's rehabilitation process, prison labour is also being considered in this regard.

The obligation to work may be imposed on both convicted and untried offenders since some penal systems do not distinguish between the two categories of offenders when imposing the duty to work.<sup>44</sup> However, with regard to the latter, they may be required to give consent before they are assigned work.<sup>45</sup> The kind of work done by prisoners varies. It may include work done for their own benefit such as cleaning their cells and washing their clothes. They may also be required to undertake work that is for the benefit of the institution but in the final analysis benefits the inmate directly or indirectly. Lastly they may be required to undertake work that is vocational training in nature and is considered to be

---

<sup>41</sup> D Smit & F Dunkel (eds) *Prison Labour: Salvation or Slavery?* (2000) vii.

<sup>42</sup> G. de Jonge "Still 'Slaves of the State' Prison Labour and International Law" in D Smit & F Dunkel (eds) *Prison Labour: Salvation or Slavery?* (2000) 313.

<sup>43</sup> As above 313.

<sup>44</sup> China can be taken as an example in this regard. See De Junge (n 42 above) 318.

<sup>45</sup> Rule 89 of the SMR.

part of the inmate's rehabilitation. This is what is largely considered as prison labour. It may be undertaken for the benefit of a public institution and in some cases for private enterprises.<sup>46</sup>

There is a growing recognition that prisoners need to be remunerated for the work they undertake in prison. The problem is that in many countries inmates are not being paid for work done even if the law explicitly provides for that.<sup>47</sup> Where they are paid, the amount may be grossly inadequate to the extent that prison labour becomes exploitative rather than achieving its stated aim of rehabilitation.<sup>48</sup> To avoid the exploitation of prison labour the 6<sup>th</sup> recommendation of the workshop on labour in prison and rehabilitation, held in Kampala, provides that:<sup>49</sup>

Remuneration for prison labour is essential as an incentive to encourage productivity. Payment should not be token. It should be so scaled as to be meaningful and encourage greater effort without being so attractive as to overshadow the income earned by the free man.

Underlying the problems with regard to remunerated work for prisoners is the fact that the right to work for prisoners is yet to get universal recognition as opposed to their duty to work. This is in spite of the fact that there exist national, regional and international frameworks that guarantee this right.

## **2.2 International arrangements for the protection of the prisoners' right to remunerated work– UN system**

Article 23 of the Universal Declaration provides that:

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 6(1) of the ICESR grants to everyone the right to work and thereby recognizing this right as an opportunity to gain one's living. However, there has been a debate centred on whether the right to work could really be considered as a right or not. While usually most of the human rights standards

---

<sup>46</sup> Although the exception which exclude prison labour from the definition of forced labour under the ILO Convention on Forced Labour no. 29 requires the state not to hire or place at the disposal of private individuals, companies or associations, prisoners, mainly in America are already working for private entities. See Corry (n 35 above) 27.

<sup>47</sup> See rule 73(2) of the SMR.

<sup>48</sup> De Jonge (n 42 above) 314

<sup>49</sup> Report of a Pan-African Seminar on Prison Conditions in Africa Penal Reform International, Paris (1997) 82.



have been taken as something positive,<sup>50</sup> the right to work requires a certain amount of physical and mental effort which can lead to some degree of suffering. So the main question around the debate is why do people need as a right something which is negative and therefore unpleasant?<sup>51</sup> Perhaps it is because of this singular attribute or capacity to cause suffering that work has been employed in criminal justice as a form of punishment.

Another question which arises around the debate is about what can be defined as work and whether it includes the right to self-employment or not. Work has usually been defined as a provision of a service for, and under the direction of another, in return for remuneration.<sup>52</sup> However, Smith argues that although there is no express right to self-employment, it can be implied from the right to work as an extension at some extent, of the freedom from compulsory labour.<sup>53</sup> Thus, based on this assumption work can be taken as all forms of performing activities which will satisfy needs and create services for a given group in society.<sup>54</sup> Therefore, from the concept of work suggested by this description one can clearly conclude that work as a human right is more than wage labour and it is related to one's participation in society's activities, to secure its survival and well-being.<sup>55</sup> And this includes the acceptance and gratification derived from community or society.<sup>56</sup>

General Comment No. 18 of the Committee on Economic, Social and Cultural Rights on the right to work interpreted the right to work in terms similar to the explanation above. The right to work includes independent or dependent wage-paid work and it is not an absolute or unconditional right to obtain employment.<sup>57</sup> The Committee defines work to include the right of every human being to decide to freely accept or choose work and therefore, no person should be forced to work.<sup>58</sup> Each worker has a right of access to systems of protection guaranteeing him access to employment.<sup>59</sup> Work must be decent in the sense that it may respects the fundamental rights of the human person as well as the rights of the workers such as, among others, the right to just remuneration.<sup>60</sup>

---

<sup>50</sup>S Liebenberg 'The right to work and right at work', available at <<http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module10.htm>> [accessed on 30 July 2010].

<sup>51</sup> Liebenberg (n 50 above).

<sup>52</sup> See article 18 of Mozambican Labour Law no. 23/2007.

<sup>53</sup> R Smith, (2005) *Textbook on International Human Rights* USA: Oxford University Press 296.

<sup>54</sup> Liebenberg (n 51 above).

<sup>55</sup> Liebenberg (n 51 above).

<sup>56</sup> Liebenberg (n 51 above).

<sup>57</sup> See General Comment No. 18 para 6.

General Comment No. 18 para 4.

<sup>59</sup> General Comment No. 18 para 6.

<sup>60</sup> General Comment No. 18 para para 7.

There are practical and legal challenges on whether prisoners can be considered as workers to enjoy guarantees under articles 6, 7, and 8 of ICESCR. It should be noted that article 2 of the ICESCR guarantees the rights enumerated in the Convention without discrimination on any ground. Further even if one is to consider the limitation clause under article 4 of the same Convention, an interpretation of that clause casts doubt on whether a limitation of these rights to prisoners is justifiable in a democratic society. The limitations clauses must be expressly stated in a law of general application in so far as it is compatible with the nature of the right and solely for purposes of promoting the general welfare in a democratic society.<sup>61</sup>

Whereas the ICESCR protects everyone from being coerced into work, the International Covenant on Civil and Political Rights, the International Labour Conventions on Forced Labour (Conventions No. 29 and No. 105) seem to tolerate compulsory prison labour. Indeed, article 2 of the 1930 ILO Convention No. 29 on Forced Labour provides:

- (1) For the purposes of this Convention the term 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
- (2) Nevertheless, for the purposes of this Convention, the term 'forced or compulsory labour' shall not include: ... (c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired out to or placed at the disposal of private individuals, companies or association.

The abolition of Forced Labour Convention No.105 was adopted to address the inadequacies of Convention No. 29 in dealing with concerns of large-scale deportation of people to labour camps for political reasons.<sup>62</sup> The latter Convention was created to fight slavery and other involuntary labour in colonial settings.<sup>63</sup> The stated aims of Convention No. 105 were to outlaw compulsory labour which was used as a means of political coercion or education or as a punishment for holding or expressing political views ideologically opposed to the established political, social or economic system; or as a method of mobilizing and using labour for purposes of economic development; as a means of labour discipline among other reasons.<sup>64</sup>

---

<sup>61</sup> See the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4.

<sup>62</sup> G Jonge Still 'Slaves of the State': 'Prison labour and international law' in D Smit & F Dünkel (eds) (1999) Prison Labour: Salvation or Slavery? 324

<sup>63</sup> De Jonge (n 82 above) 321.

<sup>64</sup> De Jonge (n 82 above) 321.

Article 8 of the ICCPR secures the right of everyone to be free from slavery and forced labour. Article 8(3)(c) of the Covenant provides exception for prison labour as a lawful form of forced labour in the following terms:

For the purpose of this paragraph the term 'forced or compulsory labour' shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

As Jonge observes, rather than the tacit admission that labour is inherent in imprisonment, it does not appear that the drafters of these treaties had addressed their minds to the legality of compulsory prison labour.<sup>65</sup> Further, ILO Convention No. 29 and ICCPR are silent on the issue of remuneration for compulsory prison labour unlike the ICESCR which guarantees to everyone the right to work and the right to just and favourable conditions of work including adequate remuneration to secure his dignity and that of his/her dependants. It is important to highlight that of the three instruments, none appears to have priority over the others.<sup>66</sup>

The SMR are a set of 95 rules that set out the minimum standards below which prisons' authorities should not fall. They were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and amended by resolution 2076 (LXII) of 13 May 1977. They contain rules which have become part of customary international law and therefore, they are binding upon states. They can also be used decisively for the interpretation of the treaty provisions under the ICCPR, ICESCR and ILO Conventions on Forced Labour Nos. 29 and 105.<sup>67</sup>

Part II of the rules provides important safeguards relating to work by convicted prisoners and untried offenders.<sup>68</sup> In relation to convicted prisoners the rules provide that prison labour must not be of an afflictive nature.<sup>69</sup> In keeping with historical evolution of prison labour, the rules approach focuses on the obligation to work rather than the right to work for a convicted prisoner by providing that 'all convicted prisoners shall be required to work'.<sup>70</sup> With respect to untried prisoners although they are not required to work, they are always offered an opportunity to work.<sup>71</sup> This is in keeping with state's

---

<sup>65</sup> De Jonge (n 82 above) 320.

<sup>66</sup> De Jonge (n 82 above) 327.

<sup>67</sup> De Jonge (n 82 above) 328.

<sup>68</sup> See rules 71 to 76 and 89 which are dedicated to labour issues.

<sup>69</sup> See rule 71(1) of the SMR.

<sup>70</sup> Rule 71(2) of the SMR.

<sup>71</sup> Rule 89 of the SMR.

obligation under the ICESCR which requires state parties to create conditions that facilitate access to work or employment towards their citizens.<sup>72</sup>

The rules also make provision for sufficient work of a useful nature and which will also maintain or increase prisoners' ability to earn an honest living after release<sup>73</sup> and call for provision of vocational training in useful trades.<sup>74</sup> The SMR attempt to create a balance between obligation to work and the right to work for a convicted prisoner by providing that within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.<sup>75</sup>

In emphasizing the rehabilitative aims of prison labour, the organisation and methods of work in prison must conform to those of similar work outside prison.<sup>76</sup> Further, interest of prisoners and vocational training should rank higher in priority than financial profit for prisons.<sup>77</sup> Emphasis is also placed on work in industries and farms operated by prison authorities rather than private entities.<sup>78</sup> Where inmates are employed in work not controlled by prison administration they must be supervised by personnel from the prison.<sup>79</sup> The rules also seek to protect occupational health and safety of prisoners by requiring that relevant rules that are applicable to workers outside prison setting should be observed including indemnity for prisoners against industrial injury.<sup>80</sup> Hours of work for prisoners should take into account circumstances relating to free workers.<sup>81</sup>

On the important question of remuneration although the rule 76(1) calls for a system of equitable remuneration of work of prisoners, it does not explicitly emphasize the principle of equal pay for work of equal value. The prison system is also required to allow prisoners to spend at least a part of their earnings on approved articles for their own use and to support their family.<sup>82</sup> It should also provide that a part of their earnings should be set aside by the administration so as to constitute a savings fund to

---

<sup>72</sup> Article 6(2) of the ICESCR.

<sup>73</sup> Rule 71(3) & 71(4) of the SMR.

<sup>74</sup> Rule 71(5) of the SMR.

<sup>75</sup> Rule 71(6) of the SMR.

<sup>76</sup> Rule 72(1) of the SMR.

<sup>77</sup> Rule 72(2) of the SMR.

<sup>78</sup> Rule 73(1) of the SMR.

<sup>79</sup> Rule 73(2) of the SMR.

<sup>80</sup> Rule 74(1) of the SMR.

<sup>81</sup> Rule 75(2) of the SMR.

<sup>82</sup> Rule 76(2) of the SMR.

be handed over to the prisoner on his release.<sup>83</sup> Where an untried prisoner elects to work, they shall also be paid full wages for the work done.<sup>84</sup> The rules also require prison administration to be paid full wages for work done by inmates outside prison when the beneficiaries are private entities.<sup>85</sup>

In conclusion, under international law, the protection of the right to work in general and the right to remunerated work for prisoners in particular is very tenuous if one is to consider the provisions of ICCPR, and ILO Convention Nos. 29 and 105. However, the treaty provisions on the right to work and right to adequate remuneration under the ICESCR do not exclude prisoners in any explicit sense. The rights under the Convention are guaranteed for all human beings without any kind of discrimination.

The limitation clauses under the aforementioned conventions cannot form sufficient basis for denying prisoners their right to adequate remuneration. The SMR can be seen as an attempt to repeal the traditional views of prison labour as being implicit in imprisonment since they are binding. It should also be recalled that article 8 of the 1990 UN Basic Principles for the Treatment of Prisoners require conditions to be created that enable prisoners to undertake meaningful remunerated employment which will facilitate the reintegration into the country's labour market and permit them to contribute to their own financial support and that of their family.

### **2.3 Regional arrangements on the protection of prisoners' right to remunerated work – African system**

In the African context, article 15 of the ACHPR provides that every individual has the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work. Article 2 of the Charter provides that the rights and freedoms guaranteed in the Charter shall be enjoyed without any discrimination on the base of, among other reasons, national and social origin, fortune, birth or other status. The rights and freedoms are exercised with due regard to the rights and freedoms of others, collective security, morality and common interests.

In Africa, the Kampala Declaration is one of the important documents of reference for the protection of prisoners. The Kampala Declaration provides that the conditions in which prisoners are held and prison regulations should not aggravate the suffering already caused by the loss of liberty.<sup>86</sup> The Kampala Declaration calls upon the states to adopt an action plan to minimise the detrimental effects

---

<sup>83</sup> Rule 76(3) of the SMR.

<sup>84</sup> Rule 89 of the SMR.

<sup>85</sup> Rule 73(2) of the SMR.

<sup>86</sup> See para 4 of the Kampala Declaration.

of imprisonment so that prisoners do not lose their self-respect and sense of personal responsibility.<sup>87</sup> The Kampala Declaration also provides that prisoners should be given access to education and skills training in order to facilitate their reintegration into community after release.<sup>88</sup> The education and skills training should be aimed at equipping the prisoners with the necessary skills rather than exploitation of their labour.<sup>89</sup> Prisoners can take the advantage of the time spent in prison by taking part in a vocational training which is compatible with their capabilities, where they can acquire enough skills to run their own business after release.<sup>90</sup> Further, the Declaration emphasizes the need for work and stresses the importance of working, as it would help the prisoners to compensate their victims.<sup>91</sup> Court orders that require the offender to pay compensation in terms of civil reparations are not usually realized because the offender generally has nothing to pay.<sup>92</sup> The facilitation of the prisoner with a remunerated work would make it possible for the victim to receive civil reparation through financial compensation.<sup>93</sup>

The Ouagadougou Declaration and the Plan of Action are addressed to governments and criminal justice agencies as well as non-governmental organisations.<sup>94</sup> The Plan of Action outlines the strategies for rehabilitation of the offenders. It highlights the need for literacy and skills training linked to employment opportunities and promotion of vocational training programmes certified to national standards.<sup>95</sup> The rehabilitation through work as provided for by the Ouagadougou Declaration is a positive mark towards the improvement of the lives of the prisoners.<sup>96</sup>

## **2.4 Domestic arrangements on the protection of prisoners' right to remunerated work**

### **2.4.1 The Mozambican Constitution**

The Mozambican Constitution implicitly provides for the protection of prisoners' right to remunerated work. It provides for equality and non-discrimination of all people including prisoners<sup>97</sup>. The Mozambican

---

<sup>87</sup> Para 5 of the Kampala Declaration.

<sup>88</sup> Para 6 of the Kampala Declaration.

<sup>89</sup> A Dissel Commentary on the Kampala Declaration Report on a Pan-African Seminary, Penal Reform International, Paris (1997) 99.

<sup>90</sup> Dissel (n 89 above) 99.

<sup>91</sup> Kampala Declaration in respect of alternative sentencing para 4.

<sup>92</sup> Corry (n 35 above) 75

<sup>93</sup> J Vagg & U Smartt 'England and Wales' in D Smit & F Dünkel (eds) (1999) *Prison Labour: Salvation or Slavery?* 71

<sup>94</sup> Plan of Action for the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa available at [www.penalreform.org](http://www.penalreform.org) [accessed on 31 June 2010].

<sup>95</sup> Plan of Action for the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa (n 94 above).

<sup>96</sup> Plan of Action for the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa (n 94 above)

<sup>97</sup> Art 35 of the Mozambican 2004 Constitution.

Constitution is among the constitutions that have expressly provided for the provision of employment to all people who fit to work since under article 84(1) is established that 'work shall be a right and duty of every citizen' including prisoners. The Constitution further provides for the provision of social services through social protection to the vulnerable groups of people which may also include prisoners.<sup>98</sup> Therefore, all domestic legislation should be in line with the Mozambican Constitution as it is the supreme law. The Constitution of Mozambique in article 11 provides for the duties of the state in the promotion and protection of human rights. The bill of rights in the Constitution prohibits discrimination on any grounds and status including being a prisoner under the principles of universality of fundamental rights and equality of all persons as stated in article 35. Article 61(3) of the Constitution provides that no one shall be denied of his/her rights except those that are inherent to the conviction and are necessary to the execution of the sentence. The provision of employment forms the basics purposes of imprisonment, which is rehabilitation.<sup>99</sup>

## **2.4.2 Specific Legislation on the protection of prisoners' rights**

### **2.4.2.1 Mozambican Prison Policy – Resolution of the Council of Ministers No. 65/2002**

The rights of prisoners in Mozambique, including the right to work, are reflected in the Mozambican Prison Policy.<sup>100</sup> This policy in its preamble recognizes the necessity for prison reform to be realized in order to comply with the SMR and seeks the implementation of the Kampala Declaration on the Conditions of Prisoners in Africa.<sup>101</sup> The Prison Policy at least shows at what extent Mozambique is willing to be bound by the above-mentioned instruments on the protection of the rights of prisoners.

The SMR provides in Rule 76 the need to provide employment to prisoners with an equitable remuneration for their labour. The Kampala Declaration has provided for the need for rehabilitation of the prisoners and currently is being partially implemented in Mozambique.<sup>102</sup>

The Mozambican Policy on Prisons seeks to implement the SMR and the Kampala Declaration, which has expressly shown the need for the employment of prisoners. Though Mozambique has not put in place measures to enforce the right of prisoners to work, the full implementation of the SMR and the Kampala Declaration would facilitate the full implementation of the right of prisoners to remunerated work.

---

<sup>98</sup> Art 85 of the Mozambican 2004 Constitution.

<sup>99</sup> Article 61 (3) states that penal sanction does not mean the deprivation of civil, political or professional rights and does not prevent the inmate fundamental rights except those incompatible with the need of the execution of the penal sanction.

<sup>100</sup> Adopted by Resolution of the Council of Ministers No. 65/2002 of 2 August 2002.

<sup>101</sup> See the Resolution of the Council of the Ministers No. 65/2002.

<sup>102</sup> The Government is making an effort to provide work for prisoners but not to pay them.

In its part 11, the Mozambican Prison Policy stresses the necessity of respect of human dignity and the rights of prisoners where it is provided that the prisoners retain all their rights except those that have been limited by the sentence. The right to work has a correlative effect on the other rights of the prisoners. The right to work guarantees the right to food and life and consequently enabling the prisoners to afford medicines for treatment. The right to health is related to the right to life which is an absolute right and it cannot be taken away even by the courts. The implementation of the prisoners' right to remunerated work would improve the conditions of prisoners as provided for by the Mozambican Constitution and applicable legislation on the protection of prisoners' rights.

#### **2.4.2.2 Decree 7/2006 – establishes the National Service of Prisons (NPS)**

Prisons in Mozambique are organized and administered under the National Service of Prisons (NPS).<sup>103</sup> The NPS was set up by decree 7/2006 and it is charged with the duty and mandate of daily running and administration of prisons. Under article 3 the Decree establishes the mandate of the NPS. The right to work as an entitlement to prisoners is provided for under article 3(f), which provides for the promotion and management of prison labour. Through this Decree and other applicable legislation, the NPS has wrongly carried out prison labour as part of the sentence where prisoners have been working on prison farms without any payment.<sup>104</sup> Besides this, prisoners can be hired through the NPS to work on public or private sectors, where their salaries will be paid to the prison authorities.<sup>105</sup>

There is need for rights-based approach to prison labour whereby prisoners should be encouraged to work and get remuneration as provided for by the SMR. The SMR provides under rule 76 (3) that prison authorities should provide that part of the earnings should be set aside to form a savings fund to be handed over to the prisoner on his release. However, NPS has not put in place measures to ensure that the work done by the prisoners is remunerated to constitute their savings to be handed over upon release. Article 7(d) of the Organic Statute of NSP recognizes the need for the compensation of prisoners in case of work accidents. This is to show that the labour law as pertains compensation and treatment in case of a work accident is equally applicable to prisoners.

The Organic Statute of the National Prisons Service providing for the mandate of the General Director of the NPS provides in article 4 (2) (h) that the General Director would approve the remuneration to be paid to prisoners in case of a remunerated work and the compensation to be paid to them or their families in case of a work or labour accident. This provision recognizes the need for provision of

---

<sup>103</sup> Decree 7/2006 (Decree of Council of Ministers) of 17 May, 2006, setting up the National Service of the Prisons.

<sup>104</sup> It has been reported that prisoners in Mozambique have been working in 'open prisons but without payment. See A Dissel 'Rehabilitation and reintegration in African prisons' in J Sarkin *Human rights in African prisons* (2008) 170.

<sup>105</sup> See article 7(1)(p) of the Organic Statute of the NPS.



employment to prisoners and the need not only to compensate a prisoner after an accident but also to pay the prisoner for his/her services. The remuneration of the prisoner after the work would be one of the measures that would make prisoners sufficient to provide the basic necessities like food and the medicines for treatment in case of those that are not provided by the prison health facilities.<sup>106</sup> The remuneration of the prisoners has more positive effects since the prisoner would not only manage to live a dignified life but would also be able to pay back compensation to the families of the victim in case of the civil damages. The Organic Statute in article 7(o) providing for the aims of the NPS states that prison serve correctional and social reintegration purposes and the provision of employment would be part of the reintegration process. The Organic Statute's aim is in line with the Ouagadougou Plan of Action that outlines the plans for reintegration through emphasis of literacy and skills training linked to employment.<sup>107</sup> Although the above Decree which establishes the NPS in Mozambique recognizes the need for prisoner remuneration and compensation in case of work or labour accident prisoners in Mozambique continue to suffer extreme hunger, malnutrition and lack of proper medicines because the state having the obligation to provide for their well being has failed to deliver. Therefore, there is need for the General Director of prisons to put in place measures and defines the amount to be paid to the prisoners in case of employment. This should not be a token but a standing right as provided for by the law.

#### **2.4.2.3 Decree-Law no. 26 643 - Prison Organisation**

The Decree-law on prison organisation came into force when the country was still under Portuguese administration and it provides for prison labour in chapter IV.

According to article 261, prisoners are obliged to work according to their capacity and the labour produced by prisoners should be productive and remunerated as long as they work under the prison administration.<sup>108</sup>

Social protection through remunerated work which includes self-employment aims at improving the lives of the most vulnerable groups in society and prisoners being among the poor and the needy need special programmes to support themselves and their dependants and also pay back their victims. In

---

<sup>106</sup> Although it can be considered as state's responsibility, there is a common feeling that if the state could supply all the basic necessities, people could commit crimes so that they could get support from the state.

<sup>107</sup> B Katurebe, Prisons are for everybody, Prison Conditions in Africa, Report of a Plan African seminar, Kampala, Uganda 19-21, September, 1996, Penal Reform International, Paris, October 1997.

<sup>108</sup> Article 266 and 278 of the Law -Decree No 26 /643 .

this regard the abovementioned Decree-law provides that the remuneration of prisoners should take in consideration the following aspects:<sup>109</sup>

- a) Compensation of the state on expenditure of their imprisonment;
- b) Compensation of the victims;
- c) Supplement of the needs of their families;
- d) Supplement their needs while in prison; and
- e) Constitution of their savings.

These objectives are in line with the rights of prisoners to remunerated labour as provided for by international human rights law and the Mozambican Constitution. The law has not only provided for the right to remunerated labour but has also provided for the mechanisms, which could facilitate the management and organization of prison labour taking in consideration that the Universal Declaration seems to be advocating for freedom from unemployment.<sup>110</sup> Thus, the colonial law was far progressive. However, it is important to bear in mind that due the colonial policy of racial segregation, this law was only applicable to people qualified as non-indigenous.

## **2.5 Conclusion**

It is clear that the promotion and protection of prisoners' rights is not lacking as far as law and policy are concerned. What remains to be seen is the level of commitment states have to the fulfilment of their obligations towards prisoners. With particular reference to social assistance to prisoners in the form of remunerated work, the previous and the current chapters have shown that this approach has a lot of advantages to all involved with or affected by the imprisonment of an individual. This is because, not only are the prisoners' rights protected, but the rights of others whose lives are connected to the prisoners, whether as dependants or victims. The Organic Statute of the National Prisons Service in Mozambique gives the General Director the power to approve the remuneration to be paid to prisoners in case of a remunerated work and the compensation to be paid to them or their families in case of a work or labour accident. Moreover, it states that there is need not only to compensate a prisoner after an accident but also to pay the prisoner for his/her services.

---

<sup>109</sup> See article 279.

<sup>110</sup> See article 23(1) of the Universal Declaration.

## Chapter three: Mozambique's compliance with international and domestic obligations regarding to implementation of the prisoners' right to remunerated work

### 3.1 Introduction

The previous chapter discussed the different legal frameworks that exist at international, regional and domestic levels for the protection of prisoners' right to remunerated work. It is clear that under international and national laws, every citizen including prisoners has the right to work, rather than obligation to work. Therefore, this chapter focuses on the challenges of the implementation of the right of prisoners to remunerated work in Mozambique looking at colonial heritage and current practice of the prison authorities.

### 3.2 Colonial Heritage

Mozambique until 1975 was under Portuguese rule.<sup>111</sup> During the period of Portuguese domination the native people which were the majority were classified as indigenous, a status regarded as less than that of citizen.<sup>112</sup> It is important to highlight that one of the main missions of the colonization phenomenon was to civilize the backward people.<sup>113</sup> In this line, António Enes, one of the well known Portuguese colonial leaders in Mozambique had classified the work as a means of civilizing the indigenous<sup>114</sup> rather than being an opportunity to gain one's living. He still argued that it was important to differentiate forced labour from slavery labour.<sup>115</sup> Therefore, during the period of Portuguese domination imprisonment rather than being a means to ensure that sentence were served, was also a means to guarantee the continued availability of the free labour.<sup>116</sup> Thus, Xibalo<sup>117</sup> was established and indigenous people were used as free labour on big farms and public works.<sup>118</sup>

Regarding the right of prisoners to work, the legislation on prison organisation, passed by Colonial regime but still in force, seems to be amongst those which can be considered as the best in the World. It foresees the right of prisoners to work and be remunerated. However, this legislation due the discrimination practice was only applied to white people and to those blacks assimilated and therefore qualified as non-indigenous. Indeed, still relying on the Organic Law of the Overseas Territory (Law no.

---

<sup>111</sup> L Mondlane 'Mozambique' in D Smit & F Dünkel (eds) (2001) *Imprisonment Today and Tomorrow* 467

<sup>112</sup> Mondlane [n 111 above] 468

<sup>113</sup> <http://www.cads-sierraleone.org/internationalresearchbrazil.htm>, [accessed on 25 May 2010]

<sup>114</sup> [http://www.temporesente.org/index.php?option=com\\_content&task=view&id=4259&Itemid=147](http://www.temporesente.org/index.php?option=com_content&task=view&id=4259&Itemid=147) [accessed on 25 May 2010]

<sup>115</sup> n 114 above

<sup>116</sup> Mondlane [n 111] 468

<sup>117</sup> Name by which forced labour was well known in Mozambique.

<sup>118</sup> [http://crawford.dk/africa/mozambique\\_timeline.htm](http://crawford.dk/africa/mozambique_timeline.htm) [accessed on 11 May 2010]

2:066 of 27 of June of 1953), its article 26 states that sentence of imprisonment may be replaced by forced labour. Also in the language of the article 25 of the same law, Common Criminal Law should be applied to indigenous persons only in cases of absence of law especially designed for them. It was in this reality of discrimination on the ground that Mozambique got its independence from Portugal in 1975. This reality was itself a violation of the principle of non discrimination which informs all international and domestic instruments on human rights.

### **3.3 Post-Independence**

As mentioned in the previous section, Mozambique became independent under the environment of discrimination. While non-indigenous prisoners could enjoy the right to remunerated work, those qualified as indigenous were subjected to forced labour. Therefore, prison labour was seen as the main source for agriculture and manufacturing industries.<sup>119</sup> When Frelimo came into power in 1975, prison system was organized and prisons were changed into productive centres or institutions of rehabilitation where offenders could be educated towards their reintegration into community.<sup>120</sup> Many open prisons, the so-called re-education centres, were open throughout the country.<sup>121</sup> In these re-education centres were generally accommodated a reasonable number of offenders who are engaged in productive activities such as farming, in order to provide food and income for prisons.<sup>122</sup> To conclude, it is important to highlight that the re-education centres were really places of rehabilitation since unqualified offenders could leave the centres with enough skills to face the free life in society.<sup>123</sup> Other offender could even refuse to leave the centres after fulfilling their sentences.<sup>124</sup> However, although the literature review shows that prisoners by that time were motivated to work, they were not getting any payment at all which amounts to exploitation of prisoners' labour in the modality of slavery. This ambitious project on prison sector was stalled by the 16 years Mozambican civil war.

### **3.4 Current practice of the prison authorities**

In Mozambique, like in many other countries, the issue of prisoners being remunerated for their labour has been relegated to second place. Further, when the society is confronted with this situation, the common feeling is that the state should not guarantee employment for prisoners while many people outside prison are unemployed.<sup>125</sup> However, this point of view can be taken as an inappropriate way to

---

<sup>119</sup> A Dissel 'Rehabilitation and integration in African prisons' in J Sarkin (ed) *Human rights in African prisons* (2008) 170.

<sup>120</sup> Dissel (n 119 above) 170.

<sup>121</sup> Dissel (n 119 above) 170.

<sup>122</sup> Dissel (n 119 above) 170.

<sup>123</sup> Dissel (n 119 above) 170.

<sup>124</sup> Dissel (n 119 above) 170.

<sup>125</sup> D Smit & F Dünkel Conclusion: *Prison labour – salvation or slavery?* In D Smit & F Dünkel (eds) *Prison labour – salvation or slavery?* (1999) 338.

address the problem. Indeed, prisoners are already 'employed' all over the world. The only difference is that in some countries prisoners are being paid the full wage market while in other countries they are not paid at all.<sup>126</sup> Before the forced labour conventions entered into force there was also put in place by the League of Nations the Slavery Convention which recommended the states to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.<sup>127</sup> The same Convention defines slavery as a 'status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.<sup>128</sup> It is important to highlight that unlike the Forced Labour Conventions, the Slavery Convention does not provide for any exception even for person under custody. This discussion is brought here because, in my view, if a prisoner has to exact forced labour, he/she has to be paid as well. Therefore, the current practice of the prisoners' authorities in most countries including Mozambique which oblige prisoners to work but without payment amount to slavery labour which is quite different to forced labour. Unless one can prove contrary, forced labour does not necessarily mean that one has to be subjected to work against his will and not get paid. States cannot take advantage of the society's anger against the prisoners to use them deliberately as free labour.

Prisoners in Mozambique have been exacting prison labour for ages. Many reports show that prisoners have been working for the state on farms such as those of Mabalane in Gaza Province and Chingozi in Tete Province.<sup>129</sup> Prison labour has also been used in some agricultural and industrial penitentiaries such as those of Nampula and Ndlhavela women prison in Maputo. While in Nampula prisoners are being engaged in farming activities to produce food and in workshops to produce different kinds of furniture, in Maputo they are also being engaged in animal husbandry and weaving. Therefore prisoners in Mozambique are already 'employed' but without any kind of payment. This situation amounts to a violation of their right to remuneration under article 7 of the ICESCR. Even the argument that some have benefited from payment of their bails<sup>130</sup> seems not to be true since to be assigned to work in farm the prisoner must be convicted and a convicted prisoner cannot be released

---

<sup>126</sup> De Jonge (n 42 above) 314

<sup>127</sup> See the preamble of the Slavery Convention signed at Geneva on 25 September 1926, entry into force on 9 March 1927, in accordance with article 12. The Convention was amended by the Protocol done at the Headquarters of the United Nations, New York, on 7 December 1953; the amended Convention entered into force on 7 July 1955, the date on which the amendments, set forth in the annex to the Protocol of 7 December 1953, entered into force in accordance with article III of the Protocol.

<sup>128</sup> See article 1 (1).

<sup>129</sup> Dissel (n 119 above) 170.

<sup>130</sup> Dissel (n 119 above) 170.

on bail.<sup>131</sup> Besides this it can be unreasonable to consider food, education, accommodation and medical assistance as payment. Indeed, the amount to be paid must take in consideration that in many situations a prisoner is the bread winner of the family.

Another argument could be that Mozambique has not ratified yet the ICESCR. However, this argument cannot be given ground since Mozambique has demonstrated willingness to be bound by the Universal Declaration which contains provisions that provides in the same line<sup>132</sup> as that of article 7 of the ICESCR. Mozambique has also ratified the African Charter which encloses altogether civil and political rights as well as economic, social and cultural Rights.<sup>133</sup>

However, it has been a big challenge for prisons' authorities in Mozambique to understand that prison labour has to be paid since it has become a cultural practice. Indeed, when the country got its independence from Portugal, the prison system only inherited those prisoners qualified as indigenous who were denied to enjoy any right. Paying prison labour differently for equal work done or not paying it at all also amounts to violation of article 26 of the ICCPR which states that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **3.5 Conclusion**

This chapter has shown that Mozambique until 1975 was under Portuguese rule. During the period of Portuguese domination the native people which were the majority were classified as indigenous people, a status regarded as less than that of citizen. Regarding the right of prisoners to work, the legislation in force on prison organisation was passed by Colonial regime. However, this legislation due to the discrimination practices was only applied to white people and to those blacks considered as assimilated. This reality was itself a violation of the right to non-discrimination under international and domestic instruments on human rights. In Mozambique, like in many other countries, the issue of prisoners being remunerated for their labour has been relegated to second place. Many reports show that prisoners have been working for the state on farms such as those of Mabalane in Gaza Province

---

<sup>131</sup> According to Mozambican criminal law, to be released on bail a prisoner must not be convicted and it is regulated on Criminal Code procedure, while convicted prisoners may benefit of conditional liberty which is regulated on criminal code.

<sup>132</sup> See article 23 of the Universal Declaration.

<sup>133</sup> The ACHPR states in para 7 of its preamble that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

and Chingozi in Tete Province. Prison labour has also been used in some agricultural and industrial penitentiaries such as those of Nampula and Ndlhavela women prison in Maputo. While in Nampula prisoners are being engaged in farming activities to produce food and in workshops to produce different kinds of furniture, in Maputo they are also being engaged in animal husbandry and weaving. In this case, prisoners in Mozambique do perform different types of activities but without any kind of payment.

## Chapter four: Strategies to ensure compliance with the undertakings

### 4.1 Introduction

As mentioned above, Mozambique has ratified several international instruments on human rights including the ACHPR. These instruments have acquired a legally binding force within the country. They create obligations that the State must observe. Because these international instruments could be breached without punishment there are a quite number of international bodies with different mandates to monitor the implementation of these instruments including those related to prisoners. In addition to this, states themselves are obliged to set up their own institution to assure the protection of individual rights. It is in this line that article 26 of ACHPR states that:

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

It is against this reality that this chapter will focus on strategies to ensure compliance with the undertakings such as litigation and cooperation with civil society and National Human Rights Institutions.

### 4.2 Litigation strategy

It is common sense that a right without a remedy cannot be taken as right at all. Indeed, citizens have to have an adequate mechanism to ensure their rights against the law-breakers (including the government) in the courts.<sup>134</sup>

The way in which prisoners may be treated has been an object of controversial discussion. Society is still divided on the issue whether prisoners are to be accorded any right. Even the courts when called upon to decide on the legal dispute between prisoners and prison's authorities, they are prone to decide in favour of the latter.<sup>135</sup> Therefore, prisoners have failed to get court support on the protection of their rights against abuses of authorities. This court position regarding prisoners' rights has been known as hands off doctrine.<sup>136</sup> According to this doctrine, courts may abstain to interfere in the prison management process since it could undermine the power of prisons' authorities and the discipline within the prison.<sup>137</sup>

---

<sup>134</sup> Enforcing constitutional rights <[http://home.ubalt.edu/shapiro/rights\\_course/Chapter7text.htm](http://home.ubalt.edu/shapiro/rights_course/Chapter7text.htm)> [accessed on 26 July 2010].

<sup>135</sup> E Richard 'Judicial Deference to the Expertise of Correctional Administrators: The Implications For Prisoners' Rights' (2001) 7 *Australian Journal of Human Rights* 91.

<sup>136</sup> Richard [n 135 above].

<sup>137</sup> Richard [n 135 above].



The hands off doctrine comprises therefore, three elements:<sup>138</sup> the first one is that which supports the idea that if the court were to intervene in the prison administration process, it could shift the running of prison process from the executive power to judiciary and this could compromise the separation of powers. According to the second one, protecting prisoners' rights could provide to prisoners enough reasons to suffocate courts with petitions without any sense. The last element states that if the courts were to enforce prisoners' rights, this could jeopardise 'the authority and discipline within a prison'.

However, with the development of the human rights movement, currently courts have moved from the hands off doctrine by recognising prisoners' right to submit petitions before the court in case of violation of their rights<sup>139</sup>. It was in this line that Judge Gubbay, the Chief Justice of Zimbabwe, in the case *Woods v Minister of Justice Legal and Parliamentary Affairs and others 1995 1 SA 703 (ZS)* held that:

The view [of hands off doctrine] no longer holds firm in this jurisdiction, and in many others, that by reason of his crime a prisoner shed all basic rights at the prison gate. Rather he retains all the rights of a free citizen save those withdrawn from him by law, expressly or by implication, or those inconsistent with the legitimate penological objectives of the correctional system.

Following the same point of view, Judge Sachs of Constitutional Court, in the case *August and another v Electoral Commission and others 1999 4 BCLR 363 (CC)*, held that:

Prisoners are entitled to all their personal rights and personal dignity not temporarily taken away by law, or necessarily inconsistent with the circumstances in which they have been placed. Of course, the inroads which incarceration necessarily makes upon prisoners' personal rights and their liberties are very considerable. They no longer have freedom of movement and have no choice regarding the place of their imprisonment. Their contact with the outside world is limited and regulated. They must submit to the discipline of prison life and to the rules and regulations which prescribe how they must conduct themselves and how they are to be treated while in prison. Nevertheless, there is substantial residue of basic rights which they may not be denied; and if they are denied them, then they are entitled to legal redress.

These two cases show how courts have purposively interpreted the rights of prisoners in general and this could also be extended to their right to remunerated work. In these cases the courts moved from ordinary interpretation and gave a purposive interpretation of the Constitution.

Prisoners in Mozambique face a number of difficulties as regards the implementation of their rights. The fact that someone is under custody should not deprive him or her the basic and fundamental rights. Prisoners like other human beings enjoy some minimum rights and protection by the Mozambican Constitution and the international human rights instruments.

---

<sup>138</sup> Richard [n 135 above].

<sup>139</sup> Richard [n 135 above].

Prisoners have the right to lodge claims before the Mozambican courts of law but will probably encounter a major problem of getting better legal representation in court due to their vulnerability and not being able to get payment for the lawyers. More so, there is need to have in place proactive judges that would deal with the case from a human rights perspective. There is need to interpret the right of prisoners' right to remunerated work by the courts of law so as to set a precedent.

A more progressive approach by the Mozambican courts as pertains the prisoners' right to work and get remuneration would set a standard for the eventual payment for prison labour and an eradication of exploitation through unpaid forced labour. Currently, there have not been any cases before court by prisoners claiming the right to work and receive payment. Indeed, although the Mozambican Constitution recognizes to every citizen 'the right of recourse to the courts against acts that violate their rights and interests recognised by the Constitution and the laws'<sup>140</sup>, the main challenge is to know what are the procedures to approach the courts mainly when it is related to violation of the constitution by omission.

Article 58 of Mozambican Constitution that provides for the right to compensation and state responsibility, in its paragraph (1) recognises to everyone the right to claim compensation for damages caused by a violation of his/her fundamental rights. However, its paragraph (2) states that the State will only be 'responsible for damages caused by the unlawful acts of its agents, in the performance of their functions'. So from this article a question whether the terms unlawful and unconstitutional are interchangeable can be rose. Of course, an act can be foreseen in a law which is unconstitutional itself and unlike in South Africa, in Mozambique an individual cannot challenge the unconstitutionality of a norm since according to article 245(2) of the Constitution, the only organs that can request for evaluation of unconstitutionality are:

- a) The President of the Republic;
- b) The President of the Assembly of the Republic;
- c) At least one third of the deputies of the Assembly of the Republic;
- d) The Prime Minister;
- e) The Attorney General of the Republic;
- f) The Ombudsman;
- g) Two thousand citizens.

Therefore, the South African model of challenging the unconstitutionality of norms, where everyone can lodge a petition before the court, should be adopted for better protection of individual rights.

---

<sup>140</sup> See article 70 of the Mozambican Constitution.

## 4.2 Monitoring bodies – National Human Rights Institutions

National human rights commission together with Ombudsman comprise what generally have been known as National Human Rights Institutions (NHRIs).<sup>141</sup> Both are independent bodies with the mandate to promote and protect human rights within the country.<sup>142</sup> Unlike Ombudsman which is based on a single person, National Human Rights Commission is a multi-member organ and therefore, it is possible to accommodate the diversity of interest in society.<sup>143</sup> National Human Rights Commissions are expected to comply with the Paris Principles which emphasises the plurality and independence<sup>144</sup> of the members and this, depend on how they are established whether by constitution or ordinary law.

### 4.2.1 Ombudsman

According to Chapter III of the Title XII of the Mozambican Constitution there should be in place an Ombudsman. It is defined as an office with the mandate to ensure that the actions of the Public Administration comply with the legality and justice.<sup>145</sup> According to article 258(1) the Ombudsman develops its activities free from any kind of influences and only has to comply with the constitution and laws. It provides to the citizens in general and prisoners in particular, the opportunity to submit their cases to be investigated and when it comes to a conclusion that any illegality or injustice violation were committed, it will address the appropriate recommendations to the right institution to correct the situation and prevent future violations.<sup>146</sup> In case of grave violation, the Ombudsman will also report to the Parliament, to the Attorney General of the Republic and to the central or local organs of public administration with recommendations for appropriate measures to be taken to correct the situation.<sup>147</sup> Finally article 260 of the Mozambican Constitution provides for the duty to collaborate in the following terms:

'The offices and agents of the Public Administration shall be under a duty to collaborate with the Ombudsman in the exercise of his functions, should he so request'. However, the Ombudsman Office is

---

<sup>141</sup> National Human Rights Institutions available at [http://www.nigeriarights.gov.ng/index.php?option=com\\_content&view=article&id=21&Itemid=76](http://www.nigeriarights.gov.ng/index.php?option=com_content&view=article&id=21&Itemid=76) [Accessed on 30 June 2010].

<sup>142</sup> National Human Rights Institutions (n 141 above).

<sup>143</sup> National Human Rights Institutions (n 141 above).

<sup>144</sup> The discussion in Parliament before the law which established the National Commission of Human Rights was passed was whether it was correct to give the power to the President of the Republic to nominate the chairperson and the deputy chairperson of the National Human Rights Commission which is contrary to the Paris Principles.

<sup>145</sup> See article 256 of the Constitution.

<sup>146</sup> See article 259(1) of the Constitution.

<sup>147</sup> See article 259(2) of the Constitution.

not into operation yet. Had already been put in place it could help a lot with the enforcement of prisoners' rights since there is no condition to lodge a petition.

#### **4.2.2 National Human Rights Commission**

The Mozambican National Human Rights Commission was established by law 33/2009 of 22 of December. According to article 4 of the abovementioned law, the National Commission of Human Rights has the powers to:

- a) Receive complaints from citizens (they may include prisoners) about allegations of violations of any human rights recognised, protected and guaranteed under the constitution, regional and international human rights instruments ratified by Mozambique and other applicable laws;
- b) Hear the complainant, collect evidence from witnesses or documents submitted to or gathered by the commission and submit it to the Attorney General for appropriate action under the law where the matter falls within criminal law;
- c) Hear and inform the complainant on the mechanisms to be followed where the matter is of civil or administrative nature;
- d) Publish the findings and conclusions of the processes under paragraphs a) and b), after they become final decision in accordance with the judicial process, in a publication specifically for this purpose;
- e) Propose administrative measures on the implementation of the domestic, regional and international human rights instruments ;
- f) Monitoring the implementation of the international and regional human rights instruments ratified by Mozambique.

It is worth noting that whereas any person can lodge a petition to National Commission of Human Rights,<sup>148</sup> the same Commission has also been given the power to act on its own initiative.<sup>149</sup> The Commission does not need to be prompted by any citizen to investigate allegations relating to poor remunerations or abuse of prison labour. Further the Commission is under obligation to monitor government's obligation under ratified human rights instruments. However, the major weakness of the Commission is that it lacks powers to enforce human rights or prosecute cases of alleged violations of human rights. The Commission can only make recommendations to the relevant government agency which may chose to ignore such recommendations thus hampering the effective execution of the Commission's mandate. Contrary to the proposal contained in the Paris Principles, the Commission has no explicit mandate to undertake human rights education. This mandate is relevant in as far as it

---

<sup>148</sup> See article 5(1) of the Law 33/2009.

<sup>149</sup> See article 5(2) of the Law 33/2009.

would enable prisoners, prison authorities and the general public to appreciate the peculiar human rights challenges facing prisoners and the need to address them.

Once again it is easy to conclude that it is of no use to produce a lot of legislation just to make a good impression at international level while mechanisms of the implementation of these laws are not put in place. Indeed, the law establishing the National Commission of Human Rights has been passed recently. Up till now, its monitoring body is only on paper. So if this body was in place it could be useful for the enforcement of prisoners' rights.

### **4.3 Conclusion**

This chapter has shown that there are National Human Rights Institutions in Mozambique, namely National Human Rights Commission and Ombudsman. Both are independent bodies with the mandate to promote and protect human rights within the country. Unlike Ombudsman which is based on a single person, National Human Rights Commission is a multi-member organ and therefore, it is possible to accommodate the diversity of interest in society. National Human Rights Commissions are expected to comply with the Paris Principles which emphasises the plurality and independence of the members and this, depend on how they are established whether by constitution or ordinary law. However, these bodies are not yet into operation in the country which would be very important to the defence of the rights of prisoners in Mozambique.

## **Chapter five: Conclusion and recommendations**

### **5.1 Conclusion**

International and regional human rights laws have adequately protected the rights of prisoners. Prisoners' right to be remunerated for work has only been a contentious issue in both international and domestic forums. The question on whether prisoners can work and get remuneration and to whether prisoners can be considered among employees as provided under the labour laws needs to be addressed taking into consideration the spirit of the Slavery Convention when it requires the states to prevent practices of forced labour which may fall into slavery.

Since prison labour was integrated into criminal justice as a form of rehabilitation and social integration rather than punishment, some states including Mozambique have taken advantage of using prisoners to generate their own food on farms and to exploit the useful purposes of prison labour.

The question of how to manage production from the prisons and harmonising the production from the prison industry and prison farm remains a question of legislation. Most states including Mozambique have failed to comply with the ILO Conventions on Forced Labour. Prisoners, like any other individual in society, have the right to remunerated labour and to receive equal payment wages just like any other individual outside prison. There is need for states, mainly Mozambique to explicitly include prisoners within the labour code as individuals who have a right to work and receive remuneration.

### **5.2 Recommendations**

The failure by most states to honour the International legal obligations as regards prisoners' right to work has been a matter of concern for most penologists. The debate on prison labour is as old as the United Nations human rights system and most states have failed to put in place measures of ensuring just remuneration of prisoners.

This research paper has attempted to provide recommendations that would contribute to the effective protection and promotion of prisoners' rights. The recommendations are general in nature but specific emphasis would be made on Mozambique as the specific country that the research has based its findings.

States including Mozambique should put in place measures for equal remuneration of prisoners whether outside prison or inside prison. There should be a system of remuneration for the prisoners and this should be harmonised with the general labour market. The minimum salary payment for all employees provided for by the Mozambican labour law should be interpreted to include even the minimum payment for a prisoner who has been provided with an economically profitable activity.

A distinction should be made between prisoners carrying labour for recreational, training purposes and prison labour. While most international legal instruments provide for labour as part of rehabilitation through vocational training, prison labour that is aimed at the exploitation of prisoners by taking advantages those clauses of forced labour conventions and ICCPR should be prohibited. It should be made clear either to the prison wardens that work that does not lie under accepted standards of vocational training should be remunerated.

Prison labour and remuneration serve the major purpose of social reintegration of the prisoner upon release as well as supporting his/her dependants while in prison. This calls for vocational trainings of the prisoners so that they can apply their skills during imprisonment and after release. This would at the same time encourage the outside prison world to either employ or re-employ former convicts into their business. The creation of working opportunities for the prisoners would be the responsibility of the state of Mozambique and the community towards fulfilling prisoners' rights and the provision of remunerated labour would serve all ends.

Mozambique has signed and ratified the international human rights treaties including the International Covenant on Civil and Political Rights and some declarations related to the protection of prisoners. Mozambique through its annual reporting system should provide a report on the steps that have been made towards the fulfilment of the prisoners' rights especially the right to work and receive remuneration.

The National Human Rights Commission and the office of the ombudsman would be better placed in the monitoring and evaluation of the prisoners' rights including the right to work and remuneration.

**Word count:** 13 399

## Books

Corry, TM (1977) *Prison labour in South Africa* Cape Town: National Institute for crime prevention and the rehabilitation of offenders

D Smit & F Dünkel Conclusion: 'Prison labour – salvation *or* slavery?' In Smit D & Dünkel F (eds) (1999) *Prison labour – salvation or slavery?* Dartmouth: Ashgate

De Jonge "Still 'Slaves of the State' Prison Labour and International Law" in D Smit & F Dunkel (eds) (1999) *Prison Labour: Salvation or Slavery?* Dartmouth: Ashgate

Dissel A 'Rehabilitation and reintegration in African prisons' in Sarkin J (ed) (2008) *Human rights in African prisons* Cape Town: HSRC Press

Frimpog K 'Rights and obligations in respect of prison labour' in Smit D & Dünkel F (eds) (1999) *Prison labour: salvation or slavery?* Dartmouth: Ashgate

Mondlane L 'Mozambique' in Smit D & Dünkel F (eds) (2001) *Imprisonment Today and Tomorrow* Hague: Cluwer Law International

Schönteich M 'Pre-trial detention and human rights in Africa' in Sarkin J (ed) (2008) *Human rights in African prisons* Cape Town: HSRC Press

Smith R *Textbook on International Human Rights* (2005) USA: Oxford University Press.

Treverton-Jones, GD (1989) *Imprisonment: the legal status and Rights of Prisoners* London: Sweet Maxwell

## Articles/Reports

A model for good farm management in Africa' available at [http://www.penalreform.org/files/rep-2002-prison-farm-management-en\\_0.pdf](http://www.penalreform.org/files/rep-2002-prison-farm-management-en_0.pdf)

Enforcing constitutional rights <[http://home.ubalt.edu/shapiro/rights\\_course/Chapter7text.htm](http://home.ubalt.edu/shapiro/rights_course/Chapter7text.htm)>

Katurreb, B 'Prisons are for everybody' in Report of a Pan-African Seminar Penal Reform International Paris (1997).

Liebenberg, S 'The right to work and right at work' available at

<<http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module10.htm>>

Mungole M 'Criminal justice system in Zambia: a case for the Zambia prison', available at <<http://www.iss.co.za/uploads/26AugMungole.pdf>>

National Human Rights Institutions available at

[http://www.nigerianrights.gov.ng/index.php?option=com\\_content&view=article&id=21&Itemid=76](http://www.nigerianrights.gov.ng/index.php?option=com_content&view=article&id=21&Itemid=76)



Richard, E 'Judicial Deference to the Expertise of Correctional Administrators: the implications for prisoners' rights' [2001] 7 *Australian Journal of Human Rights* 91.

### **Websites**

<<http://www.cads-sierraleone.org/internationalresearchbrazil.htm>>

<[http://www.temppresente.org/index.php?option=com\\_content&task=view&id=4259&Itemid=147](http://www.temppresente.org/index.php?option=com_content&task=view&id=4259&Itemid=147)

>

<[http://crawfurd.dk/africa/mozambique\\_timeline.htm](http://crawfurd.dk/africa/mozambique_timeline.htm)>

[www.penalreform.org](http://www.penalreform.org)

### **Domestic Legislation**

Mozambican 2004 Constitution

Decree 7/2007

Mozambican Prison Policy

Organic Law of the Overseas Territory [Law 2066 of 26 June 1953]

Decree Law no. 26243 of 28 May 1936 - prison organization

South African 1996 Constitution

Mozambican 2007 Labour law

### **Case laws**

*August and another v Electoral Commission and others* 1999 4 BCLR 363 (CC)

*Woods v Minister of Justice Legal and Parliamentary Affairs and Others* 1995 1 SA 703 (ZS)

### **Law Journals**

Richard E 'Judicial Deference to the Expertise of Correctional Administrators: The Implications For Prisoners' Rights' [2001] 7 *Australian Journal of Human Rights* 91.

### **Dissertations**

Kaguongo W 'Prisoners' rights: the role of National Human Rights Institutions in Africa' unpublished LLM dissertation, University of Pretoria, 2003

### **List of Universal and African Instruments**

African Charter on Human and Peoples' Rights 1981

Basic Principles for the Treatment of Prisoners 1990

Body of Principles for the Protection of All Persons under Any Form of Detention 1988

CCPR/C/84/D/1292 (2004)

ILO Convention on Forced Labour no. 29 1930

General Comment no. 18 2005

ILO Convention on Forced Labour no 105 1957

ILO Convention no 122 1964

ILO Convention Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour no 182 1999

International Covenant on Civil and Political Rights 1966

International Covenant on Economic, Social and Cultural Rights 1966

Kampala Declaration on Conditions of Prisons in Africa 1996

Siracusa Principles 1984

Slavery Convention 1926

Standard Minimum Rules for the Treatment of Prisoners 1955

Universal Declaration of Human Rights 1948