THE JUVENILE JUSTICE SYSTEM OF ZAMBIA

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ABSTRACT

This thesis examines juvenile justice in Zambia and shows that it is characterised by duality. The system has been critically examined in order to assess its historical development and to appreciate the traditional cultural aspects pertaining to child socialisation that may help to understand and improve juvenile justice, with regard to the operation of the police, courts, probation services and correctional institutions (Approved School and a Reformatory). It is shown that at certain stages of the criminal process there are instances of non-compliance with the provisions of the Juveniles Act, and that misconception of the Act leads to the ill-treatment of juvenile offenders.

A review of literature on juvenile justice is conducted for the purpose of analyzing theoretical notions underlying the development of the juvenile justice systems in Western countries, because of the general influence of the West on the Zambian legal system and, in particular, the critical impact of English law. Completed case records of juvenile cases in the Lusaka magistrates' courts for the period from January 1991 to December 1992 are examined and analysed by: name, age, sex, offence charged, final disposition or reason for discontinuance, pre-sentence report submitted or not, whether parent or guardian attended court and compliance with the Act. Views of correctional staff and inmates, judges and magistrates, senior police officers

and government officials are presented.

This study seeks to place the results in the context of the United Nations Guidelines For the Prevention of Juvenile Delinquency (Riyadh Guidelines 1990) and other international Instruments on the rights of child, taking into consideration the economic situation of the country. The thesis identifies weaknesses and defiaciencies in the structure and operations of the juvenile justice system and makes recommendations for reform (i.e. such as improved resources, better training, replacement of the correctional institutions and wider general recognition of the special problem faced by juveniles in contemporary Zambia).

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DEDICATION

This thesis is dedicated to my late wife, Annie, who had been supporting me and had contributed a lot to my fieldwork. Against her will, she abandoned our three-months-old baby son on 27th January 1994.

and

To Muchindu, our abandoned son, whom I feel will understand in the future, why I also opted to continue with this work and to leave him at Kasisi Children's Home, after attending his mother's funeral.

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CHAPTER ONE

1 INTRODUCTION AND SCOPE OF STUDY

1:1 Zambia

1:1:1 Political and economic factors

Zambia (formerly Northern Rhodesia) attained its political independence from Britain on 24th October, 1964. Its history has been well documented by historians.[1] The modern history of its criminal justice system (in particular the juvenile justice system) can only be understood by examining the impact of British rule from the 1890s until 1964. At independence the economy of the country was based on one primary commodity (copper). The impact of many western cultural values had transformed life in traditional Zambia. For example, introducing the idea of child upbringing as the responsibility of a nuclear family, rather than the traditional pattern of rearing children as members of the extended family. These factors (economic, social and political) played a critical role in the development of the criminal justice system, even though the traditional customary laws were to some extent recognised and enforced under the criminal justice system

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[1]R. Hall, (1965), Zambia, (New York: Frederick A. Praeger, Inc., Publishers); A. Roberts, (1976), A History of Zambia, (London: Heinemann); I. Kaplan, (1979), Zambia a Country Study, (Washington D.C.: The American Press).

that emerged, especially in the juvenile justice system: the Juveniles Ordinance 1956 provided:

> In the application of this Ordinance to African juveniles, the provisions of African customary law shall be observed unless the observance of such customary law would not be in the interests of such juveniles.[2]

British trade, commerce and colonisation in Central Africa were stimulated by Dr. David Livingstone's journeys between 1851 and 1873; on seeing the pathetic social and economic conditions brought about by the slave trade, he felt that the introduction of Christianity accompanied by commerce would help the people (see Hall, 1965; Roberts, 1976; Kaplan, 1979). The missionaries were the first to establish meaningful contacts with children through their religious and academic teaching. The exploration of copper in the areas that came to be known as the Copperbelt increased British interest in the area; concessions were signed between the traditional Paramount Chief of the Barotse (Lozi) and the representatives of the British South Africa Company (BSAC), which was entrusted with the administration of the two provinces (North-western Rhodesia and North-eastern Rhodesia). The British copper-mining industry was soon well established in the country and industrialists like Cecil Rhodes, who had already settled in South Africa, took a new interest in the copper resources and injected massive investment capital, especially at Bwana Mkubwa.[3]

Fearing the Portuguese, Belgians and Germans in neighbouring territories, Britain quickly took steps to protect this potential

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[2]sect. 1 (2); this provision has been retained in the Juveniles Act, Cap. 217 of Laws of Zambia.

[3]Roberts, (1976) op. cit., p. 185.

source of wealth by unifying the country. By 1911 the British had amalgamated the Eastern and Western parts of the country under the name of Northern Rhodesia and a resident Commissioner, answerable to the High Commissioner stationed in South Africa, was appointed. Administration of the country by the British South Africa Company, subject to the exercise of certain powers of control by the British Crown, continued until 1924, when direct administration through the Colonial Office was assumed by the British Crown; the Northern Rhodesia Order-in-Council, 1924, proclaimed the territory a British protectorate. The first Governor was appointed and an Executive Council and a Legislative Council were set up.[4]

Although British authorities sought to maintain control, especially by applying the policy of "indirect rule" in the 1930s, the growth of African nationalism created pressure for independence. A small number of educated local Africans turned to political life and started the struggle for independence. They operated through associations concerned with African welfare in urban areas. Their activities were intensified when Northern Rhodesia was for ten years united with Southern Rhodesia and Nyasaland in the ill-fated Federation (1953-1963).

Zambia achieved its independence in 1964, with a President as head of the newly-formed democratic state and a parliament of 120 members, representing three political parties. The President's party, the United National Independence Party (UNIP), having a majority of seats in parliament, assumed power. In 1973,

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[4]R. Hall, (1965), op. cit., pp. 104-105; I. Kaplan, (1979), op. cit., pp. 25-26.

UNIP, with the agreement of the opposition party (African National Congress "ANC"), instituted a one-party democratic state[5]; during the one-party democratic state Dr Kaunda propounded the concept of Zambian Humanism as the guiding philosophy in the political and economic administration of the country. Kaunda's philosophy of Zambian Humanism advocated the maintenance of traditional communal features in the modern Zambia (Hall 1965; Pettman 1974; Roberts 1976; and Kaplan 1979).

The worsening economic situation and the associated structural adjustment programmes of the IMF and the World Bank aggravated the economic problems of families due to rising prices of consumer goods, especially maize meal (the staple food). In 1989-90 the country witnessed food riots in the Copperbelt, Lusaka and other urban centres and this led to the birth of the Movement for Multi-Party Democracy (MMD) in June 1990.[6] This led to the adoption of a new, multi-party Constitution (1991). The MMD turned into a political party and entered the multi-party General Election on 31st October, 1991, defeating UNIP, which had ruled the country since independence. Mr Fredrick Chiluba defeated the incumbent President Kenneth Kaunda and assumed the presidency.

1:1:2 Geographical factors

Zambia lies in Southern-Central Africa and is landlocked.

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[5]The Constitution Act, No 41 of 1973.

[6]Amendment of Article 4 of the Constitution Act, 1973 in December, 1990 authorised the formation of more parties; the new Constitution was enacted by Act No 1 of 1991.

It shares common boundaries with eight countries, namely Tanzania, Malawi, Mozambique, Zimbabwe, Botswana, Namibia, Angola and Zaire. It has an area of 752,620 square kilometres (290,586 square miles). Its inhabitants are said to have immigrated from the Lunda-Luba Empire in Congo and were part of the *Mwatayavwa* Kingdom, except the Ngoni, who migrated from the south, and the Tonga, whose origin is not yet established. The creation of permanent settlements in the Territory started in the 1500s (Hall, 1965).

Zambia is one of the most urbanized countries in Africa, especially in the Copperbelt towns and Lusaka. As the Central Statistical Office noted:

> The degree of urbanization varies considerably between provinces; Copperbelt and Lusaka are the most urbanized provinces, with a percentage of urban population of 82.3 and 79.7, respectively. In the remaining provinces, the percentage of urban population varies between 9.7 (Eastern) and 29.5 (Central).[7]

The social problems associated with urbanization cause concern in the Copperbelt and Lusaka provinces, especially juvenile delinquency. This requires a proper programme of action to contain the situation. The explosive growth of the population is a recent phenomenon during the post-independence period.[8]

1:1:3 Social factors

Zambia's total population is now 8.04 million. The current

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[7]Central Statstical Office (1990), Country Profile Zambia 1989/90, (Lusaka: Govt. Printer), p. 39.

[8]ibid., p. 41.

rate of population growth is estimated at about 3.0 percent per annum; and this is due to high fertility (Total Fertility Rate 7.2), which is explained in terms of the high value traditionally placed on children. Zambia has a very young population: the child population (below 19 years) was estimated at 55.4 percent of the total population in 1990.[9] Due to economic hardships it became difficult to provide social services to the nation and to meet the needs of the youthful population; in 1989, the Government introduced a National Population Policy, making fertility regulation a public issue.[10]

Zambian society is characterised by ethnic diversity with about seventy-three ethnic groups (Brelsford, 1965; Roberts, 1976). The major differences that exist between these ethnic groups are in terms of language and social organisation (patrilineal or matrilineal). Patrilineal groups such as the Ngoni, the Lozi and the Namwanga trace their individual and inheritance rights through the father's family; matrilineal groups such as the Bemba, the Tonga, the Luvale and the Chewa through the mother's family. These principles apply in term of family structure and extend to control of child misconduct, behavioural moulding and the preservation of tribal norms. (This will be discussed in Chapters Two and Three). The diversity of languages causes difficulties of communication between individuals from different ethnic groups. For instance, in urban areas children are often taken to the police on suspicion of

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[9]Central Statistical Office (1991), Women and Men in Zambia: Facts and Figures, p. 8.

[10]Fourth National Development Plan, 1989-93, pp. 380-85.

theft, having failed to account for their presence on someone's premises because they speak a language not generally spoken in that locality, perhaps as strangers who tried to obtain directions or house numbers in order to trace their relations. They may be regarded as suspected thieves.

Economic problems have forced children to join the informal sector of employment as street vendors, marketeers and *mishanga* sellers (cigarette stick); at times some offer to deliver bags of meal mealie on their heads for a fee (generally known as human wheelbarrows). Their aims are to supplement their parents' income (usually that of their fathers, because there are few opportunities of employment for women).

These children join the informal sector of the labour force because the education system cannot give them further education. They drop out of the education system at two levels. A child starts school at the age of seven years in grade one, and sits for a selection examination at the end of his or her grade seven. He has to pass a cut-off point mark set for that particular year to continue; if he or she fails, that is the end of his or her school career. Those who continue have to pass another selection examination at grade nine level, at which there are also drop-outs (see Chapter Six). Therefore each year thousands of children between thirteen and sixteen years of age leave the education system without a meaningful future.

In Zambia, as in other countries, some school "drop-outs" become "street children", a concept initiated by the United

Nations Children's Fund (UNICEF)[11] and associated with children considered as problem-causing or delinquents. These children roam the streets as the education system failed to equip them with essential life skills and attitudes needed for gainful living within society. The UNIP government established a Ministry of Youth and Sport under the Third National Development Plan (TNDP) (1980-84), to address itself to the problem of children in streets. With a determined effort a Department of Child Affairs was established later within the Ministry of General Education, Youth, and Sport, to pursue objectives of the Fourth National Development Plan (FNDP) (1989-93) to assist children aged between seven and fourteen years and youths aged between fifteen and twenty-five years. Among the objectives to be achieved in the five-year period were:

(a) to increase public awareness regarding the rights and needs of the child;

(b) to provide more affordable and accessible services and material for the welfare of the child;

(c) to research and critically analyse the plight of the child;

(d) to reduce youth unemployment; and

(e) to promote the spiritual, mental and physical development of youth.[12]

However, the principal means of implementing these aims was through a campaign to induce youths to go "Back to the land" (see

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[11]Report of a Study of Street Children in Three Urban Centres of Zambia, (1991) (Lusaka: UNICEF) p. 2.

[12]Fourth National Development Plan, (1989-93), p. 478.

Chapter Five).

The Department of Child Welfare is concerned to build public awareness concerning the rights and needs of children, including street children.[13] These objectives and the concern of the Department of Child Welfare do not explicitly cover those children who enter the juvenile justice system, and it is argued that, with proper implementation of the Juveniles Act, the rights of children would be protected and their needs met, including those who are labelled delinquents.

1:2 Juvenile Justice in Zambia: The background

1:2:1 The background

Informal processes of "juvenile justice" were deeply embedded in traditional cultures, formerly transmitted solely by practice, example and oral means. Today, modern, formal processes of juvenile justice have been established by legislation; but they are very different from the traditional methods. Culture is not static, it is not something that one can hold or freeze for later use; it is in constant motion and change. Yet certain cultural values pertaining to child socialization have persisted or survived through the colonial period into contemporary Zambian society.

The legal systems of traditional societies in Zambia did not clearly distinguish civil from criminal law, as western legal

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[13]This was revealed by Ms K. Mutti, the Chief Child Welfare Officer at the Ministry Headquarters during a personal interview on 11th April, 1993.

systems do. Yet such a distinction did exist, as it will be discussed in Chapter Three. The distinction was obscured in rudimentary traditional socio-political organisations, some of which had never evolved politically beyond the stage of "the patriarchal or matriarchal family".[14] The family played a dominant role in regulating the behaviour of members of society through processes of socialization. When a child violated community rules the parent or guardian was held responsible. In most cases the sanction was compensation to the complainant. As juveniles did not commit those offences which were considered most serious, such as witchcraft, their misdeeds were usually settled by elder clansmen. This led early writers on African law to argue that customary law laid:

> down rules for behaviour and its penalties have been directed ...towards the restoration of the equilibrium. And that there was no distinction between civil and criminal law as understood in the western world.[15]

Therefore juvenile crime was and is understood differently from western ideas. Individuals had to understand and interpret the relationships that existed between themselves and others; and these relationships extended to their ancestors. This was based on the belief that social unity and order were possible "because people share and act upon a consciousness of common moral values (collective conscience)".[16] These values underlaid custom,

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[14]T. O. Elias (1956), The Nature of African Customary Law, (Manchester: Manchester University Press), p. 111.

[15]ibid., p. 114.

[16]Mike O'Donell, (1986) "Social Order, Social Change and Socialization", in: Patrick McNeil and Charles Townley, (Eds.), Fundamentals of Sociology, (London: Hutchinson), p. 98.

convention and criminal law and provided the ultimate justification for punishing those who misbehaved.

However, this study will show that the traditional extended-family co-operation has been modified to include neighbours in the urban residential areas; where a good neighbourhood relationship exists between the complainant and the juvenile's parent or guardian, a complaint will be dealt with in a harmonious manner. The study also shows that complainants control the criminal process in courts, rather than merely play the passive role of a witness usual in the western mode of trial. This reflects the influence of traditional cultural practices and the perception of crime as an act or omission which may be physically or spiritually detrimental to social relationships and likely to affect the ties of kith and kin adversely. The remedy for it is not always punitive action but reconciliatory measures which are applied to preserve social harmony.

The modern system of juvenile justice in Zambia is a colonial creation, imposed over traditional legal systems.[17] It was imported from Britain, where it was initially created to save children from immorality, destitution, neglect, a criminal life and the punitive measures of criminal process. The colonial juvenile justice system introduced new ideas about juvenile misconduct. It involved the use or creation of agencies or

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[17]It was first introduced by The Juvenile Offenders Ordinance, No. 41 of 1933; followed by The Juveniles Ordinance, No. 20 of 1953, and The Juveniles Ordinance, No. 4 of 1956; now known as The Juveniles Act, Chapter 217 of the Laws of Zambia. The Act was based on modern British thought and practice in regard to the treatment of young offenders which stemmed from a single basic principle expressed in section 44 of the Children and Young Persons Act, 1933.

institutions (police, courts, correctional institutions and probation services) charged to combat juvenile crime. The system was based on the laws and practices of England, where juveniles once arrested, tried and convicted underwent psychiatric and psychological treatment, as forms of punishment, which were unknown to traditional societies. Such specialised forms of treatment were expected to be established in the country and to expand gradually with well qualified personnel.

In the study of juvenile justice systems it has become common to explain child misconduct as a special category of criminality known as "juvenile delinquency". This has led scholars, researchers and policy makers to examine parents' social responsibilties in child upbringing and to consider how far juvenile delinquency is caused by improper socialization. Parents as well as children have to be helped to improve their habits and environment, in order to reduce juvenile crime. As one writer, commenting on delinquency in the United States, said:

> the theoretical account of delinquency largely absolved children from responsibility because they had little control over defective intelligence, uncaring parents, and a poor home environment. Thus the moral and social condition of the child is more important than the act he or she commits.[18]

This view has persisted in contemporary societies, that delinquency is due to parents' failure to develop a firm sense of social responsibility in the child. This theoretical perspective assumes that social factors exist that contribute to delinquency, in that poverty, illiteracy, mental inadequacies and

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[18]L. T. Empey, (1979), "From Optimism to Despair: New Doctrines in Juvenile Justice," in: C. A. Murray and L. A. Cox, Jr. (eds.): Beyond Probation: Juvenile Corrections and the Chronic Delinquent. (Beverly Hills: Sage), p. 455.

cultural conflicts in the urban-industrial environment must be the central focus of the explanation of the breakdown of the proper family units.

Zambia is experiencing the breakdown of traditional family units, due to the process of urbanization. However, during the early period of industrialization, the colonial government introduced the policy of "indirect rule", which gave traditional rulers powers to govern in their respective areas and to enforce customary laws. This was supported by labour policies which restricted or inhibited the migration of women to towns for permanent residence or employment in urban areas; they remained in the villages to which men had to return for marriage and family life. Women could only reside in towns as wives on the strength of marriage certificates issued by their respective Native Authorities.[19] Other married women remained in the villages, together with those without marriage certificates. Consequently juveniles remained with their mothers in the villages, where tribal customs and laws still maintained effective control over their behaviour; child misconduct there was a family matter and a family reaction was the means used to control it.

As already noted, the juvenile justice system of Zambia, based on the system which had developed in the United Kingdom, has to be applied in an African country in a process of transition. Cultural aspects that assist in the understanding of delinquency, such as age, sex and class differences, the

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[19]H. Heisler (1974), Urbanisation and the Government of Migration: The Interrelation of Rural and Urban Life in Zambia. (London: Hurst), p. 40.

attitudes of police and courts, peer cultures and delinquent subcultures and local socialisation practices are very different in Zambia from those of the industrialised western countries, whose philosophies and ideas nevertheless underlie the juvenile justice system in Zambia.

The Zambia police force established during the colonial era is organized to function as a modern police. It has units dealing with matters requiring specialised training, such as fingerprints, ballistics, fraud and forgeries, and a prosecutions section dealing with court matters and acting on behalf of the State in the absence of state advocates. However, the police should also have expanded their specialised wings to set up a special unit to deal with juveniles in need of protection and special treatment. This study shows that police officers handle juveniles in ways contrary to the underlying principles of the Juveniles Act.

The juvenile courts established by the Juveniles Act treat juvenile offenders harshly, applying modern law in a misconceived manner. The High Court, which is empowered to protect offenders against the failure of magistrates to comply with the provisions of the Act, has played a passive supervisory role, leaving offenders to undergo custodial sentences without proper authorisation. The standards of law enforcement agencies in the system of juvenile justice must therefore be questioned.

1:2:2 Age: who is a juvenile?

It is appropriate at this stage to know who is regarded as

a juvenile in Zambia. A juvenile means a person who "has not attained the age nineteen years; and includes a child and a young person".[20] A child is one who has not attained the age of sixteen, and a young person is one who has attained the age of sixteen but not nineteen years.[21] In this study the word "juvenile" will be used to refer to children governed by the Juveniles Act.

However, there are difficulties in ascertaining the actual ages of juveniles brought before the courts. It is argued in this study that it is generally recognised in Zambia that age is only important at a particular moment for a specific purpose. For example, in every year, at grade one school enrolment a birth certificate is always demanded, but not all births are registered as the law requires. The parents of a child without a birth certificate swear affidavits as to the birth date before commissioners for oaths. A child must have attained seven years of age for him or her to be enrolled, and may well be rejected if he or she is older than seven. Therefore parents whose child is not admitted in a particular year must destroy the affidavits in the following year in order to show their child's age as seven years and not eight, as it would evidently be, if they used the same affidavits. Hence many parents fail to register the births of their children in order to be able to change their "ages" in response to the demands of the situation, whether by increasing or reducing the ages.

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[20]Section 2 of the Juveniles Act, Cap. 217 of the Laws of Zambia.

[21]ibid.

There is a statutory requirement (enacted in 1973) to register the birth of every child;[22] the fact that this is not followed may be due to transport problems for those in rural areas distant from a district centre; persons in urban areas also find it difficult and time-consuming to register the births of their children as the district registry offices are always crowded. Therefore they see no reason for wasting time by standing in queues for a long time for something which they do not see as vital in their lives; the registration of births could wait to a later date, or until a situational need arises. However, even those who manage to file registration papers may not receive birth certificates until two or more years later.

This may also be interpreted in the light of traditional views that calendar age was insignificant, as an individual was categorised as an infant, a child or an adult. In traditional societies the important element which determined the individual's status was the initiation ceremony into adulthood. Individuals' ages were calculated on the basis of a major event or calamity that had occurred on or about the time a person was born, but not on a particular date that has to be annually referred to. For example, Tonga-speaking peoples give names to their children which remind them of major events; a child's age would be

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[22]Section 14 (1) of the Births and Death Registration Act, No. 21 of 1973, provides:

> In case of every child, whether born alive or still-born it shall be the duty of the father and mother....to give notice in the prescribed form containing the prescribed particulars of the birth within one month thereof to the Registrar of the district in which such child is born.

Section 9 of same Act provides a penalty. But all this is being ignored and to my knowledge nobody has ever been prosecuted under this Act.

referred to it (*Nzala:* born at the time of starvation; *Malilwe:* born when there was a funeral in the village or at a time when one of the relatives had died). It is true to say that the majority of Zambians are unable to give a precise age and give their ages as one or two years younger or older than they really are. This is to the fact that they do not know their ages exactly; but some know their ages and deliberately lie about them.

1:3 Purpose of Study

The main concern of this study is to analyse the nature of traditional systems, the impact upon them of a western system of juvenile justice and the scope that remains today to develop a new approach deriving its strength from the best of these diverse sources, African tradition and English law.

This thesis therefore shows that the juvenile justice system is characterised by duality. It has been critically examined in order to assess its historical development and to appreciate the traditional cultural aspects pertaining to child socialisation that could help to understand and improve juvenile justice with regard to the operation of the police, courts, probation services and correctional institutions (Approved School and Reformatory). It is shown that at certain stages of the criminal process there are instances of non-compliance with the provisions of the Juveniles Act, and that the misconception of the Act leads to the ill-treatment of juvenile offenders.

The criticisms levelled against the juvenile justice systems

in Western countries, that they have succeeded neither in treating young people humanely nor in protecting society, call for an examination of western philosophies and ideas that underlie juvenile justice. This will assist in understanding the juvenile justice system in Zambia and the traditional cultural values that have survived the colonial impact, for the purpose of developing a legal system based on the cultural, social, economic and political conditions prevailing in the country. If no efforts are made to preserve the Zambian heritage, much will be lost; and the lower rate of juvenile crimes now witnessed in rural areas will be a story of the past.

1:4 International Standards

This study seeks to place the results in the context of the United Nations Guidelines For the Prevention of Juvenile Delinquency (Riyadh Guidelines)[23] and other international instruments on the welfare of children. The international instruments encourage governments to take into account social and cultural factors in passing laws relating to juveniles. These will be assessed through an examination of the Zambian cultural heritage, with regard to future policy issues. As Guideline 4 of Riyadh Guidelines provides:

> In the implementation of these Guidelines, in accordance with national legal systems, the well-being

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[23]At the 7th United Congress on the Prevention of Crime and Treatment of Offenders held in 1985, a resolution was adopted calling for the development of the guidelines for the prevention of juvenile deliquency, which could serve as a model for member States. At the 8th Congress held in 1990, the Riyadh Guidelines were adopted.

of young persons from their early childhood should be the focus of any preventive programme.

In the late 1980s and early 1990s the international community has recognised that children need special protection from injustice and their rights, interests and welfare are guaranteed in various treaties.[24] Many of these treaties bind States to give high priorities in the allocation of resources at national and international levels to the well-being of children; national governments are required to support families adequately in the task of child upbringing. The preamble of the African Charter on the Rights and Welfare of the Child 1990, provides:

> Recognizing that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his or her personality, the child should grow in a family environment in an atmosphere of happiness, love and understanding.

States are urged to carry out measures designed to protect the rights and interests of children and to prohibit certain acts which are detrimental to the said interests and rights. They should also promote these rights and interests of children through recreational, educational and cultural activities.

However, such physical, mental, moral and social development of the child requires legal protection in conditions of freedom, dignity and security; this is achieved by implementing the international agreements by enshrining guaranteed rights, freedoms, interests, etc. in the constitution of each State. In

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[24]For more information see, Unicef (199), Plan of Action for implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s, (New York: UNICEF); United Nation Convention on the Rights of the Child 1989; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985; African Charter on the Rights and Welfare of Child 1990.

this regard the U.N Convention on the Rights of the Child 1989 has directed that any child convicted of an offence must be treated in a manner consistent with the child's dignity, which reinforces the child's respect for the human rights and fundamental freedoms of others. Article 37 (a) of the Convention provides:

> No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.[25]

The obvious form of punishment that should be discouraged is corporal punishment (see Chapter Nine) and custodial sentences should be imposed as a last resort (Beijing Rules). While Guideline 54 of Riyadh Guidelines provides:

> No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

This provision is broad and restricts any form of punishment that is punitive in nature is not to be imposed on juveniles.

1:5 Juvenile Justice in England: Historical Summary

1:5:1 The concepts of "childhood" and "delinquency"

The theoretical notions underlying the development of the juvenile justice systems in western countries, particularly in the United Kingdom, provide an important background to this

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[25]Article XVII (2) (a) of the African Charter on the Rights and Welfare of Child 1990 gives the same protection to the child from all forms of torture, inhuman or degrading treatment or punishment while detained or imprisoned; before this Charter children were protected from such degrading punishments under Article 5 of the African Charter on Human and Peoples' Rights 1981 and this was incorporated in the Beijing Rules in 1985.

study, because of the general influence of the West in Zambia and in particular the critical impact of English law on the Zambia legal system. The modern industrialised countries have long-established institutions to combat juvenile crime and associated evils. They regard child misconduct as a social problem, so that "a great deal of time, money, and force is expended in attacking it by local and national governments".[26]

Child misconduct was experienced before the seventeenth century in western societies, but it was not necessarily perceived as illegal and terms like "delinquency" were not applied to it. Childhood was considered as a brief and unimportant phase of life, of which various languages lacked precise verbal descriptions. Aries (1962) states:

> In its attempts to talk about little children, the French language of the seventeenth century was hampered by lack of words to distinguish them from bigger ones. The same was true of English, where the word "baby" was also applied to big children.[27]

This point was echoed by Gillis (1974), who said:

> By the standards of today's biologically exacting vocabulary, the language of age in pre-industrial Europe is hopelessly vague. Even as late as the eighteenth century, the French and German words "garcon" and "knabie" referred to boys as young as six and as old as thirty or forty.[28]

In western civilization until the Middle Ages "childhood" was not recognised as a special phase in the life cycle, "set apart from

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[26]G. Kassebaum (1974), Delinquency and Social Policy, (Englewood Cliffs, New Jersey: Prentice-Hall, incl.), p. 74.

[27]P. Aries (1962) Centuries of Childhood, (Harmondsworth: Penguin), pp. 28-29.

[28]J. Gillis (1974) Youth and History, (London: Academic Press), p. 1.

adulthood".[29]

Most children from a very early age began to work and take part in communal life. Morris and Giller (1987) note that child labour was traditional, universal and inescapable, and that its intensification occurred between 1780 and 1830. Thereafter, children were regarded as economic assets, as sources of cheap labour; and for years children were exploited in mines. Their hardships are "well documented in such novels as Hard Times and Oliver Twist and in official inquiries (for example, the report of the Select Committee on Factory Children's labour 1831-32)."[30] Gillis (1974) also notes that in the first decades of nineteenth century 80 per cent of workers in English cotton mills were children.[31]

Empey (1982) notes that the concept of childhood was based on the idea that children should be regarded as human beings, with their own right to live, but who, because of their particular levels of physical, moral and intellectual development, "required careful preparation for the harshness and sinfulness of an adult world."[32] Hence, with the recognition of the status of children, there was an increasing tendency to be less harsh with the children charged with crimes. Empey (1982) further notes that this helped "to create an ideal image of

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[29]L.T. Empey (1982) American Delinquency: Its Meaning and Construction, (Homewood: Dorsey Press), p. 18.

[30]Allison Morris and Henri Giller (1987) Understanding Juvenile Justice, (London: Groom Helm), p. 4.

[31] P. Gillis (1974) op. cit., p. 56.

[32]L.T. Empey (1982) op. cit., p. 8.

childhood",[33] with the responsibility for rearing and disciplining the child assigned to the parent. Children's conduct that was not in line with the expected ideal was regarded as misconduct. So strict was this ideal that the scope of acceptable child conduct was severely reduced which, in turn, led to dificulties in maintaining discipline and control. The gradual breakdown of social control in the family led to the increasing involvement of the State in the management of children and the eventual social construction of "juvenile delinquency". As Empey further notes:

> delinquency is a social creation of relatively recent times. It is a concept intended to focus our attention upon forms of youthful behaviour, which though they have been common through history, have become of increasing concern in recent years.[34]

The label delinquency is a very general concept and an umbrella term that refers to numerous types of behaviour and diverse conditions and was never given a statutory definition. As Joel Handler has observed:

> "the critical philosophical position of the reform movement was that no formal, legal distinctions should be made between the delinquent and the dependent or neglected".[35]

This means that delinquency includes acts that violate the criminal code and would be criminal if committed by adults. Secondly, it includes acts that violate county, town or municipal ordinances. Thirdly, delinquency includes acts that violate the special rules of conduct that apply only to juveniles, e.g the

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[33]ibid., p. 8.

[34]ibid., p. 5.

[35]Joel Handler (1965) "The Juvenile Court and Adversary System: Problems of function and form", Wisconsin Law Rev. p. 9.

laws on school attendance, the age of driving motor vehicles, the age of entering premises that sell alcohol (licensed premises). Fourthly it includes children who are victims of family conditions or others who need the protection of court. For example, children whose parents turn to alcoholism or who are being sexually abused by parents or who lack parental control so that they are found begging or wandering without means of subsistence. Platt (1969) classified them:

> violations of vaguely defined catchalls - such as vicious or immoral behaviour, incorrigibility, truancy, profane or indecent laguage, growing up in idleness, living with any vicious or disreputed person".[36]

This development occurred at the same time that the public became more conscious of the need to treat juveniles differently from adult offenders and to shelter them from the negative impact of association with such adults. The concern was the dangers of holding children and adults together in the same institutions.

1:5:2 Legislative measures

By the 1800's, asylums had been established for juveniles in England under the Poor Laws, which empowered certain officials to be overseers of poor children regarded as vagrant or neglected delinquents. This was a measure to protect society by controlling vagrants and beggars, not necessarily doing so in the children's interests (Parsloe 1978, Seigel and Senna 1978). It led to the establishment of poorhouses or workhouses, designed to meet the

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[36]A. Platt (1969) The Child Savers, (Chicago: University Press), p. 138.

child's physical, spiritual and educational needs. An early product of this scheme was the apprenticeship movevement found in most western countries today.[37]

Despite these advances, the criminal law and criminal process remained the same for adults and juveniles alike, even in the area of punishment. This approach was based on the concept of freewill, that persons act rationally and know the consequences of their actions. Seigel and Senna (1978) state that this philosophical understanding of crime and delinquency was "based on the idea that people were hedonistic by nature but could freely choose to behave morally."[38] This is in line with Beccaria's (1764) Essay on Crime and Punishment which called for a systematic scale of crimes and penalties based on the hedonistic principle that human motivation is inspired by rewards and punishments, pleasure and pain. It was on this basis that punishment was justified as an attempt to prevent crime. This was premised on the idea of deterrence, that the threat of punishment would keep people from committing crimes and even from engaging in other socially undesirable behaviour.[39] Criminal law in respect of juvenile offenders was also in line with deterrence

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[37]L. Siegel and J.J. Senna (1978) Juvenile Delinquency, Theory, Practice and Law, (New York: Preager Publishers), p. 306.

[38]ibid., p. 306.

[39]For more information on deterrent effect of punishment see for example:J. Andeneas (1952) "General-Prevention-Illusion or Reality?", reprinted in: Stanley E. Grupp, (ed.) Theories of Punishment, (London: Indiana University Press, 1971); K.G. Armstrong, "Retributionist Hits Back", reprinted in: Stanley E. Grupp, (ed.), Theories of Punishment, (London: Indiana University Press, 1971); E. Fattah (1977) "Deterrence: A Review of Literature", Canadian Journal of Crimonology, Vol. 19 No. 2 pp. 9-100.

theory; harsh penalties were handed down similar to those imposed on adult criminals.

Reformative measures were advanced, as opposed to the retributive treatment of imprisoning children. There was a need to separate juveniles from adult criminals who were considered to be hardened convicts and would corrupt the young offenders, as the Select Committeee on the State of the Police of the Metropolis in 1817 noted:

> ....the pleasure older thieves take in corrupting those who just entered into vicious courses, by the detail of their exploits, the narrative of hairs breadth escapes, the teaching of technical phrases; all which are a great allurement to a youth mind, being the amusement of the idle and the resources of the desperate and serving to enliven and dispel the solitude of a prison...[40]

Special facilities for juveniles were needed to avoid the dangers of contamination. An Act of 1838 established Parkhurst prison for boys on the Isle of Wight; the preamble referred to reformation of "young offenders" and this was the first time these words were used in a Statute (Parsloe 1978). Parkhurst prison was later discredited for being repressive to boys, who remained chained in leg irons, and it was considered as wholly unsuitable by Mary Carpenter.[41]

The Royal Philanthropic Society, one of the active societies concerned with the welfare of juvenile offenders, in 1792 set up a school at St. George's fields in Southwark for boys and girls

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[40]Report of 2nd Select Committee on the state of the Police of the Metropolis (1817), quoted by P. Parsloe (1978) Juvenile Justice in Britain and the United States, (London: Routledge and Kegan Paul), p. 116.

[41]S. Millham. R. Bullock and K. Hosie (1978) Locking Up Children, (London: Teakfield), p. 13.

who were either offenders themselves or who had criminal parents. But the Society in its campaign failed to distinguish between non-offenders and juvenile offenders as to suitable placement of a child.[42] As Pinchbeck and Hewitt (1973) point out, the Society, originally founded to provide homes for the children of convicts, "changed from a voluntary organisation with a rather diffuse conception of rescue and reform of the young to a specialised organisation bent on the rehabilitation of delinquent boys."[43]

1:5:3 Campaign for reform

The individual efforts of Mary Carpenter, especially her writings, contributed to the establishment of separate juvenile correctional institutions. The publication of her first book, Reformatory Schools for the Children of the Perishing and Dangerous Classes (1851), led to a social movement supporting reformatories. The pressure from this movement led the Government to appoint a Committee to enquire into the Treatment of Criminal and Destitute Juveniles, which reported in 1853; in the same year Mary Carpenter published Juvenile Delinquents: Social Evils, their Causes and Their Cure, and a conference followed. In 1854 the Youth Offenders Act established reformatories.[44] Mary Carpenter campaigned against injustice caused by deterrence in favour of a more pervasive notion of reform:

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[42]ibid., p. 12.

[43]I. Pinchbeck and M. Hewitt (1973) Children in English Society, (London: Routledge and Kegan Paul), p. 429.

[44]S. Millham et al (1978) op. cit., p. 17; P. Parsloe (1978) op. cit., p. 119.

> Love must be the ruling sentiment of all who attempt to influence and guide these children....no severity on his (i.e. the teacher's) part shall alienate them from him; no punishment of a degrading or revengeful nature will ever be employed.[45]

Richardson (1969) notes that the evangelical language of Mary Carpenter's plea had melted many hearts in her time; she opposed corporal punishment, as it not only inflicts a disgrace most sensitively felt by all high-spirited children, "but usually excites a vindictive spirit."[46]

The Industrial schools arose on the basis of separating offenders from non-offenders, as advocated by Mary Carpenter's division into the dangerous and the perishing classes. As she wrote:

> ....that part of the community which we are to consider consists of those who have not yet fallen into actual crime, but who are almost certain from their ignorance, destitution, and the circumstances in which they are growing up, to do so, if a helping hand be not extended to raise them; - these form the perishing classes: and of those who have already received the prison brand, or, if the mark has not been yet visibly set upon them, are notoriously living by plunder, - who unblushingly acknowledge that they can gain more for the support of themselves and their parents by stealing than working, - whose hand is against every man, for they know not that any man is their brother; - these form the dangerous most sensitively felt by all high spirited children, "but usually excites a vindictive spirit."[47]

Richardson notes that a system of Industrial schools developed for lesser offenders and needy boys and girls under the age of

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[45]Mary Carpenter (1851) Reformatory Schools for the Children of the Perishing and Dangerous Classes, (London: Gilpin), p. 83.

[46]Helen J. Richardson (1969) Adolescent Girls in Approved Schools, (London: Routledge and Kegan Paul), p. 8.

[47]Helen J. Richardson (1969) Adolescent Girls in Approved Schools, (London: Routledge and Kegan Paul), p. 8.

fourteen years, under the Industrial Schools Act of 1857.[48] This Act empowered magistrates to commit to these schools vagrant children and young persons associated with criminals and prostitutes, and those found begging or wandering and not having any home or visible means of subsistence, and children under twelve years who were convicted of minor offences.

This classification separates juveniles who committed criminal offences from those who are neglected and in need of care or are found in circumstances conducive to criminal activities or destitutes. Thus reformatory schools were intended for the dangerous class, while industrial schools were for the perishing class, and this connection has continued in the twentieth century as the underlying principle of juvenile justice. This study seeks to find out how the two classes are treated by the juvenile justice system of Zambia (see Chapters Seven, Eight, Nine and Ten).

1:5:4 The role of Courts

The Court of Chancery in England played an important role in the welfare of juveniles. Its operation was based on an assumption that children, and other individuals deemed incompetent (e.g mentally ill and immature persons), should be under the protective control of the monarch. This was based on the concept of *parens patriae*, which assigned to the monarch a parental role in relation to his subjects. Besharov (1974) comments that "the concept apparently was used by the English

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[48] ibid., p. 15.

Kings to justify their intervention in the lives of the children of their vassals, children whose position and property were of direct concern of the monarch."[49] Thus, the *parens patriae* power was used originally as a means of intervening in the lives of families and their children in the interests of the general welfare.

This protection did not extend initially, however, to children violating the law. It was merely a super-parental and political measure designed to control the future of the children. As Rendleman (1971) points out "the idea of *parens patriae* was actually used to maintain the power of the Crown and structure of control over families known as feudalism."[50] But this contention cannot stand, if the proposition is that the Court of Chancery could not act unless the infant had property, as it was declared by North J in Re McGrath[51] to be wholly unsupported by either principle or authority. He added:

> In Re Spence, 2 Ph. 247, Lord Chancellor Cottenham said: "I have no doubt about the jurisdiction. The cases in which the court interferes on behalf of infants are not confined to those in which there is property...This court interferes for the protection of infants, qua infants, by virtue of the prerogative which belongs to the Crown as *parens patriae* and the exercise of which is delegated to the great Seal".[52]

The intervention was to preserve children's rights and to be criminally dealt with under the due process of law, regardless

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[49]D. Besharov (1974) Juvenile Justice Advocacy-Practice in Unique Court, (New York: Practising Law Institute), p. 2.

[50]D.R. Rendleman (1971) "Parens Patriae: From Chancery to the Juvenile Court", South Carolina Law Rev. Vol. 23 p. 205.

[51](1892) 2 ch 496.

[52]ibid., p. 508.

of status in society.

By the end of the nineteenth century the jurisdiction of the Court of Chancery had been broadened sufficiently to allow some juvenile offenders to be brought under its protective umbrella. As a result of this more liberal interpretation of the *parens patriae* principle by the courts, the rigid common law procedures, which applied to juvenile offenders, could at last be circumvented. The Court of Chancery could now deal with such offenders in a much more informal manner, taking into account all the aspects relating to the child's background and the circumstances surrounding the commission of the offence. The broadening of the *parens patriae* power can be seen in the decision handed down in the case of R v Gygall[53], where Mr Justice Kay stated that:

> ...the jurisdiction, arising as it does from the power of the Crown delegated to the Court of Chancery is essentially a parental jurisdiction, and that description of it involves the main consideration to be acted upon in its exercise, is the benefit or welfare of the child. Again, the term "welfare" in this connection must be read in its largest possible sense, that is to say, as meaning that every circumstance must be taken into consideration, and the court must do what under the circumstances a wise parent acting for the true interests of the child would either ought to be...[54]

This decision is representative of a number of reforms, brought about in judicial decisions at the time, that attempted to individualise the treatment of juvenile offenders. The juvenile courts that developed later were not extensions of the Court of Chancery, but part of the general system of criminal justice,

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[53](1893) 2 Q.B 232.

[54]ibid., p. 238.

although they have also acquired some civil jurisdiction. The judgment above supported the concern of the nineteenth century reformers who advocated separate facilities for juveniles from those which housed adult criminals. Those separate institutions eventually came to form part of the juvenile justice system. The Children Act[55] of 1908 was enacted with the object of treating children not by punishing them, but with a view to their reformation.[56] The Act established the juvenile court, which was a special sitting of a magistrates' court to hear cases relating to children under sixteen years. The Act also provided for the segregation of children and young persons from adults before trial,[57] and that they be kept in special places of detention, unless it was certified that they were so unruly or so depraved that they could not safely be contained in a place of detention other than a prison. The emphasis after the enactment of this Act, then, was on the treatment of juvenile offenders within the community. Where incarceration was still considered necessary, in the case of more serious offences, juveniles were now sent to juvenile correctional institutions whose object was to reform them.

Concern with the treatment of juvenile delinquents was again re-affirmed in the Children and Young Persons Act, 1933, in a single basic principle expressed as follows:

A court dealing with a child or young person who is

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[55]Children Act 1908, 8 Edw. 7 c 67.

[56]As stated by the Lord Advocate while introducing the second reading of the Bill - Hansard Parliamentary Debates, 4th series, 1908 (186) 1251.

[57]sec. 7 of Children Act of 1908.

> brought before it, either being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provisions is made for his education and training (emphasis supplied).[58]

This principle enabled all concerned with treatment of juvenile delinquents to assess the value of alternative methods by reference to its simple intention, namely concern for the welfare of the child. This principle became the basis for juvenile justice systems in British African dependencies, including the Juveniles Act of Zambia; were to be devoted to the treatment of juveniles, who might have come before courts as children in need of care or as offenders.

[58]section 44 (1).

1:6 General Literature on Juvenile Justice

However, in the western countries over the last two decades there has been much debate about the treatment of juvenile offenders. Uncertainty has grown about the capacity of legal systems to control or to help troubled and troublesome children and awareness has developed of the unintended effects of official intervention in children's lives. The rejection of rehabilitation has stemmed from the strong critique of the rehabilitative model by Robert Martinson (1974) and Lipton, Martinson and Wilks (1975), who reviewed juvenile and adult rehabilitation programmes and concluded that they were not effective and led to the "nothing-works" concept.[59] Although Palmer (1975) points out that certain rehabilitation programmes appear at least partially effective with certain types of young offenders.

The Children and Young Persons Act of 1969 (U.K.) incorporated the welfare model principles which emphasized the importance of social background and the related lack of individual responsibility for behaviour. Under this Act the police were given discretionary powers, including the option to proceed with a case as either a criminal or a care proceeding or a caution. Cautioning is regarded as a diversion policy which attempts to steer juveniles away from formal arrest followed by court proceedings which are considered to have stigmatising effects. Therefore police cautioning is seen as a preventive

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[59]For more information see, Lipton, D.; Martinson, R.; and Wilks, J. (1975), The Effectiveness of Correctional Treatment, (New York: Praeger Publishers Inc.).

measure, encouraging the police to keep children out of the criminal process whenever possible. The principal rationale advanced is to reduce the caseloads of juvenile courts and correctional facilities, and avoid the unnecessary criminalisation of juveniles and the labelling, stigmatisation and "consolidation of criminal careers inherent in court proceedings".[60]

These measures are generally seen as progressive developments in juvenile justice policy, although they have their own critics. Commenting on juvenile justice in the U.S.A., Paulsen explains that the reformers who established the first juvenile court saw it:

> ...as a gateway through which children would pass into a rich supermarket of salvation services: Probation officer here, a medical doctor there, a dentist there, a psychiatrist here, a psychologist there. The court would be the means whereby the community brought services to bear in respect of youngsters who need them.[61]

Whereas the critics of the English system say that while aiming to divert children from court, increasing the use of police cautioning may have the unintended consequence of "net-widening" by including even greater numbers of children in the juvenile justice system than was previously the case (Farrington and Bennett 1981; Fisher and Mawby 1982; Giller and Tutt 1987). The main arguments relate to the theme of "the dispersal discipline", which suggests that community penalties are not really

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[60]R. Evans and C. Wilkinson (1990) "Variation in Police Cautioning Policy and Practice in England and Wales", Howard Journal. Vol. 29 No. 3 p. 155.

[61]M.G. Paulsen (1967) "The Child, the Court and the Commission", Juvenile Court Judges Journal, Vol. 18 p. 83.

alternatives to custodial sentences, since they do more harm than good, by widening the net of surveillance and control. As Stan Cohen (1985) says:

> So it was not merely a question of reform "going wrong"....The benevolent-sounding destructuring package had turned out to be a monster in disguise, a Trojan horse. The alternative had merely left us with wider, stronger and different nets.[62]

This is reflected in an English case where it was stated that English sentencing law lacks a consistent rationale advocating retribution, deterrence, prevention and rehabilitation as the four aims of sentencing without providing an explanation as to how these aims are to be reconciled or which is to prevail where there is a conflict between them.[63]

In western countries, the response to juvenile delinquency focuses on treatment rather than on offence characteristics in making a disposition. Unequal treatment is deemed appropriate since juveniles differ in their rehabilitative needs. This leads to disparity of sentences imposed by the courts on individuals who commit similar offences (Thornberry 1973).

Other writers argue that certain juveniles commit a disproportionate amount of violent crimes and they are extremely unlikely to be rehabilitated; such offenders must be punished on the basis of "just deserts", they should be subjected to punishment proportionate to their crimes (Von Hirsch 1976). The English Criminal Justice Act 1991 is based on the "just deserts"

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[62]S. Cohen (1985), Visions of Social Control: Crime and Punishment and Classification, (Cambridge: Polity Press), p. 38. For more information see A. A. Vass and A. Weston (1990), "Probation Day Centers As An Alternative to Custody: A "Trojan Horse" Examined", British Journa of Criminology, 30: 189 - 206.

[63]R V Sergeant (1974) 60 Cr APP. R. 74.

principle that the severity of the sentence in an individual case should reflect primarily the seriousness of the offence which has been committed. As the Home Office general guide to the Act provides:

> ...Whilst factors such as preventing crime or the rehabilitation of the offender remain important functions of the criminal justice process as a whole, they should not lead to a heavier penalty in an individual case than that which is justified by the seriousness of the offence or the need to protect the public from the offender.[64]

Prior to the Criminal Justice Act 1991, the government published a White Paper entitled Crime, Justice and Protection of the Public,[65] whose major proposal was to have a coherent framework for the use of financial, community and custodial punishment, based on proportionality as the guiding criterion for deciding the severity of sentence; custody was to be confined to serious cases only. The severity of non-custodial or community penalties is considered in terms of the relative degree of restriction upon liberty which each entails.[66]

What can be learnt from the western countries' experience? Insofar as the treatment of juvenile offenders is concerned, the literature is replete with many theories and models, aimed at analyzing the operations of juvenile justice institutions

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[64]Home Office (1991) A General Guide to the Criminal Justice Act 1991, section 1 (2) (i).

[65]HMSO 1990 (cm 965). This Paper was ably analzed by A. Ashworth (1990), "The White Paper on Criminal Justice and Sentencing", Criminal Law Rev., 217 - 224; M. Wasik and A. Von Hircsh (1990), "Statutory Sentencing Principles: The White Paper", Modern Law Rev., 508 - 517.

[66]For more information on non-custodial penalties see M. Wasik and A. Von Hirsch (1988), "Non-custodial Penalties and the Principles of Deserts", Criminal Law Rev., 555 - 572.

(police, courts, probation services, and correctional institutions) and the decision-making process employed by these institutions (Larsen 1982; Fisher and Mawby 1982; Evans and Wilkinson 1990). The major problem, however, centres around the general objectives of juvenile justice in various criminal justice systems (Parsloe 1978; Morris et al. 1980, 1983, 1987; West 1982; Ekstedt and Griffiths 1984). Should social reaction to juvenile crime be punishment-oriented or based more on an individualistic approach to such criminal activity? Should juvenile offenders receive correctional sentences proportionate to their crimes or be placed on community-based programmes? To what extent should parents be held responsible for their children's criminality? Should police cautioning be abolished? Should there be alternative informal methods of treating juvenile offenders? What methods should be employed in the prevention of juvenile delinquency? The current lack of consensus regarding the treatment of juvenile offenders deserves closer attention especially in developing countries, and this provides the basis for the approach taken in this study: to assess the impact of English law on traditional legal systems as to the underlying policies of juvenile justice in a historical perspective.

Although the same causal factors that contributed to the rise of juvenile crime in western countries (urbanization, population growth, disorientation of family life etc.) may be seen to be at work in Zambia, there is no reason to assume a common approach. For example, in sentencing juvenile offenders factors such as social status, income, family background etc. may be considered; but an issue of discrimination may also arise, as

the offender may be from a racial group regarded as a minority in the country. In the western countries this may refer to a black juvenile offender or immigrant likely to be from a lower class; in Zambia a minority may refer to a white or Asian juvenile offender who may not be from the lower class, but from the middle or higher class. Children from these minority communities do not appear before the courts; the reasons for this have not yet been researched.

1:7 Literature on Juvenile Justice in Zambia

There is little research on juvenile justice in Zambia and writers have ignored the relevance of traditional culture.

Clifford and Hatchard have contributed to the understanding of juvenile crime in Zambia. Clifford (1960), in the first study to be carried out in the country, was interested in the crime trends from 1931 to 1958 and in comparative crime rates reflecting four races - Africans, Europeans, Asians and Coloured. He also devoted a portion to juvenile delinquency among the Africans and Europeans, and found that breaking and entering and theft to have been offences which were in the increase. He then concluded "it is now to satisfy ourselves that we are dealing with crime and not just waywardness or juvenile mischief.[67] He again in 1974, in his study of the concept of juvenile delinquency in Zambia, found that "tribal elders and a wide variety of other people thought that the Penal Code was far

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[67]W. Clifford (1960) "Crime in Northern Rhodesia", Rhodes-Livingstone Institute, No. 18. p. 65.

too lenient with those who used insulting language. Children were taught to avoid and detest it".[68]

Hatchard (1984) discusses the sources of law in Zambia; he examines statistics pertaining to convicted juvenile offenders and observes that figures for juvenile crime had remained static from 1968 to 1975. He further notes that the amount of reported juvenile crime was suprisingly small as compared to the total number of convictions for criminal offences. For example, in 1971 there were 2,559 juvenile convictions compared to 40,695 total convictions, and in 1975 there were 2,575 juvenile convictions compared to 41,549 total convictions. He acknowledges that the Nakambala Approved School and Katombora Reformatory have been developed upon the lines of the English borstal system and that the prime aim is that of rehabilitating young offenders. Hatchard (1989) has raised a number of issues in his study of juvenile justice, which included the need to improve the quality of social welfare reports presented to courts as pre-sentence reports. He also found that a higher proportion of juvenile offenders are sentenced to custodial than non-custodial sentences, and those from stable families were put on probation. He then concluded by saying "it has been argued that no realistic policy on juvenile justice (and towards crime in general) can be developed without a Government commitment to research".[69] It is true that juvenile crime seems to be increasing steadily. As Mwansa (1989) notes,

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[68]W. Clifford (1974) An Introduction to African Criminology, (Oxford: Oxford University Press), p. 57.

[69]John Hatchard (1989) "Policy and Perspectives on Juvenile Justice", in: Kwaku Osei-Hwedie and Muna Ndulo, (Eds.), Studies in Youth and Development, (Lusaka: Multimedia Publications), p. 388.

in 1970, 1,846 juveniles were arrested in Zambia for various offences, and this figure rose to 2,530 in 1980, representing an increase of 30 per cent over a ten year period from 1970 to 1980.

However, there are other studies, not on juvenile justice, which indicate that a substantial proportion of Zambian youths experience "adolescence as a stressful period".[70] This period is associated with rebellious youth and contempt for authority, and also referring to conflict between generations. This leads us to the point of socialization, and to seek a focus of how traditional societies tackled this conflict to enable a child to develop in every dimension (physical, emotional, social and intellectual) so that he grows up to find a place in society in a way which gives meaning to his life and enables him to make a meaningful contribution to society; if such guidance is not given, a child may not fully understand himself. He may feel that he is forsaken and turn to crime.

The policies underlying the juvenile justice system in the country from which the Zambian juvenile justice system was imported have changed in the last two decades. Therefore is it not time for Zambia fundamentally to reconsider its policies underlying juvenile justice?

1:8 Research Methods

This work includes the results of a fieldwork study conducted in Zambia between December 1992 and June 1993, in which

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[70]M. Mwanalushi (1990) Youth and Society in Zambia: Growing up in changing society, (Lusaka: Multimedia Publications), p. 28.

a combination of approaches was used in order to examine the impact of English law on traditional legal systems with regard to the treatment of juvenile offenders. The multi-method was therefore adopted, in order to obtain comprehensive information on child socialisation, the treatment of juveniles by traditional legal system, how traditional practices and socialisation processes tried to prevent juvenile misconduct and maintain social harmony, the development of the juvenile justice system and the operation of the agencies involved therein. Research methods therefore included a review of relevant literature pertaining to child upbringing and juvenile justice in western countries and Zambia, analysis of court records and court observation, a questionnaire survey, visits of observation and personal interviews with key informants and other persons.

1:8:1 Data sources and analysis

The study has therefore utilised two sources of data: namely documentary and field investigations. However, there are real problems with the documentary data sources. Reliance on official statistics as a means of measuring criminality or delinquency in many countries has presented problems because of concerns about the reliability and validity of such data.[71] However, all

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[71]T. Sellin and M. Wolfgang (1964), The Measurement of Delinquency. (New York: Hudson), p. 7.; See also G. Nettler (1974), Explaining Crime. (New York: McGraw-Hill, Incl.,; J. Hogarth (1971), Sentencing As A Human Process. (Toronto: University Press); A.V. Cicourel (1964), Method and Measurement in Sociology. (New York: Free Press); R. Hood and R. Sparks (1970), Key Issues in Criminology. (London: Weidenfield & Nicolson); P. Wiles (1971), "Criminal Statistics and Sociological (continued...)

research in this field must rely on the agencies entrusted with the enforcement of the criminal law and the administration of justice (especially the police and the judiciary) as sources of official information on crime and criminal justice.

The police maintain records of complaints received, arrests made, cases detected and undetected, convictions and dispositions made by the courts. Cases that are not taken to court are also recorded, with reasons for the lack of prosecution. The courts also keep records of the offences tried, personal characteristics of the offenders, verdicts and dispositions ordered.

Official statistics in general have been criticised as unreliable on the basis of bias towards the wishes and methods of counting employed by the organisation involved.[72] But at the same time, Nettler (1974) observed that no presently employed measure of criminal activity, official or unofficial, is sensitive to the full range of crime and, at the same time, sensitive to variations in the judged gravity of these crimes.[73]

Wolfgang (1970), supporting the use of official statistics, observed:

> ...we do not know the total amount of crime, even with "hidden delinquency" and victimization studies. We do not know at any specific moment of time, or even stretches of time, the relationship between offences

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[71](...continued)
Explanation of Crime", in : W. G. Carson and P. Wiles, (eds), Crime and Delinquency in Britain. (London: Martin Robertson); M. Pratt (1980), Mugging as a Social Problem. (London: Routledge and Kegan Paul).

[72]G. Nettler (1974) op. cit., p. 46.

[73]ibid., p. 61.

known to police and committed.[74]

But the police data are considered a useful source of information about the character and extent of criminality, as the police "are nearest to the offences that occur..."[75]

Hence, official statistics can furnish some information on how offenders in a small homogeneous sample were treated by law-enforcement agencies. Homogeneous in the sense that they are the unlucky ones who faced the exercise of police discretionary power against them. The data collected from official statistics enable researchers to make comparisons for a population over a period of time or between groups. Thus, it is possible to find out the proportion of offenders sentenced to imprisonment, placed on probation or ordered to be caned. Nettler (1974) commented that by using official statistics researchers in attempting to increase their predictive abilities "think in terms of ratios, proportions or rates".[76]

Most criminological studies use factor or multiple regression analysis, for the purpose of uncovering correlations between crime rates and legal, socio-economic attributes. The present study employs descriptive analysis through tables as a statistical method. Frequency distributions make it much easier to grasp the information contained in a set of data, if the distribution is depicted graphically rather than in numbers *per se*, which are not presented in a sytematic way. Statistical

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[74]M. Wolfgang (1970), "On Devising a Crime Index", in: Council of Europe, The Index of Crime: Some Further Studies. (Strasbourg), p. 59.

[75]ibid., p. 56.

[76]G. Nettler (1974) op. cit., p. 58.

methods include tools for summarising, organizing and simplifying data, so that they can be more easily and precisely interpreted. They furnish investigators with succinct descriptive summaries of masses of observations (Mills 1955, Alder and Roessler 1964, Bailey 1971, Kirk 1978). As Adler and Roessler (1964) note:

> representation of a mass of data by either tabular form or graphical method is part of statistical analysis which should lead to a better over-all comprehension of data.[77]

While Mills (1955) had this to say:

> ...perhaps most important of all, in the statistical approach we have is a means for the advancement of knowledge that seems to accord in fundamental ways with the nature of things in the world we are seeking to understand.[78]

Therefore, this analysis can be used as a test of association or relationship between the variables being studied. Hence the analysis employed in this study will be useful to show the percentages of cases where guardians attended court proceedings, and percentages of each disposition ordered in each particular year. It would be possible to compare punitive dispositions and rehabilitative measures. Tables of percentages will be presented rather than frequency distribution because percentages often communicate statistical information better than simple frequencies. Percentages are far more meaningful than frequencies, since the frequencies might change greatly depending

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[77]H. L. Adler and E. B. Roessler (1964), Introduction to Probability and Statistics. (San Francisco: W. H. Freeman and Company), p. 4.

[78]F. C. Mills (1955), Statistical Methods. (New York: Henry Holt and Company), p. 1.

on sample size, while percentages might not.[79] This statistical method presents to the eye a very clear picture of distribution, showing quite unmistakably the relative number of cases being analysed at that particular moment.

Below is a description of each method, and where appropriate stating the sample used.

1:8:2 Literature review

The anthropological literature has been analysed to illustrate and examine the salient features of child socialization, the nature of the African oral tradition and the existence of traditional cultural survivals in Zambia. The work of Colson (1962); Gluckman (1965); Epstein (1953) and other social anthropologists is from time to time referred to and forms the basis of Chapters Two and Three.

The historical approach has been employed to examine the impact of western influence on the traditional legal systems. It will be shown in this study that the existence of traditional cultural survivals is not understood by law enforcement agencies, and that leads to the ill-treatment of juvenile offenders on the pretext of applying the modern received law.

In addition other documentary sources have been utilised such as archive material, articles and papers (published and unpublished), government annual reports, statutes and law reports and especially the police annual reports, which are important

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[79]R. E. Kirk (1978), Introductory Statistics. (California: Wadsworth Publishing Company, incl.,), p. 25.

sources of official crime statistics in Zambia.

1:8:3 Court records and court observations

The month of December 1992 was spent on preparatory work and observations of court proceedings to assess which Lusaka subordinate courts would be studied; the case records at the Principal Resident Magistrate's Court appeared to be most useful. Case records of Lusaka subordinate courts at the High Court of Zambia site[80] were examined for the period January 1991 to December 1992. This period was choosen on the assumption that offenders who might have been ordered to the Approved School and the Reformatory would be found at these institutions later when they were visited. The records examined were those filed as completed cases: 118 cases were analysed (61 in 1991 and 57 in 1992) and these provide the basis of Chapters Eight and Nine.

In examining the case records, the following information was extracted for analysis:

(a) The name, age and sex of the offender.

(b) The offence charged and the plea entered.

(c) The residential address.

(d) Whether the parent or guardian, attended the court proceedings, and whether such an attendance was based on the court's request.

(e) The proceedings - whether the matter had gone through

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[80]In Lusaka there are two sites of subordinate courts, and the second is at the Old Boma buildings and the in-charge is a Senior resident magistrate answerable to the Principal resident magistrate.

the normal trial process (plea to sentencing).

(f) If it did not, the reasons for discontinuing the matter.

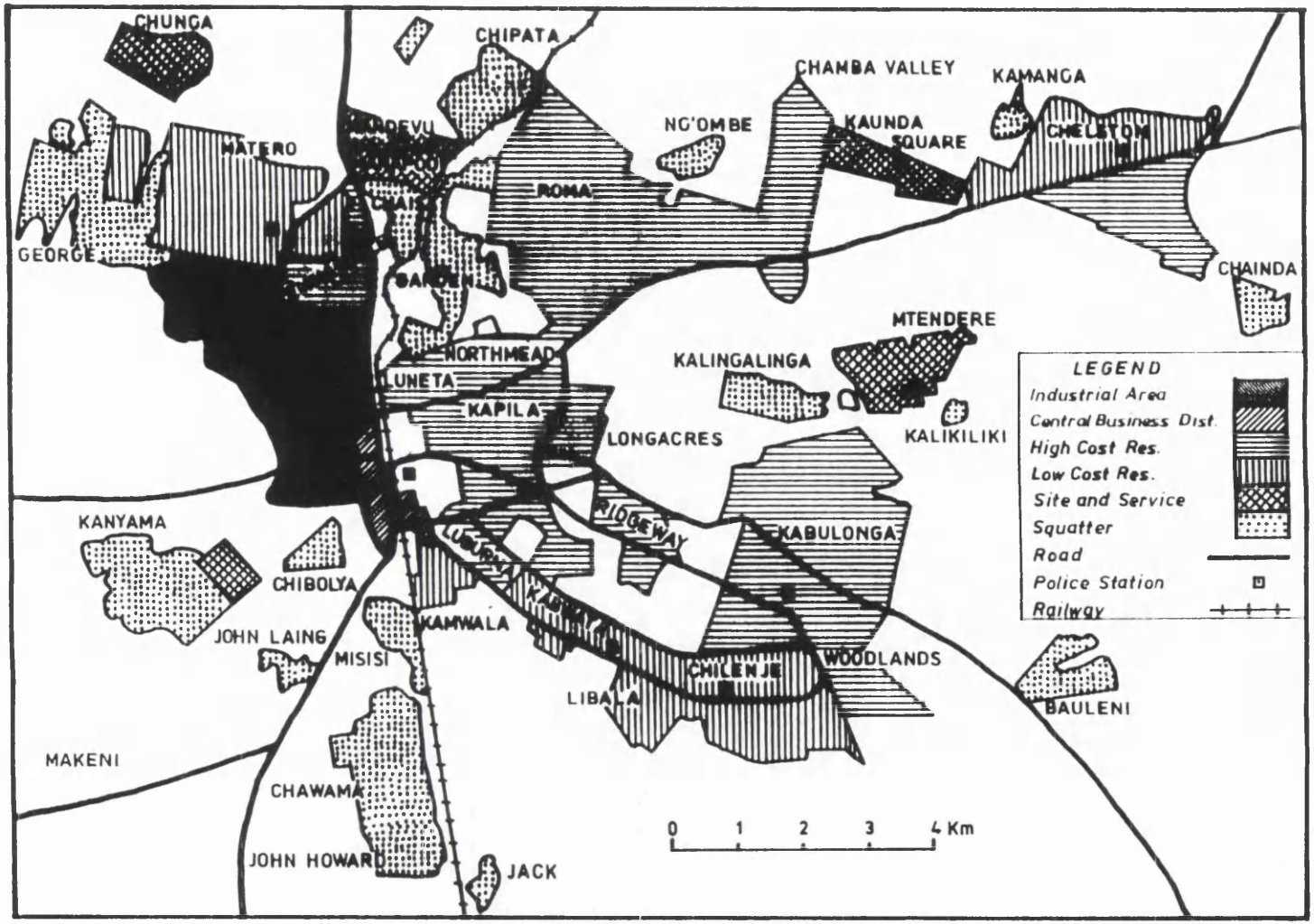
(g) Delays in finalising cases.

(h) Order or disposition imposed.

(i) Whether pre-sentence reports were submitted or not, and any other matters that pertain to compliance and non-compliance with the provisions of the Juveniles Act.

Examination of the hand-written records - in places difficult to read them proved to be time-consuming. Some court records were incomplete; e.g. information regarding bail and the occupation of offenders etc. was missing.

Activities of "street children" in street marketing were observed and taverns (where opaque Chibuku beer is being sold) were visted in the townships near the town centre (see Figure 1 the showing Lusaka lay out).



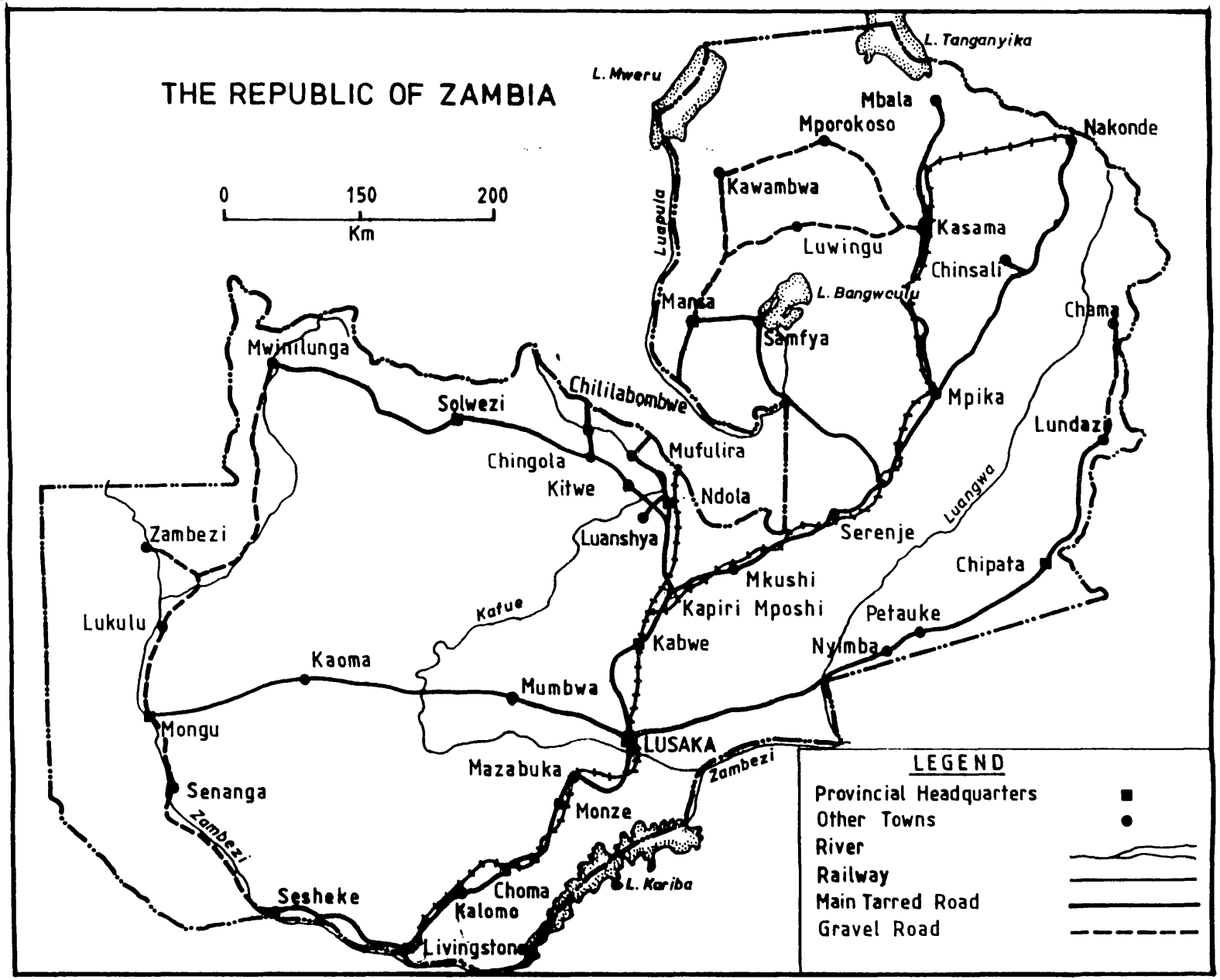
LUSAKA RESIDENTIAL AND INDUSTRIAL AREAS

Figure: 1

1:8:4 A Questionnaire Survey

During the months of February, April and May 1993, I visited Nakambala Approved School at Mazabuka, Insakwe Probation Hostel at Ndola, and Katombora Refomatory at Livingstone (Figure 2 shows Districts). I administered the same questionnaire to each of the inmates found at these institutions (24 at the Approved School, 6 at the Probation Hostel, and 52 at the Reformatory). The items covered a variety of aspects which included kinship attachment (to father's or mother's side), village visits, attitudes about the correctional institution where the inmate was detained, the programmes offered, home visits to maintain family cohesion, schooling and migration, and also the role of the High Court, whether the juveniles' orders had been confirmed by the High Court as required by the law.

Another questionnaire was given to correctional officials, to complete in their own time. After my stay at the particular institution the questionnaires were given to me (nine from the Approved School, two from the Probation Hostel and 15 from the Reformatory). The focal interest was to find out whether there are specially trained personnel at the correctional institutions, and the results will be discussed in Chapters Six and Ten.


THE REPUBLIC OF ZAMBIA
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Solwezi
Mpika
Lundazi
Mufulira
Chingola
Kitwe
Ndola
Zambezi
Luanshya
Serenje
Luangwa
Chipata
Mkushi
Kapiri Mposhi
Petauke
Katue
Lukulu
Kabwe
Nyimba
Kaoma
Mumbwa
Mongu
LUSAKA
Zambezi
Mazabuka
Senanga
Monze
Zambezi
L. Kariba
Sesheke
Choma
Kalomo
Livingstone
LEGEND
Provincial Headquarters
Other Towns
River
Railway
Main Tarred Road
Gravel Road

Figure: 2

1:8:5 Personal interviews

In March 1993 I went to Kalomo district in Chief Simwatachela's area, and stayed at Kabanga secondary school (Mission) in the Southern Province (see Figure 3). Using Kabanga as a base, I travelled to Chidi and a nearby Chilundika village using a borrowed bicycle. But movement between close villages and to Chief Simwatachela's Palace was done on foot. This allowed me to chat with children and other people en route to and from the place of research. I used a school vehicle when visiting the nearby Chief Sipatunyana's Palace. I attended a Parents-Teachers Association (PTA) at the secondary school and a neighbouring Kabanga basic school,[81] and village committee meetings. This frequent interaction with children and their parents created an atmosphere of friendship, such that my informants were at ease and willing to give me information.

The interviews and conversations I had with informants in various contexts were both directed and non-directed. Informants were asked open-ended questions on specific topics and discussions were allowed to digress. If the digression drifted too far from a particular topic, I posed direct questions to let informants come to the specific topic. I had discussions or interviews with headmen and elders in the villages. The aim was to obtain information relating to the oral teachings used in child socialization. I was interested in proverbs used in teaching children to refrain from misconduct or proverbs used in

[81]A basic school covers Grade One to Grade Nine, ending at junior secondary school level.

defending oneself and in court process. I went around the fields and rivers to see how young children continued to play their traditional role of helping their grandparents. Children were seen with their grandparents moving to and from rivers carrying water buckets and firewood.

I conducted this fieldwork in my home province and nearby district,[82] and held the status of an "insider" of the society being studied; I had not needed to familiarise myself with the concepts, life style and language of the Tonga as the pre-requisites of an "outsider" who intended to carry out a study in a particular traditional society.[83]

My insider status was an advantage in this study, as I proceeded without the delays and frustrations which I would have encountered, as an outsider. Less time was spent gathering material on the local history, farming activities, social structure and language use. It was also an advantage that I did not have to employ interpreters and translators.

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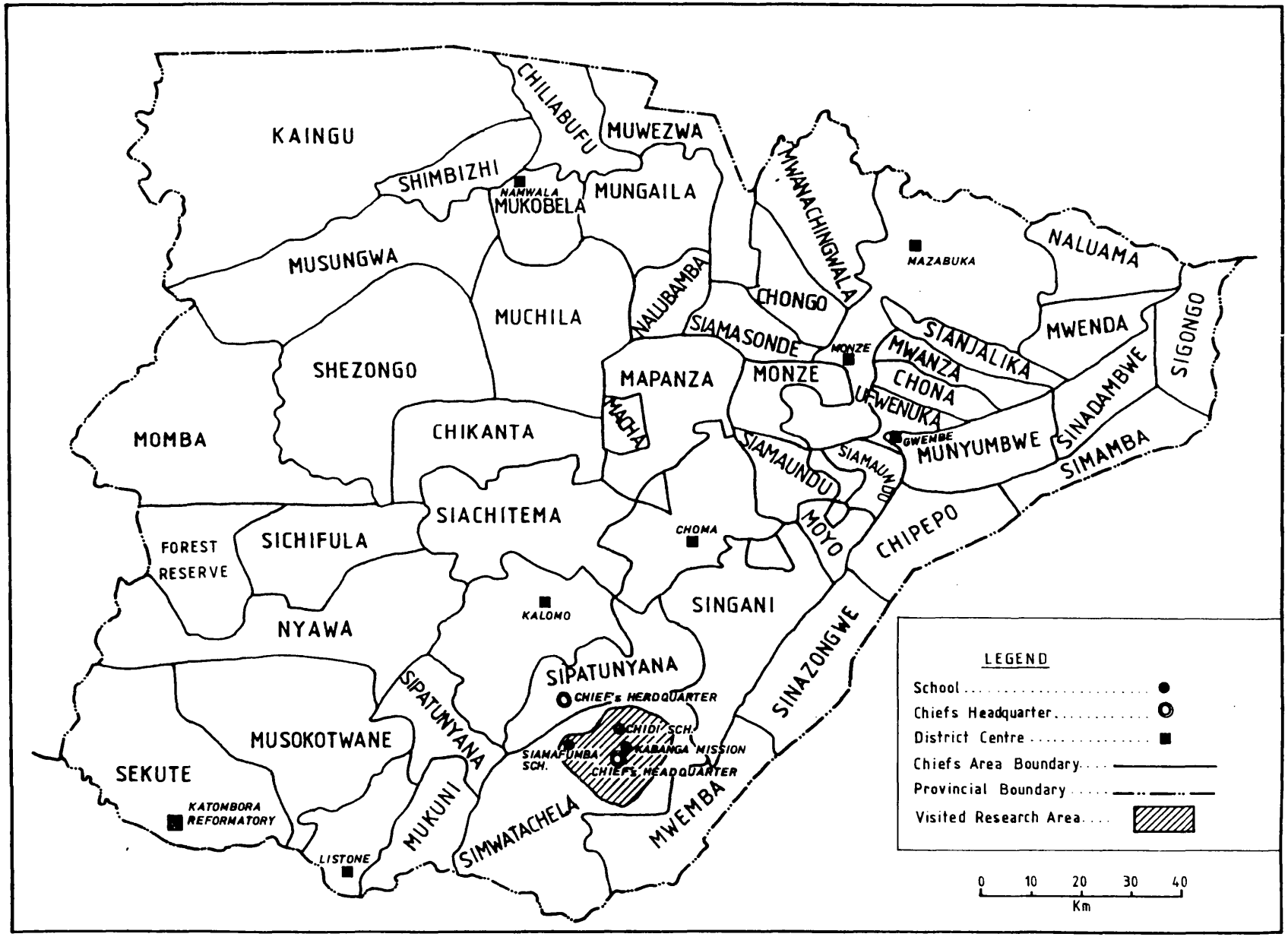
[82]My home district is Choma and shares bounderies with Kalomo district, where this study was conducted, as seen on Map 3. We speak the same language and are referred to as the Tonga-Speaking peoples. Hence, the information was collected in Tonga.

[83]For more information on the "ME" factor in fieldwork, see J. Beattie (1965), Understanding an African Kingdom: Bunyoro. (New York: Holt, Rinehart and Winston); R. Abrahams (1970), Deep Down in the Jungle...Narrative Folklore from the Streets of Philadephia. (Chicago: Aldine Publishing Co.); E.S. T. Mvula (1987), "Women's Oral Poetry As A Social Strategy in Malawi", Ph D Dissertation. (Indiana University).



SOUTHERN PROVINCE : TRADITIONAL CHIEF'S AREAS

Figure: 3

In May 1993, I started visiting key offices in Lusaka interviewed officials who could clarify certain issues raised in this study. These included the Hon. Mr. Justice Matthew Ngulube, the Chief Justice, the Commissioner for Juvenile Welfare, the Director of Public Prosecutions (D.P.P), Permanent Secretaries of the Ministries of Community Development and Social Services and of Sport, Youth and Child Welfare Affairs, District probation officer, Lusaka, and senior police officers and others who are mentioned at appropriate stages.

1:9 Organisation of the Thesis.

The thesis is divided into four parts. Part I covers two chapters the deal with children in traditional societies of Zambia and focus on child socialisation, mainly among the Tonga of Southern Province. Part II has three chapters which deal with the evolution of the juvenile justice system, mainly focusing on the influence of English law on traditional legal systems and the the role of missionaries. The social policies relating to juvenile crime during colonial and post-independence era. Part III covers four chapters which examine the operations of the police, courts, correctional institutions and probation services, in the way they treat juvenile offenders. Part IV contains a concluding chapter, which discusses findings and suggestions for the improvement of the juvenile justice system.

PART I: CHILDREN IN TRADITIONAL SOCIETIES OF ZAMBIA

CHAPTER TWO

2 CHILD SOCIALISATION: TRADITIONAL INSTITUTIONS AND THEIR ROLE

2:1 Introduction

This Chapter examines how traditional practices and other factors influenced children and young people as they grew up in traditional societies, as they adapted themselves to changes in beliefs and values of a particular society, to maintain the behaviour recognised as legally and morally correct in their community.

Any society to survive must propagate ways of meeting certain basic requirements for the maintenance of ordered social life. It must have a set of regulated behaviour patterns and must inculcate in the younger generation the values, expectations and obligations pertaining to their roles as members of the community. This continuing process of moulding behaviour to which children are subjected is known as socialisation. Nwanunobi (1992), in discussing of social institutions, remarked:

> By its nature socialisation is linked to political, legal, religious, educational and the multifaceted kinship institutions of traditional African societies.[84]

Socialisation is a process by which an individual learns to adapt

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[84]C. Onyeka Nwanunobi (1992), African Social Institutions, (Nsukka: University of Nigeria Press), p. 11; For more information on the issue of socialisation see: Graham White (1977), Socialisation, (London: Longman); D. Wrong (1961), " The over-socialised conception of man in modern society", American Sociological Review 26, 184 - 93.

his behaviour to conform to the rules and practices of a given society. Such learning involves the understanding of regulative principles of social institutions and their operative rules, which are integrated patterns of behaviour acting as social control, subject to changes under social pressures.

This chapter outlines the political and economic systems and social organisation of traditional societies in Zambia; it then proceeds to assess the role of the family in traditional societies in instilling the values that shaped the behaviour of individuals in desirable ways for the maintenance and betterment of self and society. It explores the oral traditions which are modes of transmitting cultural values from generation to generation as forms of education, as a means of discovering the source of authoritative rules, before proceeding to the next chapter, that examines offences which under traditional orders are subject to sanctions. This provides a basis for understanding juvenile crime in traditional settings and how it was controlled, as it is argued in this study that cultural values should be considered in the modern legal system, as preventive measures, instead of relying exclusively on the received legal system which is misconceivedly applied by the law enforcement agencies.

Similarly, Eriksson (1964) states that the penal law of a country should be based "on the characteristics of the culture to which it is given and adapted to prevailing social, economic and political conditions."[85] The values and beliefs are embedded in the culture of a particular society, as a patterned way in

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[85]T. Eriksson (1964) "Society and Treatment of Offenders", in Stanley E. Grupp (ed.), Theories of Punishment, (Bloomington: Indiana University Press), p. 264.

which people do things together. Culture is seen as a bond that binds people together over the years as it is learned anew by each generation. Rader (1991) states that the home is the primary transmitter of culture through a process of absorption, and goes on to give a definition of culture as:

> ....an integrated system of beliefs (about God or reality or ultimate meaning) or values (about what is true, good, beautiful and normative), or customs (how to behave, relate to others, talk, pray, dress, work, trade, farm, eat, etc), and of institutions which express these beliefs, values and customs (government, law courts, temples or churches, family, schools, hospitals, shops, unions, clubs, etc), which binds a society together and gives it a sense of identity, dignity, security and continuity.[86]

Therefore, social factors assist in explaining juvenile crime because in most cases the culture determines both the definition of crime and the way deviants are treated for their misconduct.

The discussion will not concentrate on a particular ethnic group, as there was and is no single pattern of society in Zambia, but a diversity of peoples with varying forms of political, cultural and economic development, as shown in Chapter One. However, particular references will be made to the Tonga, who were visited during this study. The customary laws of these societies reflect diverse social conditions and degrees of development. There are some societies, for example, the Lozi, the Bemba and the Lunda-Kazembe, who developed forms of royal bureaucracies, with rulers who presided over tribal council meetings and were later referred to as Kings; others societies

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[86]D.A. Rader (1991) Christian Ethics in an African Context: A Focus on Urban Zambia, (New York: Peter Lang Publishing, Inc.,), p. 10.

never developed such hierarchical structures.[87] This reflects the classic distinction between centralised and acephalous societies (see section 2:2 below).

However, in spite of this diversity, Elias (1956) notes that strong evidence of general similarities is provided by writers who studied African societies. For example, he quotes M. Delafosse, who wrote:

> Whatever be the degree attained by political institutions of the African negroes and whatever aspect the civilisation of their various States presents, their organisation and functioning, everywhere and always, offer the same essential characteristics.[88]

This statement is acceptable to some extent as historical facts show that the Lozi, the Lunda of Kazembe and the Bemba had political systems comparable to Kingdoms elsewhere, such as the Empires and Kingdoms established in West, East and Central Africa such as ancient Benin, Buganda and the kingdom of the Mwenamatapa, although they were not old as them. The kings or paramount chiefs often controlled the allocation of land to their subjects and had judicial and administrative powers. The absence of challenge or opposition to a person who had inherited the chieftaincy and been accepted by a particular ethnic group as a ruler has been used by the elite leaders in the post-independence period of African countries, to influence people to support one-party state democracies (Ghana, Zambia,Malawi, etc) partly on the

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[87]A. Roberts (1976) A History of Zambia, (London: Heinemann), p. 96.

[88]M. Delafosse (1931) Negroes of Africa, translated by F. Fligelman, p. 144, cited by Thomas O. Elias (1956) The Nature of African Customary Law, (Manchester: Manchester University Press), p. 9.

pretext of African traditional societies which existed without multi-party politics. As Kabanje (1993) notes:

> ....the absence of a liberal tradition in the colonial period and a culture of personal rule that characterised pre-colonial African traditional society constituted a legacy of authoritarianism in the post-independence period which found expression in the one-party state rule.[89]

Such writings related to societies led by chiefs, although a general similarity in cultural values would be found among the acephalous societies, when it comes to child upbringing and child misconduct, where parents played a vital role in teaching their children acceptable codes of behaviour.

2:2 Political Organization

It has been noted above that most indigenous African societies could be classified into two prominent types of government, with some mixed features.[90] The first category includes societies with centralised authority, administrative machinery and judicial institutions, whereas the second includes societies whose political arrangements were based on lineage systems without individual rulers.[91]

The historical facts indicate that before 1500 A.D there were no identifiable boundaries in Zambia and human occupation

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[89]S. Kabanje (1993) "The One-Party State and Democracy in Zambia" Unpublished Ph. D Dissertation, (University College of London), p. 58.

[90]M. Fortes and E.E. Evans-Pritchard (1940) (eds.) African Political Systems, (London: Oxford University Press), p. 5; T.O. Elias (1956) op. cit. p. 11.

[91]T.O. Elias (1956) op. cit. p. 11.

was in small groupings. Human settlements started emerging in river valleys although occupations in caves are recorded from the early 800 A.D.[92] The early periods indicate that the inhabitants were nomadic hunter-gatherers. There was no centralised authoritative system; child misconduct was solely within the family's jurisdiction.

In the *Late Stone Age* and early *Iron Age* (A.D 800) durable settlements were emerging, as methods of food production improved, with animal domestication and pottery. This was the beginning of village establishments and the emerging of certain individuals to exercise authority over other persons in identifiable territories.

2:2:1 Centralised societies

It is well documented that during the period 1500 - 1850 many Zambian societies migrated from the great Luba-Lunda Kingdom of the Congo (Zaire) ruled by *Mwanta Yamvwa*.[93] This migration is attributed to the growing population in the areas where permanent settlements emerged, and the introduction of new crops requiring

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[92]D. W. Phillipson (1972), National Monuments of Zambia, (Lusaka: Zambia Information Services), pp. 9 - 16; see also P. Nag (1990), Population, Settlement and Development in Zambia, (New Delhi: Concept Publishing Co.), pp. 14 - 31.

[93]Richard Hall (1965) Zambia, (London: Pall Mall Press), p. 16-18.; A. Roberts (1976) op. cit. p. 80-99.; see for general information M. K. Sangambo (1979) The History of the Luvale People and Their Chieftainship, edited by A. Hansen and R. J. Papstein, (Los Angeles: African Institute for Applied Research); M. Chinyama and C.C. Chiwale (1989) Mutomboko Ceremony and The Lunda-Kazembe Dynasty, (Lusaka: Kenneth Kaunda Foundation); A.D. Roberts (1973) op. cit.; W.V. Brelsford (1956) The Tribes of Northern Rhodesia, (Lusaka: Government Printer).

more arable land. It stimulated internal conflicts (within families or clans) causing rival family elders and their supporters to migrate southward (see Figure 4).[94]

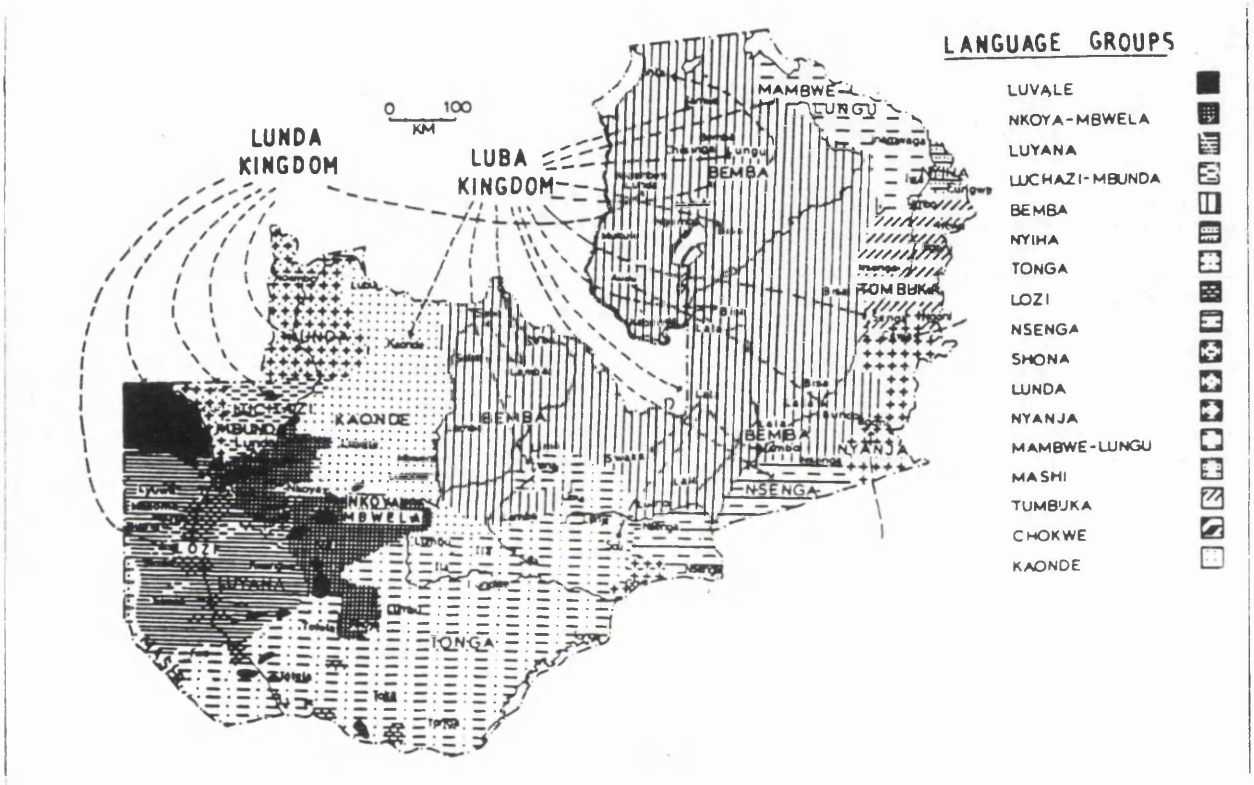

Figure 4: Migration and Tribal Settlements

Adopted from P. Nag (1979) Growth of Population Settlement and Development in Zambia, (New Delhi: Concept Publishing Co.)

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[94]ibid.; see also H. Langworthy (1972), Zambia Before 1800: Aspects of Pre-Colonial History, (London: Longman Group Ltd), p. 21.

As the Map shows, the pattern of expansion that took place led to permanent centralised settlements in the areas where suitable resources were found. These migrating groups brought with them the ideas of hereditary office and leadership, in particular to areas where there was previously no centralised political control. Canter (1976), in a study of the Lenje, notes:

> Once the migrants, with their idea of chieftainship, reached the Central Province of Zambia the process of incorporation of the Lenje by the Mukunis was slow, incomplete and performed in many different ways. Presumably the Mukunis were led by rulers of the *Batemboshi* (wasp) clan as this now provides the Lenje chiefs.[95]

The incorporation of local chiefs was at times achieved through inter-tribal wars, and the conquered chiefs continued to rule over their original areas but paid tribute to the conqueror. This created hierarchical chieftaincies in the Lunda kingdom of Kazembe of Luapula Province. This is also noticed in the Bemba kingdom under Chitimukulu (the big Chiti) of Northern Province; in the Lozi kingdom of Western Province; in the Chewa kingdom under Undi of Eastern Province; and in the Ngoni kingdom under Mpenzeni of Eastern Province.

The hierarchical structures developed in tribal-territorial areas, where the village was and is the basic unit controlled by the headman. The headman was usually appointed by the chief from his own clan. In big territories sub-chiefs were appointed, and in certain cases councillors were also appointed. These appointees were agents and acted on behalf of the paramount chief. In certain instances these agents would rebel and proclaim

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[95]R. S. Canter (1976), Law and Local Level Authority in Zambia, Ph.D Dissertation, (University of California, Berkeley: Xerox University Microfilms), p. 26.

themselves as chiefs (Canter 1976).

The paramount chiefs had political powers over their territories and even entered into treaties with foreign agents; they were free from interference in their internal authority.[96] These chiefs created centralised systems by appointing certain officials to meet as a council from time to time at their Palaces. The Paramount Chief sat as a chairman whenever they discussed political or legal matters; he would at times appoint a senior member of the council to act as chairman. It must be noted that the Chief's advisors or members of council were usually older relatives or senior members of the village. For example, among the Bemba there are the *bakabilo,* the hereditary priests and councillors of the Paramount, who were and are the "oldest or most eminent members of their respective clans".[97] The *bakabilo* are still important in the appointments of chiefs and the conduct of their funerals in Northern Province. They are responsible for *Shimwalule*, the Bemba relic shrine, where sacred objects (mostly stools) are kept. The most senior council member of the Lozi is known as *Ngambela* (Prime Minister).[98]

The centralised territorial systems that emerged under dominant leaders (the Chiefs), with supporting agencies, created administrative structures. These were involved in the allocation

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[96]Lewis A. Gann (1963) A History of Northern Rhodesia: Early Days to 1953, (New York: Noble Offset Printers, Incl.,), p. 60; See also M. Gluckman (1955) The Judicial Process among the Barotse of Northern Rhodesia, (Manchester: Manchester University Press), p. 1-4.

[97]A.I. Richards (1949) op. cit. p. 178.

[98]A. Roberts (1976) op. cit. p. 98; M. Gluckman (1955) op. cit. p. 9.

of land to their subjects, the settlement of disputes and the enactment of rules operating within the territories. In short, chiefs and their councils exercised executive and legislative and also judicial functions for serious offences (such as witchcraft, refusal to pay tribute to the chief and offences against State).[99] The chiefs had constables or messengers at their Palaces to enforce their orders (Cunnison 1959). The latest tier of these hierarchical structures were the villages, which became the basic organs of administration and justice. Child misconduct was generally brought initially before family or village elders (as discussed later in Chapter Three).

2:2:2 Acephalous societies

The Tonga-speaking peoples of the Southern Province are said to be the oldest society in Zambia, as they are considered to have settled in the country around 1200 A.D,[100] but they appear to have no traditions that indicate their origin. Colson (1962) states that before the Europeans came, the Tonga formed a "stateless society with no political system which could weld them together into a common body".[101] They had no headman or chief holding a position of authority. Each person lived in a neighbourhood where his duties and rights in the community arose from the fact of his residence alone. The *Mwinicisi* (*Mwini* =

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[99]I. Cunnison (1959) The Luapula Peoples of Northern Rhodesia: Custom and History in Tribal Politics, (Manchester: Manchester University Press), p. 183.

[100]R. Hall (1965) op. cit. p. 11.

[101]E. Colson (1962) op. cit. p. 106.

owner or possessor; *Cisi* = region or country) leader was believed to be the first person to have settled on that piece of land. *Cisi* is the word used to refer to the rain-shrine communities, their main form of residential organization above the village level as a neighbourhood (Colson 1962).

There was no family relationship between the ruler and the ruled - the *Mwinicisi* (headman) of the neighbourhood and his subjects. Each person was related to others in various ways: some were his sons or daughters; others were his matrilineal kinsmen, wives of his sons or his sisters; some were related to him through his father, and others as strangers who had come to live in that neighbourhood. Upon marriage a man was free to leave the village and settle anywhere as long as the local *Mwinicisi* accepted him.

The only group that influenced an individual's life was a small family group, as will be discussed in the next section under social organization, composed of those who considered themselves to have descended by matrilineal links from a common ancestress. These were known as the matrilineal kinsmen, "who recognized their obligations and rights and joined in common action".[102] It was this group which gathered to protect a member or to seek vengeance for some offence against him; where necessary, it also posed as a united front against a similarly mobilized unit. Colson (1958) notes that, when a member killed another, no vengeance could be taken nor compensation paid, for all members of the matrilineal kinsgroup were bound equally to the murderer and to his victim. This group was liable to the

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[102]ibid. p. 107.

victim's father's kinsmen, but the father was also related to the offender in another set of relationships, perhaps as brother-in-law or in another kinship relation, which will not entail the father's kinsmen seeking vengeance. These were the inter-relationships which helped to control members of the community. Each individual was integrated into a number of different systems of relationships in a locality, which overlapped. A person who tried to enforce an obligation against one set of relations was faced by the counterclaims upon him of other groups, with which he must have also interacted. This also enabled elders of the clan, when called upon to settle disputes, to exercise their impartiality because they were faced with the cross-cutting of relationships, which had sought an equitable settlement in the interests of the social harmony or public peace. Gluckman (1955) notes that the consistency of Lozi law depended on the capacity of these relationships to serve many interests, and termed them "multiplex relationships".[103] He further states:

> ....Lozi constantly use political terms like chief and councillor, as well as specific titles of councillors, in kinship relations, and use kinship terms like father, mother, child, brother, in political relations. This identification expresses the manner in which face-to-face personal relations dominate Lozi life.[104]

Although the Tonga did not have visible political institutions in the form of headmen or chiefs, the multiplex relationships established in their neighbourhoods had an important political role in reducing conflicts and creating internal cohesion in the society.

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[103]M. Gluckman (1955) op. cit. p. 19.

[104]ibid.

There were and are bodies of rules which had to be observed by every member of the neighbourhood; violations of them were dealt with by the council of elders. The members of the neighbourhood were expected to participate in the rain rituals, as the neighbourhoods were divided into rain-shrine districts.

The individuals who failed to observe cult rules were brought before the elders and, if found guilty, were fined. Hoe-blades were paid as fines and placed on the floors of shrines. Others were fined chickens, goats or cows or tobacco; these were shared by the elders.[105] Colson (1949) notes that people who lived outside the cult district were expected to observe the rules which surrounded the particular shrine once they moved into that area; "and adherents to the shrine regarded any insult to it as an insult to the whole community".[106] Colson (1962) observes that although the rain shrines no longer held the allegiance of many Tonga, the local neighbourhoods continued and "to most Tonga the rain-shrines were of greater importance than the chiefdoms or the Plateau Tonga Native Authority which had been imposed upon the old structure."[107] This reflects the importance in Tonga life of rain rituals, participation in which defined the political community. Children were expected to know rain-shrines in their areas and to treat them as sacred places: not to cut trees or firewood around such places.

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[105]E. Colson (1949) "The Plateau Tonga of Northern Rhodesia", in Seven Tribes of British Central Africa, edited by Elizabeth Colson and Max Gluckman, (London: Oxford University Press), p. 154.

[106]ibid. p. 155.

[107]E. Colson (1962) op. cit. p. 2.

Table 2:1

NUMBERS OF CHIEFS IN ZAMBIA (1978)

Province	Paramount chief	Senior chief	chief	Total
Lusaka	-	2	5	7
Copperbelt	-	3	12	15
Southern	-	-	41	41
Central	-	4	29	33
Northern	1	8	41	50
Western	1	-	10	11
Eastern	2	6	43	51
N.Western	-	9	24	33
Luapula	-	8	30	38

Source: General List of Chiefs - January 1978: Lusaka: Government Printers

N.B: Paramount Chiefs

Eastern: Paramount Chief Mpezeni (Ngoni)
" Chief Undi (Chewa)
Northern: " Chief Chitimukulu (Bemba)
Western: The Litunga (Lozi)

2:2:3 The present chieftaincies

Under colonial rule the idea of chieftainship spread to the Southern Province and was adopted by the Tonga-speaking peoples on the encouragement of the colonial administrators. Table 2:1 shows the number of chiefs found in Zambia in 1978 and this number has not increased since then. Once a new chief is inherits the office, his appointment must be adopted by the government through a recogntion by the President.

The Table 2:1 shows that Southern Province has no senior

chief nor Paramount Chief. This indicates that all the chieftaincies in the Province were established by the colonial government. On visiting the chiefs' Palaces in Southern Province it was seen that there were no restrictions and that formal appointments were not required, as they are in other chieftaincies. In this study visits were made to Chiefs Simwatachela and Sipatunyana without appointments and personal interviews were held with them without any difficulties.

The country has 279 traditional chiefs who control rural areas and have the support of their people in most cases; they have influence on political matters, especially when it comes to elections of members of parliament: the aspiring candidates usually solicit the chiefs' endorsements for them to be successful. The centralised political system, with hereditary chiefs, formerly traditional among some Zambian societies, has now spread throughout the nation. The House of Chiefs is to be revived.

2:3 Social Organization

As noted in Chapter One, in terms of ethnicity, Zambian society is characterised by ethnic diversity, with over 73 ethnic groups, and sharp differences exist in terms of kinship systems or forms of organisation (matrilineal and patrilineal). The traditional societies of Zambia were basically matrilineal in their patterns of social organization, with the exception of the Lozi in Western Province, the Ngoni and Tumbuka in Eastern Province, the Mambwe and Namwanga in Nothern Province and Ila in

Southern Province, who all traced their allegiances and inheritance rights through their fathers' families. Among the Tonga, when a person died his nephews and his brothers were entitled to inherit his name and share his property, but now a son can inherit his father's name and is entitled to a share of the estate.[108]

However, each of these traditional societies was composed of a number of exogamous clans. Members of a clan were all kinsmen; they believed that they were descended from a common ancestor, even if his or her name and relationship to living people was no longer remembered. Individuals were expected to marry outside their clans, to avoid committing incest. The exogamous matrilineal clans varied in number from one society to another society and were called *mikowa* (mukowa in the singular) among the Tonga, Bemba and Lamba. There are, for example, fourteen clans among the Tonga;[109] thirty-two among the Lamba;[110] and thirty among the Bemba.[111] The clans were not regarded as totemistic, though they did bear totem names, half of them of animals and of important foodstuffs (fish, mushroom, porridge, millet). For example, the Bemba chieftaincy clan is *bena Ng'andu*

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[108]Personal experience and witnessed others inherit their fathers' names.

[109]E. Colson (1962) The Plateau Tonga of Northern Rhodesia: Social and Religious Studies, (Manchester: Manchester University Press), p. 106.

[110]C.M. Doke (1931) The Lambas of Northern Rhodesia: A Study of their Customs and Beliefs, (London: G.G. Harrap & Co. Ltd.), p. 193.

[111]A.I. Richards (1949) "The Bemba of North-Eastern Rhodesia", in Elizabeth Colson and Max Gluckman (eds.) Seven Tribes of British Central Africa, (London: Oxford University Press), p. 178.

(the crocodile clan)[112], and the ruling class for the Lamba was the goat clan (*awenambushi*)[113].

Within this common pattern of custom and belief, there were regional variations. For instance, among the Bemba, Chewa, Luvale, Luchazi, and Kaonde, there was a corporate descent group. This was a matrilineal group tracing a common ancestry over four or more generations. It was a group that had corporate rights and claims to maintain against the claims of similar groups. It had collective rights to receive a share of bride-price money whenever a female was married and also a responsibility to contribute to the settlement of debts of members. In cases of succession the corporate descent group had to decide who was the rightful heir to a successional position (chieftainship or household leader). This group also decided who was to look after the children of a deceased man (Richards 1949, Roberts 1976).[114] It was always important for children to have somebody to look to as a father for guidance.

Marriages in most matrilineal societies differed from the typical *lobola* system of the Tonga and Ila of the Southern Province; in these societies the marriage contracts were fulfilled by the husband working for his in-laws for a certain period; such marriages were thus uxorical at their institution

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[112]A.D. Roberts (1973) A History of the Bemba: Political Growth and Change in North-Eastern Zambia Before 1900, (London: Longman Group Ltd.), p. 43.

[113]C.M. Doke (1931) op. cit. p. 194.

[114]The Luvale matrikin is in this respect more exact and broader because of the longer memory of genealogies of common maternal relatives. See C.M.N. White (1955) "Factors in the Social Organisation of the Luvale", African Studies, Vol. 14., No. 3.

and later became virilocal. The man had to leave his home and build a house at the wife's home for a certain period of service. During that period he had to make and fence the gardens of his in-laws. In short he had to prove that he was a hard-working and well-behaved man. Richards (1949) notes that the Bemba father counted his assets in terms of the number of sons-in-law whose services he commanded, rather than the number of his cattle and possessions. When the time came for the man to return to his own people, he informed his in-laws, who allowed him to take his wife and children, and he was escorted by the wife's mother. As Doke (1931) comments, the mother-in-law would in all probability make a suggestion to her son-in-law that "the days of his servitude have been sufficient".[115] However, in the societies which traditionally kept cattle, marriages were virilocal. The man had to pay bride-price of two cows or oxen or more as *lobola*. For example, the Tonga practised the *lobola* system for a long time, although they are a matrilineal society. Marriage payments among the Tonga from one family to another secured rights for a husband over the wife's labour, the right to control her movements and rights to her sexuality and her children.

The Tonga kinship system combines matrilineal descent with a strong emphasis upon a man's control over his marital family. Their old saying: "*Kweela lutanga a milibu kokweelela*" (crawl and children will follow...) symbolises a pumpkin plant: if you pull the plant its fruits will be drawn towards you. They usually use this saying when a person intends to marry another who might have previously married and had children; it reminds the proposer to

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[115]C.M. Doke (1931) op. cit. p. 170.

prepare to look after the children of the other party. The caring would not only be in providing food and shelter but also by instilling good manners in the children as he or she would do to his or her own children. This old saying is popular these days as people re-marry more than twice. Tonga marriages and the right to control children differ from other matrilineal societies, as *lobola* (bride-price) is demanded and paid and the woman immediately moves to the man's village.

Children in other matrilineal societies often remained with their maternal grandparents. The belief and understanding was that the father had little control over them, as he occupied an inferior position in the village during the early years of marriage life. Therefore, the maternal uncle had more power over them and a greater right to their services; he could even offer them as slaves in compensation for some injury done by a member of the clan. Ngulube (1989) points out that the matrilineal societies vested power over children in the maternal uncle because of a belief concerning the knowledge of the real father of a woman's children. The woman's capacity to conceive, and her exclusive knowledge about who had fathered which of her children, gave her lineage the right to influence their socialization and adaptation to the regulations of the family and society's pattern of life. He further says:

> The maternal side with its pride in possessing the secret knowledge about the real fathers of the woman's children gained control over the paternal side. Since the maternal side had also gained authority through that secret possession, and because the culture demands that women should not override men in authority, power and authority were therefore delegated to the woman's brother. Herein lies the origin of the uncle's significance in matrilineal

societies.[116]

This was the reason why maternal uncles in traditional societies were able to establish their own villages, and even develop them into chiefdoms. It was noted in Luapula, among the Bemba, that a man who established a permanent marriage would build a community. To begin with, as a grandfather he gained what he had lost as a father. Since his daughters remained with him for some years following their marriages, he built up a grand-family composed of his daughters, their husbands and their children. This at times included his sisters' sons and their wives and children. This led him to accumulate substantial amounts of wealth himself and to gain great influence in the community.[117] This communal life provided social insurance: members helped each other in routine daily activities and in sickness and together ensured that children were taught the moral codes of the society through the networks of links provided within the communities, regardless of clan or kinship ties.

The powers of the maternal uncle were not absolute, as the father had certain rights over his own children. He was consulted if his daughter was to be married and he had the right to distribute the bride-price paid among the matrilineal group and his kinsmen. He had to perform a marriage rite at his daughter's wedding ceremony. The son-in-law worked for him during the servitude period. Children were and are also free to choose where

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[116]Naboth M.J. Ngulube (1989) Some Aspects of Growing Up in Zambia, (Lusaka: Nalinga Consultancy?Sol-Consult A/S Ltd.), p. 3

[117]Karla Poewe (1989) Religion, Kinship, and Economy in Luapula, Zambia (Lampeter: The Edwin Mellen Press), p. 39-48.

to settle when they grew up, whether at the father's home or at the maternal uncle's.

2:4 Economic Activities

The economic activities of traditional societies usually involved the use of simple tools which were typical of the Bantu communities in less complex environments. The basic tools were the hoe, the axe, the hunting-, war- and fishing-spears and the knife (Smith and Dale 1920; Doke 1931; Richards 1949; Gluckman 1955). They were either predominantly pastoral or agricultural, depending on the environment. Most parts of the country were fairly well watered, with several lakes, major rivers and flood plains. The north-eastern societies were settled on the high plateau with poor soil for agriculture, while in southern, central and eastern Zambia the woodland soil was adapted for cultivation. The Kafue Flats and the upper Zambezi flood plains were enriched annually by alluvium deposited by these two big rivers, encouraged cultivation and provided grazing for cattle.

The peoples who settled around the major lakes and rivers had as their major activities fishing and farming. For example, the Lozi of Western Province along the Zambezi river; the Bemba of Luapula and the Kazembe Lunda along the Luapula river; the Chikunda of Eastern Province along the Luangwa river. Cunnison (1959) notes that the Lunda under Kazembe had become the owners of the swamps and valleys in Luapula and controlled the fishing in these areas.

Maize, millet, sorghum, groundnuts, cassava and sweet

potatoes were the main crops grown by most societies. Writing on Ngoni marriages, Barnes (1954) shows that men were not renowned for cultivation, but for other crafts. The Bemba are known for the traditional form of slash-and-burn cultivation called *citemene*: every year branches of trees were cut, piled up and burned, to fertilise small clearings with wood-ash; seeds of finger millet or kaffir corn were sown in the ashes formed.[118] This agricultural activity was preceded by a ritual ceremony led by the chief before sowing took place.

The Tonga, Ngoni, Lozi and Ila are cattle-keepers. Barnes (1954) notes that at the time of the war between the British and the Ngoni in 1889, the Ngoni had an estimated herd of cattle of about 20,000.[119] Colson (1962) points out that cattle were not regarded as an economic asset by the Tonga, although they got milk from them, made their hides into thongs for ropes and ate the meat when one of them died. Such practical utility did not determine the importance of their cattle to the Tonga:

> They admired and extol cattle for beauty of form, strength, and size, and cows for their reproduction records.[120]

Today in the villages ploughing is mainly done with oxen: the well-to-do own tractors and others hire tractors to plant their fields. It is rare to see people use hoes to plant, but hoes are used to weed crops in the growing season. Maize is mainly grown as a staple food crop and for cash whenever there

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[118]A.I. Richards (1949) op. cit. p. 167.

[119]J.A. Barnes (1954) Politics in a Changing Society: A Political History of the Fort Jameson Ngoni, (London: Oxford University Press), p. 93.

[120]E. Colson (1962) op. cit. p. 141.

is a surplus, although cassava is considered a staple food crop in Western, North-Western, Luapula, Northern and Copperbelt Provinces. Other crops are grown if the family wants to generate more income, including sweet potatoes, groundnuts, beans, okra, cabbage, tomatoes and onions. Nearly all households keep chickens, as they are traditionally important in initiation ceremonies and ancestral offerings.

It is necessary to assess how children are integrated in economic activities which are considered vital in the society, as social status was traditionally determined by a man's possessions. The child's basic role in a traditional society is to learn, to acquire traditional skills and absorb basic norms for the continuity of the society; he or she helps in every activity that produces food and income for the well-being of the family.

This study observed the activities of children during the research in Chief Simwatachela's area of Kalomo district of the Southern Province. In this area maize is the major cash-crop grown and the people are traditional cattle-keepers. Informants often stated that cattle are kept as potential cash security, for use in ceremonies (funerals), for farming and for *lobola* (bridewealth payments) when their sons get married. They formerly had much larger herds, but as a result of corridor, mouth and foot diseases herds have reduced in numbers compared to the 1970s and the early 1980s. There were found three heads of household with over 200 head of cattle; others had not less than 20 heads each. One informant visited had a grinding mill, a tractor and

a good burnt-brick house with corrugated iron sheets.[121] In the area there are three stores selling sugar, detergents, bath- and washing-soap, salt, kerosene, some canned food, blankets, clothing, etc.

The agricultural work observed in this study involved planting, fertilizer application, harvesting, herding cattle and, on a small scale, weeding. The boys spend most of their time on cattle-herding while the girls are involved in domestic activities (cooking, collecting firewood, drawing water from streams or wells and looking after the younger children). The boys assist in repairing or erecting kraals and running errands.

The daily activities (for the rainy season) begin early, before sunrise. The boys go to the kraal to collect the oxen and bring them to the yokes, attach ploughs and proceed to the fields. Their fathers follow behind to the fields. The bigger boys handle ox-drawn ploughs, while the younger ones assist by leading in front of the oxen. Other boys take cattle to graze.

Girls aged about six were seen helping their mothers to draw water. They clean the houses and cook food to be taken to the fields, and porridge for the small children and for the school-going children who attend morning sessions. They accompany their mothers to the fields and assist by carrying food, maize-seed or any other seed crops to be planted. The girls assist their mothers in sowing. The young children remain at home and look after their baby brothers and sisters, taking care of the household effects from goats and other domestic animals and ensuring that maize flour is not eaten by chickens.

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[121]Mr Jeremiah Mungalanga

While working in the fields the families take a break for food or allow small children to have a break. Children are allowed to have a meal during this period. Field work usually ends between 13.00 hours and 14.00 hours; the father walks home with his son or sons, and at times the whole family walks together. One of the sons usually remained to look after the oxen. The mother and daughter or daughters started looking for pumpkin leaves or other vegetables from the fields or gardens. The women and girls prepared lunch for the family. Men and boys carried out some house maintenance or other work while waiting for lunch.

After lunch girls continued domestic activities, while boys at times joined those other boys looking after cattle. They played with steers which have not yet been brought to yoke, with a view of taming them. This is a popular activity among the Tonga-speaking peoples and it is usually done by boys. If the boys were not taming steers, they went out hunting with dogs, or fishing using hooks. This activity is a traditional role of men as breadwinners, providing special relishes such as meat and fish. From mid-April they use *koonze* (*toonze* - plural traps) to catch a variety of birds that include guinea fowl and doves. It is usually done in the fields after the harvesting of groundnuts and maize. In old days they used bows and arrows, but now boys use catapults to kill birds. It was a common to see catapults hanging around the necks of boys.

It is a common feature these days in Zambia to see crops being sold by the road-side of most major highways joining cities and major urban centres. These crops are generally bought in bulk

by marketeers from towns who re-sell them to consumers at markets in urban areas. The road-side marketing of crops is usually done by women and girls; sometimes small boys assist their mothers to sell.

The maize is marketed to the Cooperative Marketing Unions and the millers. The money received from the sales of maize and other crops is kept as family income. The children do not expect to be paid wages, but expect new clothes at the end of the season and their school requirements to be bought. Most boys interviewed expected their fathers to pay *lobola* when they get married. Boys are encouraged to earn and retain money from sales of fresh milk as a reward for their agricultural labour. They decide the quantity of milk to be retained in the family and the quantity to be sold. The sale of milk supplements the family income. Boys are often consulted when a father intends to sell a cow or an ox, and then their views are taken seriously.

2:5 The Family

Most Zambians belong to the extended families of their respective kinship groups (as discussed above under social organisation). Such a family may consist of a man, his wife or wives and such unmarried children as live with them in one household. The family may also include some older persons -a parent, widow or widower or a divorced person who has come with his or her small children to live with relatives in a household. Within the family there may also be young children who are reared by the family: including grand-children, children of one of the

spouses or children of even more distant relatives. The family is therefore regarded as a central focus of social life and the community provides a person both with identity and with a certain amount of protection and support throughout his life, by mutual aid and assistance which spring from personal interaction. As I. Schapera (1940) points out:

> ....in the old days many of the activities making up the culture of the tribe were centred in the family. It was the outstanding reproductive, economic, educational, and religious unit; it regulated sexual relations; it was the basis of legal and administrative functions of a tribe; and it was the unit of domestic life....[122]

This means that the family unit was and is an important institution in society: it played and plays a vital role in teaching children the norms and values of the society for the purpose of social solidarity. A child learns the ethical and legal principles of the society within the family. The contemporary writers on indigenous African education argue that such education is essentially an "education for life" and it is largely informal.[123] The children were taught to be self-reliant.

A Zambian family structure adheres to a very complicated system of kinship within the extended family. In tribal society people have several fathers, mothers, and grandparents, as well as many brothers and sisters. On domestic etiquette, Skjonsberg (1989) notes that the vernacular term for "mother" (in Tonga "baama") includes the biological mother, her co-wives, her

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[122]I. Shapera (1940) Married life in an African Tribe, (London: Faber), p. 342.

[123]G. Brown and M. Hiskett (1975), Conflict and Harmony in Education in Tropical Africa. (London: George Allen & Unwin Ltd), p. 65; see also Chapter 24 in the same book.

sisters, step-mother, and the father's brothers' wives, and "father" includes the biological father, his brothers and the mother's husband if she remarried; and this group of people is addressed as, and accorded the respect given to, a mother or father as the case may be. The term for "uncle" (in Tonga "acisha") referred to the mother's brothers only.[124] Thus, the offspring of all these "fathers" and "mothers" are regarded as the child's "brothers" and "sisters". He can go and live with any of them and demand any reasonable assistance from them; such demands are usually honoured. For example, a person is responsible for the school expenses of his father's brother's son, in the same manner that he would be for his own son.[125]

The importance accorded to children in traditional societies of Zambia is indicated by the welcome given to a new-born baby by the community, shown by the customs normally practised.

When two persons married, they were regarded as being in transition to adulthood; their respective parents still had some control over them. The couple established a household which was under the direction of the matrilineal or patrilineal group (as the case may be) of which the husband was a member (eg. Tonga, Chewa and Bemba). The group had an interest in the maintenance

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[124]E. Skjonsberg (1989) Change in an African Village: Kefa Speaks, (West Hartford, Connecticut: Kumarian Press), p. 124.; K.D. Kaunda (1966) A Humanist in Africa: Letters to Collin M. Morris from Kenneth D. Kaunda, President of Zambia, (Nashville: Abingdon), p. 27. But these days in urban areas it is being used loosely, where girls with many boy-friends would introduce some of them to their children as their uncles, especially if the man will just spend a night at the woman's place.

[125]This situation is commonly witnessed in urban areas; personal experience: most families known to the researcher have members of extended families as dependants.

of his household, since it formed a part of his estate in which the group had rights of inheritance. The couple were observed in their day-to-day activities by the family members in the community. This practice still exists as a divorce in a local court cannot be entertained unless there is evidence to show that parents or other elders tried to reconcile the parties. Ngulube (1989) notes that the real test of the marital relationship came with the first pregnancy:

> ...Even the real adulthood of a woman was to be seen and understood in this context. For to be a mother, one was to be a mother in her head too, otherwise she should not be a mother at all....Married life was a kind of existence and testimony for the fullest existence was parenthood. Children transcended all other things and made it possible for marriages to go on until the couple was as one, blood relatives bound by a blood line of wordless togetherness. It was children who brought couples a greater base on which to agree.[126]

After the birth of the first child the parents dispense with their own names and begin to be called (in Tonga) *bina-* or *wisi-* (name of the child), meaning the mother of so-and-so- or the father of so- and-so respectively. The acquisition of such a title attracts much prestige and proves that the parents are fully accepted as adult members of their community. A couple who remain for a year or two without a child become miserable and are forced to look for medicine from a witch-doctor to cure their barrenness or impotency. In this study it was found that traditional herbalists in Lusaka townships are frequently visited by young women, seeking medicine to cure their barrenness,

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[126]Naboth M.J. Ngulube (1989) Some Aspects of Growing Up in Zambia, (Lusaka: Nalinga Consultancy/Sol-Consult A/S Ltd), p. 20-21.

sometimes accompanied by their husbands.[127]

On the birth of the first child there is joy in the community and the good news is passed to relatives in distant places. Women relatives come to see the new-born baby bringing food-stuffs for the mother, who stays indoors until the umbilical cord is removed from the child; during this period she cannot prepare meals for anyone except the baby. The husband is cared for by his mother or another relative in the locality. The couple receive communal assistance in the form of guidance as to child care, and traditional medicines are brought for the child before it is medically cleared to be handled by anyone other than the mother.[128] Among the Tonga, if a child is a boy visitors tell the father that his wife has given him *sing'ombe* (a cattle herder); this symbolises the social responsibilities a child is expected to fulfil.

Such communal assistance was seen to exist in modern Zambia in the study recently conducted by Poewe, who remarked:

> The striking features of Luapula's matrilineal descent organization are those which try to counteract enervation and high mortality rates by guaranteeing fertile members access to adequate amounts of food and to fertile sexual partners. Luapulans are members by birth of corporate matrilineal descent groups.[129]

The joy was considered necessary because of the dangers that threatened the life of a new-born child and contributed to the high mortality rate. So many lives were lost through premature

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[127]Informants: Herbalists N. Nawa and S. Semeka of Matero and Kalingalinga townships, respectively.

[128]ibid., p. 22.

[129]Karla Poewe (1989) Religion, Kinship, and Economy in Luapula, Zambia, (Lampeter: The Edwin Mellen Press), p. 39.

births, still-births and even deaths shortly after birth. The children who survived were cared for attentively and they also had to contribute in turn to the families' existence. It is appropriate now to examine the role and socialisation of children in traditional society.

2:6 The Role and Socialisation of Children

Village solidarity was and is exhibited at traditional ceremonies, where all members of the community had to participate in the communal rites, contributing food and even brewing beers for the rituals. As well as offering sympathy and help when a member was in need, it was the duty of family members to give him advice and to persuade him or her to act wisely. Parents were under an obligation to ensure that their children were brought up properly, acquired wisdom in the ways of the community and learned to live with other people. Wisdom could be acquired from the elders of a particular community. It included neighbourly behaviour, dignity and respect for law and custom, but it discouraged boastful or quarrelsome conduct.

2:6:1 The child and the grandparents

In traditional societies family members were inherently responsible for the care of their needy kin, although they had to extend their means of support for the benefit of their numerous fathers, mothers, grandparents, uncles, brothers and sisters and not forgetting uncles, aunts and cousins. Kaunda

(1966) elaborates on the role of the family, rather than the State, in caring for the elderly:

> The idea that the State or some voluntary agency should care for the aged was anathema to me, for it almost seems to imply that old people are a nuisance who must be kept out of the way so that children can live their lives unhampered by their presence. In traditional societies elderly people are venerated and it is regarded as a privilege to look after them. Their counsel is sought on many matters and however infirm they might be they have a value and constructive role to play in teaching and instructing their grandchildren....They are embodied wisdom; living symbols of our continuity with the past.[130]

This quotation implies that in the early stages of the child's life, socialization depends significantly on his or her grandparents, and there is also a reciprocal responsibility to support them in return.

During the period of childhood, between weaning and entrance into the sleeping hut of unmarried boys and girls, children were mostly with their grandparents, especially grandmothers. The duty of the grandmother was to provide the grandchild with food, protection and shelter. Bruwer (1948), in his study of the Chewa, remarked that children received a great deal of fostering and education, and as a reward grandchildren provided their grandparents with a proper burial.[131] When they grew old enough they were taught specific trades such basketry and pottery. Children of appropriate ages played a big role in their grandparents' lives; for example, girls were required to grind maize or millet, cook, draw water from the stream, collect

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[130]K.D. Kaunda (1966) op. cit., p. 26.

[131]J.P. Bruwer (1948) "Kinship Terminology Among the Cewa of the Eastern Province of Northern Rhodesia", African Studies, (December 1948), p. 186.

firewood and clean their grandmothers' huts. The boys would be sent on errands, to cut firewood, hunt for honey and kill birds or rabbits for their grandmothers. They would be sent to collect reeds for making mats from the forest or to carry them on behalf of their grandmothers. Children did many small jobs for their grandparents.[132]

This study supports those earlier studies; in most of the households visited in Chief Simwatachela's area grandparents were looking after their grandchildren. It was a common sight to see small girls with their grandmothers carrying tins of water from the streams and at other times in the fields searching for wild green vegetables, wild fruits, mushrooms etc. At one village a girl after giving us stools and greetings stated:

> Babeene tabakuboni, alimwi tabakwe matwi kamwambizya (my grandmother is blind and deaf, therefore you must raise your voices while speaking).[133]

This shows how concerned the young girl was for her grandmother, by letting visitors know how to communicate with her. She thereafter informed her grandmother that there were visitors and then give them her greetings. Such a caring attitude was strongly shown towards their aging grandparents by the children, who attended to all their needs. In the case of girls, this prepares them for womanhood activities, i.e cleaning the house, cooking and maintaining kitchen utensils. Girls do not take formal courses in housekeeping. The grandparents in return instil

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[132]Clement M. Doke (1931) The Lambas of Northern Rhodesia: A Study of Their Customs and Beliefs, (London: George G. Harrap & Co.), p. 140.

[133]The child was found at Mr Jeffrey Muchindu's home and her name is Juliet.

cultural values through reciting oral traditions (discussed later in this Chapter) to their grandchildren. For instance, a grandparent would sing a song of praise or utter a proverb to encourage the child in what he or she has done. In doing so they alter the relationships between them, as proverbial statements influence each of them. In these traditionally communicative events there occurs a gradual reordering of roles and relationships simultaneously in the community. The child considers that he or she plays an important role in the society and must not deviate from the recognised social responsibilities for a good future life. The grandparent also feels that he or she has discharged the social obligation of transmitting cultural values to the young generation and at the same time receives caring from the society in his or her own home, instead of a state-owned institution ("home for the aged").

2:6:2 The child and the parents

Parents' instructions were carried out by their children concurrently or complementarily with those given by grandparents. Parents carry out this responsibility informally, although there was also some more formal education at the temporary initiation camps organised for adolescent boys and girls in society (discussed later); they instruct the child in certain skills such as drawing and carrying water from a stream, collecting firewood, collecting clay for making pots, and so forth. There was no systematic programme of training nor any formal time-table; parents instructed their children as the occasions arose in the

daily life of the community.

A common sight in the villages was of a girl looking after a baby brother or sister, little younger or smaller than herself.[134] As she grew older she was given more duties. Adult tools, too heavy for a child, were cut down or substitutes were provided; "a worn-out hoe, a small water pot, a short pestle and a wooden milk bucket in place of a mortar, were given to her".[135] There were other skills which required to be taught in simple and systematic instruction: for example, making baskets; pottery and woodcrafts and also domestic etiquette; for these proper instructions were given. Children were taught all these as necessary preparation for adulthood. Ngulube (1989) states that the whole process of socialization aimed at "producing well adapted children who could carry on the customs and values of the society".[136] Marwick (1952), writing about the Chewa, considered that child socialisation was aimed at behavioural ideals, as he stated:

> The most important traits of the child are: willingness to be sent on errands; non-violent; and, in case of little girls, being careful of property, especially pots....In everyday life Cewa constantly sustain these models of behaviour. They reprimand children who refuse to go on errands or who break pots, and quickly separate those who fight lest their

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[134]A boy did this task if there was no older girl in the family, as the present researcher carried his brother and sister on his back while the mother was working in the fields and doing other household activities.

[135]Barrie Reynolds (1968) The Material Culture of the Peoples of the Gwembe Valley, (Manchester: Manchester University Press), p. 221. The book based on the study of the Gwembe people of Southern Province during the period between 1955 and 1957.

[136]N. Ngulube (1989) op. cit., p. 179.

parents should join in.[137]

In this way many tasks were learned and mastered by a child as he or she grew up - such as household manners, attitudes towards property and elders, proper language expressions, domestic and field work and general behaviour towards other members of the community. In short, this informal training for life countered any tendencies towards deviation or delinquency.

However, there were and are some specialised tasks that took on a sexual bias as children grew up and prepared for their future adult roles. These involved more serious training from their mothers or fathers. When boys began to move into their fathers' sphere of influence, they received specialized instructions. For example, the Tonga, who are one of the cattle-keeping societies, taught their sons the system of care and herding of cattle. As Colson (1962), in her study of the Tonga in 1947, observed, the herding arrangement in 1913 was considered an ancient custom, and Tonga leaders informed government officials:

> It would not be possible to tell you how many cattle we have because no man keeps all his cattle in own village. He herds the cattle of others and others herd his cattle: it is our custom of long standing. But we have many.[138]

Children learned such practices and the role of cattle in Tonga society. As pointed above the Tonga valued their cattle not for the milk and meat they provided, but in a social context and for

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[137]M.G. Marwick (1952) "The Social Context of Cewa Witch Beliefs", Africa, Vol. 22 pp. 120-135 at 134.

[138]Quoted from a report by the Secretary for Native Affairs written in 1913, cited by E. Colson (1962) The Plateau Tonga of Northern Rhodesia: Social and Religious Studies, (Manchester: Manchester University Press), p. 134-135.

rituals that dramatized social ties. Cattle were (are) used for bridewealth as an important element in the series of transactions which created a new family group. They killed a beast to celebrate a girl's initiation ceremony as she entered into the status of a marriagable woman.[139]

In this study it was found that boys in Chief Simwatachela's area have control over the supply of milk in the family, as they have to decide how much is to be consumed in the family and how much is to be sold to raise the family income. It was also observed that when a father went to town to do some other business, he would delegate all farming and other work activities to his oldest son, who in turn supervised the members of the family, including their mother. This particular son was to decide which oxen and farming implements to use, and the time for working. This prepares the son for the social responsibilities he would take over from his father; in this cash-crop economy he would control the father's estate after his death (in place of the nephew or other matrilineal kinsman, who formally did so, as shown above under social organisation). A boy who is entrusted with social responsibilities would grow up as a responsible man and become more self-reliant; the chances of him becoming a delinquent were slight. For instance, what Lucy Mair recorded for the Baganda in the early nineteenth century is true of the traditional societies of Zambia. At a conducive moment, whether out on the farm, relaxing under a big tree or walking to some distant place, a father would feel gratified to talk to his maturing son:

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[139]ibid., p. 141.

> Be sure to know your relatives, so that you need not be afraid to stand up for your rights. Do not refuse to pay a debt, if you do you have no one to lend you, or redeem. Do not commit adultery, but love unmarried women who have no husbands. Do not betray a blood-brother who is hiding in your house. Do not steal, except in war. Do not listen to your wives telling tales of one another, or you will be left alone.[140]

Such words of wisdom embrace many aspects of what the parent believes will be vital to his son's knowledge as he makes his way towards maturity and enters the life of dilemmas and risks. It is a warning to the son to know his relatives so that in the absence of the father due to death or some other reasons, the son would know from whom to solicit help or support in defending his rights at the time of sharing the estate of the deceased father, especially in modern Zambia where children are no longer in a subordinate position when it comes to the inheritance of their fathers' estates[141] and such understanding enables children to live peacefully with their relatives.

As children grew older, the clan elders, male and female, began to confide in them the vital wisdom relating to the assistance to be accorded to kinship or clan members, the recognition of relatives and acting honestly towards fellow-members of the community. Such teachings and instructions were extended beyond the family levels to include the lineage and clan

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[140]Lucy Mair (1934) An African People in the Twentieth Century: Buganda, (London: G. Routledge and sons), p. 66. This statement reminds the present writer of his late father's words uttered in July 1962, when the writer was being escorted to a Mission Boarding school to enter standard three (Grade V): "You have left the village behind with your mother and me as your father, you will meet and live with different people. You must choose an honest person as a friend who will attend to your needs and nurse you, before we hear of your illness, and be honest to him and others...."

[141]The Intestate and Succession Act No 5 of 1989.

of three or four generations. The clan members involved were and are aunts and uncles of each individual who are part of kinship units and are thought of as being the most effective sources not only of social cohesion but also for transmitting social norms and cultural values to the younger generation. For example, aunts are responsible for the instruction of girls in secluded initiation ceremonies: they appoint instructresses and decide in whose house a particular girl will be kept while under instruction. Among the Luvale and Lunda uncles are responsible for boys' *mukanda* initiation ceremonies. These are the clan elders whose responsibility was to ensure that every child of a particular clan was instructed in the proper customs and practices of the larger ethnic group, and was taught the history and the relationships between the clan and the larger group to which the clan subscribed.

In order to understand a child's role and upbringing in the traditional setting in Zambia, we shall examine Tonga oral traditions, which usually function as ideological charters expressing the society's values and as legal codes reflecting the way people's lives are ordered and how individuals or groups resolve conflicts between them.

2:6:3 Oral traditions

2:6:3:1 General discussion

It is not intended to review all the well-documented

literature on oral tradition,[142] but to examine that which specifically relates to child socialisation, especially the educative aspects. Finnegan (1970), in her attempt to narrow the gap between written and oral literature, divided oral literature into three main categories: songs; prose, comprising narratives, proverbs, riddles and oratory; and drum language and literature, with drama. Whiteley (1964), providing a text for various genres of oral African tradition, selected prose from various parts of Africa, (including East, West, Central and South Africa); his aim was to preserve oral literature that was representative of African tradition. Makouta-Mboukou (1973), in her discussion of proverbs, folk-tales, riddles and songs, argued that oral literature was for the people, while written literature was for the privileged - she called it "elite literature", since it was restricted in access to those with the means to attend school and to buy books. Whereas oral tradition was offered freely and was easily accessible: it was a social responsibility for the elders to ensure that children were taught tribal traditions, which were passed from generation to generation by word of mouth. The method of transmission from one generation to the next is usually by testimony. As Vansina (1965) points out:

> The transmission of oral traditions may follow certain definite rules, but it may also be a completely

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[142]For more information on oral literature in Africa, see: Ruth Finnegan (1970) Oral Literature in Africa, (Oxford: Claredon Press); Wilfred H. Whiteley (1964) A Selection of African Prose 1: Traditional Oral Texts, (Oxford: Clarendon Press); Oladele Taiwo (1967) An Introduction to West African Literature, (London: Thomas & Sons Ltd.); Jean Pierre Makouta-Mboukou (1973) Black African Literature: an Introduction, (Washington, D.C.: Black Orpheus Press); Kevin B. Maxwell (1983) Bemba Myth and Ritual: The Impact of Literacy on an Oral culture, (New York: Peter Lang).

> spontaneous affair....This may be done either by training people to whom the tradition is then entrusted, or by exercising some form of control over each recital of the tradition. Though the form of esoteric knowledge is of a special group and employment of mnemonic devices may contribute towards ensuring accurate repetition of traditions.[143]

This statement demonstrates that in traditional societies there existed structured systems of education, for every community had a means of passing on to the young its accumulated knowledge, to enable them to play proper adult roles and also to ensure the survival of their offspring and the continuity of the community and society at large. African states have been urged to incorporate some aspects of indigenous African education into modern educational processes in order to harmonise the two systems and minimise any conflict that might arise (including legal education.[144]

Scholars agree that indigenous forms of education in structured systems existed in pre-colonial Africa.[145] Traditional education centred upon man himself, his environment (nature) and supernatural beings. The philosophy of education in traditional societies was aimed at preparing a child for all phases of membership in the community and for life in its all aspects; for it:

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[143]J. Vansina (1965) Oral Tradition: A Study in Historical Methodology, (Middlesex: Routledge and Kegan Paul), p. 31.

[144]G. Brown and M. Hiskett (1975), supra Chap. 24.

[145]Abdou Moumouni (1968) Education in Africa, (London: Andre Deutsch Ltd.), pp. 15 33. See also: Kofi A. Busia (1969) Purposeful Education for Africa, (Paris: Mounton and Company), pp. 13-18; Jomo Kenyatta (1959) Facing Mount Kenya: The Tribal Life of the Gikuyu, (London: Martin Secker and Warburg Ltd.), pp.98-129; David G. Scanlon (1964) "Indigenous Education: The Poro of West Africa", Traditions of African Education, (New York: Teachers College , Columbia University), pp. 13-26, 118-130.

> ....embraces character-building, as well as the development of physical aptitudes, the acquisition of those moral qualities felt to be an integral part of manhood, and the acquisition of the knowledge and techniques needed by all men if they are to take an active part in social life in its various forms.[146]

This means that the content of the education given was aimed at preparing a child for life, adulthood and good membership of society and it embodied all aspects of life.

In traditional societies a child's education started with the first days of his life through lullabies and songs. Most scholars agree that one of the commonest use of lullabies is to soothe a crying child or lull the child to sleep. Read (1959) gives the primary use of lullabies among the Ngoni of Northern Malawi as follows:

> The nurse girl jogged him (the child) up and down on her back and walked to and fro with him endlessly, crooning lullabies to soothe the baby.[147]

Kenyatta considered lullaby to play an important role in the early education of African children; he states:

> In these the whole history and tradition of the family and clan are embodied, and, by hearing these lullabies daily, it is easy for the children to assimilate this early teaching without any strain. This is one of the methods by which the history of the people is passed on from generation to generation.[148]

In their early lives, children listen to story-tellers who provide educational programmes as stories are told in the form of folktales, myths and legends. Purchas-Tulloch (1976) states that among the types of folk tales was the didactic tale in which

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[146]A. Moumouni (1968) op. cit., p. 29.

[147]Margaret Read (1956) The Ngoni of Nyasaland, (London: Oxford University Press), p. 58.

[148]J. Kenyatta (1956) op. cit., p. 100.

a moral was taught.

Children also learnt proverbs which served to impart the knowledge and wisdom of the society as well as its morals, ethics, norms and values. A child was warned or punished for deviant behaviour and was praised for doing something good. A child willing to be sent on errands was praised in song or in proverb. As Raum (1940) points out:

> When a child flies into a rage, when he lies or steals, when he is recalcitrant or violates the code of etiquette, when he makes an ass of himself, when he is cowardly, he hears his actions commented upon in the words of a proverb. And also when he is worried or grieved and again when merry and overjoyed, an ancestral adage is impressed upon him.[149]

Like proverbs, riddles also served an educational function. Riddles developed memory skills and were used in competitions among boys in the evening gathering as to the environmental things, birds and animals, through riddles as a test in nature.[150] These were also important in the development of a child's intellectual capacity and quickness of responding. An individual used proverbs and riddles in his daily life as he grew up and they were cited in the settlement of disputes as a means of reducing tension.

African oral traditions have been studied in Caribbean societies termed New World Africans (Paramaribo, Surinam, Haiti, Trinidad and Tobago, and Jamaica), and their persistence in these communities led the writers to refer to them as "African

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[149]O. Raum (1940) Chaga Childhood, (London: Oxford University Press), p. 217.

[150]R. Finnegan (1970) op. cit., 432. See also: Stephen A. Mpashi (1978) Uwauma Nafyala, (Lusaka: Neczam); Paul B. Mushondo (1958) Amapinda mu lyashi, (London: University of London Press).

survivals".[151] Purchas-Tulloch (1976) studied the Jamaican tales known as Anansi and showed that these are a survival of African oral tradition. With the evidence of African survivals in Jamaica, she concluded by saying:

> ...The presence of African ways of life in Jamaica despite the pressures of colonialism attests to the African having preserved many of his old customs, here, in the New World, the application being that these customs stemmed from Africa.[152]

Herskovits (1971), writing about the persistence of African cultural elements in Haiti, despite the pressures of the slave trade that had existed during that period, says:

> The cultural heritage of the African, it has been, was not a negligible one. In the entire area from which Africans were drawn it was of sufficient unity so that the differences between the behaviour of peoples was but a gloss on the deeper resemblances between their traditions.[153]

These survivals have persisted because it was considered necessary "to preserve and hand on the traditions of the forefathers."[154] If societies outside the continent of Africa seek to preserve their African heritage, it is imperative for African countries themselves to lead the way and develop their political, social, economic and judicial institutions on the basis of African cultural values.

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[151]Jean A. Purchas-Tulloch (1976) "Jamaica Anansi: A Survival of the African Oral Tradition", PhD Thesis, (Machigan: University Microfilms International), p. 10.

[152]ibid., p. 291.

[153]Melville J. Herskovits (1971) Life in a Haitian Valley, (New York: Doubleday and Company inc.,), p. 305.

[154]ibid., p. 306.

2:6:3:2 The Zambian situation

No previous study in Zambia has seriously considered traditional child socialisation as an important aspect of the prevention of delinquency in the pre-delinquent stage. The process of child socialisation, which was considered educative in other societies, provided a dynamic whole in which moral and character training, practical activity and tuition in oral, philosophical reasoning were inseparably intertwined. The clan elders (aunts, uncles etc.), in collaboration with the family members, especially fathers, mothers and grandparents, emphasized story-telling as an aspect of child training, in order to ensure the continuity of the good name of the family and clan, and thus the well-being of the whole ethnic group. Story-telling had a significant influence in moulding a child's character. This was how customs and oral traditions were passed on to successive generations. As Vansina (1965) observes, the transmission of oral tradition may follow certain definite rules, but it may also be a completely spontaneous affair left entirely to chance.

To illustrate the role of oral traditions in moulding individual behaviour in the Tonga community, lullabies, proverbs and other oral traditions which are functionally useful in child socialisation will be examined.

2:6:3:2:1 Lullabies

Lullabies are common in most African societies, being

commonly used to soothe a crying child and lull the child to sleep (Read 1959). In Tonga society, in the first developmental years of a child's life, songs aid the child in the acquisition of sensory-motor skills: standing, walking and running, and also in the recognition of environmental dangers. For example, when a child is seen to be standing for the first time, the mother, maid or any older person would sing:

> Wayima wayima ngokolole, njuza a kayembele ng'ombe. ngokolole; (He is standing, standing ooho, tomorrow he will go and look after cattle).[155]

The song indicates to a male child what his duties will be as he grows older: he will not only stand and walk within the village but will go in the bush and care for the cattle, the basis of the society's economy. For a female child the song would differ, referring to a woman's social responsibilities, including fetching water, firewood and working in the maize fields. Obviously in most cases lullabies reflect the division of labour and responsibility that exists in the society.

On one occasion a woman was observed holding a stick with a flame of fire on it and bringing it to the child to touch it, while saying:

> Teete teete teete mulilo ulapya (danger, danger, danger, fire you will be burnt).[156]

The child was allowed to touch it slightly: he started crying and was soothed. When the same instance was repeated the child moved his hand away and cried before the flame was too close to him. The song accompanied by danger indicate to the child that there

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[155]Personal interview with Mrs Mary Kachoka.

[156]The instance occurred at headman Chilundika's home.

are things that appear beautiful, but care must be taken before handling them. The child is exposed to fire which is very useful in a home, but has dangerous consequences if not handled with care.

2:6:3:2:2 Proverbs

Proverbs are a very convincing and traditional style of communication, which distil the accumulated life experience and wisdom of the previous generations in society. Nyambe Sumbwa (1993) has compiled Zambian proverbs of the Bemba, Tonga, Nyanja, Luvale, Kaonde and Lozi.[157] It is relevant to examine those Tonga proverbs which serve an educational function in child upbringing by passing on the morals, ethics, norms and values of the society.

A child is expected to show respect to all elderly persons and to emphasise this point the Tonga usually remind their children through an old saying:

Nyoko ngumwi (Your mother is one).[158]

This is often used to advise persons who show disrespect to other elderly persons who are not from their clan or family, that such attitudes are discouraged and it has a general influence on codes of behaviour. The respect accorded to your parents must be extended to other parents, who could assist you in time of difficulties. The respect is not only to your own parents but to

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[157]N. Sumbwa (1993), Zambian Proverbs, (Lusaka: Multimedia Publications).

[158]Informant, Headman Chilundika.

persons who are older than you. For example, it was observed that whenever an elderly person came to the men's communal gathering place, one of the elders gave his own stool to the newcomer and the next man in seniority gave his stool to that elder, and the process continued of giving stools to the next senior man down to the youngest boy who was forced to sit on the ground or on a brick or stone. This shows that the observance of seniority practised resembles the respect for rank practised in military circles.

A child who is often sent on errands without complaining is usually praised and even given a reward, as an example to others, especially perhaps children who had refused to be sent. If the child returns from an errand with some food or item given to him where he had gone, he would be praised as follows:

> Sinkaaki kutumwa kokulya (A person who is sent now and again is the one who eats).[159]

This is used to encourage children to be helpful in the expectation of rewards, but it also reflects that there is nothing for nothing: if you want to eat do something, as supported by the sayings:

> Cibuye tapi na talipi ushile (A floor does not give) or Muzoka ulya kweendeenda (A snake eats by moving around).[160]

These proverbial statements remind children that laziness and idleness are not rewarded; nothing can be achieved except through productive work. It urges children to work hard and to gain

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[159]Informant, Headman Chilundika, and most informants referred to it.

[160]N. Sumbwa (1993), supra., p. 77. Informants also referred to it and it was popular, and personal experience the present researcher knew it from childhood.

necessary advice through meeting with people. It also teaches individuals that initiative is essential in day-to-day life.

In encouraging initiative the Tonga require children to participate in decision-making or to contribute to whatever is being done or discussed. An elder would call a person who is considered to be young in a gathering to comment or contribute to the discussion by saying:

> Maanu alazwa amukasuumbwa (Wisdom can come from a small ant-hill).[161]

Children are encouraged to give their opinions on certain matters: for example, they are consulted on the sale of cattle, as to which they think are productive and should not be sold.

Informal socialisation by such means as proverbs also discourages deviant behaviour and encourages children to be law-abiding citizens. Stealing is always condemned and children are advised not to take other people's property. Many informants expressed their views in the saying:

> Doombe kumbila bubi bwadombe kumba (Man ask for help, the bad part of a boy is stealing).[162]

Children are advised to take pride in asking for something rather than taking it without the owner's knowledge and consent. It is more shameful to be labelled a thief, than to be called a beggar. Boys are advised to be honest with other people's property. In furthering honesty, children are told to be trustworthy and to speak the truth:

> Simuluula donda uluula lyaamucisa (He who speaks of a big sore, talks about the one he once had) or

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[161]Personal experience, learnt from childhood, although was repeated by informants.

[162]Informant: Mr Jeremiah Munyandi (Headman Chilundika).

Zyakotaabende takululwi nkaka (Where you were not there you do not give a detailed story).[163]

Children are asked to speak from experience and discouraged from speaking of things of which they do not have personal knowledge. This reduces rumour-mongering and lying. Children should grow up as honest people who would tell the truth and avoid gossiping.

Mponi-mponi mulozi simulaka ujaya cisi (A witch is better; one who talks too much kills a nation).[164]

Gossiping is worse than the bewitching because the witch may kill one person while gossiping and rumour-mongering can cause disunity and disruption in society. This reflects the traditional objectives of maintaining social harmony and solidarity; this unity can be destabilised through gossip and the spreading of lies.

Children are discouraged from getting involved in fights or violent acts.

Suntwe mowa nguuwongola (A cowardly hyena lives longer).[165]

It is better to be called a coward than to get involved in fights. They urge their children to avoid mixing with deviants.

Simweenda aumineme ayebo ulaminama (Associating with a bad person makes one bad).[166]

It is important for children to choose their friends from among those who abide by the norms of the society. This recognises the principle of separation applied in modern juvenile justice

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[163]Informants, Mr Noah Mujuku, Joseph Kachota and Samuel Munakanyemba (Chief Sipatunyana).

[164]N. Sumbwa (1993), supra., p. 78.

[165]Informant, Mr Samson Sikaale.

[166]ibid.,

systems to avoid the contamination of juvenile offenders by adult criminals.

The Tonga furthermore teach their children not to indulge in bad practices that would lead them in trouble, informing them that even if not caught on the first or second instances, repetition increases the likelihood of detection:

Sokwe kaamuleya katabi (A monkey missed a branch).[167]

Children are taught to avoid indulging in evil practices such as stealing, with the expectation of not being caught. The Tonga do not emphasise punishment as a deterrent, as most offenders view the chances of being caught to be low and feel safe to commit crimes. This saying reminds them that their career will one day come to an end when they will be arrested.

Children are also taught proverbs which they could use in future in defence of their cases or as court justices. These may be learnt in general talks or when they are applied in daily lives, but also in evening discussions with the elders.[168] When a person is brought before a court for committing a crime, he may be very depressed and apprehensive. His supporters or sympathisers may say to him:

> Sileti mulandu wakafwida mwinda (A person who does not commit a crime died in the womb).[169]

Conflicts are inevitable in society; a person is bound to differ with some other person at some time. The dead are the only people

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[167]Informant, Mr Benjamin Mukalanga; also found in N. Sumbwa (1993), supra., p. 69.

[168]One such evening discussion was attended at Mr Samson Sikaale's home, where his children and grandchildren participated in story-telling, and proverbs and riddles solving.

[169]Informant, Mr Samuel Munakanyemba (Chief Sipatunyana).

who could not misbehave and conflicts will always arise. This could also be addressed to the complainant, to cool his or her temper, indicating that today the offender has wronged him or her but tomorrow he or she might be guilty, as everyone at some time may find themselves in such difficulties.

A person refutes an allegation if he claims that he did not intend to harm or injure somebody:

> Kupwaya nsuwa mbutenzi (The calabash is broken by a person who slips).[170]

This is a defence of accident or involuntary conduct. This may show remorse for what has happened, admitting the allegation and asking for the matter to be resolved by reconciliation.

Proverbial statements embody moral prescriptions and reflect traditional wisdom as they supply traditional answers to recurrent ethical problems. A proverb prescribes in clear and simple terms a course of action which conforms with the community's values. As Maxwell (1983) states, although a proverb does not directly supply its referent, an alert listener could feel its moral sting in the conversational context.[171] For example, a chief or headman hearing a case, before passing judgment, would address the parties: "*matako aalamwi tabuli kunchumbana*" (two buttocks always rub each other); where there are people, conflicts or disagreements are bound to arise. This was a way of reducing temper between the parties and promoting reconciliation, in the name of social harmony. "*Bayazene bakalwanina mutwe wa sulwe*" (friends fought over a rabbit's head)

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[170]Informant, Chief Sipatunyana.

[171]Kevin B. Maxwell (1983) Bemba Myth and Ritual: The impact of Literacy on oral Culture, (New York: Peter Lang), p. 38.

means people are bound to differ and quarrel, but that does not mean the end of their relationship. A father warns a child who associates with a sorcerer or other bad company by saying: "*meno zifuwa*" (teeth are just bones); do not think that a person who smiles at you loves you.[172]

2:6:3:2:3 Story-telling

In traditional societies at appropriate times, usually in the evenings, mothers, aunts and grandmothers would gather children around the fire-places and recount traditional stories to them. These stories were considered to have had a powerful psychological influence, as they reflected moral standards and emphasized good behaviour and social conduct. Some of tales told were about the brave deeds of young children of the past.[173] Individuals were trained from childhood to pay attention to storytellers, and learnt that storytellers were people who could be trusted and believed. This oral education was given in narrative stories (*twaano*) which normally included songs, and conventionally conveyed a lesson to be learnt. These stories recounted ordinary events in the society, emphasizing that the

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[172]The proverbs given above are from the present researcher's personal experience; and informants Chief Sipatunyana, Mr Samson Sikaale, Mr Noah Mujuku, Headman Chilundika and Mr Benjamin Mukalanga.

[173]W.R. Mwondela (1970) Mukanda and Makishi in North-Western Zambia, (Lusaka: Neczam), p. 3.; For more information see, Kevin B. Maxwell (1983) Bemba Myth and Ritual: The Impact of Literacy on an Oral Culture, (New York: Peter Lang); John T. Milimo (1976) "A Study of the Proverbial Lore of the Plateau Tonga of Zambia", B. Litt. Thesis, (University of Oxford); Kalunga S. Lutato (1980) "The influence of oral narrative traditions on the novels of Stephen A. Mpashi", Ph.D Thesis, University of Wisconsin.

present-day reality was rooted in the past. At the attended evening discussions a typical story was told:

> A long time ago, one day a man together with his younger brother went to visit his in-laws at a distant village. They arrived very late in the evening when it was too late to prepare a chicken as relish for a son-in-law who visits for the first time. They were left to sleep without food being given to them, after travelling the whole day. They very hungry. After everyone went to bed, when it became dark, the man left his little brother asleep and went to steal some green maize from a nearby field. When he came back he lost his way, but saw a small fire in a house. He thought it was the right house. He went in and put the green maize on the floor. Thinking that his brother was still asleep, he called out, "Make a good fire so that we can prepare the maize. There's no sign that we shall be given supper tonight." He went out again to fetch some more maize. On his return he became angry with his brother and rebuked him, for continuing sleeping. He did not know that he was in a wrong house; his mother-in-law, whose house he had entered, was watching all this. She said in a disapproving voice, "This is not your house, my son." The man turned round and realised where he was. He was so ashamed that he ran away and never returned to that village again.[174]

Children love such stories and learn much from them. Such a story was intended to discourage theft, and also to encourage girls to be good towards their prospective sons-in-law. It also shows the importance of a chicken in traditional societies, so that it was imperative to own some. This oral education assured the listeners that the social message was being delivered from deep within the culture and that the narrator was credibly versed in that tradition.[175]

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[174]It was told by Sikaale a grandson to Mr Samson Sikaale on the evening discussion we had on 4th April 1993, and it is a story told in most traditional societies of Zambia - W.R. Mwondela (1970) op. cit., p. 4.

[175]K.S. Lutato (1980) op. cit., p. 169.

2:6:3:2:4 Summary

In traditional societies, without any formally defined curricula, the important educational goals expected of every member of the community were well known and almost everyone finally attained them. For this purpose oral traditions transmitted vital information and basic skills which every member of that community had to acquire in order to attain the attributes of the "ideal" man or woman in that community.[176] These traditions included those attached to certain cultural institutions, which were transmitted to the younger members of the communities through the child socialization process. This learning process contributed to modifications in behaviour as a result of experience. Such changes in behaviour were reflected in what a person did, how he or she felt and thought or in his or her attitudes and ways of conducting his day-to-day activities. The lives of people were regulated by traditional wisdom and values, reflected in proverbs, which encompassed the observance of rules of decency and conventions of generous hospitality, as manifestations of dignity, that emerged into neighbourliness. These guided the traditional courts in dispute settlement, as they had to assess the conduct of the parties within the community's values and decide whether particular levels of deviation called for repressive or reconciliatory measures. So children were taught to live in harmony with their fellows to seek help from them and render assistance when needed by others.

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[176]M.G. Marwick (1952) op. cit., p. 134.

2:6:4 Formal education in traditional societies

In the last sections it has been shown that child socialization was intended to regulate communal behaviour and preserve the traditional value system. Children were expected to grow up with a sense of obedience, dignity, honesty and wisdom. At the time they were taught the responsibilities of adult status, including the proper care of one's family, respect for the elderly, duties to the community, and ways of making a living. But this was not the only form of traditional training.

Although most of the individual's education (social and cultural training) in the traditional societies was acquired informally, it would be wrong to think that there were no formal aspects and no formalized phases in the course of the child's growing up. Vansina (1965) in the study of Polynesia points out that many pre-literate societies had schools for the purpose of giving systematic teachings of classical traditions, with a special house built for the purpose and the services hired of a bard who became the teacher. All children and teachers went to live in the newly-constructed dwelling. During the periods of instruction the pupils were taboo - "became taboo, because of the nature of what was taught".[177]

The traditional societies of Zambia also had such schools, and the communities of the North-western Province (the Luvale, Kachokwe, Luchazi etc.) and the Lunda - Kazembe of Luapula

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[177]Jan Vansina (1965) Oral Tradition: A Study of Historical Methodology, (Middlesex: Routledge and Kegan Paul), p. 31.

Province still have them.[178] They were associated with initiation ceremonies, which took place in a camp outside the village. Boys reaching the age of puberty or just prior to it were required to attend. This was known as *the Mukanda* camp. Mwondela (1970) observes that boys between the ages of thirteen and seventeen underwent the *Mukanda* circumcision; the purpose was to sever the links between the young men and the womenfolk who, up to that time, had looked after them in the early stages of their growing up. Women and uncircumcised persons are not allowed to enter the camp; the boys remain at the camp after circumcision for a period of six or more months. Mwondela further states that the children are instructed in all aspects of adult life, teachers coming from all parts of the locality, who are considered to be specialists in different arts, in which instruction was given, such as dancing, singing, folklore, handicrafts and sexual life.[179] The instructions at the camp are intended to mould the behaviour of the boys, as they are subjected to a form of training in severe discipline and self-control. Becker (1974) quotes an elderly tribesman who describes young people who undergo such instruction at puberty as being:

> ....like newly dried jackal pelts [which] need to be brayed [sic] and fashioned by their wiser elders, for otherwise they turn out hard, and unpliable and inadequate. In the same way as bread is made of measured meal, yeast and water, and then thoroughly kneaded, so too at the time of puberty our boys and

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[178]Recent study of the Luvale by Kenichi Tsukanda (1988) "Luvale Perceptions of Mukanda in Discourse and Music", U.M.I., Queen's University of Belfast (Northern Ireland), Ph.D Thesis,.

[179]Willie R. Mwondela (1970) Mukanda and Makishi Traditional Education in North-Western Province, (Lusaka: Neczam), p. 6.

girls are taught how to mix the ingredients of life.[180]

When young men returned from their initiation to resume the normal routines of life, members of the community concerned accepted them as responsible adults who were now prepared to abandon the care-free lives of children and become trusted members of society, with interests in the crafts and trades they had been taught.

Similar training in skills and crafts in other Zambian societies which did not set up circumcision camps was done at the men's communal village fire-place; for example the Tonga, Lenje, Bemba etc., where children listened to more advanced talk about the community and their role within it. This communal place was differently referred to or named by each ethnic group; *Zango* amongst the Luvale; *Chikuta* amongst the Tonga; *Insaka* amongst the Bemba; *Mphala* amongst the Chewa and Nsenga. Boys were expected to participate in the crafts of their own choice and had opportunities to watch and imitate the elders at these meeting places. The young men were expected to show their initiative to learn more about the community and to tackle the problems of life with less dependence on their elders, by acquiring physical skills. They learnt some of the arts through apprenticeship to an expert: for example, making hoes, spears, axes and mortar.[181]

In this study personal interviews were conducted at a *chikuta* (men's communal fire-place) where boys were seen making

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[180]Peter Becker (1974) Tribe to Township, Herts, England: Panther), p. 77.

[181]Clement M. Doke (1931) op. cit., p. 347; Edwin W. Smith and Andrew M. Dale (1920) The Ila-speaking Peoples of Northern Rhodesia, (London: Macmillan and Co. Ltd.), p. 196-215.

hoe- and axe-handles, stools, cooking-sticks etc which are sold along the Livingstone - Lusaka highway (as discussed above in the Chapter) and the money raised is used by the boys or to supplement family income. Small boys, when they come from the bush, collect food from their mothers' houses and bring it to the men's communal fire-place, where they assemble to eat. A boy was rebuked for eating food in his mother's hut. *Chikuta* is still an important meeting place for men in the Tonga society.

The girls were and are more fortunate in that in all societies at puberty a ceremony was held and during the period of seclusion they were given instruction on good behaviour. The girl who is under initiation is also differently referred to or named as a *cisungu* girl in most societies (as a *moye* amongst the Tonga and Ila). The girls were taught traditional codes of behaviour which were considered to be the wisdom of the house. For example, when a girl is menstruating she should not have sexual intercourse. Stafaniszyn (1964), records that a girl was told that when married, if her husband copulated with her while she was asleep, she should tell the people in the village, asking why he had not awakened her. The matter should be reported to the chief: "such man is a sorcerer, because he would lie even with a corpse. In such cases compensation was paid".[182] And Skjonsberg (1989), notes that in modern Zambia among the Chewa girls are taught how to cook well and how to look after the relatives of their prospective husbands. The house and yard must be kept clean

[182]B. Stafaniszyn (1964) Social and Ritual of the Ambo of Northern Rhodesia, (London: Oxford University Press), p. 93.

and tidy.[183] The girls were taught how to brew traditional beer, and learnt dances specially for women. They were told to avoid sexual relationships outside marriage, and that having such relationships within their own clan was considered incest. (Colson (1958) found that it became common among the Tonga for a girl to bear a child before marriage in the decade 1920-1930.[184]) Girls were put in seclusion for a period of not less than one month.

The initiation ceremonies for girls are still practised in all societies, and some parents in urban areas, during school holidays, especially in August, send or take their daughters to the villages for such activities. Others in urban areas hold ceremonies in the towns, appointing certain elderly women to act as instructresses in the absence of aunts.[185] But in rural areas the practice is active, as it was in the 1940s.

The traditional formal training encourages children to acquire specialized skills, and at the same time it was and is used as a means of social control over children, upon whom the security and future prospects of the society depend. By these was society supported and assisted children through changes of

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[183]E. Skjonsberg (1989) op. cit., p. 130; See generally on girls' maturation ceremony, E. Colson (1958) The Marriage and Family Among the Plateau Tonga of Northern Rhodesia, (Manchester: Manchester University Press); A.I. Richards (1956) Chisungu: A Girl's Initiation Ceremony Among the Bemba of Northern Rhodesia, (London: Faber & Faber).

[184]E. Colson (1958) op. cit., p. 291.

[185]Personal experience, I used to issue police permits for persons who intended to hold such gatherings in Mufulira town and was also called to attend as Officer-in-Charge of a police station within whose jurisdiction the functions were taking place.

adolescence.

2:7 Conclusion

The traditional societies tried to instill desirable modes of behaviour in children. The clan elders ensured through their many social controls that children grew up in a manner acceptable to the community's way of life. The whole process of socialization through oral traditions aimed at producing well adapted children who carried on the customs and values of the society; and at the same time recognized that a child could have a role to play in social activities, especially towards grandparents. Child socialisation was by training which, though not formalised in the same way as a school system, catered for the physical, moral and cultural development of the children. It covered physical education, occupational skills, social and cultural education and wisdom. The oral traditions (proverbs and story-telling) that have been analysed in detail serve as a means of informing the children about their culture and traditions and it is by such methods that virtues of justice, honesty and respect for elders are inculcated in the young generation. Day-to-day economic activities taught children to be self-reliant and productive.

Children encountered adolescence with social responsibilities at hand and this reduced delinquent behaviour, as there was no time of idleness. They were involved in economic activities at an early stage in life, as shown in section 2:4 above. Traditional societies imparted to their children all the

skills considered useful. The educational system was multi-purpose oriented: a child was exposed to all life activities and the question of not finding something to do, when he or she grew up, never arose. Children were guided by the old saying: "*Choloobwe ba aakako*" (man have your own property). This saying is strengthened by the one already discussed: "*Chibuye tapi*" (the floor never gives). Children were to grow and face life with determination and objectives; every activity was deemed to sustain life.

However, most important aspects of traditional child socialisation are rapidly disappearing from the cultural scene. This is due to the modern educational system which has impinged on traditional socialisation, whereby schools have taken over some functions of traditional societies, such as domestic science and vocational education.

The current challenge is to preserve the best of the traditional culture and to improve modern education system so that combine, they provide adequate preparation for life in Zambia in future years.

CHAPTER THREE

3 THE MAINTENANCE OF ORDER IN THE TRADITIONAL SETTING

3:1 Introduction

This chapter examines the rules which bind individuals and social groups together and the institutions which maintained those rules in traditional Zambian societies. It explores firstly the legal and religious systems, which were closely associated: in traditional societies there is a tendency to attribute the authority of law to divine sources. Thereafter the chapter will examine the classification of offences under traditional orders, the indigenous judicial process and traditional sanctions.

3:2 Legal Systems in Traditional Societies

Chapter Two examined how traditional societies instilled cultural values, norms and codes of behaviour in the young generation; this process of child socialisation was linked to the traditional political, economic, social, educational and religious systems. Law is essentially an aspect of political systems since the main aim of an institutionalised authority is the maintenance of law and order. Any discussion of legal systems must be considered in the general perspective of social control, because every society upholds certain types of behaviour and condemns others in an effort to achieve social integration and solidarity. For this purpose each society uses a system of

rewards and punishments generally referred to as sanctions; these are societal reactions to approved or disapproved behaviour respectively. As Beattie (1964) defined:

> ...a sanction is any institution a consequence of which is to incline persons occupying certain roles to conform to the norms and expectations associated with those roles.[186]

It is therefore difficult to accept the view that sanctions under customary law did not qualify as legal sanctions, because they were not imposed by a constituted political authority.[187]

As noted in Chapter Two, values and beliefs are embedded in culture in the patterned way in which people do things together, and culture is a bond that binds people together over the years as it is learned anew by each generation. Through the process of socialisation laws, convention, customs etc., are learned, and these are concepts used to maintain social norms. Violations of these social norms prompt differential degrees in the nature and intensity of societal reactions. However, law is viewed as more formal, its breach calling for organised and possibly more severe societal condemnation than breaches of other social norms. It is therefore necessary to consider how laws are made and to discuss the mechanisms for their enforcement in traditional societies.

3:2:1 Centralised political systems

Ways of making laws vary according to societal differences.

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[186]J.H.M. Beattie (1964), Other Cultures: Aims, Methods and Achievement in Social Anthropology, (New York: The Free Press), p. 165.

[187]A.R. Radcliffe-Brown (1976), Structure and Function in Primitive Society, (London: Routledge and Kegan Paul), p. 298.

In a society with well organised and identifiable governmental organs, it is easier to identify the operation of legislative functions than in a society with diffused functionaries, which might even be considered a lawless society, without specialised legal institutions.

As shown in Chapter Two, most traditional societies of Zambia developed their chieftaincies between the 1500s and 1800s and some of those became established kingdoms, including the Lozi kingdom, the Kazembe-Lunda kingdom, the Bemba and the Ngoni kingdoms. However, these kingdoms had extended their respective dominion over many neighbouring ethnic groups, where they appointed sub-chiefs and headmen from their own clans. For example, the Lozi extended their influence in Western, Southern and Central provinces; the Bemba in Northern and part of Central province. This led to hierarchical political structures with centralised authority, administrative machinery and judicial institutions based on lineage systems.

The Kings and their councils and sub-chiefs enacted and amended laws: these rulers were seen as the sources of law. But the rulers were not the source of all the law; rather they were only custodians, as most of the laws were customary laws, based on the practice of the people, modified by the enactments of previous rulers. As Gluckman (1955) notes, in his study of the Lozi:

> According to Lozi legends, some time after God *Nyambe* first created Man, one of His sons by His own daughter founded a kingdom in the upper Zambezi Valley. The Lozi believe that with the king there came into existence Lozi Law (*mulao waMalozi*) as a whole body of rules defining rights and duties and of procedures for

seeking justice from the king.[188]

Although the chiefs and their councils amend existing laws and enact new ones to meet new situations, popular beliefs attribute the origins of customary law to divine sources.

The chiefs visit villages in their areas, and at other times send their messengers, to receive complaints from their subjects. They also still pass by-laws for their respective areas. During the study a visit was made to Chief Simwatachela's palace (in Kalomo District of Southern Province); there was a beer drinking-party of which the Chief stated that it was opening the new brewing season, authorising his subjects to increase the cost-price of beer from three Kwacha to five Kwacha per cup. The Chief further stated that there are five headmen who sit as a council of which he is the Chairman.

3:2:2 Acephalous political systems

As seen in Chapter Two, the Tonga of Southern province had no centralised political system. But the *Mwinicisi* (Mwini = owner or possessor; Cisi = region or country) leader in each area was believed to be the first person to have settled on that piece of land. He had no superior authority, rather he informally exercised or influenced other men in the neighbourhood to form a council of elders which passed rules, especially those which pertained to ritual ceremonies (to be discussed under religious systems).

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[188]M.Gluckman (1955), The Judicial Process Among the Barotse of Northern Rhodesia, (Manchester: Manchester University Press), p. 1

3:2:3 Forums for dispute settlement

Thus traditional societies had institutions that enacted and amended laws to cope with changing situations. As will be shown later in the chapter, there were ranges and categories of offences under customary law, in particular those which were frequently committed by juveniles. It is necessary to consider the range of strategies for the resolution of conflicts. The choice between different judicial forums in traditional societies depended on the nature of the misconduct, the wrong-doer and the anticipated sanction.

3:2:3:1 The chief's court

The chief's court in centralised societies was commonly adopted for resolving conflicts. Litigants presented their cases before the chief and his council and, through their witnesses, adduced detailed evidence without interference. The chief thereafter passed a judgment: there was a well established procedure known to everyone. This forum resembled modern courts as it had the means to enforce its judgments. The Lozi had formalised judicial and legislative authority as machinery for law enforcement. The Lozi court structures were recognized by the colonial authority as advanced machinery for dispensing justice and they were not interfered with during the early colonial rule.[189] Gluckman (1955) notes:

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[189]The Northern Rhodesia Government's formal recognition of Barotse (Lozi) Native Authorities and establishment of Native (continued...)

> It was not certain whether the Northern Rhodesia High Court had full jurisdiction in Barotseland. The Government had no power to assist the Barotse authorities to enforce their orders or judgments.[190]

The Bemba, Ngoni, Lamba and Kazembe-Lunda also had such centralised judicial systems. The chiefs were able to enforce their judgments through the established councils and the Paramount chief's court in each territory was considered as the highest court (Richards 1949; Barnes 1954; Doke 1931; Cunnison 1959).

This study found that Chief Simwatachela sits with a council of 5 senior headmen to hear disputes over land and serious cases of stock theft, which are usually not reported to police. But this chief's council has no statutory power to hear cases; such power is vested in the Local Court established at the Palace, presided over by Local Court Presiding Justices (to be discussed in Chapter Eight).

3:2:3:2 The village forum

Village forums are found in both centralised and acephalous societies, where the village headman and his council sit to hear disputes brought before them. These are matters not serious enough to be referred to the chief: for example, cases of fighting or minor thefts; individuals even approach such committees for advice. This forum is now officially recognised

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[189](...continued)
Courts (Ordinances Nos. 25 and 27 of 1936) were later than for the whole country where Native Courts were established in 1929.

[190]Gluckman (1955), op. cit., p. 2.

as the Village Committee, as the one attended during the fieldwork (to be discussed later in the chapter).

3:2:3:3 The council of elders

This forum is typical in an acephalous society such as the Tonga, where there were no headmen but an influential person could call others to gather for the resolution of conflicts. The forum allowed litigants, their kinsmen and other allies to contest their cases or grievances and then passed its decision. At times it played a role of a mediator. As noted in Chapter Two, the Tonga lived in neighbourhoods divided into rain-shrine districts; anyone who violated rules pertaining to the rain-shrine was brought before this forum and, if found guilty, was fined in hoe-blades which were placed on the floor of the shrine (Colson 1962).

3:2:3:4 The family assembly

Conflicts within a family might be resolved by a meeting of family members only, without requiring outside intervention. Colson (1962), in her study of the Tonga notes:

> But there is no open forum in which the wrongs done by one kinsman to another can be proclaimed to the world, which in any event has no interest or obligation to see that justice is done, for where only kinsmen are

involved, no outsder may enter.[191]

For example, if a child behaved rudely to his father and such misconduct was considered serious, the matter may be referred to the grandparents to resolve it. The grandparents may be from both the mother's and father's side or from only one side. If the assembly is from one side of the family and decides that the child is uncontrollable it might order him or her to go and settle with the other side. The child was exiled not for life, but as form of punishment, for him to realise the seriousness of what he or she has done (to be discussed later under sanctions). Such an order was made in cases where reconciliation could not be promoted between the child and the complainant-parent. This could arise which the child continued misbehaving after several warnings.

3:2:3:5 The age group assembly

Acephalous societies such as the Tonga-speaking people, who are also cattle-keepers, used a method of conflict resolution based on age grades: boys of the same ages went to herd cattle and disputes that arose were settled among themselves by those who were influential in the groups. Cases of assaults occurred but were never reported to the elders; the decisions of this forum were binding over all the boys involved. The disputes were assumed to be settled in an atmosphere that allowed other boys to contribute and created social harmony among the group. The

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[191]E. Colson (1962), The Plateaux Tonga of Northern Rhodesia: Social and Religious Studies, (London: Manchester University), p. 403.

forum operated on a reconciliatory basis whereby each member relied upon the group's assistance to prevent the misconduct coming to the notice of the elders.

3:2:4 The recognition of "criminal law"

These forums will be discussed later in the chapter, when considering offences and sanctions under customary law. The early writers on African customary law argued that such forums did not qualify to be called judicial institutions or criminal courts, because they failed to make the distinction commonly applied in Western societies between civil and criminal wrongs. They argued that offences like murder and theft, which are clearly criminal offences according to English law, are generally treated by many African societies as "matters for private redress by the wronged party or group rather than by the State as the custodian of public safety and welfare".[192] This controversial point was raised by Maine who stated that:

> Now the penal law of ancient communities is not the law of Crimes, it is the law of Wrongs, or, to use the English technical word, of Torts.[193]

This statement was justified before the work of social anthropologists, when detailed knowledge of human social organisation was restricted to that of Western societies and the work of social anthropologists had not yet adduced evidence relating to rules of human behaviour in traditional societies.

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[192]T. O. Elias (1956) The Nature of African Customary Law, (Manchester: Manchester University Press), p. 110.

[193]Henry J.S. Maine (1906) Ancient Law, Sir F. Pollock (ed.), (London: John Murray), p. 379.

In these societies rules of conduct regulated the behaviour of individuals to maintain the social equilibrium and ensure the continued existence of the society as a corporate whole.

Later studies of some African societies have shown that it is unnecessary to assess whether certain conduct is criminal or not, as such a study of purely criminal law among traditional societies misses the most important phenomena of their legal life.[194] For example, Elias in his Nature of African Customary Law, Chapter VII, argues very forcefully that such a distinction exists, and he cites several anthropological and legal writings that clearly bring this out. Read (1964) states that it is not sufficient to compare Western notions of punishment with those adopted in traditional Africa, or to look for differentiation of legal procedure comparable to English law. He went on to say:

> As the fundamental notion of "crime" involves something deeper than these. It suffices to distinguish in general terms between the public or common injury involved in "crime" and justifying punishment, and the private injury which is redressed in a civil case by compensation.[195]

Thus for an act causing injury to be recognised as a "crime" it must have caused a social reaction from the community in general, rather than merely a response by the victim to pursue a claim for redress; of course some acts may invoke both reactions.

Rules of law inevitably reflect cultural values, as products

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[194]B. Malinowski (1926) Crime and Custom in Savage Society, (London: Kegan Paul), p. 31; see also C.K. Meek (1937) Law and Authority in a Nigerian Tribe, (London: Oxford University Press), p. xiii, on an observation of Ibos: "....what are crimes or torts to us are for the most part crimes or torts to them".

[195]James S. Read (1964) "Crime and Punishment in East Africa: The Twilight of Customary Law", Howard Law Journal, Vol. 10 pp. 164-186 at 167.

of the political, social and economic environment. The societal reaction to any misconduct is shaped by the society's interpretation of what should be condemned and the gravity of sanction will take into the account cultural values of a particular society.

3:3 The Traditional Religion and Individual Behaviour

It was shown in Chapter Two that in the child socialisation process in Zambia a child was exposed to various social institutions (political, economic, educational and religious systems). In traditional Zambian societies the spiritual world was one with which people had daily contact during almost every phase of their lives. Certain behaviour which threatened the social harmony and was considered to be offensive to the spirits and thus a threat to the harmony of the whole society was considered to to be contrary to customary law. It was believed that the future might be predicted or even controlled by means of religious rituals conducted by heads of families, elders or chiefs. Weller and Linden (1984) state that religion gave the individual a sense of living in harmony with his environment, "when all went well, and gave him the hope of restoring that harmony when ill-health or misfortune disturbed it".[196] As Mbiti (1975) remarked, a division between secular and sacred traditions is artificial to African life since the two are integrated into

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[196]John Weller and Jane Linden (1984) Mainstream Christianity to 1980 in Malawi, Zambia and Zimbabwe, (Gweru: Mambo Press), p. 7.

man's whole existence.[197]

As also shown in Chapter Two, Zambian life styles were and are determined and learned anew largely from examples, proverbial statements and simple stories about ethical ideals, which were constantly bandied about in traditional discourse. In addition, by instilling a little fear and motivating listeners (generally children) to follow traditional behavioural prescriptions, the innumerable "ghost-stories" and rumours of spirits provided a float of evidence on which belief in spirits rested (Doke 1931, Colson 1962, Marwick 1965, etc.). Therefore individuals believed in, and their practices acknowledged, hidden, mysterious powers and forces; this recognises a certain dualism in the traditional practices. In some instances, certain misconduct is punished by the community; in other cases misconduct is left to the vengeance of mysterious powers. This dualism is a marked feature of the lives of Zambians and even runs through all their conceptions of the unseen; on the one hand there are the *mizimo* (ancestral spirits) and, on the other hand, The Supreme Being (God).

In order to understand how children acquired knowledge of the traditional religious systems which centred on the spiritual world, it is necessary to examine traditional religious beliefs and practices.

3:3:1 The traditional understanding of The Supreme Being

The belief in spirits was considered as a fertile ground

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[197]John S. Mbiti (1975) Introduction to African Religion, (New York: Praeger), p. 12.

that the missionaries invoked to convert traditional societies to Christianity. Belief in the supernatural is universal in all traditional societies in Zambia[198] and made easy the transfer of allegiance from the traditional supernatural giver of all life and determiner of all fate and fortune to a Christian God.

African traditional religion is closely related to the overall structure of African society. Mbiti (1975) argue for an indigenous monotheism; he indicates that religion, as part and parcel of the African heritage, is the product of the thinking of many generations and is found in the history of all African peoples, even though there are many different cultures. He says, "through the ages, religion has been for Africans a normal way of looking at the world and experiencing life itself".[199] This argument presupposes that for generations Africans have believed in an overall supernatural power, in some form of "Supreme Being". Mbiti (1975) further states:

> "all African peoples believe in God. They take this for granted. It is the centre of African religion and dominates all its other beliefs".[200]

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[198] For more information see, E. W. Smith and A. M. Dale (1920), The Ila-Speaking Peoples of Northern Rhodesia, Vol II (London: Macmillan & Co. Ltd.), pp. 79 - 212; C. M. Doke (1931), The Lamba of Northern Rhodesia: A Study of their Customs and Beliefs, (London: George Hurrap & Co); E. Colson (1962), The Plateau Tonga of Northern Rhodesia: Social and Religious Studies, (Manchester: Manchester University Press; I. A. Richards (1949), "The Bemba of North-Eastern Rhodesia", in: E. Colson and M. Gluckman, (eds.), Seven Tribes of British Central Africa, (London: Oxford University Press).

[199] John S. Mbiti (1975) op. cit. p. 12.

[200] ibid. p. 40. For more information on African traditional religion, see D.B. Barrett (1968) Schism and Renewal in Africa, (London: Oxford University Press), p. 83, P'Bitek Okot (1971) African Religions in Western Scholarship, (Nairobi: East African Literature Bureau), p. 47.

Horton (1971) argues that the field of African experience in recent times widened from the traditional microcosm of tribal village life to the more modern macrocosm of cultural interchange, trade and war. Simultaneously, lesser local spirits, who controlled the microcosm, retreated in deference to a more remote powerful spirit, whose influence could be extended to the macrocosm. Maxwell (1983), applying Horton's argument to the Bemba society of Northern Province of Zambia, says that a monotheistic *Lesa* (God) became acceptable as the "traditional religion accommodating itself to the larger social structure introduced in the eighteenth and nineteenth centuries".[201] This can be said to apply to other traditional societies where lineage spirits have failed to explain, predict and control events in the larger social universe they had entered. There was a need for a spirit that would not be territorially limited, but a central spirit-force exercising universal religious power.

Hence, traditional societies had religious beliefs which could not conform to a monotheistic religion. In all these societies spirits exhibited human traits, with spouses and children. Therefore, the idea of pure spirit, applied to a Christian God, with no previous human life was foreign to traditional societies. It is logical to say that traditional societies accepted Christian teachings on the basis of Jesus Christ, who is said to have lived on earth and experienced human living; at His death, His spirit became one of the ancestral spirits. The offerings or worship to ancestral spirits did not require a priest or temple. Children learn the religion through

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[201]Kevin B. Maxwell (1983) op. cit. p. 95.

story-telling and rites. A child learns social rituals associated with birth, marriage and death. Traditional religious worship was reserved only for the spirit of spirits, but there were also sacrifices to one or more idols; the concept of God allowed for idolatry.

However, the Christian missionaries introduced the idea of God, "the Supreme Being", through Christian catechesis; and education was the primary means of converting people from their old practices to belief in Christ (as shown in Chapter Four).

3:3:2 Offerings to the ancestral spirits

The traditional societies believed that the spirits of the departed ancestors had considerable power for both good and evil. These spirits were translated by anthropologists as "ancestral spirits", and were differently referred to or named among the various ethnic groups: *mizimo* ("*muzimo*" in the singular) among the Tonga; *imipashi* ("*umupashi*" in the singular) among the Bemba and Lamba.[202]

Sacrifices are made to these spirits at the beginning of a season and at the time of harvest. Whenever there was a good harvest in a year, it was attributed to the kindness of these spirits, and they were held responsible at other times when there

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[202]Elizabeth Colson (1962) The Plateau Tonga of Northern Rhodesia: Social and Religious Studies, (Manchester: Manchester University Press), p. 1.; See other writers: Kevin B. Maxwell (1983) Bemba Myth and Ritual: The Impact of Literacy on an Oral Culture, (New York: Peter Lang); Clement M. Doke (1931) op. cit.; M.G. Marwick (1965) Sorcery in its Social Setting: A Study of the Northern Rhodesia Cewa, (Manchester: Manchester University Press).

was a drought in the country. Marwick (1965) mentions attending a sacrifice of a fowl to the lineage spirits of a woman leader of a rain-making cult on the occasion of a rain-making dance (*mgwetsa*), which, "having long been neglected, was revived during a particularly serious drought in January 1949".[203] It has been shown in discussing political organization (in Chapter Two) that the Tonga, who had no chiefs, owed allegiance to rain shrines and the heads of these shrines exercised some authority over members of the local neighbourhoods, which were divided into rain-shrine districts. An individual who moved into such a district was expected to honour the sacred rain shrines within that particular district.

This study supports the earlier studies on the significance of offerings to the ancestral spirits. In early December 1992, the writer witnessed the revival of rain-rituals because of the drought the country experienced in the 1991/92 rainy season. It was performed near Kamwale Hill, beneath the *malende* (sacred baobab tree), and was conducted by the *Muleya* (goat clan), as it is believed that the *Mwinicisi* was from this clan; the clan leader poured brewed beer under the tree while the on-lookers were singing standing at a distance of 50 metres. Children without teeth were not allowed to reach that far;[204] organisers informed everyone to leave their shoes at a distance of over 100 metres. A chicken was killed and roasted, and not salted. It was

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[203]M.G. Marwick (1965) op. cit. p. 64.

[204]The observation that was followed at the Lwiindi (rain ritual) held by the Tonga of Zimbabwe Chief Dumbula Mola on 8th November 1987 the event recorded in P. Reynolds and C. C. Cousins (1993), Lwaano Lwanyika: The Tonga Book of the Earth, (London: Panos Publications Ltd.), p. 206.

then given to small children. This symbolised the innocence and purity of children in the eyes of the community, as they ask for assistance from the ancestors. When one elderly man was asked, why was the chicken given to the children only, he replied:

> We are asking our ancestors to forgive us, if we have wronged them, by presenting the children, saying we are now as clean as our children, who have not yet sinned.[205]

Children play an important role in social life and are regarded as mediums through whom the community may contact the ancestors. The children also regard their participation in this religious gathering as very important and all try to behave during the ceremony. It was even the children who started singing and drumming before elderly persons took over when the ceremony reached its climax. In the evenings after the ceremony children often gathered, drummed and sang the same songs which were sung at the rain-shrine.

Other seasonal offerings to the ancestral spirits are carried out in the country: including *Kuomboka* by the Lozi, when the Paramount Chief moves from the valley home (Lealui) to Limulunga, *Mutomboko* for Kazembe-Lunda of Luapula, *Shimunenga* for the Ila and *Nc'wala* for the Ngoni. These ceremonies are nowadays usually officiated over by high ranking government officials and attract foreign tourists.

These ceremonies are performed as sacrificial offerings to appease the ancestral spirits, so that they are not angered or made to feel neglected. These practices, perpetuated through the generations by elders and children, are deeply instilled with

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[205]Personal interview with Mr Mark Choonga.

customs relative to the sacred. Therefore, individuals strive to live in conformity with what is perceived as the adequacy of their communal traditions and customs, in order to be in harmony with the whole community; this community includes spiritual beings whose anger is believed not to be towards the offender only, but to the community at large (discussed under traditional sanctions later).

3:3:3 Witchcraft/Sorcery

Understanding African tribal life is impossible without an examination of witchcraft. Wilson (1971) says that belief in witchcraft is the recognition of the reality of evil and the personification of temptation, greed and hate. She likens it to the concept of the devil as the embodiment of evil in Medieval Europe.[206] Evans-Pritchard (1937) distinguished witchcraft from sorcery, in Zande culture:

> Azande believe that some people are witches and can injure them in virtue of an inherent quality. A witch performs no rite, utters no spell and possesses no medicines. An act of witchcraft is a psychic act. They also believe that sorcerers may do them ill by performing magic rites with bad medicines.[207]

Writers on the traditional societies of Zambia have found that witchcraft is socially inherited or acquired, not biologically inherited; there was every indication in both witchcraft and sorcery that material was being used by a deliberate evil-doer,

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[206]Monica Wilson (1971) Religion and Transformation of Society, (Cambridge: Cambridge University Press), p. 35-37.

[207]E.E. Evans-Pritchard (1937) Witchcraft, (Orancles, and Magic) among the Azande, (Oxford: Oxford University Press), p. 21.

as opposed to a mystical evil-doer who was driven by addiction.[208] Reynolds (1963), in his well-documented study of witchcraft cases brought before the courts of Barotseland (now known the Western Province), found that the single term "*muloi*" was used for evil practitioners, whatever the means of doing harm they were believed to have employed.[209]

Traditional Zambian societies regarded witches and sorcerers as being the same, if they used destructive magic to harm others, but those who employed magic for protection from evil-doers were regarded as witch-doctors or diviners (*ng'anga*). Zambians believed that magic could be employed for a variety of purposes. As noted in Chapter Two, women and couples in Lusaka who had failed to have children after a year's marriage consulted witch-doctors to cure their barrenness and various other diseases. There is magic for protecting oneself, or one's crops, cattle or hut, or one's conjugal rights from the evil actions of others. But protective measures were known to be punitive or harmful to others; such as the medicine known "*lunyoka*", applied secretly by a husband to his wife, which would cause her lover to die in one of a variety of ways according to the activating agent (*chizimba*) used.[210] Hence, children were told that, if they stole or took other's crops or property that was magically protected,

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[208]Marwick (1965) op. cit. p. 77; Victor Turner (1967) The Forest of Symbols: Aspects of Ndembu Ritual, (Ithaca, New York: Cornell University University Press), p. 119-120.

[209]Barrie Reynolds (1963) Magic, Divination and Witchcraft among the Barotse of Northern Rhodesia, (London: Chatto and Windus), p. 14-47.

[210]Marwick (1965) op. cit. p. 69-72; V. Turner (1967) op. cit. p. 116-125.

their stomachs would swell and they would eventually die.

Belief in witchcraft persisted in Zambia and the colonial administration recognised that it was difficult to detect offences of witchcraft and more difficult to prosecute and obtain convictions, because of witnesses' fear of occult reprisals. As the Commissioner for North-Western Province reported in 1956:

> One prospective witness committed suicide to avoid going into the witness box. District officers throughout the province are in the comfortable position of having certain knowledge that the fear of wizards and witches keeps much of the population in a state of tension for much of time and obstructs progress in all sorts of ways, without being able to do anything about it. Public opinion is in any case socially against the conviction of those who "name" witches. We are told that education is the cure; but cure is a long time coming.[211]

Belief in witchcraft in modern Zambia has been strengthened by the study of Kenichi Tsukanda, a Japanese scholar, who conducted his research in 1983 into the Luvale traditions of North-Western Province. He himself had undergone the traditional circumcision and training for the purpose of researching the secret society of Mukanda tradition and to discover the elements of Luvale beliefs and rituals. On the day of the purification ceremony his *Chijika Mukanda* (*Mukanda* holder), the head of the village and the person who allowed him to conduct the research in that manner, became critically ill with high fever, vomiting blood, and died two days later. The sudden and unexpected death of this man named Kamboyi Kafwale led most people to believe that he was a victim of witchcraft. Mr Tsukanda, the researcher, a few days later became critically sick with strong palpitations,

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[211]Northern Rhodesia, Department of Native Affairs, Annual Report for the 1956, p. 22.

difficulty in breathing and advanced dehydration. He had to leave Zambia after six months of continued ill health and repeated medical examinations in Tokyo showed nothing diagnostically wrong.

While in Lusaka before leaving for Japan, he was taken to a Baptist Church for spiritual purification and appeasement, believing that he was bewitched. He stated that he had no choice but to leave the country to avoid further risks to his life and discontinued his research. This experience changed his beliefs in witchcraft and Luvale traditions, as he states:

> ...Whether I believed in it or not, I was inevitably put in the traditional frame of Luvale belief, not simply as a researcher but as an individual from another culture, and I was required to act carefully as a result. Many Luvale traditions that I had previously dismissed as superstitions, such as ritual details of Mukanda rites, witchcraft and sorcery, thus came to stand forth as "possible actualities" and eventually to be perceived with a very serious sense of being real. My repeated critical illness also gave an impetus to this process of changing perceptions of Luvale traditions.[212]

Such stories strengthen the belief in traditions pertaining to witchcraft and sorcery. This makes children fear those named who practise them and even avoid touching their property. In certain instances, children refused to go to the homes of named sorcerers, when sent on errands. As shown in Chapter Two, an old saying, "*Meno zifuwa*" (teeth are just bones), tells children to be careful with persons who showed some kindness, because such kindness may not be genuine; they should therefore be careful when dealing with individuals and show good manners to elderly

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[212]Kenichi Tsukanda (1988) "Luvale Perceptions of Mukanda in Discourse and Music", U.M.I., Ph.D Thesis, (Queen's University of Belfast, Northern Ireland), p. 20

persons.

Belief in witchcraft was a means of social control: children feared to take property left unattended in some suspicious manner, thinking that it might have been magically protected. Children were taught to respect elders and to share things with relatives, to avoid provoking any motivation to kill, as it was believed that jealousy and greed motivated people to kill their neighbours through witchcraft. Stafaniszyn (1964) notes that the Ambo people used to tell their children that when you met an elderly person, do not refuse him fish, if you did, he or she could bewitch you, and you would be dead. He further adds that sorcerers are spoken of "as very persistent and arrogant in asking gifts. The Ambo often carried fish either caught or bartered or received as a gift".[213] Children were told not to move about at night lest they came in contact with evil spirits and fell sick.

3:3:4 Taboo

Traditional societies also regulated behaviour by prohibitions known as taboos.[214] Certain thoughts, feelings and acts contrary to the acceptable conduct in the community were prohibited in this way. The taboos regulated behaviour and also played a key role in the management of fear: some traditions or

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[213]Bronislaw Stafaniszyn (1964) Social and Ritual Life of the Ambo of Northern Rhodesia, (London: Oxford University Press), p. 94.

[214]H. Webster (1942) Taboo: A Sociological Study, (London: Oxford University Press), p. 1.

usages were to be cherished and, if they were not, the spiritual beings would be angered. Unless appeasement was made some form of punishment would follow.

A member of the community who failed to observe these taboos or prohibitions could suffer a personal sanction or a misfortune could befall other members. Ngulube (1989) points out that taboos are solutions in advance, as obedience to them insulates the individual against an anticipated problem "whilst disobedience militates one against the problem".[215] For example, it was taboo for Luvale boys to eat eggs, because the "doorlessness" of an egg would cause problems at *Mukanda* circumcision. Hence, boys who obeyed this prohibition were expected not to have the pains of circumcision. It was taboo for boys to eat a tortoise, because it retracts its head; boys who ate it would face problems during circumcision, with the penis head. It has been noted under offerings to ancestral spirits (above) that persons attending a ritual rain ceremony had to remove their shoes 100 metres away from the shrine. Failure to do so was considered a violation of a rule relating to offerings and it would anger the spirits: the offering would not be accepted and the rains prayed for would not come. The killed and roasted chicken is a subject of taboo, as it is eaten only by children.

The rules of taboo played an important role in the traditional societies, as they brought about co-operation in the communities, as socializing forces to establish and maintain social solidarity. The taboos relating to certain occupations

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[215]Naboth M.J. Ngulube (1989) Some Aspects of Growing Up in Zambia, (Lusaka: Nalinga Consultancy/Sol-Consult A/S Ltd), p. 54.

were obeyed by every member to maintain this social solidarity.

Children were expected to know and understand taboos in their societies, as each taboo points to some kind of expectation by the society. It was the expected problem that transgression would have brought to the society that really defined the status and gravity of the taboo.

3:3:5 Summary

Child upbringing helps most Zambians to understand and learn religious practices as cultural and religious mores are interrelated and form the basis of customary law offences and penal sanctions. The acquiring of correct behaviour was based on society's sacred values. All of the aspects of socialisation occurred in the context of one's family (as shown in Chapter Two); importantly, in the process of socialisation a child had to live a life inseparable from all other aspects. He was loved and cared for; in his education he kept a watchful eye on his older brothers and sisters, parents and grandparents, in order to achieve technical skills and learn to respect certain sacred values.

3:4 The Maintenance of Order

It has been shown in Chapter Two that the mutual social obligations individuals had were not confined to supplying food to one another, but extended to sharing with relatives the obligations of giving sympathy, assistance and guidance to the

children in the early stages of their lives. Such communal obligations created social pressures which served to maintain order in each particular community. It has been noted that parents admonished their children not to be boastful and quarrelsome, but to respect their elders and other people's property. The desire for prestige or for gaining the reputation of being a well-adapted child directly modified their behaviour towards neighbours. However, there must have been some children whose behaviour at times was contrary to the norms of society. Questions arise: how was their conduct regarded? Was there any regular legal mechanism for dealing with such delinquency?

3:4:1 The classification of offences under traditional orders

In attempting to classify misconduct in the traditional societies, it must be recognised that there were standards of social behaviour maintained by collective public sentiment: any member flouting those standards would provoke universal disapprobation and, in serious cases, joint repressive action. It has been shown in the last chapter that traditional communities socialized their children to grow up as conforming and hard-working persons. They were taught to do those things which the elders approved, and to avoid conduct which society condemned. In short, children had to grow with the understanding in their minds of what was right and wrong in their community; traditional societies had recognised codes of ethics and norms to be followed. For instance, Smith and Dale (1920) noted that the Ila person had his standard of judgment, based on a norm

which was the custom; an Ila acts as part of a whole: "his well-being depends upon his conforming to the general practice; the good is that which has the approval of the community, the bad is anti-social".[216] Customs were to be followed, and by their nature they were handed down from generation to generation. It has been shown that the religious belief in the "Supreme Being" and ancestral spirits controlled individual behaviour, and was supplemented by witchcraft beliefs and taboos. These have been considered to have been the bases of offences against customary law, which can be classified into three, namely: *Chisampi* (Rudeness), *Kulitaya* (offences) and *Kutondwa* (breaches of taboo).[217]

3:4:1:1 *Chisampi* - Rudeness

Under this category are listed numerous actions and sayings which were considered as misconduct, including indecent behaviour, unruly and unseemly conduct. It also included disrepectful behaviour to the elders (including failure to obey instructions or to give up a stool to an elderly person). It has been noted in Chapter Two that children are often reminded of this through an old saying: "*Nyoko ngumwi*" (your mother is one). All old persons must be treated in the same way as one's mother; they are to be accorded respect. It was serious misconduct if a child uttered abusive language to an elderly person. One

[216]Edwin W. Smith and Andrew M. Dale (1920) op. cit., p. 344.; see also C.M. Doke (1931) op. cit., pp. 208-221 discusses misbehaving among the Lamba.

[217]Smith and Dale (1920) op. cit., p. 346.

informant stated:

> In the old days children behaved because there were many prohibitions they were reminded of each day, and they were in the form of "don't". This was our law for our children and you lawyers of these days say it is not law.[218]

Children were taught the following rules from infancy.

1. Receive a gift with two hands, whilst kneeling down, otherwise it may be withdrawn.
2. If your father or an elder sends you on an errand, go without a single question.
3. While talking to an elderly person, sit or kneel down.
4. When eating food with one's elders, never get up to go until the elders have finished.
5. Do not mock or laugh at a cripple, blind, deaf or dumb person or an orphan.
6. Do not use obscene or abusive words or revile others.
7. Do not insult your father, even if he is scolding you.
8. Do not spit saliva on anyone, even when fighting with him.
9. During a traditional dance do not touch married women by their breasts.[219]

Such rules and others were frequently recited and imposed on the children;[220] this study found that they are still frequently recited through proverbial statements. A child who breached any

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[218]Informant: Mr Benjamin Mukalanga.

[219]It is generally known that in those days women were bare-breasted. However, even today boys are forbidden to touch married or older women indecently, except their cross-cousins, with whom they have a joking relationship and whom they may jokingly touch on their breasts.

[220]C.M. Doke (1931) op. cit., p. 209.

of these rules was considered to be rude or ill-mannered (*sichisampi*), and could be beaten by any elder of his clan who had seen him conduct himself in such a manner or had received a complaint of such behaviour. If the incident was serious it would be referred to the headman as a dispute. For example, if a person was insulted or reviled, he would complain to the headman; the father together with his child would be summoned and after a hearing an appropriate remedy would be imposed, generally a warning or order of compensation, as the legal systems aimed at maintaining social solidarity rather than punishing wrong-doers (as discussed above).

3:4:1:2 *Kulitaya* - "Offences"

This category comprised most of what are now offences against the person and property (thefts and assaults). They were not serious instances of misconduct as shown below. *Kulitaya* meant that a person who misconducted himself had immediately enslaved himself to the person offended and was therefore in the power of the person wronged.[221] He had to redeem himself or members of his clan had to come to his rescue by making a payment of a ransom. If the individual or his clan failed to pay, it was up to the wronged party to exercise his right through vengeance/self-help by him or his family. The matter might have to be taken before the headman or chief for settlement. Children were taught to respect other people's property and not to be

[221]Smith and Dale (1920) op. cit., p. 346.; Doke (1931) op. cit., pp. 65-66.

violent against others so as to cause some injury to them. The basis of self-enslavement seems to have had its roots in the institution of slavery whereby persons were taken as slaves if they falsely claimed a relationship with a man or addressed another as a relation when in fact there was no relationship. A woman who suckled a child not belonging to her family was said to be in the state of *kulitaya*. A person who married a widow, when he was not in the category of those who were entitled to inherit the estate of the deceased, was said to have misbehaved and a relative of the deceased could lay a complaint against him. Spitting on someone from another clan; killing a person of another clan; taking something from a person of another clan and many more were instances of misconduct under this category.

This emphasized the importance of a very close connection, amounting almost to identity, between a person and his possessions: an injury done to his property, was also an injury to his person. It also served as a basis for the preservation of family and clan integrity that was not to be interfered with. As Smith and Dale (1920) state:

> It would be be a mistake to measure their indignation against infractions of the property laws by any valuation of our own of the worth of the goods. To us the anger evoked, and the penalties imposed, are sometimes, perhaps generally, out of all proportion to the trumpery value of the goods. But we have to remember that what seems trivial to us is in their eyes precious. And it is not so much the value of the thing that a Ila person looks at as the fact that it is his, and nobody has the right to interfere with it or damage it.[222]

As seen in Chapter Two, children were reminded by the old saying *choolobwe bakako* (man have your goods); a person who fails to

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[222]Smith and Dale (1920) op. cit., pp. 392 - 393.

adhere to this proverbial statement and disrespects other people's property is bound to enslave himself.

Enslavement was a severe sanction in terms of justice, where spitting on someone or suckling a child from another clan attracted the same penalty as serious crimes, such as murder or theft: enslavement for life. However, persons who were taken slaves under this category were not treated as prisoners, but became members of the household of which they were enslaved. They even acquired membership in the clans of such families. For example, Chief Simwatachela stated that the fourth Chief Simwatachela was previously a slave to the *Muzyamba* clan.

It was a principle of law that a person could not enslave himself to a clansman and therefore *kulitaya* was not possible between clansmen. This study found that a common form of juvenile misconduct was taking eggs from their parents; and they even took chickens and roasted them in the bush while herding cattle. Boys would also take sweet potatoes, cassava and other crops that could be eaten without cooking them.[223] These cases were dealt within the family by a warning or beating, if it came to the notice of elders, in case in future a child might take the property of a person from another clan.

3:4:1:3 *Kutondwa* - Taboo

Kutondwa were offences against taboos. For example, a mother-in-law is a subject of taboo: a man is forbidden to shake his mother-in-law's hand and cannot speak to her directly but

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[223]Informants: Chief Sipatunyana and Mr Benjamin Mukalanga.

only through a third person. Infraction of a taboo was thought to lead to a mysterious thing or harm done (*malweza*) to the offender or other members of the community (Colson 1962). A person who broke a taboo put himself in the power of mysterious forces, annoying the spirits, who would react against him or his fellows. In most ethnic groups incest was regarded as a serious offence in this category, which could undermine the community's cohesion.[224] The taboo prohibited sexual relations beyond the narrow English categories of incestuous relationships: for example, it was forbidden for a man to have sexual intercourse with his wife's sister or with his niece, his aunt or his brother's wife.

But most taboos related to food or were occupational or personal taboos which left the offender at risk of mysterious harm for any violation of them.[225] These offences did not generally call for dispute settlement, except those which were considered to jeopardise the well-being of others (for example, witchcraft, incest which was associated with witchcraft and occupational taboos associated with warriors and iron smelters) and those considered to be against the State (for example, among the Tonga showing disrepect to the rain-shrines or sacred places was a serious offence that threatened the social harmony or menaced the whole community).

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[224]C.K. Meek (1937) Law and Authority in a Nigerian Tribe, (London: Oxford University Press), p. 123.

[225]Smith and Dale (1920) op. cit., p. 348.

3:4:1:4 Summary

This classification of offences shows how the traditional societies of Zambia regarded misconduct, according to its degree of seriousness and gravity, as calling for different social reactions. Such reactions varied considerably according to whether the deviant behaviour and its consequences were to be regarded as an individual responsibility, to be sanctioned by retributive measures. For example, a child who reviled an elderly person may be severely punished: corporal punishment was appropriate to deter him from similar misconduct in future. Alternatively, social peril might have been anticipated, which called for collective repressive measures. Thus where a child cut trees around a sacred place or showed disrespect to the rain-shrines, such misconduct would be considered to anger the ancestral spirits and so jeopardise the well-being of the whole community. The father, together with his child would be summoned before a council of elders, where the sanction to be imposed would be severe and ordered in the name of the society. This raises the question: what were the underlying principles for the treatment of crime in traditional societies?

3:4:2 The traditional judicial process

If delinquent behaviour was suspected or alleged, how were the accusations resolved and how did the wronged party enforce his rights? There is much evidence of the traditional judicial

process in Zambia.[226] Gluckman (1955, 1965), who studied the traditional Lozi legal system, found that the Lozi judges decided cases on their merits by examining all the actions of parties, especially considering whether they had acted as reasonable men in the circumstances of the case. As he stated:

> .....wherever they found departures from established usages--from custom--they became suspicious that the deviating person had committed more serious breaches of right doing.[227]

This was done in order to ascertain whether the parties had conducted themselves within the norms of that particular society, before the court could find that the defendant was liable and thereafter consider a ppropriate remedy.

3:4:2:1 Public gallery

In traditional societies courts were held in public, usually in an open space under a tree in the village, where the chief and elders sat when dispensing justice. During this study a Village Committee sitting to hear cases assembled under a big tree at headman Chilundika's home.[228] Members of the court formed part of the circle and the audience filled the remainder. The parties sat in the middle facing the bench. Children were allowed to

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[226]e.g. A.L. Epstein (1954) Juridical Techniques and Judicial Process: A Study in African Customary Law, (Manchester: Manchester University Press), p. 1; cited by Epstein - Official Memorandum quoted by Arthur Phillips (1948) Native Tribunals in Kenya, (Nairobi: Government Printers), p. 245.; Gluckman (1955, 1965); T.O. Elias (1956) op. cit., p. 212.

[227]M. Gluckman (1965), The Ideas in Barotse Jurisprudence, (London: Yale University Press), p. 200.

[228]It was held on 4th April 1993.

attend the proceedings. Here young men are expected to acquire knowledge of the laws of the society by paying close attention to the proceedings and judgments. As Doke (1931) notes, when a young man emerges from boyhood and shows "wisdom, ability, and physical strength" he was called by his elders to quit the play of the boys and "join the older men, take his place in listening to the settling law-cases, and so qualify to give advice".[229]

The traditional judicial process was guided by an old Tonga saying: "*Bosha kwaamba mwambi nyoko kaliwo*" (justify your conduct in the presence of your rival).[230] This means that there could be no secrets in giving evidence: all evidence must be adduced in the presence of the other party. Before proceedings commenced the parties were asked whether they intended to call any witnesses and, if so, whether those witnesses were at court; if they were not present the court would adjourn the case.

This study of a particular assault case[231] supports the findings of studies conducted in 1940s and 1950s: each witness was allowed to give her statement in a detailed manner, which could include hearsay. The wronged party, supported by his witnesses, gave his statement, and then the offender did likewise. The parties were given an opportunity to cross-examine each other but it was noted that they failed to frame questions

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[229]C.M Doke (1931) op. cit., p. 62.

[230]Informant, Mr Samson Sikaale.

[231]Case of Rhoda Beneya V Law Miyanda witnessed at the Village Committee Katengo court, Chilundika village on 4th April 1993. The members of court were: Julius Kavwaya (as Chairman because the headman did not sit as a member of court), Andrew Nakatunte (member), White Chilundika (member), Samuel Sikaale (member) (called from another village: Nankupaisya), Felix Munyandi (secretary) and Zakeyo Dibula (messenger).

but ended up making further statements. Members of the court put questions to the parties and their witnesses. This study confirmed what Smith and Dale (1920) noted, that the witness as a rule was left to say his say. Before the court retired the Chairman solicited opinions on the case from other elderly persons in the audience (and even of the village headman who was seated behind the committee). After retiring the Chairman gave judgment and passed the sentence: a one thousand Kwacha fine (one hundred Kwacha was for the court and ten Kwacha for the summons, the remainder was compensation for the complainant).

In traditional societies the court decides a case by measuring the parties' behaviour against the standard of conduct which the court recognises a reasonable person should have maintained. This is an application of the principle of the reasonable man. The concept of the reasonable man was further analysed by Epstein (1954) in his study of urban native courts in Zambia, as not to be assessed only by evaluating the party's powers of rationalization. But the traditional courts have extended the concept of reasonableness to include a varied range of customary behaviour patterns and moral standards which, "although they would not be legally enforced in themselves, are channelled into the judicial process in order to assess the behaviour and claims of litigants".[232] This was important because conflicts arose at times between inter-related parties, as Gluckman (1955) called them: "multiplex relationships" (noted in Chapter Two); it might be between father and child, when the

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[232]A.L. Epstein (1954), Juridical Techniques and Judicial Process: A Study in African Customary Law, (Manchester: University of Manchester Press), p. 12.

court had to assess the behaviour of the father in discharging his responsibilities towards the child, against the behaviour of the child. It was necessary to see whether each of them had acted within the expected norms of their community, before the court could find that the child had acted wrongly towards his father.

It is necessary to reproduce certain portions of the case of Miyanda observed at Katengo court, Chiludika village, to assess the Village Committee's application of the concept of the reasonable man:

> The complainant (the girl) was called and stated "he met me on the road and asked me to stop; I told him I am in a hurry. He grabbed and beat me several times on my face and body. He tore my dress. I can identify him. This one."
>
> The Court (to Defendant): "Have you heard? Tell us what you know."
>
> The Defendant: "I heard what she said. Yes I beat her. She was my lover, I told her to stop and wanted her to give me the things I gave her during the time of our relationship. She refused to stop and said her parents did not want her to marry me. I then beat her."

Ordinarily this was a straightforward case and possibly a plea of guilty making trial unnecessary. But it went through a complete hearing. Here is what transpired between the parties and members of the bench.

> 1st member (to Def.): "Did you show yourself to her parents? How did you beat her? Did you love her?"
>
> Def: "No. I slapped her. No, because she said her father refused her."
>
> 2nd member (to Compl.): "He says you are his lover, what do you say? Where is the dress? He says your parents did not want you have a relationship with him, is this true?"
>
> Compl.: "No, I have never been his lover. I never told him that my father stopped me. He is lying."
>
> 2nd member (to Def.): "How much did you give her? Did

your father know about this?"

Def.: "Fifty Kwacha. I did not tell my father."

3rd member (to Compl.): "The boy loves you, why can't you just forgive him?"

Compl.: "He is not my boy friend."

3rd member (to father of Compl.): "Did you hear what your son-in-law say?"

Father to Compl.: "He cannot be my son-in-law, as his father has never come to ask for my daughter."

Chairman of the Committee (to mother of Compl.): "We know you mothers always are aware of the relationships of your daughters before we men are. What do know about this?"

Mother of Compl.: "I do not know any relationship, and I was surprised when I heard that my daughter was beaten. He has never come to our house and how could he be our son-in-law.?"

The court was trying to assess the conduct of the complainant to decide whether she had really been a girl-friend to the defendant. It might have acquitted him on the basis that the complainant was of low morality and a prostitute who gets money or other things from men and then ditches them. The defendant was rebuked by the court for proposing love to a girl on the road. The court said that you have to go to the girl's home: her parents should know that you are proposing marriage to their daughter.

Members of the Committee put questions to the parties and parents of the complainant which appeared on their face to be irrelevant to the issues before court. Irrelevant evidence is allowed in traditional courts, which are preoccupied with restitution and the restoration of the social equilibrium. As Gluckman (1965) has pointed out, among the Barotse (Lozi) the judges try to prevent the breaking of multiplex relationships

that exist so that the parties can continue to live together amicably; and courts seek to promote reconciliation in such disputes. In order to do this the courts have to broaden their inquiries to cover the total history of the relations between the parties, and not only the narrow legal issue raised by one of them. Canter (1976) in his study of the Lenje observes:

> I was evaluating the testimony of the litigants, which seemed logical given the amount of time and interest directed to the plaintiff and defendant. I assumed their testimony was the area in which court members' decision rested. As I became aware that it was the testimony of the "expert witness" that played the overwhelming part in the court's decision in family case, my ability to predict markedly improved.....Not only does the local court expect that a dispute will be assessed initially within the appropriate corporate boundaries, but in family disputes the court calls a family authority (the kinsman) or head of family as expert witness.[233]

Hence the concept of relevance is broadly applied in traditional courts, because of many facts that affect the settlement of a dispute in most rural situations, where parties live in established neighbourhoods. But multiplex relationships have emerged in urban areas through intertribal marriages and the sharing of communal services such as water and toilets in townships (which have developed into "family neighbourhoods").

3:4:2:2 Taking an oath

In traditional societies, during the hearing of a case the court's aim was to convict the offender, not necessarily the accused person. This means that at the end of the day the

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[233]R. S. Canter (1976), Law and Local Level Authority in Zambia, (Ph. D Dissertation University of California, Berkeley, Michigan: University Microfilms International).

decision might be given against the complainant or any of the witnesses called, or somebody else not originally a party to the litigation. The court would invite the offender or witness to declare his innocence by taking an oath, swearing on the sacred things. For example, a person might have to declare his innocence by stating that he did not steal and is prepared to touch the soil from the grave (*ivhu lya chumbwe*). The grave site was a sacred place and was not to be visited, unless for burying the dead. He might also say: "If I did steal, let God strike me" (*Leza a nduume*). There were many forms of oath-taking as a means of proving innocence. In certain cases offenders were set free if the oath was attached to a very sacred thing.[234] The oath-taking was not applicable to all witnesses, but to those who were implicated or the one being accused. However, this is no longer applicable in the criminal process as the English common law procedure is adopted in all courts.

3:4:2:3 Trial by ordeal

When offenders were unknown ordeals were used as a form of investigation to identify them; usually it was used in cases of witchcraft, to identify the sorcerer responsible for a death that occurred in the village.[235] In theft cases, the complainant would be advised by the elders to consult a diviner who could name one or more persons as being responsible. The elders would summon the

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[234]C.M. Doke (1931) op. cit., p. 77; E. Smith and A. Dale (1920) op. cit., p. 355.

[235]C.M. Doke (1931) op. cit., p. 311.

village members to a gathering where such revelation would be made. The named suspects would be asked or would volunteer to undergo an ordeal test. There were two forms generally used in Zambia - "the hot-water test" and "the poison test".[236] The hot-water test was conducted in public. A potful of water was brought to boiling and a stone dropped in. The suspects were asked to pick the stone from the boiling water. Smith and Dale state that the accused was addressed in a technical term *sansila*:

> If it be that you are guilty, then you will be burnt and leave your nails in the pot; if you are innocent, then why should you be burnt.[237]

The suspects were then examined. If there was no sign of blistering, the offender was found not guilty, but should there be any blistering, he was prounced guilty. Smith and Dale (1920) point out that the Ila had great faith in this ordeal; it was common to hear someone, even children, say when accused - "I will put my hand in the pot".[238]

The poisoning test was done by the presiding diviner who would put roots from *mwavi/mwazhi* shrub in water and let the suspects drink it. This decoction was administered in public and words uttered to the effect that if he was not the one there was no reason for him to die, but if he was guilty let him die. The suspect then took the drink and this test was often used for the offence of witchcraft.

Trial by ordeal is no longer practised; it seems to have

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[236]C.M. Doke (1931) op. cit., pp. 311-313.; E. Smith and A. Dale (1920) op. cit., pp. 354-358.

[237]ibid. p. 356.

[238]ibid.

ended since the late 1940s, when a sub-chief whose son had died ordered headmen in his area to undergo the "*Mwavi*" test to find out who was responsible for the death. The headmen were asked to remove roots from the boiling pot, and those whose hands festered from the resultant burns were denounced as wizards. The sub-chief was convicted of the offence relating to witchcraft before a Chipata (then Fort Jameson) subordinate court.[239]

3:4:2:4 Summary

Everyone from childhood had some acquaintance with the process of litigation and, through the presumption and concept of reasonableness, elders while sitting to hear cases were able to import into their judgments their experience of the whole way of life of the people (i.e their habits and customs, their ethical code and system of knowledge). This means essentially that judgments were given according to the understanding of a particular society, where it would have been said that a case had been settled amicably. Because it was not always necessary that compensation should be ordered, but more important that the decision and judgment protected and served the stability and growth of the village. In such cases a warning was given to the offender, alternatively the court would give an advice to both the complainant and the offender.

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[239]The Northern Rhodesia Native Affairs Annual Reports 1947, p. 57.

3:4:3 Traditional Sanctions

As shown above, offences under customary law were classified into three categories, reflecting the gravity of the misconduct and indicating the severity of the sanctions applicable to different offences and even the levels of enforcement. The issues raised by the question why certain rules are obeyed call for a diversity of answers. Elias (1956) analyses various views given by jurists and other writers, which include compulsion as a sanction, regarding obedience to law as based on force, whether physical or mental; psychological sanction, based on five grounds of compliance with a rule of law (indolence, deference, sympathy, fear and reason); and sociological sanctions (religious sanctions, ridicule and ostracism).[240]

The sociological approach is more persuasive in identifying the underlying force; as noted in Chapter One, in traditional societies criminal behaviour was and is understood in terms of something physically or spiritually detrimental to social relationships and social harmony. Crime was an act considered to be offensive to the spirits or seen as a menace to the harmony of the society. Driberg points out that ancestral worship is in reality more social than religious; and religious sanction is based on the theory that the clan is a continuous entity comprising "both the living and the dead. The ancestors are just as much concerned as the living in the due observance of the

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[240]T.O. Elias (1956) op. cit., pp. 56-75.

law".[241]

It was the responsibility of all members of the community to preserve the unity of their social group. Therefore, this social harmony existed on the basis of moral relationships; for the preservation of peace and order, the tribal elders had to maintain this by settling disputes on a reconciliatory basis (Gluckman 1965, Epstein 1958, Colson 1953). They were guided by a traditional proverbial statement, "*bayazene bakalwanina mutwe wa sulwe*" ("friends fought over a hare's head"). This was based on a folklore tale that a long time ago two hunters, having killed a hare, decided to divide it into halves. But to one part a head was attached, and a disagreement arose as to who would take that part. This conflict was resolved by a third party. But these two men did not stop going to hunt together because of this instance. Therefore, after hearing a case and having reached a decision a chief, headman or council of elders would remind the litigants of this proverb before making an order. Therefore, the court's aim is to preserve harmony in the society and in most cases to settle conflicts on reconciliatory basis. But in certain instances, reconciliation would give room for other remedies which are penal in nature. It is therefore essential to examine the nature of sanctions in traditional societies.

3:4:3:1 The nature of sanctions in traditional societies

The sanction to be imposed depends on the nature of the

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[241]J.H. Driberg "The African Conception of Law", The Journal of Comparative Legislation and International Law, 3rd Series Vol. 16 pp. 230-46 at 234 and 242.

dispute before court. A purely family conflict, that does not call for settlement by a third party, might require no sanction. But where the complainant is not related to the accused but lives in the neighbourhood there might be some redress awarded to the injured person and this would depend on the nature of the complaint. As Milner (1972) notes:

> So in an important range of customary disputes, judicial discretion was fundamental. For many offences of varying significance, particular sanctions were not laid down in advance but penalties depended on the circumstances and dictates of the individual case....The personal characteristics of the offender were often at the crux of decision. In many areas, a chief or rich man would not be executed for murder but allowed to give a slave to the bereaved family, either as compensation or for execution in his stead.[242]

The punishment regularly imposed on children for offences under category (a) (*chisampi* - rudeness) was beating; this should not be equated with the flogging (corporal punishment) which was introduced by missionaries, as will be seen in Chapter Four, because beating was done in an informal manner, such as slapping, smacking or by use of a stick, but there was no special stick or instrument used. The number of strokes was not fixed or specified. The beating was done by a member of the child's clan, who would be a father, mother, uncle, brother, sister, grandparent or any elder in that kinship. It must be noted that under tribal laws beating (home corporal punishment) thus differs from a judicially imposed corporal punishment, as the juvenile usually has affection, or at least respect, for the person who beats him, and because of their continuing relationship there are ample opportunities for later reconciliation. It also facilitated

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[242]A. Milner (1972), The Nigerian Penal System, (London: Sweet & Maxwell Ltd.), p. 32.

recollection of the punishment and made the offender fear the consequences of repeating the offence. These conditions do not exist in the prison environment where judicially imposed corporal punishment is now carried out. Older people who committed these offences were reprimanded or ostracized (Doke 1931).

As the sanctions were imposed on the basis of discretion, juveniles were often warned of their misconduct and the consequences to follow if they continued misbehaving. The immaturity of juveniles played an important role in the determination of which type of sanction would be imposed. As will be discussed later, parents were held responsible for their children's crimes.

3:4:3:2 Other types of sanctions

In certain situations it can be stated that the maintenance of social solidarity was repressive, for instance, where amputation was done as form of punishment and also for *Kulitaya* - offences, which called for immediate ensalvement to the family of the victim. These sanctions were known to all members of society both children and adults; the totality of beliefs and sentiments common to all members of the society formed a determinate system which had its own life: marked by intense, face-to-face inter-personal relationships and a rigorous scheme of socialisation which allowed a minimum deviation and such deviant behaviour called for severe condemnation.

Durkheim (1964) contends that punishment in traditional societies is, first and foremost, an emotional reaction to the

violation of rules which do not need a juridical expression, because everybody feels their authority; and he further states:

> Peoples in these societies punish for the sake of punishing, making the guilty party suffer solely for the sake of making him suffer and without seeking any advantages for themselves from the suffering which they impose. Punishment often extends further than the guilty party and reaches the innocent, his wife, his children, his neighbours, and it extends in a quite mechanical fashion.[243]

This statement may be applicable in Zambia, as the underlying principle for the treatment of offenders in some traditional societies was retribution; punishment had to fit the crime, especially for offences which were considered serious or a menace to social harmony. For example, witches were punished harshly in most societies, and witchcraft offences were triable by the chief's court, which had powers to impose a death penalty.

For other serious offences penalties were as follows.

(1) Fining in kind - payment of cattle, goats, beads, hoes, tusk or grain.

(2) Enslavement of the convicted person or some of his relations in his place, especially women or children (Doke 1931).

(3) Death for witchcraft cases - carried out by burning or stoning to death.

(4) Mutilation - cutting off fingers or a hand for stealing; pulling out eyes for adultery; Cunnison (1959) notes that Kazembe had a special officer, the "*katamatwi*" (cutter of ears), who used an instrument like a large pairs

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[243]E. Durkheim (1964) The Division of Labour in Society, translated by George Simpson, (New York: Macmillan & Co. Ltd), p. 85.

of scissors. Doke (1931) found that a child had had his ears cut off as a warning for stealing. And Gluckman (1965) comments that theft was punished frequently, and more severely than homicide:

> ...as a thief was being maimed for life as his hand was seized and placed on a red hot piece of clay pot, the burnt hand festered and rotted away in most cases, and at best it never returned to its normal condition. An incorrigible thief was killed.[244]

(5) Banishment - a person was ordered permanent banishment from the group, that meant from the village. Canter (1976), in a study of the Lenje of the Central Province, found one case where such a sanction was suggested. He quotes the uncle of the offender who said:

> What we can only do, this is our son, if he makes a mistake we should say okay, your father's side fails to go along with you. Then we send him to his mother's side.[245]

This sanction is used not for permanent exile but to let the other family side (mother's or father's) know the juvenile's character and if he failed to cope with the father's family when sent by the mother's side, he will go back to the mother's side that sent him away.

Even in centralized societies such as the Barotse kingdom, Bembaland and Kazembe-Lunda, these sanctions were frequently imposed on offenders, because there were no prisons. The offenders were detained only while awaiting trial and punishment

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[244]Max Gluckman (1965) The Ideas in Barotse Jurisprudence, (London: Yale University Press), p. 211. In this study most of informants in Simwatachela's area mentioned that this method of treatment of offenders (adults and juveniles) had been used among the Tonga.

[245]R. S. Canter (1976), op. cit., p. 170.

(execution), and not as a form of punishment. These sanctions gave satisfaction to the wronged party, as he considered the community's involvement had come to his aid rather than leave him to carry out his claim by self-help. However, in an adultery case the injured husband, together with his kinsmen, pursued and attempted to kill , or torture and kill, the adulterer; self-help was not only permitted but expected in this situation.[246]

3:4:3:3 Ritual reconciliation and compensation

It is usually stated that in traditional societies the court's aim in its function of social control is the preservation and maintenance of the social equilibrium. Milner (1972) states that there are sanctions which could "be applied in such a way as to allow the community to resume its ordinary life as quickly as possible and with the minimum disturbance".[247]

An order might have been that the wrong-doer was to kill a cow or goat and brew beer, then the complainant and other elders had to eat the meat and drink beer together with the wrong-doer. This ritual recociliation required the wrong-doer to make friends with the complainant. The ritual reconciliation served the purpose of appeasing ancestral spirits so as not to cause misfortune to the wrong-doer or any other member of his clan. The ritual reconciliation was applied to offences under category (c)

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[246]C.M. Doke (1931) op cit., p. 67, says: "The injured husband had the right to inflict death on both (wife and her lover), and anounce this to wife's father and the chief, showing the blood-stained spear".

[247]A. Milner (1972), op. cit., p. 34.

Kutondwa - Taboo.

In this study one informant stated that two children who had quarrelled and stopped talking to each other were called by elders. They were told to hold a piece of grass, each of them holding one end, and were told to break it into two; and then asked to greet each other. That was the end of the dispute and they were advised to live in harmony thereafter.[248]

Offenders were fairly commonly ordered to pay compensation to the complainants or perhaps even to the community. As noted in Chapter Two, among the Tonga, a person who violated the rules of rain shrines was ordered to pay a hoe which was put in the rain-shrine hut, as compensation to the community of the neighbourhood district (Colson 1962). At times there was collective responsibilty, where if a person committed a serious offence in category (b) above, the whole kin was involved and every member was liable, not as an individual but as part of his kin. Colson (1962) in her study of the plateau Tonga in 1953 (as will be discussed later under the child's liability), focusing on one detailed case of homicide, shows how members of the clan agreed to take responsibility for payment. This aspect of compensation in traditional societies raises the difficulty of distinguishing between civil and criminal matters. But this could be overcome if societal reactions directed by a controlling authority such as the chief or headman or, in an acephalous society,by the elders, are considered to be penal sanctions, as the demands would be deterrent or retributive measures.

Before a person is held responsible, or considered to be

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[248]Informants: Mr Benjamin Mukalanga and Chief Sipatunyanya.

under an obligation, to redress the injured party, his liability must be proved or ascertained. This raises the question of the child's liability in traditional societies.

3:4:4 Child's liability

"Liability" is different from the notion of "responsibility". "Liability" is considered in establishing whether, in circumstances where an individual is seeking redress for injuries sustained, there is somebody who is obliged to make redress to the victim. Allott, Epstein, and Gluckman (1969) stated:

> We shall use "liability" to cover the obligation of a person to pay damages or make other redress to an injured party, and restrict "responsibility" to describe whether the person so obliged is believed to have planned injury (i.e. was responsible).[249]

This section discusses when juveniles' acts in traditional societies became actionable injuries in law. The literature shows that juveniles were treated the same, with regard to their criminal responsibility, in traditional societies of Zambia as in other African communities. Schapera (1938), while studying Tswana law and custom, noted that each head of family was responsible for all his dependants. Thus his wife, unmarried children and servants could not take a legal action against any other person unless assisted by him and represented by him. These persons could not be sued except through him.[250] This was

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[249]M. Gluckman (1969), Ideas and Procedures in African Customary Law, (London: Oxford University Press), p. 66.

[250]I. Schapera (1938) "A Handbook of Tswana Law and Custom", reprinted in E. Cotran and N.N. Rubin (eds.), Readings in African Law, (London: Frank Cass & Co. Ltd. 1970), Vol. 1, p. 198.

supported by Snell (1954) in the study of Nandi customary law.[251] Therefore, in traditional societies whether in criminal or civil matters, the head of a household is responsible for the payment of any penalties arising from the misdeeds of a family member.

The Tonga in understanding a child's liability are guided by the old saying:

> *Kanyaanya katukizya nyina* (literally meaning messing up of the toilet by the child leads to the rebuke of the mother).[252]

This means that a child, while still a baby, was taught through lullabies to inform his or her mother that he or she has to use the toilet. If he fails to do that it implies that the mother failed to teach him toilet manners and that she is responsible for his misconduct. The parent or parents failed to socialize him and to help him to acquire the characteristics of an ideal child. The child's liability is the parents' responsibility. A child is a creature of custom and morality as much as of reason; and his behaviour is by definition unreasonable if it confounds, and does not conform with, the basic attributes of male or female. He or she is *sichisampi* (a rude child). All that is due to the fault of the parents, who are to face the consequences of his or her unreasonableness.

However, this depends on the seriousness of the misconduct and the injuries caused. For example, for most of the misconduct under category *Chisampi* (rudeness) the child may be punished

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[251]G.S. Snell (1954) "Nandi Customary Law", reprinted in E. Cotran and N.N. Rubin (eds.), Readings in African Law, (London: Frank Cass & Co. Ltd. 1970), Vol. 1, p. 199.

[252]Informants: Mr Benjamin Mukalanga, Chief Sipatunyanya and Jeremiah Munyandi (Headman Chilundika).

immediately by an elderly person who notices or discloses the misconduct and thereafter informs the parents of what has transpired. But if the victim feels the matter has to settled by a third party, he will report to the *mwinicisi* (the headman of the village). For instance, when juveniles herding cattle do not pay attention so that the cattle stray and cause damage to property, the owner of the property will bring charges of unlawful damage to his property before the headman. The juveniles will be summoned together with their parents. The liability is brought on the basis of the cattle-owner in his omission or failure to keep the cattle under effective control, when in fact it was the juveniles who were negligent in the bush and their liability is attributed to their parents. The old saying *Kanyaanya katukizya nyina* (quoted above) is the underlying principle in such liability of children. The father may be ordered to pay compensation to the complainant, in turn he might punish the children for that misconduct.

Colson (1962), in her study of the Tonga of Southern Province in 1953, shows, by focusing on one detailed case of homicide, how members of the clan agreed to take responsibility for compensation. She quotes a Mr. C, the leader of one clan group, who stated:

> When your child marries, you take the calabash and announce to the spirits that she has gone to be married to such and such man. Sometimes there where she is married, she bears a mad child. But it is our relative. So what can we do? We cannot say that we will not pay this case.

The other men who had gathered all agreed:

> Of course we are going to pay, but we shan't know how much we are going to pay until settlement....

When the sons of Mr. C's brothers who were too old to be active in the matter were asked to help their fathers. The sons agreed:

> Yes, we know that this must be paid. There is nothing

to do but pay.[253]

As already discussed under traditional sanctions above, it was found that the clan members were agreeable to settle compensation payments on behalf of their child member's offence of homicide. Doke (1931), in his study of the Lamba, found that the headman could order the parents of children brought before him to pay a certain amount to the complainant. The parents would pay and then "themselves punish the chidren for the trouble they had brought".[254]

In this study of the court procedure observed at Katengo court, Chilundika village, the father of the complainant was the one who initiated the matter by "buying a summons" from the headman. He also began the proceedings by saying:

> I bought this summons against Law Miyanda to find out why he beat my daughter.[255]

He then left the centre of the assembly, and the girl was called to give her evidence. The father of the defendant was called to sit where he would be able to hear what was being said. After the court gave its verdict the father of the defendant was asked whether he had anything to say, and further whether he had the money ordered. His reply was through the old saying that there was nothing he could do as that was expected for a parent with a troublesome child.

This was and is the usual practice in traditional societies, where a child's criminal liability is diffused in the communal

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[253]E. Colson (1962) op. cit., p. 114.

[254]C.M. Doke (1931) op. cit., p. 66.

[255]Mr D. Beneya.

collective responsibility. The parents are always involved in the criminal proceedings and it is essential that they do attend the court. If a parent is not present the matter would be adjourned to another date for the parent to attend.

3:5 Conclusion

It has been shown that the traditional societies of Zambia not only instilled desirable modes of behaviour in their children, but educated them to understand the relationships between man, his environment and supernatural beings. The clan elders ensured through legal and religious institutions that children acquired relevant information relating to religious practices and advice on social and other matters relating to codes of conduct. The whole process of socialization through oral traditions would not be complete without exposing children to legal and religious systems, because moral, political, social and economic aspects of character development are vital to the understanding of the nature of deviant behaviour and penal sanctions. The children learn about all human activities which are considered beneficial to them in their future lives, including trades training, economic and religious activities.

Collective criminal responsibility played a vital role in indigenous legal systems as parents were made to be active in controlling their children. The judicial forums established to resolve conflicts were spread throughout society and allowed little opportunity for deviant behaviour, because children were under constant observation. This minimised delays in disposing

of cases before tribunals. Child criminal liability was attributed to the parents and sanctions were based on reconciliation. The immaturity of juvenile offenders was taken into consideration when the court imposed any sanction.

PART II: EVOLUTION OF THE JUVENILE JUSTICE SYSTEM

CHAPTER FOUR

4 EVOLUTION OF THE JUVENILE JUSTICE SYSTEM: I THE COLONIAL PERIOD 1889 - 1964

4:1 Introduction

Chapter One of this study suggested that the Zambian criminal justice system, and in particular the evolution of the treatment of juveniles, can be understood only by analysing historical events. These include the establishment of British political and economic institutions during the colonial era and the way those inherited institutions have been adopted or modified since independence to suit changing political, economic and social conditions and especially in response to juvenile crime.

This chapter examines the emergence of courts and police as agencies of the administration of justice in the colonial days and thereafter analyses the rise of the juvenile justice system in the 1950s. It will be necessary to examine the impact of western values on traditional legal systems and child socialisation process.

In discussing the historical development of the criminal justice system, this chapter will attempt to analyse the effects of missionary work, the British South Africa Company administration and colonial government in its application of the doctrine of indirect rule.

4:2 The Missionary Influence

As shown in Chapter One, British interest in trade, commerce and Christianity in Central Africa was aroused by Dr. David Livingstone's journeys between 1851 and 1873 (see Hall 1965; Rotberg 1965; Roberts 1976; Kaplan 1979). Livingstone's work not only supplied Europe with scientific information but also assisted in formulating a policy intended to "civilize" Central Africa. He thought that the only way to end the slave trade and other social evils (poverty, ignorance and superstition), which could not be solved by the indigenous people, was by introduction of European civilization. This could be achieved through new forms of commerce and Christianity.[256] Livingstone believed that Europe must bring the Gospel to the Africans, and that in addition some means of legitimate commerce should be introduced to eradicate the slave trade, as he recognised the potentialities of the Zambezi river valley for growing cotton and other crops on the plateau.[257]

The different missionary societies in many parts of Europe were deeply impressed with Livingstone's work. Christianity came into the country through several societies with varying beliefs and types of organisation. These societies established mission stations in various regions of the country in the last two decades of the nineteenth century and in the early twenty

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[256]Robert Rotberg (1965) Christian Missionaries and the creation of Northern Rhodesia 1880-1924, (Princeton, New Jersey: Princeton University Press), p. 4.

[257]R. Rotberg (1965), supra. p. 8.

century.[258] The mission stations in some areas became centres of slave refugees; for instance, those of the London Missionary Society among the Mambwe and Lungu in the north-east.[259]

The Paramount Chief of the Lozi accepted the Paris Missionary Society in the hope that the missionaries would teach the Lozi the material, as well as the spiritual, techniques of the Europeans. However, it was also a political move in that the Paramount Chief believed that the settlement of the missionaries in his area would provide protection against the Ndebele, who used to raid the Lozi for cattle, women and children.[260]

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[258]For example:
(i) In Western Province the Paris Missionary Society at Sefula in 1885.
(ii) In Northern Province the London Missionary Society (L.M.S) among the Lungu and the Mambwe in 1885 and 1887, respectively; the White Fathers among the Bemba in 1888; the Free Church of Scotland among the Lala at Chitambo where Dr. Livingstone's heart was buried; and the Livingstonia Missionary Society among the Namwanga in 1895.
(iii) In Southern Province the Primitive Methodists among the Ila; the Jesuits at Chikuni in 1905; the Seventh Day Adventists at Rusangu in 1905; the Brethren-in-Christ at Macha in 1906; and the Church of Christ at Kabanga in the 1920s. Kabanga was the centre of the fieldwork. The school is still a primary school with Grade 9 as the highest grade, but a secondary school opened in 1983, was built besides the old school.
(iv) In North-western Province the Plymouth Brethren among the Lunda and the Luvale in the early 1880s.
(v) In Eastern Province the Dutch Reformed among the Ngoni in the 1898.
For more information see, L. H. Gann (1958) The Birth of A Plural Society: The Development of Northern Rhodesia Under the British South Africa Company 1894-1914, (Manchester: Manchester University Press); John Weller and Jane Linden (1984) Mainstream Christianity to 1980 in Malawi, Zambia and Zimbabwe, (Gwero: Mambo Press); D. Merritt (1980), The Dew Breakers, (Winona, Mississippi: J. C. Choatte Publications).

[259]L. H. Gann (1958) op. cit., p. 27.

[260]Francois Coillard (1897) On the Threshold of Central Africa: A Record of Twenty Years' Pioneering Among the Barotsi of the Upper Zambezi, traslated by Catherine Winworth Mackintosh, (London: Hodder and Stoughton), p. 256.

The establishment of these missions and those that followed opened the way to European settlers and contributed greatly to the development of the country in general. The missionaries were the first people to have meaningful contacts with children, especially through the boarding schools they established. These schools are still regarded as the best in the country and most children of Ministers and top civil servants are sent to these schools.

The concern of this chapter is the impact of evangelism on traditional values and legal systems. How was the Gospel spread to the various communities? What was the impact on moral realism? It will also be necessary to examine forms of law and punishments that were introduced for violation of the moral standards promulgated by the missionaries.

4:2:1 Missionary influence and the Educational System

All these Missions have influenced Zambians in several ways. They introduced formal education and discouraged traditional education. As shown in Chapter Two, indigenous educational systems focused on traditional history, law, practical skills and physical development. Teaching methods included story-telling, riddles, proverbs, songs, dances, ritual ceremonies, imitation, participation and observations.

The mission schools were instruments of change. Unlike the informal education that sought to preserve and maintain the *status quo* of traditional societies, the mission schools aimed at social and economic change. Mission school education sought

to alienate children and their parents from their societies' values, customs and beliefs. The missions perceived the alienation as imperative to civilize and christianize the backward peoples of Central Africa. For example, the secretary of the London Missionary Society instructed his workers in Central Africa to submit reports regularly, describing their daily battles against darkest heathendom. As he wrote:

> We long to know that our Central Africa Mission has become a real mission of Christian teaching and Christian inspiration to the natives among whom you ...are settled... We ...do long to hear.... that earnest, daily, settled work is going on ... the work of telling the glad tidings.[261]

It was the aim of the missionaries to destroy what they considered primitive practices, to preach a new doctrine of sin and to teach Africans to read in order that they could understand and appreciate the wisdom of the Scriptures. However, one important factor was that the missionaries first taught the people to write and read their own indigenous languages, before they learned English. This usefully encouraged the preservation of traditional cultural values as traditional stories were now written (Gann 1958; Rotberg 1965).

The missionaries condemned all aspects of traditional marriage and the associated practices: polygyny, bride wealth, beer drinking and traditional dances. As one missionary, in giving a description of the Ila intended generally to be applied to the peoples of Central Africa, wrote:

> The Ila are a people whose national business is polygamy, their national past-time beer drinking, and

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[261]London Missionary Society: Thompson to Jones, 22nd February 1889, Central Africa xxii.

their sport fornication.[262]

The missionaries did not understand indigenous institutions, especially polygamous marriages; they considered African wives who did most of hoeing and weeding in the fields to have become servants of their husbands. They did not appreciate the fact that men did the clearing of the land by cutting the trees, looked after cattle and made the tools used in farming. In short, there was a division of labour in traditional societies. Polygamy was discouraged by missionaries: as a result, for example, Litia, the son of the Paramount Chief of the Lozi, who was one of the first converts at Coillard's school, had put away his second wife and renounced the invocation of ancestors.[263] The converts acquired European values, as they started regarding Europeans as their authorities in spiritual affairs. The traditional elders were starting to lose control over the young men. The aims of the London Missionary Society in teaching Africans can be deduced from a letter written in 1900 by the secretary to a new appointee to Zambia (Northern Rhodesia), which read in part:

> It is most important that the converts should learn to read in order that they may attain to a fuller knowledge of the Scriptures, when the Scriptures can be provided for them, but I think it is even more important that they should learn to live self-respecting, progressive Christian lives. The mission that turns out good carpenters and blacksmiths does more among such people as you have....than that which turns out good readers and writers...[264]

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[262]Chapman Papers: Chapman to Guttery, 23rd August 1911, Methodist Missionary Society. Quoted by Robert Rotberg (1965) op. cit., p. 40.

[263]Weller and Linden (1984) op. cit., p. 33.

[264]London Missionary Society: Thompson to May, 2nd June 1900, Central Africa xxix, 47.

The schools that had been set up were to replace traditional methods of instilling tribal values into the young. The schools gradually replaced traditional initiation camps and the seclusion of girls at puberty. The periods for which children were kept at initiation camps and in seclusion was reduced to two weeks or a month to match school holidays. This has become the practice and some communities have even abandoned these initiation ceremonies. For example, among the Tonga, initiation ceremonies are only held in Monze and Mazabuka districts and abandoned in Kalomo, Gwembe and Eastern part of Choma districts of Southern Province.

The missionaries were prepared to implant not only western values, but also industrial training. The schools were to produce clerks, teachers , evangelists, craftsmen and interpreters. This meant the replacing of traditional life, values and economy, which were based on a different spiritual world. Most informants found in Simwatachela's area were former pupils of Kabanga and Namwianga mission schools and retired teachers. They are now Church elders of Church of Christ.[265]

The missionaries found it necessary to train their young converts in bricklaying and carpentry, as these were essential skills for building mission stations. As one missionary who employed a builders' assistant remarked:

> As we worked together I would take occasion to implant some scripture truths into his mind.[266]

Practical as well as moral reasons made industrial training

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[265]Informants: Mr Josiah Kachota, Mr Joseph Zelu and Mr Noah Mujuku, to name a few.

[266]London Missionary Society: Hemans to Thompson , 19th April 1892, Central Africa viii/5/b

necessary. This was the only way converts could be helped to believe that personal effort and modern methods would make a man economically successful, without resorting to witchcraft practices. Such bricklayers and carpenters are found in rural areas, where they are hired by other villagers to build their houses and repair damaged furniture.[267]

The skills converts acquired forced them to leave their villages and seek employment in mission stations and in other European employment and government agencies, when these came into existence. This form of labour migration disrupted the traditional way of life of the communities. The women and children were left in villages without the head of the household. Children also started seeking employment in the newly established mission centres and left the traditional watchful eyes of the elders. They started discarding traditional ways and behaved in ways befitting newly-made christians. They dressed neatly when attending Sunday services. As one London missionary in 1891 reported:

> All my servants are already neatly dressed and have assumed a civilised appearance.[268]

Beer brewing and drinking was part of traditional life. Beer was used in ceremonial rites, such as girls' initiation ceremonies, and at rain-shrine offerings. But these activities were now considered primitive by these young converts; children

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[267]Personal experience: my late father used to hire a former Sikalongo Mission pupil who just completed Standard 4 (Grade 6) and had no additional training in bricklaying than the one acquired as a pupil. Others have only completed Standard II (Grade 4).

[268]London Missionary Society: Hermans to Thompson, 11th July 1891, Central Africa vii/4/a

started indulging themselves in beer-drinking. Schuster (1979) in her study of the women of Lusaka, notes that modern career women have two explanations of their illnesses, one fostered by their childhood experiences, the other supported by their knowledge gained later in life. Her analysis gives a typical case of one university graduate lady:

> To her white friends, Dorothy explains the psychosomatic nature of her illness, analyzing its recurrence in terms of a correlation with stressful situations: university examinations, the end of a romance, and so forth....To her female African confidants, Dorothy reveals that she has been suffering from "spirits" since the age of four...[269]

This two-fold manner of thought is expressed in many other ways by most of Zambians in urban areas, despite Christian teachings and modern forms of education. The traditional cultural values are deep and lasting for the present and the coming generations, in that individuals have to relate some of the events in their daily lives to the old customs and practices.

However, the delegation of missionary work to Africans and the new educational system gave positions of considerable responsibility to Africans as teachers within the framework of a basically European organisation. This then confined missionaries themselves to administrative and supervisory responsibilities. This raises the question of how the missionaries exercised their role as pioneer secular administrators?

4:2:2 The role of missionaries and the infliction of corporal

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[269]I. M. G. Schuster (1979), New Women of Lusaka, (Palo Alto, California: Mayfield Publishing Company), p. 34.

punishment

As shown in section 4:2:1 above, missionaries came not only to spread the Gospel to the peoples of Zambia, whom they considered to be heathens, but also as the representatives of a new way of life. They condemned the worship of ancestral spirits and polygamy; then considered such practices as paganism and impure. In order to be saved, the African must acquire a sense of sin and confess his wickedness. Therefore, deviant behaviour was now defined according to a Western conception of right and wrong; "the word of the missionaries became law for Africans who were in any way subject to their influence."[270]

The missionaries protected those families that lived on their land and in return demanded that they should discard their traditional ways and conform to Christian practices. Thus they should attend Sunday services, avoid polygamous marriages and stop drinking beer. For example, when David Jones moved the Fwambo station to Kawimbe in 1891, he insisted that all those Mambwe who wanted to accompany him to the new station must first make an allegiance that they would "faithfully participate in the Sunday worship and work cheerfully on behalf of the mission."[271]

Therefore, perhaps without realizing what they were doing, the missionaries transformed an *ad hoc* means of protection into a system of total control and exercised temporal power. The L.M.S. missionaries were convinced that the only way to extend

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[270]Robert I. Rotberg (1965) op. cit., p. 55.

[271]London Missionary Society: Jones to Thompson, 16th September 1891, Central Africa viii/4/b

their influence was to continue to rule the villages, and one of them justified their exercise of secular authority in a letter to their directors in London:

> ....we cannot depend on gathering the people together for the purpose of telling them our message or of getting the children into our schools. If we lose control of our villages we may lose our people and the work of years would be undone.[272]

Control over the villages was also seen as a source of labour for the missionaries and a way of forcing children to attend mission schools, as another L.M.S missionary wrote:

> Without full control of the villages the children would not come to school; the people would not attend Sunday services; the villages would be thoroughly corrupted; missionaries would often be, as in early days, without servants; if called upon hurriedly to go on a journey it would be impossible to get men [as carriers]; in cases of emergency ....it would be impossible to get them [to help]....[273]

This statement shows that initially Africans did not accept the idea of attending schools to receive a Western education, as they could not see the value of learning to read and write. It also appeared strange for them to sit in the hot sun and listen to a foreign teacher; it was generally thought to be a waste of time. All missionaries found it difficult at the beginning to recruit pupils for their schools. In Western Province the school was thought to be for the Royal families, as most of Coillard's first twenty youths were royalty or their slaves.[274] It was difficult to sustain their interest in education as their attendance was

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[272]London Missionary Society: May to Thompson, 9th November 1898, Central Africa x/2/a.

[273]London Missionary Society: Hemans to Thompson, 2nd November 1898, Central Africa x/2/b

[274]Francois Coillard (1897) op. cit., p. 291.

frequently interrupted by traditional economic demands. They had to look after cattle in the rainy seasons; they had to attend traditional initiation camps or go into seclusion at maturity. Rotberg (1965) quotes a Methodist's report:

> The attendance is very bad just now. The reason is the crops are ripening and at the present time the big birds find the mealies a feast easy to be got, and no end of children are away from school to scare away the birds.[275]

The missionaries then started boarding the students to ensure their regular attendance under constant supervision. This meant that the boarders had to participate in all the activities of the mission station. They became a source of labour and were forced to attend Church services regularly and to live upright Christian lives.[276] The students were also asked to sign a bond agreement that they would work as directed and live in peace and friendship with their fellow students.[277]

However, the missionaries did not end at regulating boarding students, but promulgated a vast body of regulations for the whole community. Everyone was commanded to take part in Christian worship on Sundays; muzzle-loader guns were not to be fired in funerals in villages; villages were to be kept clean. All children were to attend school.[278] The crimes of theft,

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[275]Robert Rotberg (1965) op. cit., p. 108.

[276]London Missionary Society: Thompson to Jones, 24th April 1890, Central Africa, LMCXXIII, p. 111.

[277]The present researcher remembers signing one at Sikalongo Mission Boarding school in 1962, when he enrolled as a student in Standard Three.

[278]London Missionary Society: Minutes of the Tanganyika District Committee, 12th-22nd October, 1898, Central Africa, x/2/a. Tanganyika district refers to Mbala district of the Northern Province, as it was known by that name.

drunkenness, adultery, the administration of the poison ordeal and murder were also recognized.

Any person who violated these regulations was punished by flogging (corporal punishment). The flogging was done by the use of the *cikoti*, a long whip made of cured hippopotamus hide. One of the newly appointed missionaries who was astonished by the behaviour of his senior colleaques at one London mission reported to his home committee that:

> half a dozen long strips of thick hippo-hide hanging from a tree, with heavy weights, being cured for the abominable practice in the hands of the missionaries of the London Missionary Society, of horsewhipping the natives, in accordance with the necessity of their positions...[279]

The missionaries had therefore extended their powers: they were effectively destroying tribal authority and traditional judicial process. As Rotberg (1965) remarks, missionaries transformed their verandahs "into courtrooms and acted as prosecutor, defence counsel, judge, and jury all at once."[280]

However, not all missionaries supported the exercise of secular power or accepted the roles of law-givers and judges without appeal. Some argued that the frequent administration of corporal punishment by a missionary exercised a most baneful influence upon his personal character and largely tended to impede the spiritual progress of the mission. They further argued:

> ...in fact instead of being regarded as the white men who carry to them the good tidings of God's love... we are known and feared ....and the spiritual side of the

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[279]London Missionary Society: Purves, in May to Thompson, 6th August 1898, Central Africa, x/2/c.

[280]Robert Rotberg (1965) op. cit., p. 60

> work seems almost necessarily quite subordinate to the material.[281]

At this stage flogging had become a mandatory form of punishment, but missionaries who frequently whipped their students were bound to lose them through desertion.

In certain instances, children' misconduct was regarded as mischief and no sanctions were imposed. Coillard described their village:

> as a den of thieves and the hot bed of the grossest, shameless immorality.... Further the pupils " stole food, nails, screws, tools ...even two aneroid barometers."[282]

Nevertheless, Coillard was patient, he did not do anything except that for a time he forbade pupils access to the workshop. It must be noted here that the children's behaviour was within the traditional values, where children were expected to use initiative and imitate adults in their physical skills: they may have had taken the nails and screws in order to make their own toys. But such conduct was contrary to the new societal values of individual possession, which was gradually replacing the tribal collectivism. Children were now expected to seek permission to use certain items, and if they did not do that their conduct would be labelled as theft and punished with flogging.

In 1906, the London Missionary Society issued instructions forbidding its members to resort to flogging as a punishment of adults, and advised them not to take the law into their own hands

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[281]London Missionary Society: Mackay to Thompson, 6th August 1898, Central Africa, x/2/c.; see Purves to Thompson, 2nd October 1894, Central Africa, ix/2/e.

[282]Francois Coillard (1897) op. cit., pp. 265-291.

by inflicting penalties.[283] Hence, corporal punishment became and remained as a form of punishment for juveniles only, and the justification for its continued application as form of punishment will be discussed in Chapter Nine. However, by 1906 the Missionaries were no longer the sole source of protection, employment, and Western advancement, although they continued to take an active role in the juvenile justice system by establishing homes for needy children (see section 4:4:3).

4:3 Under The British South Africa Company Rule 1899-1924

As see in Chapter One, the discovery of copper in the late 1890's, in the areas that came to be known as the Copperbelt Province, increased British interest in the area and as a result concessions were signed between the traditional Paramount chief of the Barotse (Lozi) and the representatives of the British South Africa Company (hereinafter BSAC or the Company), which was entrusted with the administration of the territory north of the Zambezi.[284] At the Company's suggestion the territory was split into two provinces, namely: North-Eastern Rhodesia, with headquarters at Fort Jameson (now known as Chipata), and North-Western Rhodesia, with headquarters from 1900 at Kalomo and then, from 1907, at Livingstone, near the Victoria Falls. In 1924 the

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[283]London Missionary Society: Thompson to McFarlane, 7th April 1906, Central Africa, xxxiii, p. 486.

[284]The Royal Charter of Incorporation of the British South Africa Company, October 29, 1889, was originally drafted to grant administrative powers to the Company south of the Zambezi river. On March 5, 1891, the charter was amended to include the territory north of the Zambezi.

British Foreign Office formally assumed direct control of the territory and proclaimed it a British protectorate.

The economic and social changes in the country influenced the development of the criminal justice agencies (courts and the police) as new institutions responsible for the administration of justice in the country. The traditional chiefs became agents of the British administration as labour recruiters and poll tax collecters in their respectives areas, subject to the Native Commissioners' directions.[285] Consequently, this undermined the old order as the headmen exercised executive powers over their subjects as directed by their chiefs, long before the application of the doctrine of "indirect rule". This caused a conflict, as shown in Chapter Three, because among the Tonga the head of the rain-shrine fined violators of regulations pertaining to the same and such fines were put to the use of the local communities, while now the chief or headmen on behalf government collected money on behalf of government, which was put to use in other areas.

4:3:1 The Establishment of Courts

The British South Africa Company had to enforce its authority over the people by appointing a small body of civil servants who had been recruited from South Africa and Southern Rhodesia. Such officers were later recruited for the British colonial services from Britain's Universities. The attitudes of the indigenous peoples of Zambia were being affected as the

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[285]The Native Commissioners' Regulation No. 1 of 1908.

colonizers brought with them new standards of behaviour and concepts of crime and punishment, through christian teachings, Western forms of education and the English common law tradition.

The North-Western Rhodesia Order-in-Council, 1899, which introduced English law, provided that native law was to be respected unless "incompatible with the due exercise of Her Majesty's powers and jurisdiction."[286] The traditional customary law was also preserved in the North-Eastern Rhodesia Order-in-Council, 1900, which provided that while dealing with civil cases between Africans the High Court and magistrates' courts were to be guided by native law:

> unless it was contrary to natural justice or morality, or to any order made by Her Majesty in council.....[287]

This has become known as the "repugnancy clause," limiting the application of customary law to instances where it was not repugnant to natural justice or morality, and was common to British dependencies.[288] The introduction of English law into Zambia was a move by the colonial authorities to limit the influence of Roman-Dutch law which was already in force in the neighbouring country (Southern Rhodesia). As in other British dependencies the "British" courts also recognized native marriages that were valid at customary law; this had to be

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[286]Article 9.

[287]Article 35.

[288]A.Allott (1960) Essays in African, (London: Butterwoths), p. 197-201. This clause has been ably analysed by J. S. Read (1972), "Customary law under Colonial Rule", in: H. F. Morris and J. S. Read, (eds.) Indirect Rule and the Search for Justice: Essays in East African Legal History. (Oxford: Clarendon Press), pp. 177 - 212.

provided in statutes: for example, evidence of a polygamous spouse was admitted in criminal matters for the defence in magistrates' courts and the High Court.[289]

The provisions of these Orders-in-Council made it possible for changes in the legal system to be a transition from tribal customary law to the English common law rather than an abrupt, radical change. To some extent these two systems of law were combined, as the new courts were to apply both. The British did not want English law to intervene in purely native cases. The North-Eastern Rhodesia -in-Council, 1900 had created a High Court with civil and criminal jurisdiction over all persons in the Province.[290] Appeal to Her Majesty in Council could be taken in civil cases involving over £500=00.[291] In criminal cases, the High Commissioner was given power to "...remit or commute, in whole or in part, any sentence of the High court, and may signify remission or commutation by telegram".[292] Magistates' courts were created with both civil and criminal jurisdiction;[293] appeals were to lie before the High Court.[294] The Administrator of the Province was empowered to appoint Native Commisioners and Assistant Native commissioners with such jurisdiction, "not

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[289]Northern Rhodesia Proclamation No. 2 of 1913, section 51 and section 45 of Northern Rhodesia Proclamation No. 1 of 1913, subsequently amended by Northern Rhodesia Proclamation No. 19 of 1914 and Northern Rhodesia Proclamation No. 20 0f 1914, respectively.

[290]art. 21.

[291]art. 28.

[292]art. 26.

[293]art. 29.

[294]art. 33.

exceeding that exercisable by magistrates, as may from time to time appear to the court to be expedient".[295]

In 1911 the judicial systems of the two Provinces were merged under the provisions of the North-Eastern Rhodesia Order-in-Council of 1900. The High Court of Northern Rhodesia was established;[296] appeals from it lay in certain circumstances to the Judicial Committee of the Privy Council (Her Majesty in council) as the final court of appeal.[297] At the lower levels of the judicial hierarchy magistrates, native commissioners and assistant native commissioners exercised criminal jurisdiction, continuing the judicial structure of North-Eastern Rhodesia throughout Northern Rhodesia. However, native commissioners and assistant native commissioners were given power to hear civil cases, where the parties were Africans, in their local districts. In criminal cases, they could hear such matters if the accused was an African.[298] The magistrates, native commissioners and assistant native commissioners dealt with disputes before them in an informal manner, as they did not have a background of legal training. The head of the High Court was a legally trained person.

However, as time went by, a more formal system of justice came into existence. Magistrates' court were empowered to impose

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[295]art. 38 (1) and (3).

[296]Northern Rhodesia Proclamation, No 1 of 1911, art. 21. But this Proclamation is a reproduction of North-Eastern Rhodesia Order-in-Council, 1900.

[297]ibid. art. 28.

[298]Northern Rhodesia Proclamation No 3 of 1913, section 5.

criminal punishments as severe as a £25[299] fine, an imprisonment term not exceeding 12 months or an order of whipping not exceeding 24 lashes.[300] Native commissioners who heard cases involving Africans could impose a £5 fine, imprisonment not exceeding 6 months or 10 lashes;[301] assistant native commissioners were limited to a £2 fine, 3 months' imprisonment or 5 lashes.[302] Much judicial work remained in the hands of the traditional chiefs (tribal courts), as the native commissioners could not visit each village in their respective areas more than once a year. It became the official policy to encourage chiefs to adjudicate in minor criminal cases. It was also economically advantageous to the BSAC which would otherwise have required a large administrative staff to control the African population.

Not only was a new system of justice brought into the country, but new categories of crime were also introduced. The tribal way of justice was dramatically altered. As Gann (1957) notes:

> ...tax evasion became a crime, so did offences against firearms regulations, and breaches of labour contracts. All these had been unknown in tribal life; they came into existence through the problems created by the contact between tribal Africans on one hand and a dominant European group on the other.[303]

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[299]In Northern Rhodesia Sterling Pound was the trading currency.

[300]Northern Rhodesia Proclamation No 2, section 17.

[301]Northern Rhodesia Proclamation No 3, section 7.

[302]ibid.

[303]L.H. Gann (1957) op. cit., p. 96; see also High Commissioner's Proclamation No. 37 of 1908, Statute of North-Western Rhodesia; High Commissioner's Proclamation No. 18 of 1912. Statute Law of North-Eastern Rhodesia 1908-11, of North-Western Rhodesia 1910-11, of Northern Rhodesia 1911-16.

Courts established by the British claimed the sole jurisdiction to deal with more serious crimes. The British system of justice was superimposed on Zambian tribal law, which mainly remained as part of civil law. The superimposition of British justice on the traditional judicial systems led to some early conflicts of ideas with the indigenous population. One source of such conflicts was the way the British dealt with serious offences arising out of tribal superstitions, such as witchcraft allegations; as it became an offence to name a person as a witch or wizard under statutory law.[304] The people, whose beliefs in these religious and social practices felt that these were been seriously violated, and to upset tribal customs.

The juvenile justice system was not a separate system of justice at this time, perhaps because juvenile crime was not a serious social phenomenon. African children were not permitted to live in the newly expanded "copper" towns. The tribal customs and laws still maintained effective control over juvenile crime in the villages. As child misconduct was seen as a family matter, a family reaction was the means used to control it. However, flogging and whipping were recognized forms of criminal punishment for children aged 18 years or over, who could be ordered to receive not more than 12 strokes.[305] A person under the age of 16 years sentenced to imprisonment was supposed to be

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[304]North-Eastern Rhodesia, Witchcraft Suppression Regulations No. 1 of 1910 as amended by Northern Rhodesia, High Commissioner's Proclamation No. 5 of 1914. Where naming or indicating a person to be a witch or wizard became an offence.

[305]North-Eastern Rhodesia, Regulations No. 2 of 1909, reg. 9; While Northern Rhodesia, High commissioner's Proclamation, No. 12 of 1915, section 7, uses the terms "whipping" and "caning".

detained separately from older prisoners.[306] A person under the age of 16 years at the time of committing an offence punishable with death, would not be sentenced to death on conviction, but ordered to be detained during the High Commissioner's pleasure.[307]

4:3:2 The Police

To enforce its authority and maintain law and order, the British South Africa Company needed a police force. In order to achieve this objective the Company had to bring peace in the north by eliminating the slave trade. It has seen shown in this chapter that the Bemba raided their neighbours for slaves, and this made it easier for the London Missionary Society to settle among the Mambwe and Lungu, who welcomed them as their protectors. The Bemba were linked to the Arab slave traders who had settled along the north of Lake Nyasa under their *Sultan* Mlozi.[308] The Bemba were encouraged by the Yao chiefs who had benefitted from this enterprise, acquiring guns, beads, and cloth in exchange for slaves and ivory. The Company used force to destroy the main strongholds in Nyasaland, and thereafter closed most slave routes from Zambia (then Northern Rhodesia). The British used royal naval vessels and recruited Sikhs in its

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[306]Northern Rhodesia, High commissioner's Proclamation No. 14 of 1912, section 13.

[307]North-Eastern Rhodesia, Regulations No. 2 of 1910, reg. 2; see Northern Rhodesia, High Commissioner's Proclamation No. 12 of 1915, section 4.

[308]L.H.Gann (1957) op. cit., p. 66.

military police force. The Yao of Nyasaland were recruited in the Imperial expedition that fought the Mpezeni Ngoni of Eastern Province, who also raided some neighbours(Gann 1957). By 1900 North-Eastern Rhodesia had an Imperial police force composed of Africans (Nyasas and the Ngoni), Sikhs and White officers.[309] However, the North-Eastern Rhodesia Order-in-Council 1900 permitted a civil police force to be established under the Administrator. Police officers were those who acted as messengers in the offices of Native Commissioners. They were employed to take messages to traditional chiefs or serve summonses on defendants.

In North-Western Rhodesia (the Lozi kingdom) the slave trade was not so well established, as the Paramount chief had control all over the territory and did not allow slave trading.[310] The Paramount chief received tribute from the neighbouring communities, whom he called his subjects. It was more logical for him to receive products than to sell human beings. As noted in Chapter Two, the Barotse used the Zambezi flood plain which was fertile and produced goods which were bartered with the people living in the high lands. As Gann (1957) remarks:

> Moreover the Barotse valley was not densely populated, and it was both desirable and possible to import labour with different skills rather than to export it. Apart from this, the country possessed a number of products suitable for legitimate trade and was thus not so dependent on the export of human beings.[311]

The Lozi raided their neighbours for cattle and children, but

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[309]Created by art. 20 of North-Eastern Rhodesia Order-in-Council 1900.

[310]L.H.Gann (1957) op. cit., p. 70.

[311]ibid. p. 70.

those children who were captured were not sold but became slaves in the royal families. Coillard's early school was attended by princes and their slaves.[312]

The Company intended to establish a police force that would attract white officers from South Africa, but this proved to be expensive and those whites who were recruited became victims of diseases. As a result of that the Barotse Native Police was formed,[313] composed of Africans from the Bemba, Ngoni and Ila (as the Lozi showed no interest in police work). However, it had a higher percentage of white officers and non-commissioned officers than the North-Eastern Rhodesia police.[314]

In 1912, after the amalgation of the two provinces, the police units were also unified to form the Northern Rhodesia Police Fprce.[315] The police officers were generally illiterate and did not receive training in civil policing, except in arms drill, as the force was armed.[316] In case of war, police officers were to be employed in military services.[317] Their main functions were to enforce the native commissioner's orders; they also had guard and escort duties. Gann (1957) notes that regardless of some organisational changes, the police retained certain characteristics:

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[312]Francois Coillard (1897) op. cit., p. 291.

[313]High Commissioner Proclamation No. 19 of 1901.

[314]L.H.Gann (1957) op. cit., p. 75.

[315]Northern Rhodesia High Commissioner Proclamation No. 17 of 1912, section 3.

[316]ibid. section 8.

[317]ibid. section 7.

> Whatever its legal status, it was in effect a military rather than a civil force...[318]

It is assumed that the police handled juvenile offenders in the same way as adult criminals and they may even have detained them together, because at this stage there was no separate juvenile justice system. Ideas about rehabilitation had not yet reached this part of the world. Whenever a police officer wanted to arrest anybody in the village, he had to report to the village headman, who in turn would assist in the apprehending of the suspect. If he was a juvenile the father or guardian was to be contacted and picked together with his child.[319]

4:4 Under Colonial Office Rule 1924 to 1964

The British South Africa Company discovered that the territory was becoming too costly to administer, while the British authorities in turn thought that the administration could be improved by placing more responsibility for tribal affairs into the hands of tribal chiefs. On the 20th February 1924,[320] the British South Africa Company handed over the administration of the country to the Colonial Office. The Northern Rhodesia Order in Council revoked the 1911 order in Council and created the post of Governor for the territory.[321] The economic and

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[318]L.H.Gann (1957) op. cit., p. 75.

[319]Informants: Chief Simwatachela and Chief Sipatunyanya and other elders interviewed echoed the same assertion.

[320]Northern Rhodesia Order in Council, 1924.

[321]ibid. art. 6. It abolished the post of Resident Administrator.

social changes that had taken place had undermined the Company's policy of allowing the traditional rulers to maintain control over their subjects. The dual court structure was established and functioned without any major difficulties, even in the newly emerged urban areas.

4:4:1 The impact of the copper industry and urbanization

As seen in Chapter one, Zambia is one of the most urbanised countries in Africa. In the late 1920s and early 1930s the country experienced rapid economic development as discoveries of vast copper deposits were made. The expansion of the electrical and automobile industries "during and after the First World War had greatly increased world demand for copper."[322] This attracted mining financiers to the copper industry in the country. The first mine shaft was sunk at Bwana Mkumbwa in 1927 and Broken Hill mine (now known as Kabwe) was exporting zinc and vanadium in 1928-30. There was an improvement in the country's revenue during these years. As Roberts (1976) notes:

> ...there was a real modest improvement in the country's financial position: in 1928-29 revenue exceeded expenditure for the first time and continued to do so until 1932-33.[323]

By 1930 there were four large mines on what is now known the Copperbelt Province, namely: Nchanga at Chingola and Nkana at Kitwe (these were owned by Rhodesian Anglo American Corporation), Mufulira at Mufulira and Roan Antelope at Luanshya (owned by

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[322]Andrew Roberts (1976) op. cit., p. 185.

[323]ibid. p. 185.

Rhodesian Selection Trust, which was dominated by American finance). The copper industry continued to expand and copper became the major source of revenue. All the mines are now under the Zambia Consolidated Copper Mines Corporation Limited (ZCCM).

The mines also stimulated town growth, the expansion of commerce, the establishment of secondary industries and the extension of a money economy. This provided financial incentives and attracted a large number of young persons to the expanding copper towns and other emerging commercial and industrial centres along the line of rail. As a man in the traditional Zambian society was regarded as the breadwinner, more men than women drifted into towns to search for employment, which left a relatively higher percentage of women in the villages. As Hoover et al (1984) note, 10,946 Africans were employed in the mines by the end of 1927 and 22,341 by 1929.[324] The man was no longer tied to the traditional work of tilling the land; peasant farming was regarded as inferior and a better living meant seeking professional, government, or unskilled positions in the urban areas. Some individuals left their villages to seek employment on European farms (thus in the reserved lands). As Roberts (1976) remarks, this migration was a result of the need to obtain money to pay taxes, "and to buy from European stores, the imported household goods which were replacing the cloths, pots and hoes that were once made and bartered in the villages".[325]

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[324]Earl L. Hoover, John C. Piper and Francis O. Spalding (1984), "The Evolution of the Zambian Courts System", in: Muna Ndulo (ed.), Law in Zambia, (Nairobi: East African Publishing House), p. 51.

[325]A.Roberts (1976), op. cit., p. 178.

The individuals who migrated from tribal areas in search of financial incentives found themselves in strange and new environments. Chapter Two showed how individuals acquired cultural values through socialisation. A child was surrounded by all his relatives, and this larger family determined his career and behaviour. Thus, he was trained to be a hunter, craftsman and traditional farmer. This larger family, moreover, was supported by the surrounding community, which was also harmonious in its traditional culture. These communities had rules or norms designed to control the behaviour of their members (see Chapters Two and Three). Juveniles in urban areas were considered to be in insufficiently controlled environments, living amongst strangers. As Wilson (1941) in the study of Kabwe (then Broken Hill) commented:

> Today the inhabitants of Northern Rhodesia are members of a huge worldwide community, and their lives are bound up at every point with the events of its history...They have entered a heterogenous world stratified into classes and divided states, and so find themselves suddenly transformed into peasants and unskilled workers of a nascent nation state.[326]

This meant that the restraining eye of the village community was no longer upon the juveniles who migrated to or were born in urban areas. They found themselves in industrial or commercial centres without family ties and belonging to no social circle in which their conduct could be scrutinized or observed. Predictably some engaged themselves in delinquent acts. As Jenkin Lloyd Jones, referring to the United States industrial centres, stated:

> Some of the serious social problems were associated with industrialism. The currents of industrial and

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[326]See A.L. Epstein (1983) Urbanization and Kinship, (London: Academic Press), p. 3.

> commercial life have set in tremedously towards the city. Thither flows with awful precipitancy the best nerve, muscle and brain of the country, and the equilibruim will be a current established, whereby the less competent, the unprotected, the helpless and innocent can be passed back, to be restored and reinvigorated.....[327]

The concentration of the population and general pattern of urbanisation, as in the newly expanded copper towns and those other industrial centres, combined with economic instability, are considered as contributing factors to juvenile delinquency that emerged in these areas. As Morrison (1897) referring to the economic instability that rose in 19th century in the United States, remarked:

> A community of this sort produces a large portion of weak and ineffective people possessing very inadequate physical equipment for successfully fighting the battle of life. As a result of their physical deficiencies, people of this kind are unable to obtain regular employment or to keep in work when they obtained it. ...they are driven down to the very lowest social stratum if they do not happen to have been born in it.[328]

However, the study of personalities, the social background and family histories of juvenile offenders has been challenged by radical criminologists, that the validity of their findings are concentrating upon individuals involved instead of basing such findings upon the social conditions that make individuals behave

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[327]See M.A. Platt (1969) The Child Savers, (Chicago: University of Chicago Press), p. 38. Other writers on factors associated with juvenile delinquency : Micheal Rutter and Henri Giller (1983) Juvenile Delinquency: Trends and Perspectives, (Middlesex, England: Penguin Books Ltd); D.J. West (1982) Delinquency: Its roots, Careers and Prospects, (London: Heinemann).

[328]D.W. Morrison (1897) Juvenile Offenders, (New York: D. Appleton), p. 28.

in the way they do.[329] Political and economic forces may be depicted as determining factors to a greater or less extent, but social traditions and criminal justice machinery are also vital in juvenile crime analysis, as some of the alleged characteristics of delinquents may be exaggerated, if not created, by the processes of trial and punishment and the consequential social stigma and loss of reputation to which those who happen to be caught are inevitably exposed.

4:4:2 The application of customary law

The Colonial Office reconsidered its policies regarding native affairs in light of the limited administrative staff available. The Colonial office introduced the concept of "indirect rule" in Zambia and encouraged the application of customary law;[330] chiefs and other traditional rulers were given responsibility for the management of their communities within tribal areas, and were to preserve and maintain all that was considered good in tribal organization and customs. This was provided for by the Native Authorities and Native Courts

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[329]see H. Parker and H. Giller (1981), "More and Less the Same: The British Delinquency Research Since the Sixties", British Journal of Criminology, Vol. 21 pp. 230-45.

[330]This had been applied in other British Colonies. See H.F. Morris and J.S. Read (1972) Indirect Rule and The Search For Justice: Essays In East African Legal History, (Oxford: Clarendon Press). See, generally, Epstein's classic work on the urban courts, e.g. A. Epstein (1953), The Administration of Justice and Urban African, (London: University Press); "Some Aspects of the Conflict of Law and Urban Courts in Northern Rhodesia", Rhodes-Livingstone Journal, Vol. 12 (1951), p. 28; "The Role of the African Courts in Urban Communities of the Northern Rhodesia Copperbelt", Rhodes-Livingstone Journal, Vol. 13 (1953), p. 1; and Hoover et al (1984), supra. p. 53.

Ordinances of 1929. The Native Courts Ordinance of 1929 gave chiefs jurisdiction over minor criminal cases, applying customary law, in courts in the rural areas. The Ordinance extended recognition to all traditional rulers, providing that these courts:

> ...shall consist of such chief, headman, elder or council of elders in the area assigned to it as the governor may direct.[331]

However, the Ordinance merely recognized what was already a very effective set of judicial institutions in the western part of the country, the Barotse kingdom, and formalised the means whereby appeals could go from the King's court to the territorial judiciary (Gluckman 1955 and 1965). The Ordinance empowered the Subordinate Courts to supervise the administration of justice in native courts through the exercise of a review and revisory jurisdiction over native court decisions.[332] The review and revisory powers raised the issues of ascertainment of native customary law and restrictions on its application (discussed later in the chapter).

Indirect rule applied to the new urban areas as well, in an attempt to maintain some measure of social control and to avoid detribalization. In 1936, a new Native Authority Ordinance re-enacted and strengthened the earlier provision of 1929.[333] The Native Courts Ordinance 1936 created native courts in the Copperbelt towns and other urban areas: elderly persons from

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[331]Native Courts Ordinance, No. 33 of 1929, section 3 (2).

[332]ibid. section 6.

[333]Native courts Ordinance, No. 10 of 1936 was enacted to extend the courts's jurisdiction.

surrounding tribal rural areas, considered to be acquainted or conversant with local customs, were appointed as presiding justices for new urban courts.[334] Their appointments were for terms of three years, with a two term maximum before their replacement by new persons from the rural areas. Urban native courts initially faced the problem of conflict of laws when dealing with family law cases, particularly in the context of inter-tribal marriages.[335] Coldham (1990) notes that in such cases the courts have made a deliberate choice of law, in respect of custody cases, "namely that customary law of the woman should apply".[336] The customary law applied in urban areas has changed both in form and content from what it was in pre-colonial days and even forty and fifty years ago from what it is in the rural areas today. As shown in Chapter Three, parents are still held responsible for criminal offences of their children in rural areas.

The jurisdiction of a native court was specified in the warrant issued by the governor,[337] and excluded cases involving the death penalty and witchcraft.[338] The traditional societies

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[334]Chief Sipatunyana worked as Local Court Justice at Kalomo Urban Local Court 1952 - 1955, before installed as a Chief.

[335]ibid. section 10. See also A. Epstein (1951) "Some Aspects of The Conflict of Law and Urban Courts in Northern Rhodesia", Rhodes-Livingstone Journal, Vol. 12, 28-40 at p. 29-30; and his general writings on Native Urban courts - A. Epstein (1958) Politics in an Urban African Community, (Manchester: Manchester University Press), and A. Epstein (1981) Urbanization and Kinship, (London: Academic Press).

[336]S. Coldham (1990), "Customary Marriage and the Urban Local Courts in Zamba", Journal of African Law, 67 - 75 at 74.

[337]ibid. section 8.

[338]ibid. section 11.

continued with their traditional ways of settling disputes and imposing sanctions according to their morals and values. For example, a case of witchcraft was considered to be a threat to the community; death or exile was the normal punishment. Other criminal cases were dealt with on the reconciliatory basis through compensation. As Colson (1953) notes:

> Today, with the presence of the British administration, Northern Rhodesia police, the government-instituted chiefs with their courts and messengers, there is effective force to prevent the mobilization of units in vindictive action, but underneath this superstructure one can still see the interplay of the old forms of social control based on the interaction of kinship and local groups. These still work to reach a settlement over and above that which can be obtained through the courts. They are interested, not in the punishment of the offender, but in the re-establishment of good relations between the groups involved.[339]

The statement indicates that there was a conflict between the English idea of punishment for a crime and the traditional approach found under customary law. It was particularly noticed with regard to imprisonment as a penalty, which gave no benefit to the complainant. Under customary law restitution and compensation were the preferred sanctions. As a result, complainants are often willing to discontinue criminal charges before the courts, preferring settlements outside court in anticipation of compensation (as shown in Chapter Eight).

However, penal sanctions under customary law were subject to the Native Courts Ordinances 1929 and 1936 and were limited as to the extent of applicability, because their validity was to be ascertained or tested before adoption. Thus native courts were empowered to try cases involving customary law "...so far as it

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[339]E.Colson (1953) op. cit., p. 204.

is not repugnant to justice or morality or inconsistent with the provisions of any order of the King in Council or with any other law in force in the territory,[340] rules of provincial and district commissioners and native authorities,[341] and such laws the governor might direct".[342] This principle of recognition was applied throughout most African territories where British colonial government was established, as a long-standing principle that relations between Africans within the territory should be regulated in accordance with the laws and customs of their ethnic groups.[343]

Therefore, the established native courts were faced with this limitation based on the repugnancy clause when it came to the sanctions of the law, where some of the punishment under customary law were considered brutal in nature. As Read (1972), discussing punishments under customary law in East Africa, notes, there was little interference with the tribal courts during Colonial days:

> European administrative officers were directed to exercise a reasonable supervision, not unduly interfering with them, unless they should be essentially inhuman or unjust, as for instance, where convictions are obtained by witchcraft or torture, or entail barbarous penalties such as mutilation, cruel corporal punishment, or the enslavement of a condemned

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[340]Native Courts Ordinance, No. 10 of 1936, section 12(a). This has now been enacted in Local Courts Act, chap. 54 section 12 (1).

[341]ibid. section 12(b).

[342]ibid. section 13.

[343]See J.S. Read (1972) "Customary law under Colonial Rule", in H.F. Morris and J.S. Read, Indirect Rule and the Search for Justice: Essays in East African Legal History, (Oxford: Clarendon Press), pp. 167-212; H.F. Morris (1972) "Native Courts: A Corner-Stone of Indirect Rule" in the same book at pp. 131-166.

person or his relations.[344]

However, regardless of their limitations the native courts contributed a valuable service to the evolving society adapting themselves to suit the ever-changing conditions caused by the impact of European civilization upon traditional life. This justifies their existence in the country and litigants in most cases are satisfied with the judgments of what have now become the local courts. Coldham (1990) notes, "nationally, fewer than one case in 100 would go on appeal".[345]

The chiefs enforced tribal laws and customs on juveniles but the parents continued to play a vital role in child socialisation and an active part in native court proceedings in rural areas, as shown in Chapter Three. Local courts settle disputes in an informal and advisory manner in rural areas, as the native courts used to do, because at times complainants do not bring specific claims before courts (Epstein 1958).

4:4:3 The Establishment of The Juvenile Justice System

Urban development in Zambia has followed industrial development. One does not find large indigenous urban settlements typical of Western Africa, especially Nigeria. Even people from the larger ethnic groups did not move far from their rural villages or tribal life to create new settlements, the traditional subsistence economy continued and did not support the

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[344]J.S. Read (1972) "Kenya, Tanzania and Uganda" Offprint from African Penal Systems, (London: Routledge & Kegan Paul Ltd.), p. 94.

[345]S. Coldham (1990), supra., p. 67.

establishment of big markets. Large towns developed in Northern Rhodesia only as answer of large-scale mining. The policy of indirect rule did not mean that the colonial government relinguished power to the indigenous people; the system was introduced to maintain control over Zambian society through tribal leaders and to control the economic wealth of the country. However, more and more young people left the tribal areas and settled in the expanding towns and on the reserved lands, new measures were needed to control their behaviour, because they were beyond the reach of their traditional leaders.

4:4:3:1 Strengthening of the criminal justice system

The colonial authorities introduced a Penal Code in 1930,[346] a codification of English law which differed from the uncodified English law itself. When the native courts were being established in the country, rest of the judicial system was revised: the High Court[347] and the magistrates courts were expanded, as the Subordinate Courts Ordinance 1933, created new courts of provincial commissioners and resident magistrates, in addition to those of district commissioners, and district officers.[348]

The introduction of the Penal Code indicated the need for improved police services. In 1932, an officer seconded from the Northern Rhodesia Regiment (Military Unit) was appointed the first Commissioner of Police; in 1933 the police force was established as a separate civil police unit.[349] Police stations were established in mining and other towns along the line of rail and small police detachments were based at Mongu and Chipata (then Fort Jameson) in the western and eastern parts of the

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[346]Penal Code Ordinance No. 42 0f 1930 (now Laws of Zambia chapter 146). For discussion of the sources of criminal law in Zambia, see John Hatchard (1984) "Crime and Punishment in Zambia" in Muna Ndulo (1984) op. cit., pp. 163-186, at 163-64.

[347]The High Court Ordinance, No. 18 of 1933.

[348]The Subordinate Courts Ordinance, No. 36 of 1933. This has remained as the basic law constituting subordinate courts as will be seen in the later chapter, while discussing operations of courts (Laws of Zambia chapter 45).

[349]Under Northern Rhodesia Police Ordinance, No. 44 of 1933. See also Report of Commission Appointed to Enquire into the Financial and Economic Position of Northern Rhodesia, (London: His Majessty's Stationery Office) (1938) p. 307.

country respectively. The police force did not operate in the trust lands, which were under the control of the tribal chiefs; district messengers from the offices of district commissioners enforced native authorities' orders and local laws. The police could only enforce the laws in these areas when called upon by the district commissioners. The main police work arose in the "industrial areas, with the wandering labour population, the unauthorized residents in townships and squatters on White's farmlands".[350]

At that time the colonial government did not establish a prison service separate from the police force. The Commissioner of Police was also appointed as Chief Inspector of Prisons. All members of the prison services were appointed under the Police Ordinance and district messengers were also at times called for prison duty. However, the Commission appointed to enquire into the financial and economic position of Northern Rhodesia recommended in 1938 that the administration of prisons should be separated from police work:

> Gaol administration has now become a specialized science and should be controlled by men whose special duty it is, and not officers whose primary work is to prevent and detect crime.[351]

Yet the situation did not change up to the time of independence in 1964.

African Juvenile offenders sentenced to imprisonment were confined together with adult inmates and with those with mental illness at Livingstone Central Prison, because there were no

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[350]ibid. p. 311.

[351]ibid. p. 320.

adequate arrangements for them elsewhere. As reported in Department of Social Welfare Annual Report 1946:

> African juvenile offenders are dealt with either by corporal punishment, imprisonment...as there is no specialised treatment of juvenile delinquents. While European juvenile offenders are detained in a reformatory in South Africa.[352]

The Commission (1938) notes that with a younger generation developing on the Copperbelt, there was need for adequate arrangements to be made, since the country did not have a local reformatory or Borstal institution. However, the legislation of the time had a provision authorising juvenile offenders to be transferred to a reformatory in South Africa and this was applied to Europeans.[353]

4:4:3:2 Juvenile Court

The British influence up to this time had been so profound that no alternative sources of law or policy were considered. The authorities imported English ideas concerning the treatment of juvenile delinquency while recognizing that children were not to be held responsible for their actions to the same degree as adults. The Criminal Procedure Code was enacted in 1933[354] and the Colonial Annual Report note:

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[352]Northern Rhodesia Colonial Annual Report 1946, p. 35.

[353]Juvenile Offenders Ordinance, No. 41 of 1933, section 14. While section 16 of the same Ordinance recognizes the agreement entered on 5th November 1920 between the Administrator of Northern Rhodesia and the Officer Administering the Government of Union of South Africa to have juvenile offenders removed to the Union. Now sections 115 and 114 respectively of chapter 217 of Laws of Zambia.

[354]The Criminal Procedure Code, No. 23 of 1933.

> The Procedure Code is almost identical with that recently enacted in the East African Dependencies, and its enactment in this territory necessitated so many amendments to existing Courts Ordinances that the latter were re-cast and the opportunity taken of bringing them up to date.[355]

The Juvenile Offenders Ordinance 1933[356] included provisions modelled as the English Children and Young Persons Act 1933. This Act, for the first time, attempted to create a separate juvenile justice system in Northern Rhodesia, although at this time juvenile delinquency had not yet assumed serious proportions in the country.[357] This Ordinance provided the fundamental ideas underlying a large number of the provisions contained in subsequent legislation on the protection, care and prosecution of juveniles. Welfare work was already in progress at this time, as in 1932, a "government nursing sister" was appointed to do such work in Ndola "amongst the rapidly-increasing poor population".[358] Thereafter, welfare work and other preventive measures were carried out in all growing towns (Livingstone, Lusaka, Kabwe and Luanshya).

The Ordinance did not set up a separate juvenile court and no special magistrate or judge was appointed. All magistrates dealt with juvenile matters in addition to their other administrative and judicial functions. However, when a court was hearing a juvenile case it was required to sit in a different

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[355]Colonial Reports: Nothern Rhodesia for the year 1933, (London: H.M.S.O 1934), p. 37.

[356]No. 41 of 1933.

[357]Colonial Reports: Northern Rhodesia For the year 1949, (London: H.M.S.O 1950), p. 45.

[358]Northern Rhodesia Colonial Annual Report 1933, p. 11.

building or room from that where it ordinarily held criminal proceedings, or on different days or at different times from those at which the ordinary sittings were held. Such a court was referred as Juvenile Court.[359] The court was to exclude all persons from the court except advocates, parties to the case, their witnesses and members of court.[360] Juveniles were to be separated from adult offenders, unless jointly charged with an adult with the same offence.[361]

Besides the criminal jurisdiction, a juvenile court could hear cases against destitute children, who were considered to be persons "in need of care".[362] This legislation was applicable:

(a) to juveniles found begging or receiving alms or wandering or falling in bad association or exposed to moral danger;

(b) to juveniles who by their bad conduct or lack of discipline are a cause of concern to their parents, guardians or other persons in charge of them;

(c) to juveniles who were in control of a parent who by reason of criminal record or drunken habits is unfit to have the care of him;

(d) to a juvenile who, being an illegitimate child whose parent is undergoing imprisonment, is found destitute.

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[359]Juvenile Offenders Ordinance, No. 41 of 1933, section 3 (1).

[360]ibid. subsection 4.

[361]ibid. subsection 3.

[362]ibid. section 18. Amended by Ordinance No. 20 of 1953 and became section 12, it became section 9 under Ordinance 4 of 1956, and it still section 9 under the Juveniles Act, chapter 217 of the Laws of Zambia.

This legislation introduced notions unknown to traditional societies, in which a child was looked after by a family, and family did not refer to father and mother only. Therefore, a child whether legitimate or not could not find himself a destitute after his or her parents died or were imprisoned.

A juvenile court could not sentence a child under 14 years of age to imprisonment, but might fine him, order corporal punishment, place him on probation or commit him to the reformatory.[363]

During the remainder of the colonial period, there were no major changes in the treatment of juveniles, although African welfare centres were established in urban areas and welfare officers appointed. Some amendments were made in 1953, when the Juveniles Ordinance[364] replaced the Juvenile Offenders Ordinance, and dealt comprehensively with all aspects, other than adoption, of the protection and welfare of juveniles and with juvenile delinquency. The Ordinance divides juveniles before the court into two classes, namely, juveniles in need of care and juvenile delinquents. The latter class, as seen above, continued to be dealt with by magistrates sitting as juvenile courts, whereas the forner class were to be dealt with by Special Courts consisting of a chairman with other persons to assist and advise him. The Ordinance went further to require that one of those two persons should be a woman.[365] In addition the Ordinance deals with the

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[363]ibid. section 10.

[364]No. 20 of 1953.

[365]ibid. section 11; and section 10 establishes the Special courts.

control of foster parents, the prevention of offences against juveniles and the control of entertainment by and for juveniles. Juvenile under the 1933 Ordinance meant a young person who had not yet attained the age of 18 years; the 1956 Ordinance amended to include a person below 19 years (this is the definition under the present Act discussed in Chapter One).

The Special Courts had a surprisingly short life, as they were abolished in 1956 by the Juveniles Ordinance, No. 4 of 1956; the position reverted to that of 1933, where there were no specially appointed magistrates. No plausible explanation can be given, only some speculations. The reason may have been that no specialised training had been initiated for magistrates most of whom as administrative officers were in any case burdened in combining judicial and administrative function.

The colonial government, the local authorities and voluntary societies, working in co-operation in social welfare, especially in relation to juveniles in need of care, extended their services. In 1957 Chilenje Remand Home for Africans was opened in Lusaka, others were built for Europeans in Kitwe, Luanshya and Lusaka. By 1962, place-shelters of safety have been opened in Livingstone, Kabwe (then Broken Hill), Kitwe, Mufulira, Mansa (then Fort Rosebury) and Chipata (Fort Jameson), for African children found to be in need of care in urban areas.[366] Plans were under way for building a Remand Home at Ndola. Juvenile Courts were often able to exercise their jurisdiction over juveniles in need of care: in 1962, for example, 153 juveniles

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[366]Department of Welfare and Social Services and Probation Division Annual Report, 1962, p. 40.

were committed to the care of the Commissioner for Welfare of Juveniles as a fit person.[367]

4:4:3:3 Probation

By 1952, the colonial government had not yet established a department of social welfare. The Salvation Army operated a Home Refuge for European children at Ndola and the Diocese of Northern Rhodesia operated one such Home for European children also at Ndola.[368] African welfare in urban areas was the concern of local government authorities, who ran general recreactional activities and youth clubs.[369] The colonial government did not wish to encourage children to migrate to the towns, as Sandford, the Senior Provincial Commissioner, stated that "....I am certain that native children are better off in their own villages without education than the children in the mine compound with education".[370] This was in line with process of indirect rule, which required that juveniles should be in the tribal areas where they would be controlled by the tribal elders and where education was not a necessity.

The colonial government continued to separate juvenile offenders from adults through a method of probation (supervised freedom). A juvenile court was empowered to make a probation

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[367]ibid., p. 41.

[368]Colonial Reports: Northern Rhodesia For the year 1949, (London: H.M.S.O. 1950), p. 44.

[369]Colonial Reports: Northern Rhodesia for 1951, (London: H.M.S.O 1952), p. 88.

[370]Richard Hall (1965) op. cit., p. 109.

order against a juvenile found guilty of any offence other than homicide.[371] The order could be with or without conditions, and required that the juvenile should be under the supervision of a probation officer for a specified period, not exceeding three years. The probation officer was under the control of the court that made an order; his duties were to visit the probationer, help him if possible to get a suitable job and make regular reports to the court.[372]

The Probation of Offenders Ordinance 1953[373] provided a more general use of the probation system for supervising offenders in the community. This Ordinance applied only to the Copperbelt and other industrial centres along the line of rail and was not applicable to native trust lands (tribal areas).[374] Its application was gradually extended to such areas as the need arose, by Government Notices.[375] The Department of Welfare and Probation services was set up in 1952, which enabled a start to

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[371]Juvenile Offenders Ordinance, No. 41 of 1933, section 7 (2) (3).

[372]ibid. section 7 (5); a probation officer was required to make progressive reports to the court.

[373]No. 15 of 1953.

[374]Govt. Notice No. 359 of 1953.

[375]For example: The Probation Offenders Ordinance was to apply to:
1. Chipata (Fort Jameson) Township by Govt. Notice No. 266 of 1956.
2. Mansa (Fort Rosebury) Administrative District Govt. Notice No. 355 of 1961.
3. Samfya Boma Govt. Notice No. 365 of 1962.
4. Kasama District Govt. Notice No. 163 of 1963.
5. Mbala (Abercorn) Township S.I 256 of 1965.
6. Chinsali District, Senanga District and Chipata District S.I 281 of 1967.
7. Mbala District S.I 57 of 1970. But now it applies to the whole of the country.

be made in co-ordinating social welfare. In 1955, the African probation service was established and thereafter the training of African social workers began. From its inception the Probation Service had supervised many juveniles on probation: for example, in 1958 there were 138 orders relating to African juveniles and in 1959 207.[376]

Social welfare officers were trained for probation work. The Residential Training Centre at Mindolo Mission started offering a two-year course in social studies to selected Africans in 1954. The course covered theory and practice of group work, theory and practice of case-work, problems of human behaviour and others subjects. The social welfare organiser co-ordinated with local authorities and was responsible for the "in-service" training scheme for the staff of local authorities. In 1963 the Oppenheimer College of Social Services was opened and in 1965 it was incorporated into the University of Zambia, providing a two-year course for the diploma in social work and a four-year degree in social work administration.[377] In 1962, a social welfare organiser was appointed, with considerable experience in Scouting, to extend the Boy Scouts' Association movement to the rural areas. The Department had trained social welfare officers and social workers, including handicrafts instructors and trades instructors,[378] and the system continued to develop up to the

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[376]Department of Social Welfare and Probation Services Annual Report, 1958, p. 12, and at p. 11 for the 1959 Report.

[377]Department of Welfare and Probation Services Annual Report 1962, p. 2; see also the Annual Report for the year 1965 p. 9.

[378]Department of Social Welfare and Probation Services Annual Report 1965, p.38.

time of independence.

4:4:3:4 The Reformatory, Approved School and Remand Homes

The Juveniles Ordinance 1953 was very comprehensive regarding juvenile delinquents. It provided for the establishment of Reformatories[379] and Approved schools.[380] Kangonga Training School-Bwana Mkubwa near Ndola established in 1960 was closed and inmates transferred to Nakambala in Mazabuka in 1963. Nakupota Training School was established at Ndola in 1961, but this school for unknown reasons could has now become Insankwe Probation Hostel. The Ordinance is based on the English statutes, (i.e., the Children and Young Persons Act 1933, the Criminal Justice Act 1948, and the Prisons Act 1952). The Katombora Reformatory near Livingstone has rules similar to those relating to Borstal training in England.[381] The Nakambala Approved School is based on the (former) English approved schools.[382] The Chilenje Remand Home in Lusaka was established on the basis of English remand homes, for the safety custody of juvenile offenders.[383]

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[379]section 91. Katombora Reformatory was gazetted as a reformatory on 8th December 1953, prior to this date juvenile offenders were held on the Governor's warrant, and their sentences varied between 2 years and 5 years imprisonment. In short, Katombora was juveniles' prison as it cantered for those aged between 9 and 18 years old.

[380]section 76.

[381]Criminal Justice Act 1948 (11&12 Geo 6 c. 58) Sect. 20 (1), Prisons Act 1952 (15&16 Geo 6 & 1 Eliz. 2 c. 52) Sect. 45 (2), (3).

[382]Children and Young Persons Act 1933 (23&24 Geo 5 c. 12) Sect. 57 (1).

[383]ibid. Sect. 77 (1).

Institutional facilities for European children in need of care continued to expand: a home was run by the Sons of England Patriotic and Benevolent Society in Kitwe and a home for older boys in need of care was opened by the Governor in January 1957 run by the Rotary club of Lusaka.[384]

The Mazabuka (Nakambala) site had an additional advantage over the Kangonga in Ndola, in that it was possible to train a number of boys in agricultural pursuits as a result of which it was considered that inmates would be able to "contribute towards their own subsistence".[385] In 1963 there were three teachers at this School and the Local Education Authority expressed the view that the examination results obtained "with the boys reflected great credit upon the teachers, despite some practical problems posed in the teaching programme".[386] In 1964, the Nakambala Training School curriculum included a recreation programme and an active Scout Troop. By the end of December 1964 the School had 50 inmates and plans were prepared to expand the School to accommodate 100 inmates; these plans have never been implemented.

Katombora Reformatory was established to accommodate 120 inmates. At the end of 1953 it had 53 inmates; the highest number of inmates in any year was 84 in 1966. At independence the Reformatory was still being constructed. However, in 1964 inmates constructed a clinic and a school to serve both inmates and

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[384]Colonial Reports: Northern Rhodesia for year 1957, (London: H.M.S.O 1958), p. 36. Charitable Organisation were really active in the protection of children and did assist the Department of Social Welfare in social services.

[385]Department of Social Welfare and Probation Annual Report, 1963, p. 9.

[386]ibid., p. 10.

children of staff. The clinic also serves surrounding villages. Inmates were involved in various trades, including carpentry, tailoring, basket making, plumbing, bricklaying, shoemaking, cement blockmaking, painting and decoration. There was a Boy Scout Troop under Housemasters and inmates were involved in weekend camping and camp fires. In 1964 the Reformatory won 28 prizes at Livingstone agricultural show. The Reformatory had at least one trained instructor in each trade.

4:5 Conclusion

Thus the colonial government recognised juvenile crime as a social phenomenon by introducing laws relating to juvenile offenders and by establishing institutions to cater for such juveniles. Yet the enactment of the Juveniles Ordinance was just the importation of legislation from the mother country, when in fact the time was perhaps not yet ripe for such legislation in Zambia. This is illustrated by the provision for the continuing application of African customary law in making dispositions of juveniles found guilty of criminal offences and those declared in need of care.[387] The interests of juveniles were to be observed in accordance with customary law, although such interests were not spelt out. It is assumed that this includes traditional patterns of child upbringing (i.e. a juvenile must be allowed to choose a person he/she wishes ti live with).

On the other hand missionary work had already had some

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[387]section 1 (2) of the Juveniles Act, quoted in Chapter One footnote number 2.

impact on the traditional life of the indigenous peoples: it affected child socialisation processes with the introduction of formal education and christian beliefs. The mission schools had an objective of social and economic changes and, through the new educational system, children were alienated from their societies' values, customs and beliefs. The missionary aimed at destroying what were perceived as primitive practices (e.g. rain-ritual dances) and started to preach a new dotrine of sin.

Therefore, deviant behaviour came to be defined in terms of sin and the western conception of right and wrong. A juvenile who violated the regulations prescribed by the mission was subjected to corporal punishment as a means of social control, and this has remained as a disciplinary measure in schools and even as a disposition in the juvenile justice system.

During the BSAC and colonial administrations, the intentions were to have indigenous people apply their respective customary laws in civil matters and even in criminal cases, subject to the "repugnancy clause". The BSAC had introduced common law and statutory offences (tax evasion, firearms-related offences and crimes of witchcraft), and also established formal courts and police services.

But child misconduct was defined in terms of adult criminality and had received special attention. The idea of a separate juvenile justice system borrowed from Great Britain was introduced under the Juvenile Offenders Ordinance 1933, on the lines of the English Children and Young Persons Act 1933. But the Ordinance was not followed up to the letter as no special magistrates were appointed to hear juvenile cases. However, more

juvenile establishments were created with the help of religious organisations. The underlying principles of juvenile justice were followed: more remand homes for juveniles in need of care were established, approved schools and a reformatory were set up and staffed with trained personnel. Oppenheimer college for such officers was established and the Department of Welfare and Probation Services continued to expand up to the time of independence. During this period the concern for the pre-delinquency stage was being taken care of through homes for safety and the "need of care" proceedings.

CHAPTER FIVE

5 THE EVOLUTION OF JUVENILE JUSTICE SYSTEM: II IN THE POST-INDEPENDENCE PERIOD

5:1 Introduction

This chapter assesses how the government of Zambia responded to the problem of juvenile delinquency. In particular, it examines whether at any stage government adopted a clear policy in respect of juvenile offenders and whether staff personnel involved in the juvenile justice system are adequately trained.

After independence many qualified colonial officers in the public services including the juvenile justice system left the country. This led the Zambian government to embark on rapid training programmes to fill the vacant posts and implement a Zambianization programme, appointing Zambians to senior positions in the public service. However, there were certain policies implemented which affected juveniles. For example, the "back-to-land" campaign, minimum sentences for certain offences and the vigilante scheme.

It is suggested that, with the lack of government guidelines for the police and the courts, juveniles have been ill-treated as they are not usually accorded even their rights as provided by the Juveniles Act and therefore may often be denied their fundamental rights guaranteed by the Constitution. For example, juveniles are detained together with adult criminals at police stations and at courts (the provisions of the Act relating to the

operations of the police, courts and juvenile correctional institutions will be discussed in Chapters Seven, Eight , Nine and Ten).

5:2 The Training of Criminal Justice System Personnel

At independence on the 24th October 1964 Zambia inherited the criminal justice system established by the colonial government. The government also inherited severe economic problems: while assuming political power, it failed to gain control of the economy. This was due, in part, to:

(a) a scarcity of skilled and educated Zambian workers, with an extreme dependence on expatriate manpower at most levels of skilled employment in government and in the private sector, and

(b) a surplus of unskilled labour beyond the number of wage-earning jobs which the economy could provide.[388]

At independence there were just over 1,200 Zambians with secondary school certificates and scarcely 100 University graduates.[389] The lack of qualified manpower affected the criminal justice system: all the High Court judges, most of the magistrates, the Commissioner of Police and senior police officers, Social Welfare Officers and the Principal of the

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[388]First National Development Plan, 1966-1970 (Lusaka: Govt. Printer), p. 73 - 78; see also Republic of Zambia, Manpower Report and Statistical Handbook on Manpower, Education, Training and Zambianisation, 1965-1966 (Lusaka: Govt. Printer), p. 1.

[389]Advisory Mission (ILO) (1977), Narrowing the Gaps: Planning for the Basic Needs and Productive Employment in Zambia, (Addis Ababa: Jaspa), p. 45.

Reformatory were all expatriates, many of whom resigned at or after independence.

Urban growth stimulated by the mining industry continued after independence, with increased migration to urban areas. As the United Nations Conference on Human Settlement (Vancouver, 1976) noted:

> .....after independence, with the abolition of the poll tax and the removal of restriction on movement, the migration links established during the colonial period, between the rural areas and the towns were strengthened and urban growth rates since independence have been extremely high.[390]

This has led to squatter settlements springing up on the peripheries of many towns. In the mid-1970s the government embarked on the upgrading of these areas (Chawama, Old Kabwata, Kanyama etc. in Lusaka), providing them with some sewage and sanitary services, although in most cases water supplies remained on a communal basis.

As many expatriate officers left the civil service, leaving senior posts vacant, the government had the task of filling vacant posts and also had to satisfy the people that it was in control of the administration and by the instituting a Zambianisation programme. This meant that some appointments to senior levels were not based on merit or qualifications; some expatriates were even removed from their posts without justification. Special training programmes were needed for the police, juvenile court magistrates and social welfare officers.

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[390] United Nations Conference on Human Settlement, Held on 22nd - 26th April 1976, at Vancouver, p. 6.

5:2:1 Selection and training of police officers

Shortly before and immediately after independence, experienced expatriate officers began leaving the Police Force in large numbers. Under the government's Zambianisation policy, the first Zambian Commissioner of Police was appointed on 1st November 1965; thereafter training programmes were hurriedly initiated for indigenous Zambians required to take over vacant senior positions.

Formal organisations like police forces are usually bureaucratically structured to enhance efficiency by coordinating and integrating the members and their activities. Max Weber (1946) argued that there is an ideal or complete bureaucracy which displays certain characteristics;[391] such characteristics have been examined in relation to contemporary police departments.[392] These characteristics include the division of labour and responsibilities as to police duties, police regulations as they pertain to rules and procedures, police reports and records which end up in permanent files[393] and the

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[391]Max Weber (1946) "The Theory of Social and Economic Organisations," in H. H. Gerth and C. Wright Mills (trans.) Max Weber: Essays in Sociology, (New York: Oxford University Press), pp. 329 - 441.

[392]R. J. Lundman (1980) Police and Policing: An Introduction, (New York: Holt, Rinnehart and Winston), pp. 45 - 69; T. A. Critchley (1967) A History of Police in England and Wales, 900-1966 (London: Constable), pp. 50 - 52.

[393]Zambia Police Force Standing Orders No. 213 specifies the method of disposal of police records and Appendix 9 of the same specifies how long those records can be held at police formations. And some of such records are trasferred to the Director of the National Archives, while others cannot be

qualification and selection of recruits; police work has been recognised as a permanent and pensionable occupation,[394] certain interpersonal relationships have been created and police work has become technical in that certain investigations require forensic knowledge. Internally, police forces have developed to build command systems, career structures and job security with impartial disciplinary tribunals etc.

Appendix VI shows the organisation at police headquarters, the various responsibilities of the police force being located within specific subdivisions. An administrative subdivision headed by a Deputy Commissioner coordinates police units with respect to appointments, promotions, discipline, training, salaries, and capital expenditure, police camps, sports etc.; a technical subdivision responsible for the computer unit,[395] signals and motor transport unit, is also headed by a Deputy Commissioner.

In order to assess whether police officers are competent to deal with juvenile delinquency, the selection and training of police recruits must be examined.

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destroyed before they are examined by the Director or his representative.

[394]Police officers are classified as civil servants by the Police and Prison Services Commision of 1974; and their conditions of service are governed by General Orders 1976, which applies to all other public officers (teachers, doctors, nurses, etc.).

[395]Its function is not clear because when I visited police headquarters found computers not being used and police statistics anr records are not stored in the computer.

5:2:1:1 Requirements for appointment as a police officer

There are fixed criteria for selection as a police officer, with three entry points: a Cadet Assistant Superintendent must be a University graduate, a Direct Entry Sub-Inspecter must possess a Cambridge School Certificate or a G.C.E "O" Level in three subjects (English and any other two that should include either either Mathematics or a Science subject)[396] and a Constable must a Grade 9 or Form II Certificate. In all appointments, except Cade Assistant Superintendent must be aged between 18 and 25 years. All recruits must be without criminal records.[397] Confirmation in the Police Force was ordinarily given after a two-year probation period.[398]

However, in the late 1970s and through the 1980s, a major consideration in recruitment was the possession of a membership card of the ruling United National Independence Party (UNIP), and the interviews for selection involved district and provincial political leaders.[399] The last Cadet Assistant Superintendent intake was in 1975, and that of Direct-Entry Sub/Inspector was in 1990.

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[396]The present researcher was appointed as such on 10th February 1971.

[397]Zambia Police Force Standing Orders No. 42.

[398]These entry points are a colonial legacy as the higher ranks were specifically reserved for Cadets from the British schools, Africans could only join the police as constables.

[399]Political education based on Kaunda's Philosophy of Humanism was introduced in the syllabus for recruits and refreshers courses.

5:2:1:2 Police training

Police training has been characterised as a process of socialization whereby recruits learn the values and behaviour patterns characteristic of experienced police officers considered suitable for transmission to newcomers. Officers are thus encouraged to work as a unit rather than as individuals. Newcomers are taught to stand by their fellow officers.[400] These values and characteristics were viewed as the working personality of police officers.[401]

Selected candidates are trained at Lilayi Police Training School. The period of training for Constable recruits is one year, while for Cadet Assistant Superintendent and Direct-entry Sub-Inspector it is six months, but the content of the courses is the same: the emphasis is on law, police duties and foot drill.[402] However, Cadet Assistant Superintendents and Direct-entry Sub/Inspectors are taught separately by officers of the rank of Chief Inspector and above.

The topics cover and emphasize the laws police officers enforce and the proper ways to enforce these laws. The method of teaching involves memory work on the part of recruits, as the

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[400]Personal experience. The presenter researcher saw most complaints against police when he was Chairman of Boards of Inquiry, "closed-unascertained" as police officers called to give evidence, testified in favour of their fellow officers.

[401]R. J. Lundman (1980), supra pp. 70 - 85; See also J. Skolnick (1966) Justice Without Trial. (New York: Wiley), pp. 24 - 67.

[402]Zambia Police Force Standing Orders No. 91. And personal experience as the present researcher underwent such a course in 1971, although at that time the duration of the course was four months.

questions usually require recruits to recite or reproduce the definitions of offences as provided in the Penal Code or the rules of procedure provided in the Criminal Procedure Code (CPC). Thus recruits can memorise certain sections of the legislation without really understanding them.

The foot-drill training is quasi-military as it involves physical training, weapons use and self-defence. This gives an impression to recruits that policing is a physically demanding and dangerous occupation. All members of the police must be able to use the .303 rifle, G3 rifle and revolver with reasonable accuracy, and there is supposed to be an annual series of musketry competitions in all divisions.[403] Recruits learn that their interaction with instructors is a relationship based on the chain of command, and that this would continue in their future working relationship with superior officers. Recruits are told to address a superior officer as "Sir" and to stand at attention while speaking to him until given the command: "at ease". As in military training, cleanliness is encouraged. The recruits' last stage of training is taken at the separate Para-military Training School, also at Lilayi. The whole police training makes recruits regard themselves as members of a disciplined force and not as individual officers.

After training recruits are attached to experienced officers whom they understudy, learning the problems and practices of local stations.

There are only three police officers who are qualified as advocates of High Court of Zambia and only twelve graduate

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[403]Standing Orders No. 93, 94, and 95.

officers, who hold various bachelor's degrees. All of these, except the Inspector-General of Police, are below the rank of Deputy Commissioner, which is a policy-making rank. In the 1980s the Police Force had over thirty university graduates but most of them resigned or asked for transfer to other Ministries or Departments. Misplacements and consequent frustrations are common in the police service. For example, the Presidential body-guard is a University graduate, who should be heading a police department instead of guarding an individual and carrying his briefcase.[404] The Commanding Officer at Lilayi Police Training School is said to be a holder of the Form 11 (Grade 9) certificate.[405] He has no special training whatsoever, and has risen through ranks.

Advanced promotional courses formerly provided for officers being promoted from Sergeant to Sub/inspector are no longer held.

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[404]Personal experience. The present researcher while holding the rank of Assistant Superintendent and working as Officer-in-Charge of Kantanshi police station in the Copperbelt division, in 1982 was selected for a Master of Arts degree in Criminology at Simon Fraser University B.C Canada on SIDA scholarship with a view on completion to head the Police Training School Lilayi or to head a Research unit at Headquarters. On return was he reverted to the prosecutions section, promoted to Superintendent and posted to Copperbelt Division Headquarters to head the prosecutions department. As he was frustrated at not utilising his recently acquired knowledge, he asked for a departmental transfer to the Ministry of Legal Affairs and was appointed as a State Advocate under the Director of Public Prosecutions in 1985. The late Mr L. Mwaba, while holding the rank of Senior Superintendent and heading the prosecutions department at Headquarters, was removed and appointed to command a small rural district (Mazabuka); he requested a departmental transfer to the Ministry of Legal Affairs as State Advocate and rose to the post of Director of Legal Aid; Hon. Mr Justice C.P. Sakala, who followed the late Mr Mwaba, might have transferred to the Ministry of Legal Affairs for similar reasons but is now a Judge of the High Court.

[405]Personal interview with an officer at Police Headquartes in the Staff section.

Junior officers, especially constables are promoted without passing Force Standing Orders and Force Instructions examinations, which were essential before and through the 1970s.[406]

The police training does not equip officers with the relevant knowledge that would assist them in handling of juvenile offenders. Officers are influenced by the widespread perception that deviant behaviour is politically motivated (as discussed in the Chapter Six). This concern is with the crime rather than the person who commits it, as to why he behaves in that way and how he could be assisted; juvenile offenders are labelled criminals, as adults are, and treated accordingly. The question of how police officers treat juvenile offenders will be assessed in Chapter Seven.

5:2:2 The selection and training of lay magistrates

Formal training for lay magistrates in general started in 1965 at the National Institute of Public Administration (NIPA). At independence colonial administrative officers who had also presided over Magistrates' Courts started leaving the country in large numbers and it was government policy to train Zambians as magistrates and to separate judicial functions completely from administrative functions. NIPA has continued on a regular basis to train magistrates for the Judicial

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[406]For example football players in Nkwazi, the Police Club, are usually promoted without attending any promotional course.

Department.[407]

5:2:2:1 Qualification for the course and selection procedure

The lay magistrates' course is open to men and women, of at least twenty-five years, who are Zambian citizens, with at least Form V academic qualifications (the equivalent of a full Cambridge School Certificate) or with four "O" level passes plus a credit in English language. A record of successful employment and referees' reports are required. Applicants who meet these requirements and are considered suitable are interviewed by a selection board set up by the Judicial Service Commission. The annual intake normally required is about twenty.[408]

5:2:2:2 The curriculum

Unfortunately that the training programme for lay magistrates does not include criminology or any social science subject that could introduce a theoretical and historical understanding of juvenile justice, nor are the students introduced to the probation services or social work. Such elements are surely vital if magistrates are to gain some theoretical understanding of the factors associated with juvenile crime and to be guided as to the sentencing policy of the courts, for example, whether to impose penal sanctions based on

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[407]Personal interview with Mr. E. J. Swarbrick, Head of Legal Department at NIPA.

[408]Personal interview with Mr George Tembo, Clerk of Court at Lusaka Subordinate Courts, on 29th May, 1993.

deterrence or to order an offender to undergo a rehabilitative programme. Without such a broadened knowledge, a magistrate's sentencing approach is likely to be legalistic, instinctive and probably punitive in nature.

The course covers a duration of two years (until 1987 one year) in three terms of fourteen weeks each year; on completion students receive a Diploma Certificate. During vacations students have field attachments to various courts where they sit with working magistrates.[409]

Five main subjects are taught during the course: criminal law, criminal procedure, the law of evidence, English and local statutes. The emphasis is to master the Penal Code and the Criminal Procedure Code and even to memorise certain sections considered to be important: for example, in the Penal Code, sections defining offences which are frequently brought before the courts, such as theft, housebreaking, burglary and assaults; in the Criminal Procedure Code, sections relating to the institution of proceedings, summons, warrants and withdrawal etc. On the law of evidence the emphasis is on rules and principles relating to criminal proceedings. On local statutes students are introduced to various Zambian Acts (Roads and Road Traffic Act, Mentally Disordered Persons Act, Legal Aid Act and Juveniles Act). The aim has remained the same: to produce an officer well

[409]During fieldwork in Lusaka met five trainee magistrates who were understudying the Principal Resident Magistrate, the Resident Magistrate, and two Magistrates class II. When interviewed they stated that they unable to follow most cases because the witnesses were speaking too quickly.

versed in the exercise of criminal jurisdiction.[410] The teaching unfortunately does not include customary law offences nor customary practices as sources of the present law in Zambia. The students are also taught some principles of the law of contract and torts and the sources of English common law.

In the second year experienced persons from various Ministries and Departments give talks to students on different subjects. These include officers from the Judiciary, the office of the Director of Public Prosections, the Department of Social Welfare (Probation services), the Department of Legal Aid, the police, etc. Visits are also arranged to Courts, the Approved School and Reformatory and other relevant institutions.[411]

It is usual for successful students of this course to be appointed Magistrates Class III on a probation period of two years, and to be posted to stations where there are experienced magistrates under whose supervision they work, mainly in trying criminal cases. Magistrates interviewed stated that the course was adequate for their work, but agreed that there was need for special training in juvenile justice.

5:2:3 Professional magistrates: appointment and training

The complete absence of specialised training in juvenile

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[410]A. G. G Campbell, (1980) "The Training of Magistrates in Zambia", in: The Report of the African Commonwealth Magistrates' Seminar on Legal Education for Magistrates', Local, Primary and Customary Courts and Future of Customary Law, Held at Lusaka 27th July - 2nd August, 1980.

[411]All five appointments the present researcher was supposed to have attended were cancelled because the persons scheduled to give talks failed to turn up.

justice for lay magistrates applies also to professional magistrates. Resident Magistrates are appointed by the Judicial Service Commission after selection from applicants with law degrees who have also been admitted to legal practice.

The LL.B programme at the University of Zambia does not expose students to an in-depth understanding of the criminal justice system, in particular juvenile justice. The criminal law subject taught includes principles of criminal responsibility and defences to criminal liability based on the Penal Code; the only aspect covered relating to juveniles is the age of criminal responsibility. Child misconduct is taught and learned in a general perspective of criminal behaviour as a crime and not a type of deviant behaviour that calls for special attention. There is no instruction in sentencing principles or any theoretical explanation of juvenile delinquency, the factors to be taken into account in sentencing a juvenile offender. No differential treatment of juveniles is brought to the students' attention, as the procedural rules taught give more emphasis to the institution of criminal proceedings before the Subordinate Courts and the High Court. The optional criminology course is unpopular and taken only by serving police officers and magistrates; the number of students had always been between three and five annually until the 1992/93 academic year, when ten students registered to take this course.[412] This may be due to the facts that students do not see any career prospects in the criminal justice system and that there are no devoted criminologists encouraging others to join

[412]Personal knowledge and experience. The course may not be offered as the lecturer responsible has been appointed Permanent Secretary of the Ministry of Home Affairs.

them. As shown in Chapters Four and Ten, the Department of Social Services and the correctional institutions which should recruit suitably trained staff have lost their vitality.

After appointment as Resident Magistrate, new magistrates are given no further formal training: they are attached to experienced magistrates initially for two weeks or a month for orientation in preparing court records, hearing and recording proceedings, writing judgments and passing sentences. Thereafter, they may sit alone and be posted to run district stations, exercising criminal and civil jurisdiction.

5:3 Reactions to Juvenile Crime

As seen in Chapter Six that since independence more juveniles have been charged with offences under the Penal Code and that this increase could be attributed in part to unemployment in urban areas and lack of educational facilities and also the population growth. Therefore, there is need to have a social policy for combating juvenile crime. It is appropriate to examine policies set up by government which were not directly aimed at juvenile crime, including the "back to the land campaign", the minimum mandatory sentences and the vigilant scheme.

The demand for greater respect for national authority has increased the pressure on customary laws. Customary laws have lost their jurisdiction in criminal justice and their application has been restricted mostly to civil matters. Under customary law parents were held responsible for their children's deviant

behaviour and had to compensate the victims thereof. In the past such matters were often dealt with on a basis of reconciliation the family of the victim and that of the offender being brought together to resolve the dispute, whether it was criminal or otherwise (see Chapter Three).

As seen in Chapter One, determined to control public conduct in April 1967, Dr. Kenneth Kaunda, then the President, introduced a concept of Zambian humanism, seeking to combine the advantages of modern technology and welfare with the purported communal and man-centred life of the tribe, as the guiding principles for Zambian society. He wrote:

> This high valuation of Man and respect for human dignity which is a legacy of our tradition should not be lost in the new Africa. However "modern and advanced" in a western sense the young nation of Zambia may become, we are fiercely determined that this humanism will not be obscured. African society has always been man-centred....It is clear all human activity centres around man.[413]

The concept of humanism contributed to the growth of a single moral community and helped to sustain respect for the aims of the government, which remained in power from 1964 to October 1991. It became the cornerstone of nationhood in Zambia: although the nation comprised some 70 ethnic groups, no one group tried to dominate the others politically.

Yet nationhood cannot be said to have created a homogenous society with a national culture: the different ethnic groups retained their own customs and languages. However, the substantive criminal law was unified in a Penal Code of colonial origin and as part of the fundamental rights guaranteed in the

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[413]K. D. Kaunda (1967), Humanism in Zambia and a Guide to its Implementation. (Lusaka: Govt. Printer), p. 7.

Constitution unwritten customary law was no longer enforceable after independence (see in Chapter Eight).[414] In other words, the values and morals of the traditional Zambian communities are now tested by the modern standard of justice and good conscience,[415] and the application of traditional customary law concerning crime diminished in importance. Therefore, child misconduct is labelled delinquency and dealt with through the formal criminal justice system, with the aims of punishing and rehabilitating those found guilty.

The Zambian government, in seeking to build a man-centred society, has retained without significant change the criminal justice system, in particular the juvenile correctional institutions, established by the colonial government. However, their relevance and effectiveness in the country has drastically diminished (see Chapters Seven, Eight and Nine). One of the main causes of their decline in effectiveness is the lack of personnel trained in juvenile justice systems as discussed above.

It must be noted that the policies applied in the man-centred society are punitive in nature, as the emphasis is on punishment as a means of controlling deviant behaviour and maintaining social harmony, contrary to the concept of Zambian humanism which advocates communal life and traditional reconciliatory practices. The underlying rationale is deterrence;

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[414]Art. 20 (8) of the Constitution Laws of Zambia 1965 edition: No person shall be convicted of a criminal offence unless that offence is defined and penalty is prescribed in a written law. The operation of this article was deferred to 1970 to allow more time for the customary law offences to be have been codified.

[415]Under the repugnancy clause (section 12 (2) of the Local Courts Act Cap. 54;

the use of pain is justified to discourage the inclination towards deviant behaviour. Severe penal sanctions are believed to prevent or reduce the incidence of juvenile crime, and to preserve the maintenance of social order. As Kaunda propounded in his concept of humanism, regarding the maintenance of social harmony:

> Obviously, social harmony was a vital necessity in such a community where every activity was a matter of team-work. Hence, chiefs and traditional elders had an important judicial and reconciliatory function. They adjudicated between conflicting parties, admonished the quarrelsome and anti-social and took whatever action was necessary to strengthen the fabric of social life. Mention must be made here of the fact that when any of these anti-social activities were punished, very often the punishment was heavy.[416]

He does not go further to state how offenders are to be treated in modern Zambia. The implication that can be drawn from this quotation is that harsh penal sanctions are appropriate for offenders convicted of offences involving anti-social activities. This applies to juvenile offenders because, as will be seen in later chapters, despite the provisions of the Juveniles Act, there is no clear distinction of criminal process between juvenile offenders and adult criminals. Treatment measures exist in principle as the underlying philosophy, while deterrence and retributive principles are the operative policies in practice for controlling deviant behaviour. This reflects the fact that there is no consistent government policy on juvenile crime.

At independence the Zambian government did not regard juvenile crime as a serious social problem; other problems were more pressing. As Kaunda (1967) pointed out:

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[416]K. D. Kaunda (1967), op. cit., p. 5.

> what problems do we now face?... I would say that we have four which are immediate and vital: hunger, poverty, ignorance and disease.[417]

No policy was stated relating to juvenile offenders in the First National Development Plan. The Second National Development Plan (1972) provides for the statutory supervision of juveniles on probation and those released on licence from correctional institutions.[418] There was no suggestion to set up a probation service under the Probation of Offenders Act distinct from the Social Welfare Department, established under the Juveniles Act, whose main concern is child care, matrimonial reconciliation and counselling, neglected children and those in orphanages. The probation service has declined in operation to a minimal level as the government has not embarked on an expansion policy. It is necessary to examine some government actions that have implications for the prevention or control of juvenile crime.

However, there is no data relating to the general popular people's reaction to juvenile crime; although such reaction is towards to the general criminal activities. There is no concern as to some penal sanction often imposed on juvenile offenders, such as corporal punishment.

5:3:1 The "Back-to-Land" campaign

The increasing number of youths migrating to many towns and cities rewardhunt in the country led the government to come up

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[417]K. D. Kaunda (1967), op cit., p. 30.

[418]Second National Development Plan 1972 - 1976, (Lusaka: Govt. Printer), pp. 155 - 56.

with what was considered a corrective measure: by the "Back-to-Land" campaign, started in the mid-1970s, the government took steps to curb the migration of youths to urban areas through the establishment of Rural Reconstruction Centres. In this program unemployed school drop-outs are recruited to work in agricultural production projects instead of roaming in towns. It was hoped the number of unemployed drop-outs would be reduced. The policy impliedly aimed at reducing juvenile crime in towns, by preventing juveniles migrating to urban areas in search of quick money. It was seen by the government as a measure to minimise the desire for seeking employment in government or unskilled positions in urban areas. As former President Kaunda declared:

> These (rural reconstruction) centres are very cardinal to the revolution in the country --- now the focus of the government's efforts. Colonial brain-washing has led our youths to grow with the idea of life under the bright lights of cities and of white-collar jobs as the only avenue to a decent future.... Future of youths flourishes on the fertile soils of Zambia, and offers abundant opportunities for the people of Zambia to live happily and in prosperity. We must educate the Zambian youth right from the beginning about the beauty of working on the land.... These rural reconstruction centres should be a leading motivating force in spearheading the agrarian revolution in the countryside.[419]

This corrective measure had a political and economic objective, to restrict the movement of youths to urban areas, requiring them to live in the rural areas and engage themselves in the traditional career of tilling the land without any assistance in acquiring farming implements and other requisites. This policy was finally incorporated in the Third National Development (TNDP)

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[419]K. D. Kaunda, President of the Republic of Zambia, Address to the eighth National Council Meeting of UNIP on 27th April 1976. Reported in Times of Zambia, 28th April 1976.

(1980-84). This policy was not accepted by the youths. As Tiberondwa (1976) notes, when the similar policy implemented in Uganda in 1971, school leavers argued that the advocates of the "back-to-land" philosophy:

> do not call us to come and join them in rural areas, but they order us to leave them in the best areas of the cities and towns and go and join our parents in the villages.[420]

The corrective measure which is based on the agrarian revolution and the desire to increase food production for local consumption and for export has been the underlying policy for the prison farms and production units. Therefore, the correctional programmes in the juvenile institutions are centred on agricultural training. Katombora Reformatory is one of the correctional institutions with major prison farms and gardens producing maize and vegetables and keeping poultry and goats. Nakambala Approved School also runs a production unit which is engaged in agricultural production. Prison farms and gardens' activities may influence the courts to impose custody-oriented dispositions.

5:3:2 Legislative measures

It has been shown that the desire for greater respect for authority of the state had increased pressure on customary laws through legislative measures. Thus, the unwritten customary laws were codified and, the orientation underlying the sentencing

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[420]A. K. Tiberondwa (1976), "Back-To-Land Campaign: Zambia's Goals and Problems", Unpublished Paper. (Lusaka: University of Zambia), p. 20.

rationale being retributive and deterrent, the use of harsh penalties was justified to discourage the inclination towards future criminal behaviour on the part of the offender ("specific deterrence").[421] Secondly, such penalties serve to warn society at large that it does not to pay to engage in criminal activities ("general deterrence").[422] Therefore, severe penal sanctions were advocated as they were believed to prevent or reduce deviant behaviour.

5:3:2:1 Deterrent legislation

Assuming that severe penal sanctions can prevent crime, from the mid-1970s the government introduced amendments to many of the penalties under the Penal Code, increasing maximum sentences and introducing mandatory minimum sentences of imprisonment for certain offences.[423] For example, the maximum penalty for theft was increased from three to five years' imprisonment[424] and for stock theft (stealing any domestic animal) the penalty was increased from 10 to 15 years' imprisonment.[425] A person convicted of a second or subsequent offence of stock theft or

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[421]E. Fattah (1977), "Deterrence: A Review of Literature", Canadian Jo. Crim. Vol. 19, 2: 9 - 100 at 15.

[422]ibid., p. 17.

[423]The Penal Code (Amendment) Act No 29 of 1974 was a comprehensive piece of legislation that amended sections 94, 95, 96, 272, 275, 277 and 294 by repealing and replacing them; others were created by insertion (section 281A creating an offence of theft of motor vehicle).

[424]Section 272 as amended by Act No. 29 of 1974.

[425]Section 275 of the Penal Code as amended by Act No. 29 of 1974.

theft of a motor vehicle receives a minimum seven-year imprisonment term.[426] Other Acts passed thereafter, have minimum mandatory sentences. For example, the Corrupt Practices Act No. 14 of 1980 provided for a five-year minimum term of imprisonment for a public officer convicted of corrupt practices under Part IV of the Act.[427]

Even a juvenile convicted of such an offence was subject to the minimum sentence; for instance, in Chisala V The People[428] a juvenile was charged jointly with two adults and convicted of aggravated robbery; he was sentenced to a mandatory minimum 15-years' imprisonment, the same as the adults (to be discussed in Chapter Eight section 8:4). The legislature in increasing certain penalties did not specify how the courts should assess the gravity of the crimes in question. For example, theft includes stealing items valued at one Kwacha or thousands of Kwacha. It would be helpful to have range of penalties according to offences categorised into the levels the value of property; this could assist courts when sentencing juvenile offenders.

The enactment of minimum sentences emphasises and reinforces the deterrent philosophy of punishment. In the absence of any special exceptions or guidelines for the sentencing of juveniles, Juvenile Courts have no option but to impose the prescribed

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[426]Sections 275 and 281A of the Penal Code as amended by Act No. 29 of 1974.

[427]Section 35 of the Corrupt Practices Act. However, this section was amended by Amendment Act No. 2 of 1987, on seeing that courts were acquitting defendants on flimsy grounds (personal experience: once prosecuting attorney on behalf of Anti-Commission from 1985 to 1989).

[428](1976) ZR 239.

minimum sentences on juvenile offenders. Such penalties have severely curtailed judicial discretion which is the fundamental underlying principle of juvenile justice and which recognises that every human being, as well as every offence, differs and requires different treatment. Discretion is crucial in arriving at a sentence relevant to the rehabilitative needs of a juvenile offender. Courts in their enforcement of deterrent legislation tend to impose custodial sentences and corporal punishment as shown in Chapter Eight. Yet deterrence studies in other countries have shown that deterrence is effective in some crimes but not in others. As Lewis (1986) stated:

> The deterrent effect is stronger for rape and assault, weakest for hijacking and fraud, with robbery, burglary and auto theft, larceny and murder in between...for most crimes, a substantial majority of studies have found a negative association between crime rates and sentence severity.[429]

The courts need the support of the police in ensuring a high clear-up rate that could have an impact on potential deviants. This can create a high degree of likelihood of arrest on the part of potential offenders and a high probability of conviction. The police have failed in this regard as many cases are withdrawn because the police fail to secure the attendance of complainants and their witnesses, as shown in Chapter Seven. Deterrent legislation and its implementation by courts may lead juvenile correctional institutions to concern themselves with the aim of protecting the public rather than with rehabilitative programmes for inmates, as shown in Chapter Nine. In short, the objective

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[429]D. E. Lewis (1986), "The General Deterrent Effect of longer Prison Sentences", Bri. Jo. Crim., 26, 47 at 49; See also E. Fattah (1977), "Deterrence: A Review of Literature", Canadian Jo. Crim. 19, 2: 9 - 100.

of the correctional institutions will be to have inmates serve their time in detention without effective implementation of rehabilitative programmes.

Such deterrent legislation is passed without any guiding policy relating to the treatment of juveniles, while the colonial government used to give explicit policies regarding the treatment of juvenile offenders. Children's homes and probation hostels established in the 1950s and 1960s no longer exist. The Department of Social Welfare Services is disoriented and has lost grasp of its functions (as shown in Chapter Nine). This may be due to the fact that deviant behaviour has been perceived as a political phenomenon perpetuated by individuals intending to destabilise the country: such persons should be severely dealt with. As Kaunda (1974), in propounding his concept of Zambian Humanism Part II, stated:

> Those brothers and sisters who are dangerous to others...would remain in prisons. This type of offender would remain in these institutions until society is satisfied that they have developed for the better, spiritually and morally.[430]

Child misconduct is perceived within the general understanding of criminal activity; such deviant behaviour deserves condemnation. Deterrent legislation is advocated, with less rehabilitative measures and those already available are not being applied. This led to the strengthening of the Youth Wing of the ruling Party in the mid-1980s, to "co-opt" suppress deviant juvenile behaviour by incorporating it in police operations.

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[430]K. D. Kaunda (1974), Humanism in Zambia and A Guide to its Implementation Part II. (Lusaka: Govt. Printer), p. 29.

5:3:2:2 The legalised "instant justice" mob

The government had to view crime as a political issue. Thus, persons involved in criminal activities were political discontents or dissidents bent on embarassing the government. UNIP, then the ruling party, at its 17th National Council in 1982 resolved to mobilise all its members in Sections, Branches, Wards and at places of work to form security committees. At the National Council in 1985 a directive was given to implement speedily the 1982 resolution. Thereafter the Zambia Police Amendment Act, No. 23 of 1985 repealed and replaced Part IX of the principal Act that established special constables and created in their place the vigilante scheme. Special constables were appointed by police station officers-in-charge[431] and regularly instructed by such officers or other senior officers;[432] special constables had been constantly under the supervision of, and had enjoyed the same powers and privileges as professional police officers. The Police Act had provided:

> Every special constable appointed under this Act shall have the same powers, privileges and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities as police officers.[433]

This had created a good working relationship between the police and certain members of the community who had volunteered to work as special constables and were paid an hourly allowance while on

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[431]section 48 of the Police Act.

[432]Personal experience: while being officer-in-charge of Kantanshi Police Station, Mufulira.

[433]Section 52 (1) of the Police Act.

duty.[434]

Under the 1985 Act, the vigilantes are recruited and supervised by the ruling party and subjected to political control by Section, Branch and Ward levels of the Party leaders. Their appointment is to be recommended by the Ward Security Committee to the Inspector-General of Police who in turn issues Form GV2 to the appointed vigilante.[435] A person can only be appointed as a vigilante, if he:

(a) volunteers to serve as a vigilante;
(b) is resident in the section (of the Party);
(c) is at least eighteen years old;
(d) is of good moral character (assessed by Party leaders);
(e) is physically fit; and
(f) has no previous convictions.[436]

The vigilantes have only the same powers of arrest as other members of society (private persons):[437] they can arrest any person who in their presence commits a cognizable offence or whom they reasonably suspect of having committed a felony.[438] A person arrested must be handed over to a police officer or taken to a

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[434]Section 56 ibid.

[435]Section 48 (2) of the Police Act, as amended by Act No. 23 of 1985.

[436]Section 49 ibid.

[437]sections 31 and 32 of the Criminal Procedure Code. This means that they do not have other powers which the special constables had, such as power to break into a building where a suspected crime has occurred or to stop, search and detain of vehicles and vessels suspected of conveying anything stolen or reasonably suspected of having been stolen (under section 23 of the C.P.C, applicable to police officers and also applied to special cosntables on duty).

[438]Section 51 (1) ibid. a reproduction of section 30 (1) of the C.P.C.

police station without unnecessary delay.[439]

Mwansa (1992) notes that the vigilante was intended to assist the police in crime prevention and to narrow "the growing gulf between the police and the public".[440] This may be one of the reasons for the establishment of the scheme. However, it is argued in this study that it was a political move to instill in the people a sense of insecurity with anti-social behaviour and to encourage them to regard it as being perpetuated by the enemies of the ruling Party and as deserving condemnation by everybody. The deviants, whether adults or juveniles, must be dealt with severely. It is noted that the 18-year-olds were recruited to be policing themselves. It was a move intended to occupy the school drop-outs roaming in streets; to give them to do. The vigilantes do not undergo any form of training and were given uniforms in the UNIP colours where these were available. The most important thing is this that the scheme effectively legalised "instant justice" mobs.

In the 1970s it became a common experience to hear people in urban areas, especially in crowded areas like shopping centres and bus stations, shouting "*Kabwalala! Kabwalala! Kabwalala!*" "(thief! thief! thief"); such occasions have been defined as "a mob beating a suspected offender whose wrongful conduct has

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[439]section 51 (2) ibid. a reproduction of section 32 (1) of the C.P.C.

[440]K. T. Mwansa (1992) "Crime Property in Lusaka", Unpublished Ph. D Dissertation, (London: University of London), p. 470.

sparked off crowd hostility".[441] This activity has now covered most of the areas even in residential areas and villages. In many cases it has resulted in the death of the victim.

The study found three instances in Chief Simwatachela's area where suspected cattle rustlers were beaten nearly to death before being taken to the police. In one case, the informant stated:

> We caught two thieves delivering stolen cattle at night. We arrested and tied them to a big tree until in the morning. But during the night anybody who just felt like, stood up and went to where they were tied and started beating them. In the morning, in the presence of the headman we got a cattle brand, put it in fire and when red-hot branded their buttocks. Then let them free and return the animals to the owners.[442]

Such reaction by villagers reflects their realisation that neither the police nor the courts are capable of protecting them and their property through the criminal process, which could take years to be completed as discussed in Chapter Three. Mwansa (1992), in support of Hatchard (1985), notes that the roots of instant justice are in the social structure of the Zambian society:

> ....Wealthy members of society take their own defensive measures in the form of guards, dogs and building high walls around their business and residential premises...for poorer members of the society, lving in high density areas in particular, such protection is far beyond their means...and with the apparent failure of any official response, many feel that it is necessary to take other measures to protect themselves and their families against

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[441]M. K. Chilala (1976), "Instant Justice and the Law in Zambia", in: R. Robins and K. Rennie (eds.), Social Problems in Zambia, Vol. I. (Lusaka: University of Zambia), p. 35.

[442]Informant: known in the area Jamba (Mr. Hoe) because used procude bags of maize to sell by the use of a hoe. However, there was a similar instance that was reported in News Papers involving a former Minister and Member of Parliament in early 1980s.

criminals.[443]

In general instant justice is supported among people in the low social economic group (Chilala 1976), but even in other social groups individuals come to support it once they have become victims of pick-pocketing or burglary.

However, the instant justice mobs were often juveniles in the streets of urban areas who attacked the suspected offenders and at the same time they were themselves the pick-pockets at shopping centres and bus stops. When the vigilante scheme became operative, many juveniles joined and set up their offices at market places. When a suspected offender was arrested, he was taken to such an office, where he was subjected to torture. He was searched and anything found on him was taken away. Vigilantes were seen marching suspected offenders to police stations, especially street vendors, who in the process lost their goods. Juveniles were and are the victims of such vigilantes' scheme activities. Persons taken to police stations often ended up being released for lack of evidence because the vigilantes at times suppressed evidence or hid recovered property which was supposed to provide exhibits. Most police officers interviewed had negative attitudes to the scheme, as they considered vigilantes to be involved in criminal activities themselves. Mwansa (1992) reports what one senior police officer had said:

> In some cases, some Party officials get involved in criminal activities and the vigilantes do not have the courage to report them, let alone arrest them. In other cases, the vigilantes themselves commit crime and where that is the case, there is suppression of

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[443]K. T. Mwansa (1992), op. cit., pp. 474 - 475.

valuable information and evidence.[444]

In such a case the vigilante scheme has continued with the instant justice mob activity under the auspices of the law. This created a conflict between the police and local Party leadership, as the police felt that they were not assisted in the fight against deviant behaviour. The purported helpers were the persons getting involved in such miscoduct. There was nothing the police could have done as the vigilante scheme was established within the context of "party supremacy" in a one party state.

One would have expected an amendment of the Police Act to abolish the vigilante scheme, after the country returned to a multi-party constitution in 1991. However, this has not been done and the Youth Wing of MMD, the ruling party, has acted as the UNIP vigilantes had done; for example, immediately after the elections in 1991, by seizing vehicles from UNIP officials to have them turned into government vehicles. The present government has not changed the official perception of criminal activities as being political endeavours intended to embarrass the government and destabilise the nation. This was reflected in March 1993, when President Chiluba re-imposed the three-month "State Emergency" for the purpose of arresting and detaining opposition political leaders and by associating them with the increase in the crime rate, especially crimes of armed robbery and burglary, in the country.[445] During the three years that the MMD has been in power, the government has not yet made any statement on juvenile justice policy; the institutions of

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[444]K. T. Mwansa (1992), op. cit., pp. 470 -471.

[445]Times of Zambia of 11th March 1993.

juvenile justice have continued their ineffective operations without any meaningful plans to redress the situation as shown in the later chapters.

5:4 Conclusion

At independence all the institutions of criminal justice were inherited and, with a hurried Zambianisation programme, more Zambians took over senior positions in all the institutions, including the police. But after those initial training programmes, there have been no other training programmes for juvenile justice system personnel. The Department of Social Welfare Services has no specialised officers and is generally under-staffed.

Since independence Zambian governments have reacted to the increase in juvenile crime by legalising "instant justice" mobs and establishing a politically-motivated vigilante scheme. This has undermined public confidence in the police, which feel the police have failed to protect them and their property.

The "go-back-to the land" policy has no attainable effects on deviant behaviour, because its positive aim is to push juveniles into the villages without any assistance in their day-to-day activities which are beneficial to their future lives.

In the post-independence Zambia, the government has not explicitly recognise juvenile crime as a social problem, which needs to be tackled. In this regard the government is supposed to involve charity organisations and the whole community to supplement its efforts and equip the law enforcement agencies

with necessary resources and have specially trained personnel.

CHAPTER SIX

6 THE NATURE OF JUVENILE OFFENCES AND OFFENDERS

6:1 Introduction

It has been shown in Chapter Four that the juvenile justice system was established in Zambia under the Juvenile Offenders Ordinance 1933 based on the English Children and Young Persons Act of the same year. At independence (1964) some of the juvenile institutions were still under construction, for instance, staff houses and quarters for inmates at Katombora Reformatory were being built and remand homes were being established in major towns. It has also been noted that the Zambian Government has not defined any express policy relating to juvenile delinquents and this suggests that juvenile crime has not yet reached such alarming proportions that demand a deliberate response to it.

This chapter examines the nature of juvenile offences and the characteristics of offenders who were sent to correctional institutions. Firstly, it will be necessary to examine the major factors associated with juvenile crime in the country, which appear to be unemployment and the failure of the educational system, before discussing the types of crimes generally committed by juveniles. Secondly, the chapter will consider the background characteristics of inmates of the Approved School and the Reformatory.

6:2 Factors Associated with Juvenile Crime

6:2:1 Unemployment

To add to the problem of squatting, many of the juvenile migrant town dwellers have had no adequate training to make them suitable for employment. In 1975 there were 394,000 employees of the estimated total population five million in the formal sector of the economy; in 1988 this figure had dropped to 361,000 out of estimated total population of eight million.[446] As seen in Chapter one, over fifty percent were children persons aged below 25 years. The Advisory Mission (1977) notes that the large balance of persons seeking urban jobs have either found themselves in informal employment, which attracted them for getting quick money, or have swelled the population of frustrated job-seekers; it also noted that most of the large increase in the African wage bill after independence went to "pay people more rather than paying more people".[447] It must be noted that the welfare scheme was never introduced in Zambia.

Juveniles in search of quick money join the informal sector as a source of income. This sector consists of the foodstall, in public markets or in the back streets, the suitcase salesman on the fringe of regulated markets, most of the individual craftsmen, small house builders, shoe repairers, bicycle

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[446]Central Statistical Office (1990), Country Profile Zambia, (Lusaka: Govt. Printer), p. 28.

[447]Advisory Mission (1977), op. cit., pp. 50 - 54.

repairers, hairdressers etc. Those found in the towns are mostly from squatter housing areas (such as Kanyama, Chawama, Soweto, Kalingalinga and Mtendere etc. in Lusaka), and these individuals also go around in rural areas, selling second-hand clothes known as *salaula* (select and pick). This includes persons selling farm produce along the highways as discussed in Chapter Two, juveniles who join their mothers selling sweet potatoes, tomatoes and other vegetables and also selling cooking oil in small tins, cigarette sticks and wooden crafts, which they make.

Individuals in formal employment have also started joining the informal sector to supplement their small incomes. However, many people look down upon informal sector activities and consider them unproductive (Advisory Mission, 1977). Yet it is the informal sector which has absorbed the majority of juveniles dropping out of educational system (discussed later in chapter). They have become known as cigarettes sellers (*mishanga* boys) or street vendors, as they go around bars and other drinking places selling individual cigarettes to those who cannot afford to buy packets. They are often referred to as delinquents, not as status offence, but they are only charged with offences under specific legislation, the violation of which by an adult would be brought before the court.

As the informal sector is associated with the notion of delinquency, it is neglected by the government and persons who are involved in its activities often come into contact with the police. It is regarded as lacking a basic infrastructure conducive to productive economic activity and faces the application of various laws and regulations relating to "black

marketeering" and business licensing. This is difficult for juveniles who find themselves under age to qualify to hold business licences. They are often picked up by the police for trading without a licence. As it appears that the informal sector is economically vital to juveniles, it is necessary to decriminalise their activities (to be discussed in detail in the concluding Chapter).

6:2:2 The failure of the educational system

As noted in Chapter One, the majority of juveniles are elementary (primary) school drop-outs, many of whom are either too young to be employed or have not yet acquired any useful skills. Each year thousands of juveniles are not selected for Grades 8 and 10 and thus drop out of the education system, at primary and junior secondary levels. This is due to the fact that there are insufficient school places in the higher grades. A child is supposed to be enrolled in grade one on attaining the age of 7 years. A child who enrols in Grade 1 will sit for certificate and selection examination at Grade 7 (i.e primary school education). If selected for Grade 8 s/he will sit for another certificate and selection examination at Grade 9 (i.e junior secondary education). The child may continue senior secondary education from Grade 10 to Grade 12.

TABLE 6:1

GRADE 8 - SELECTION FIGURES FROM 1973 TO 1993

Year of Grade 7 exams	No of candidates	No selected	Progression rate (%)	Drop-out rate (%)
1973	88,784	19,762	22.25	76.75
1974	97,685	20,868	21.36	78.64
1975	120,631	21,000	17.40	82.60
1976	119,000	21,961	18.45	81.55
1977	120,545	21,628	17.09	82.91
1978	127,738	21,762	17.01	18.99
1979	132,912	22,077	16.06	83.94
1980	143,699	22,021	15.34	84.66
1981	146,827	22,660	15.43	84.57
1982	151,801	25,938	17.00	83.00
1983	162,126	26,890	16.58	83.42
1984	176,680	38,094	21.06	78.94
1985	178,311	39,058	21.90	78.10
1986	176.902	42,527	24.03	75.97
1987	174,102	43,218	24.82	75.18
1988	197,265	48,563	24.60	75.40
1989	180,826	49,010	27.10	72.90
1990	182,318	56,539	31.01	68.99
1991	221,689	58,188	26.20	73.80
1992	-	-	-	-
1993	199,548	54,345	27.03	72.97

Source: Central Statistical Office and Examinations Council of Zambia.

Table 6:1 shows that between 1973 and 1993, there was only one year when the drop-out rate was below 70% and in most years it was 75% and above. At the end of the twenty-year period the

rate was only slightly lower than at the beginning. This can attributed partly to population increase and partlyto the community self-help programmes initiated in the country in the late 1980s, when local communities contributed to the building of extra class-rooms at most primary schools. Where such class-rooms were built, the schools were upgraded to basic schools to run Grades 8 and 9 classes. One of such schools is Kabanga Basic School, visited in Chief Simwatachela's area, which was built in the 1920s; it had its first Grade 9 candidates in 1990. Since the beginning of the 1970s the government has not built a secondary school.

TABLE 6:2

GRADE 10 - SELECTION FIGURES FROM 1988 TO 1993

Year of Grade 9 Exams	No. of candidates	No. of selected	Progression rate (%)	Drop-out rate (%)
1988	79,830	13,613	17.05	82.95
1989	84,044	14,940	17.78	82.22
1990	82,281	16,144	19.62	80.38
1991	82,500	16,708	20.25	79.75
1992	-	-	-	-
1993	100,779	16,660	16.05	83.95

Source: Central Statistical Office and Examination Council of Zambia.

Table 6:2 shows that for the period of six years, the drop-out rate for Grade 9 has been 80% and above. It does not mean that students fail the examinations, but that there are no places in secondary schools for them to continue their education in grade 10. The government has no educational policy in response

to the population increase. Charitable organisations are assisting the government in building more schools. For example, the Namwianga Mission of Kalomo district is doing a commendable job in this regard, in the mid-1980s it built Kabanga Christian Secondary School in Chief Simwatachela's area and opened a junior secondary school teachers' college at Namwianga Secondary School. Kabanga Christian Secondary School runs junior and senior secondary school classes. However, the educational system as a whole has failed to live up to the expectations and needs of the people as each year it pushes thousands of children out of the system prematurely.

6:3 The Nature of Juvenile Crime

6:3:1 General

It has been noted above that the informal sector is associated with the notion of deviant behaviour, especially in relation to school drop-outs. However, it should not be supposed that all juveniles in the urban areas who search for employment and join the formal or informal sectors engage themselves in criminal activities. Yet there are some of them who, of necessity, become delinquents and engage themselves in various crimes (theft, breakings, assaults and other crimes). For example, the number of juveniles brought before the courts has increased since independence. 1,864 juvenile offenders were proceeded against in 1964, and this rose to 3,000 in 1974. In this study the increase in juvenile crime rates has been

attributed to the lack of a beat patrol system by the police (discussed in Chapter Six). As Mr H. Mtonga, former Inspector-General of police, stated:

> Crime which could easily be contained has accelerated due to lack of beat and general patrols by the police.[448]

It is assumed that the presence of police officers on patrol deters potential criminals and reduces crime rates. Well-organised patrol systems can encourage the police in making more arrests and in exercising their discretionary powers.

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[448] Zambia Police Annual Report, (1986), p. 1.

TABLE 6:3

CRIMES REPORTED TO POLICE AND NUMBERS OF JUVENILES DEALT BY COURTS 1981 TO 1991

Year	Total crime reported	Number of juveniles dealt with by courts
1981	120,303	2,040
1982	133,247	3,781
1983	141,975	3,274
1984	135,303	4,121
1985	140,222	3,758
1986	132,447	973
1987	-	-
1988	121,976	2,685
1989	134,276	1,120
1990	133,669	4,551
1991	132,717	2,706

Source: Zambia Police Annual Reports (1981 - 1991).

No data was collected for 1987, as the duplicate copy of the annual report was missing from Police Headquarters.

Secondly, the number dealt by the courts does not include those acquitted or discharged, because such figures do not specify the number of juveniles.

Table 6:3 supports Mr. Mtonga's comment on crime rates, especially looking at the 1985 figure that preceded the making of the comment. It must be pointed out that it is not possible to ascertain the percentage of juvenile crime from the crime statistics given by the police. Although thousands of juveniles are thrown out of educational system annually, the Table shows how small is the number of juveniles who are criminally processed each year. As stated in Chapter Seven, this could be attributed to lack of patrols: offenders are brought to the police by the complainants themselves, once they are found in possession of property identified by the owners or are apprehended by onlookers in cases of assault. However, the Table raises some doubts about the record system by the police as it does not give a pattern or trend, but figure tend to rise and fall. It is difficult to believe whether the figure 973 for 1986 is a correct one, comparing it to the previous years.

The nature of juvenile crime may also be looked at from the aspect of the offenders' characteristics, that is by examining what kind of persons commit offences. Table 6:4 below gives the age distribution of juveniles who committed offences between 1981 and 1991.

TABLE 6:4

AGE DISTRIBUTION OF OFFENDERS BETWEEN 1981 AND 1991

Year	Ages of juvenile offenders										
	8	9	10	11	12	13	14	15	16	17	18
1981	-	-	-	04	18	35	75	145	359	529	875
1982	-	-	02	08	37	88	173	304	506	744	1919
1983	-	18	32	26	59	123	114	281	642	1020	959
1984	-	-	-	-	95	149	387	557	415	1238	1291
1985	-	11	38	45	82	149	125	300	580	1128	1300
1986	-	-	-	02	08	26	45	85	203	206	399
1987	-	-	-	-	-	-	-	-	-	-	-
1988	-	-	07	24	60	106	277	408	396	604	803
1989	-	-	-	05	18	30	58	108	200	280	421
1990	-	10	30	80	123	168	359	528	500	1333	1420
1991	-	-	10	30	64	107	279	409	397	605	805

Source: Zambia Police Annual Reports (1981 - 1991)

N.B: It was not possible to obtain data for 1987; the duplicate copy was misplaced at Police Headquarters. The annual reports for 1987-1991 are not yet published.

Table 6:4 highlights the concentration of juvenile crime in

the age range 14 to 18 years. Besides being the age of adolescence, this age, as noted in Tables 6:1 and 6:2 above, includes most of the children who prematurely drop out of the educational system at various levels, employable but unemployed youths. It seems that juveniles aged between 8 and 12 are infrequently brought before courts. Is it advisable to raise the minimum age of criminal responsibility from 8 to 12 years?

6:2:2 Crimes committed by inmates of juvenile institutions

In this study it was not possible to collect data relating to offences committed by juveniles and the offenders' characteristics, because of the period constraint; the analysis is therefore based on information obtained from inmates at Nakambala Approved School and Katombora Reformatory. The data analysed show trends that confirm the nature of juvenile crime and the general characteristics of juvenile who repeatedly commit offences and are brought before the courts.

TABLE 6:5

CRIME DISTRIBUTION BY JUVENILE CORRECTIONAL INSTITUTIONS

Crime	Reformatory	Approved School
Manslaughter	02	01
Robbery	01	00
Rape	01	01
Store breaking	05	03
Burglary & Theft	06	03
Housebreaking & Theft	12	03
Entry and Theft	01	00
Theft from person	03	00
Theft from motor vehicle	03	00
Stock theft	00	01
Theft	14	09
Unlawful wounding	00	01
Assault O.A.B.H	04	01
Criminal trespass	00	01
Child in need of care	00	01

Source: Data from inmates at two juvenile correctional institutions.

Table 6:5 shows the nature of offences committed by juveniles, inmates at the two juvenile correctional institutions. The Table reflects the dominance of theft and related property offences, which seems to confirm that poverty, and the gross inequalities resulting from the unequal distribution of available resources (lack of school places and job opportunities), are the major contributing factors of juvenile crime. However, it must be pointed out that theft offences committed by juveniles usually

involve very small amounts of money and small items of property, especially domestic goods, which are often easy to sell.

The statistics tabulated in Table 6:3 and Table 6:4 show that, in both absolute and relative terms, juvenile crime contributes only a small portion to the overall crime situation in the country. It is necessary to examine other social background characteristics relating to juvenile offenders.

6:4 The Background Characteristics of Inmates

It has been shown in Chapter Nine (Sentencing Policy) that courts take into account certain factors before making orders. These may be legal or extra-legal variables, such as offence, age and socio-economic status. Some of these factors have for decades provided theoretical explanations of the causes of crime and have later been viewed as contributive factors (West 1969, Hatchard 1989). In this study residence, ethnicity, educational level, marital status of parents, upbringing and family composition are examined.

Legal variables of offence and age have not been analysed in detail, but a general account of them is offered (as shown in Tables 6:4 and 6:5). The majority of offences of which inmates had been found guilty were property crimes and this supports Mwansa's (1992) study "Property Crime in Lusaka", in which he found that property crime is generally committed by both adults and juveniles.[449] In this study it was found that over 70% of the

[449]K. T. Mwansa (1992), "Property Crime in Lusaka" Unpublished Ph D Dissertation, SOAS, University of London.

inmates were found guilty of theft, housebreaking and theft, burglary and theft, store breaking, theft from the person and theft from motor vehicles. There was only one inmate at the Approved School, and two at the Reformatory, who had been found guilty of manslaughter; only four at the Reformatory had been found guilty of assaults, and one at each institution had been found guilty of rape.

It was difficult reliably to analyse the ages of inmates as it was found that inmates had given different birth dates at different stages. The birth date given to the courts often differed from the one given to social welfare (probation) officers who had interviewed them for the purpose of pre-sentence reports; yet different birth dates were given in the course of this research. Hatchard (1989) notes that juvenile offenders lower their ages in order to receive more lenient dispositions. At Nakambala Approved School one inmate had given his age to the court as fifteen, to the social officer as sixteen and to this research as twenty-one years; if the latter was accurate, as seems likely, he should not have been at this institution, whose maximum age limit is nineteen years. However, this study shows this changing of ages to be a common practice (as discussed in Chapter One).

The difficulty in ascertaining actual ages makes it diffult to send young offenders to appropriate institutions. As shown above, an inmate at the Approved School who was too old to be at this institution, would not benefit because the courses offered are intended for younger children and he would feel out of place and even start bullying other inmates.

There were ten inmates at the Reformatory and three inmates at the Approved School who had previous convictions. Most of them had lied about their records and had stated that they were first offenders, but when their files were examined it was found that they had previous convictions; the previous dispositions had generally been corporal punishment.

6:4:1 The maintenance of relationship between inmates and their kinsmen in traditional villages

In this section the concern is to show the percentages of inmates who were born in urban centres and in traditional villages respectively, and further to ascertain whether those born in urban areas, even though classified as town-dwellers, have maintained contacts with their kinsmen in traditional villages; it will also be interesting to see the percentage of those born in villages who had never visited urban areas. The urban areas referred to here are Copperbelt towns, the capital city of Lusaka, and towns mainly along the line of rail, because towns in rural areas or district centres (Bomas) are smaller and are influenced by the culture of the traditional villages surrounding them in such a way that their living conditions are close to those of village life.

Table 6:6 (a)

BIRTH PLACES OF INMATES BY INSTITUTION
(percentages of inmates)

Institution	Born in Village	Born in Urban area
Reformatory	10	90
Approved school	21	79

Table 6:6 (b)

INMATES BORN IN URBAN AREA WHO HAVE VISITED VILLAGES
(percentages of inmates)

Institution	No	Yes
Reformatory	36	64
Approved school	47	53

Table 6:6 (c)

INMATES BORN IN VILLAGES WHO HAVE VISITED URBAN AREAS
(percentages of inmates)

Institution	No	Yes
Reformatory	100	00
Approved school	20	80

Source: Data from correctional institutions

Table 6:6 (a) shows that a majority of inmates come from urban areas, and obviously this is within the usual assumption that urbanization and industrialisation break up traditional cultural values and weaken child socialization processes. This means that children brought up in urban areas are more likely to be arrested, charged with various offences and brought before the courts than those in traditional settings. Those in traditional settings may be taken before traditional tribunals and distance from a police station may lead to offences not being reported.

But Table 6:6 (b) shows a high proportion of inmates who can be said to be in all ways town-dwellers, as they have never visited the traditional villages. It was interesting to note that a majority of these town-dwellers stated that their permanent homes were in the villages from which their parents came, and that they were only residing temporarily in urban areas. Most of them could even name their parents' villages and traditional chiefs. But in fact they were really permanent town-dwellers. This shows that juveniles have connections with traditional settings, even if they live permanently in urban areas; their residence in the urban areas, in their view, is temporary.

However, Table 6:6 (c) shows that juvenile offenders are also found in traditional villages but that at one stage or another they had come under urban influences. In certain cases traditional villages are close to district centres and children from there go to town to shop and occasionally attend social activities there. But it seems that the problem is not yet grave in rural areas, because the majority of those who were from rural areas had committed crimes in rural district centres which in real terms could be said to be urban areas. There was only one inmate at the Approved School who had been found guilty of stock theft, an offence obviously committed in a rural context. However, as shown in Chapter Three, this is a common traditional crime among cattle-keepers.

6:4:2 Ethnicity

It has been noted in Chapter One that the Zambian population

includes about 73 distinct ethnic groups. These are usually categorised into the seven main languages spoken in the country (Roberts 1976): Bemba (mainly spoken in the Northern, Luapula, Copperbelt and Central Provinces), Tonga (Southern Province), Lozi (Western Province), Nyanja (Eastern Province), and Luvale, Lunda and Kaonde (North-Western Province). With English, the official language, they are the recognised languages used on Radio Zambia. In this study the ethnicity of inmates is analysed on the basis of these seven languages. (The Mambwe, Namwanga and the Lungu are normally included with the Bemba-speakers, the Tumbuka, Chewa and the Nsenga with the Nyanja-speakers and the Ila and Toka with the Tonga-speakers).

Table 6:7

INSTITUTIONAL INMATES BY ETHNIC GROUPS

(percentages)

Ethnic group	Percentage of total population	Reformatory inmates	Approved school inmates
Bemba-speaking	40.8	55	54
Tonga-speaking	15.1	08	04
Nyanja-speaking	22.2	15	30
Lozi	08.2	08	04
Kaonde, Luvale, Lunda	10.1	14	04
Other	03.6	00	04

Source of Population statistics: Central Statistical Office 1990.

In urban areas it is to be expected that juvenile offenders will come from various ethnic groups. Table 6:7 shows that Bemba-speakers provide the highest proportion of the total population

40.8% of 8,073,500; the Nyanja followed with 22.2% of the total population. Table 8 shows that these ethnic groups come from provinces (Northern, Eastern and Luapula) that have experienced substantial out-migration to Copperbelt and Lusaka Provinces, between 1963 and 1980.

Table 6:8

POPULATION DISTRIBUTION BY PROVINCE, 1963, 1969 AND 1980
(percentage of total population)

Province	1963	1969	1980
Central	8.9	8.9	9.1
Copperbelt	15.6	20.1	22.1
Eastern	13.7	12.6	11.5
Luapula	10.2	8.3	7.4
Lusaka	5.6	8.7	12.2
Northern	16.2	13.4	11.9
North-Western	6.0	5.7	5.4
Southern	13.4	12.2	11.9
Western	10.4	10.1	8.6

Source: Central Statistical Office.

These provinces have also been regarded as less developed areas. The out-migration of males, leaving female-headed households behind, has been common in less developed areas, even in the colonial era (Richards 1949; Cunnison 1959). The Central Statistical Office (1990) in a 1975 survey found that the less developed areas had a higher ratio of dependants, both children and old people, to active adults.

But there are certain individuals in Zambia who tend to

have less connections with their traditional backgrounds and consider themselves as town-dwellers: many of them are generally from ethnic groups which are found in large proportions in all the provinces and towns. Among such families traditional child socialization principles and practices have weakened significantly, as they do not return to traditional villages on their retirements, but settle in the squatter townships. It is likely that higher proportions of juvenile offenders come from these ethnic groups.

Table 6:7 shows that a large proportion of inmates at both institutions are Bemba- and Nyanja-speakers. These two ethnic groups dominate the Zambian urban population and, as Table 5:8 shows, they have a historical trend of rural out-migration. This must have weakened their attachment to their traditional culture, including traditional child socialization processes. Children who were traditionally cared for by their mothers and their mothers' kinsmen are now commonly reared by a single parent (mother) who may be unable alone to exercise effective control, especially over an adolescent boy. The Luvale and Lunda, who still practice the traditional *Mukanda* initiation ceremonies, maintain their children's respect for authority as the initiation ceremonies teach them such respect and responsibility. This may be a reason why they have only a small proportion of inmates at the Approved School.

As noted in Chapters Two and Three, the Tonga-speaking peoples have strong processes of child socialisation, including oral traditions (proverbs) which by reiteration instil cultural values. They also teach young children agricultural skills and

the importance of cattle-rearing. The establishment of urban areas along the line of rail which passes through the Southern Province has had little impact on their way of life. They regard urban areas as places to gain some income before returning to the village, which is a permanent home. This may partly explain why only a small proportion of inmates from these groups are at the Reformatory and the Approved School which are both in this province.

6:4:3 Educational levels of inmates

Low educational levels among juveniles have often been considered as a major factor contributing to juvenile crime (as discussed in section 6:3 above). Hatchard (1989) stated that the majority of juvenile offenders in Zambia are of low competitive educational levels, which deny them employment opportunities. There are thousands of school drop-outs from the educational system each year (as shown in Tables 6:1 and 6:2).

Table 6:9

EDUCATIONAL LEVELS COMPLETED BY INMATES

(percentages of inmates)

Institution	Never went to school	Completed Grades 1 to 4	Completed Grades 5 to 7	Completed Grades 8 to 9	Complete Grades 10 to 12
Reformatory	04	08	67	17	04
Approved school	00	25	63	12	00

This study supports the research of Hatchard (1989), as Table 6:9 shows that over 79% of inmates at each of the institutions had completed only grade seven, which is not sufficient for acceptance for any technical or vocational training. As shown in Table 6:1 and Table 6:2, each year thousands of children drop out of the educational system and these children are not yet mature enough to enter the work force (Hatchard 1989).

However, this study found that the majority of inmates at the time of their arrest were engaged in income-generating activities. The widely expressed view that juveniles do not contribute to the economy of the country is not supported by this research, because after dropping out of the educational system

many juveniles are engaged in an informal sector of the economy. By doing so they supplement their parents' or guardians' incomes, and this accords with the traditional practice that a child at an early age plays a vital role in the day-to-day economic activities of society (shown in Chapter Two), based on the old saying "*chibuye taapi*" (idleness does not pay). A person has to work if he needs a better life. A child does many domestic tasks at his or her parents' or grandparents' home and takes a keen interest in their activities. In this study it was found that juveniles worked side by side with their mothers as market and street vendors and are often detained by police officers for trading without licences.

6:4:4 Marital status of inmates' parents at the time of arrest

Family breakdown often leaves children as rootless wanderers when their families fail to act as effective primary socialisation agencies. It is often argued that such situations thus become a source of juvenile crime. As noted in Chapter Seven, children found in such situations may be brought before a court as being in need of care; the court may then make approved school orders.

Table 6:10

MARITAL STATUS OF PARENTS AT THE TIME OF ARREST

(percentages of inmates)

Marital status of parents	Reformatory	Approved school
Married living together	48	53
Divorced	27	20
Father dead	17	14
Mother dead	06	13
Never married	02	00

Table 6:10 shows that 48% and 53% of inmates at the Reformatory and Approved School respectively had parents who were married and living together, but a relatively high proportion of parents were divorced, and death is also shown to be one of the significant destabilising factors in family life. It is reasonable to say that divorce is not a major factor in the inability of families to act as social control agencies, as the majority of juveniles come from stable families. 27% of inmates at the Reformatory had parents who had divorced compared to 48% whose parents were married and living together. In short, most of inmates were from stable families.

This study found that juvenile offenders who were not living

with their parents at the time of their arrest were being looked after by their kinsmen, i.e brother, sister, uncle, aunt and/or grandparents. One inmate at Nakambala Approved School was living with a friend. This indicates that the traditional extended family responsiblities are still recognised in many communities. A child at every stage of his life has someone to depend upon; even after the death of one of his parents or when parents have been divorced, the child lives with some other member of his extended family.

When inmates were asked about the relationships between them and their kinsmen, the majority stated that they had good relationships with those from their mothers' side. This supports the traditional role maternal uncles have played, and is a reflection of matrilineal ties, as the majority of Zambian ethnic groups are matrilineal (see Chapters Two and Three).

6:4:5 Composition of inmates' families

This study supports the findings of Hatchard's study that juvenile offenders generally come from big families. In this study it was found that the number of children in a family ranged between one and twelve at both institutions. It is also in agreement with Hatchard (1989) that older children were prone to criminal activities because they were out of family control as parents pay more attention to the younger ones. As shown in Table 5:4, the concentration of juvenile crime is in the range of 13 to 18 years for the period 1981-1991.

At Katombora Reformatory 27% of the inmates were first-born

in their respective families and 29% were third-born, while at Nakambala Approved School second-born were leading with 25% of the inmates, followed by fourth- and fifth-born with 17% each. This suggests that older children in the families find support from their peers and through that association learn criminal activities. The traditional expectation may not be ruled out that the first-borns have a responsibility for looking after their younger brothers and sisters; while under pressure to acquire an income in order to discharge their obligations, when that income does not come easily, they may find themselves in trouble with the law, for, as shown above, most crimes are property-oriented. As shown above, at the time of arrest some inmates were living with their brothers and sisters, who may also have lacked adequate income or resources. It can be further noted that the demands of a vulnerable cash economy subject to rapid inflation and other problems are still new to many.

6:4:6 Sex

In this study the emphasis has been on male juvenile offenders: it must not be taken that female juveniles are not involved in criminal activity. However, there is no published data relating to female juvenile offenders as the police annual reports do not categorise juveniles into male and female. It is therefore difficult to deduce the proportion of female offenders from the available statistics. In addition, there is no correctional institution for female juvenile offenders in Zambia, although plans for one were mooted out during the colonial era:

> No institutional facility for girls who could be refractory if not actually delinquent to be sent to Approved School. The Approved School in South Africa are often Afrikaans-speaking and therefore not very suitable for Northern Rhodesians. Plans are on the way to have a cottage-type institution at Lusaka to house girls who may be sexually delinquent.[450]

That institution has never come into existence up to date. The explanation often given is that few girls are involved in criminal activities. This assertion is incorrect because female juveniles are often brought before the courts for various offences. The impression that they are few in number results from poor statistical records by the police and a lack of research to determine the degree of female juvenile criminality. As one writer on the U.S.A. situation has said:

> One would conclude from these findings that the incidence of female delinquency generally declines or remains stable as females move through adolescence, while the proportion of youths involved declines significantly over this same period. Furthermore, there is a noticeable cohort effect, which suggests that delinquent behaviour is not attracting the number of female participants today as it did in the past.[451]

The situation in Zambia is probably that female delinquency has changed generally over recent years and that trends of female delinquency, especially as revealed in non-official sources, have changed. For example, more girls commit assaults, theft and theft by servant (e.g while employed as maids and nannies) and infanticide.[452] However, it seems that traditional patterns of

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[450]Department of Welfare and Probation Services Annual Report 1960, p. 8.

[451]S. S. Ageton (1983), "The Dynamics of Female Delinquency, 1976-1980," Criminology, 21, 4: 555 - 584 at 583.

[452]Case Record No. 2P2/155/92: case perused at Lusaka Subordinate Courts was of infanticide; personal experience, having prosecuted girls involved in various crimes.

female behaviour continue to influence most women today.

The lack of a female juvenile correctional institution restricts the sentencing powers of the courts, which are left with limited options to deal with girls. In one case where a Lusaka Subordinate Court deemed an offence (unlawful wounding) to have been serious, requiring a deterrent sentence, a 15-year-old female offender was fined Kwacha 3,000=00.[453] Ordinarily, a fine is considered to be a lenient penal sanction, but in this particular case the court viewed it as a severe penalty as there was no other considered deterrent sanction open to the court. In the absence of an appropriate institution, therefore, such female juvenile offenders cannot benefit from the principles of rehabilitation established by the Juveniles Act.

6:5 Conclusion

As seen most offences committed by juveniles do not involve personal injuries and many of them generally are property offences which are capable of being prevented with good policies and plans. These offences can be also be dealt with under customary law by the imposition of compensation and restituttion (fully discussed in Chapter Eleven). Although thousands of juveniles drop out of the education system, only a small proportion of them engage themselves in criminal activities.

Social and cultural factors, mostly associated with juvenile offences, need carefully consideration when working out a preventive measure. As they involve some aspects of child

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[453]Case Record No. 2P2/103/91.

socialisation, schools and families must play a vital role in child upbringing and good working relationships are needed between them and the law enforcement agencies, if plans for the prevention of juvenile delinquency are to be realised. Divorce has been seen not to be a major contributing factor to juvenile crime. A correctional institution for girls is needed.

PART III: INSTITUTIONS OF JUVENILE JUSTICE

CHAPTER SEVEN

7 THE ROLE OF THE POLICE IN CONTROLLING JUVENILE CRIME

7:1 Introduction

This Chapter examines the role of the police in combating juvenile crime. This entails a brief discussion of the organisational structure and practices of the police, to identify the relevant organs within the police force and their functions, and to assess the extent of compliance with the provisions of the Juveniles Act. Finally, the chapter addresses the similarities or differences in approach between the handling of juvenile offenders and adult criminals respectively, with regard to bail and detention, the role of parents in pre-trial process and rehabilitative measures.

Discussion of the role of the police usually recognises the prominence of the police as the primary representatives of the criminal justice system; this is particularly so in the handling of those juvenile offenders who are criminally processed. The police open the doors of the juvenile justice system and are usually the first officials of the State to be encountered by juvenile offenders. If a police officer decides not to arrest a particular juvenile on suspicion of having committed an offence, none of the other law enforcement agencies (courts, probation services and correctional institutions) will play any part in dealing with the juvenile as an offender.

The police exercise wide "discretion" (individual judgment)

in handling offenders.[454] This is a necessary and normal part of police work, but the potential for abuse exists, if there is no way routinely to review the police activity and if there are no guidelines for the exercise of police powers. As a result, decisions of police officers may often be inconsistent. This may include a complete non-compliance with the provisions of the Juveniles Act, which spells out the official procedures to be followed when dealing with juveniles.

However, studies conducted mostly in the U.S.A and Great Britain to examine the exercise of police discretion have shown that police officers generally take into account various criteria in deciding whether to arrest particular juveniles:

a. the wishes of the complainant/victim;
b. the nature of the offence or misconduct;
c. the race, attitude and sex of the offender;
d. any previous misconduct, if known by the police;
e. the wish and desire of the juvenile's parents to cooperate in solving or settling the problem; and
f. the place of occurrence -whether the incident happened in private or in public.[455]

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[454]Edwin H. Sutherland and Donald R. Cressey, (1974), Criminology, (New York: J.B. Lippincott Co.), pp. 374-75; J. Goldstein, (1960), "Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice", Yale Law Journal, 69, 543-88. Also see Michael S. Pike, (1985), The Principles of Policing, (London: MacMillan Press), pp. 63-92.

[455]For further discussion of these factors, see Irving Pillavin and Scott Briar, (1964), "Police Encounters with Juveniles," American Journal of Sociology, 70, 206-214; Donald Black and Albert J. Reiss, Jr., (1970), "Police Control of Juveniles," American Sociological Review, 35, 63-77; Richard J. Lundman, Richard E. Sykes, and John P. Clark, (1978), "Police Control of Juveniles: A Replication," Journal Research in Crime and Delinquency, 15, 74-91; for Great Britain see:F. H. McClintock and N. H. Avson (1968), Crime in England and Wales, (London: Heinemann); I. T. Oliver (1973), "The Metropolitan Police Juvenile Bureau Scheme", Criminal Law Rev., 499 - 506; D. P. Farrington and T. Bennett (1981), "Police Cautioning of in London". British Journal of Criminology, 21, 123 - 135; C. J. (continued...)

In normal circumstances the wishes of the victim, the seriousness of the offence and the strength of the evidence weigh heavily against the offender, influencing the police officer's decision towards making an arrest.

However, scholars in Britain can study the exercise of police discretion because of the organisational structure of the police, with juvenile bureaux or sections set up specifically to deal with juveniles. With the enactment of Children and Young Persons Act 1969, police bureaux had as their principal objective the diversion of young offenders from criminal prosecution. The cautioning of juveniles has become the standard treatment of children and attracted the attention of all concerned; it also forced the police to develop working relationships with other agencies (probation, education, youth work, local authority social services). How far has this change in England influenced police operations in Zambia? How do the police treat with juveniles and the general public in combating juvenile crime? This chapter attempts to answer these questions in assessing the police role in controlling juvenile crime.

It will be argued in this chapter that it is difficult to attempt a meaningful assessment of the exercise of police discretion in relation to juveniles. This is due to the organisational structure of the Police Force, which has failed to establish special units or sections for dealing with

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[455](...continued)
Fisher and R. I. Mawby (1982), "Juvenile Delinquency and Police Discretion in an Inner-City Area". British Journal of Criminology, 22, 63 - 75; P. Lerman (1984), "Policing Juveniles in London: Shifts in Guiding Discretion 1893-1968". British Journal of Criminology, 24, 168 - 184.

juveniles. The colonial militaristic model and training that has continued makes the police view juvenile crime in a broad perspective of criminality and see the police as the only agency that could control it. The police have reduced the role of parents in the juvenile justice system and distanced themselve from the public and in particular from juveniles themselves.

7:2 Police Structure

The Zambia Police Force is established by statute as a single, national force, with the usual objectives: e.g. to protect life and property, to prevent, detect and apprehend offenders, to preserve peace, to enforce traffic laws and to carry other civic matters such as controlling crowds at public meetings and football matches, directing missing persons and returning found property to the owners, etc.[456] It is a centralised system of policing different from most police forces in the western world which are local and decentralised systems, such as those found in the U.K and the U.S.A. But in general British police forces are less responsive to the government than the Zambia Police Force is: despite statutory guarantees the office of the Inspector-General of Police is treated as a political office.

The powers granted to the police by legislation are normally exercised by individual police officers but an outline of the

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[456]Section 5 of the Zambia Police Act, Cap. 133 of the Laws of Zambia.

organisation and administration of the Police Force is necessary in order to provide an assessment of the role of police officers in juvenile justice.

Command and control of the Police Force is vested in the Inspector-General of Police, who is appointed by the President of Zambia.[457] The composition of the Police Force is set out in legislation.[458] The Inspector-General delegates some of the powers vested in him to Officers-in-Charge of districts, but districts in urban areas are divided into small areas covering townships. These are controlled by Officers-in-Charge of police stations. Other officers control Provincial areas as Officers-Commanding Divisions.[459] For police purposes, Zambia is divided into nine divisions, which generally conform in name and area with the provinces of the country and retain the respective political and administrative Provincial Headquarters.[460] Other specialised wings of the police are also called divisions (State House, Mobile Unit, Para-Military Unit, Tazara Police and Protective Unit). The Police Training School, Lilayi is also referred to as a division.

The Mobile Unit and the Para-Military Unit were established in the late 1950s and early 1960s, during the uprisings in the urban areas as national liberation movements gained popularity. Their prime objective was and is to "provide a striking force in

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[457]ibid., section 3

[458]ibid., section 4, see the First Schedule of the Zambia Police Act attached as Appendix IV.

[459]ibid., section 6.

[460]See Appendix V.

areas under disturbances, and secondly to reinforce police stations experiencing outbreaks of crime beyond the scope of normal formation strength."[461]

The Tazara Police Unit and the Zambia Police Protective Unit were established in the 1970s as Divisions within the Police Force, respectively to guard the Tazania-Zambia Railway line (Tazara) which was under construction and to undertake security protection of important installations in the country and guard the homes of "very important persons" (VIPs).[462]

In general these Units were introduced into the Zambia Police Force or expanded for the purpose of creating employment opportunities for former United National Independence Party (UNIP) supporters and the Youth Wing. It was the wish of the ruling party to award its members some monetary benefits. These Units recruited Grade seven drop outs, and the major requirement was UNIP's membership card. This has nothing to do with juvenile crime. This means that these Units were concerned with civic matters (crowd control) and the protection of political leaders and their property.

This study has found that these Units have contributed to the problems facing the general duties wing. As the officers in these Units are attested members of the Police Force, they share the resources assigned to the Force even if they are not solely involved in police duties *per se*. For example, the Police Staff Officer operations stated that the police could not recruit in

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[461]Zambia Police Annual Report 1978. p. 10.

[462]The VIPs include ministers and heads of foreign Missions and Embasies.

1993 because officers in the combat Units filled the allotted posts for the year.[463] There are about four thousand officers on the pay-roll who are not actually doing police work. The Mobile Unit and the Para-Military Unit officers are always armed and whenever called for crowd control, often beat members of the public with the butts of their firearms. It is a common sight to see a Para-Military officer beating a juvenile for minor violations, especially when they round up juveniles trading on streets; these officers have been condemned by the members of the public because of their brutality in their operations.

It is relevant to examine the nature of encounters between police and juveniles and to consider how the police exercise their discretionary powers in dealing with juveniles, before examining the aspects of pre-trial process (bail, the role of parents and the principle of separation).

7:3 The Police Encounters with Juveniles

The Juveniles Act provides for procedures and safeguards for the handling of juvenile offenders to be different from those applicable to adult offenders. This reflects the underlying philosophy of the juvenile justice system of treatment, protection and rehabilitation rather than punishment; the system requires those who deal with juveniles to understand the aims and scope of the Juveniles Act.

In the mid-1960s researchers started giving high priority

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[463]Informant: Mr S. Banda, Assistant Commissioner, Staff Officer. Police Force Headquarters.

to two issues without stressing the importance of their connection: the effectiveness of a police officer on patrol and the quality of relations between him and the public. In 1967, Bordua and Reiss developed the terminology "reactive" and "proactive" in describing the nature of police work.[464] The role is referred as reactive where members of the public are responsible for reporting occurrences that result in the arrest of juveniles. On the other hand, the police role is characterised as proactive when the police officers on their own initiative discover incidents that results in the apprehension of offenders. The proactive role places emphasis on preventive patrol and even maintaining surveillance of the criminal elements.

However, the police in most cases in making successful arrests depend heavily on evindence supplied by complainants and their witnesses. Mwansa (1992), in his study of "Property Crime in Lusaka", found that in 95% of cases either the "victim or civilian witness...or vigilante...provided information which led to the arrest of the suspect".[465] Therefore, a small proportion of suspects are arrested on the information provided by police officers themselves. Mayhew and et al. (1989) have also noted that the vast majority of crimes the police come to know about are reported by victims or persons acting on their behalf. On

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[464]D. Bordua and A. J. Reiss, Jr. (1967), "Law Enforcement", in: P. L. Lazarsfeld (ed.), The Uses of Sociology, (New York: Basic Books), pp. 280 - 284.

[465]K. T. Mwansa (1992), "Property Crime in Lusaka", Unpublished Ph.D Dissertation, (London: University of London), p. 202; see also A. K. Bottomley and C. Coleman (1976), "Criminal Statistics: The Police Role in the Discovery and Detection of Crime", International Journal of Criminology and Penology, 4, 33 - 58.

personal or household victimisation, the report states:

> So not surprisingly 94% of reported offences uncovered had been reported to them either by victims, or on their behalf by family or friends. The police were at the scene of crime in only 3% of cases; assaults were most likely to be witnessed by the police themselves.[466]

The police encounters with suspects, especially with juveniles, and discoveries of crimes vary with different types of crimes. Different methods are needed to deal with juveniles and adult offenders respectively.

In this study, an effort was made to assess encounters between the police and juveniles. Visits were made to police stations in Lusaka for observations of police practices; interviews with inmates of the Approved School and the Reformatory and police annual reports provided much information for analysis.

The vast majority of cases where the police on their own discovered and arrested offenders were those under various statutes classified as "contraventions". But some cases were brought under the Penal Code and classified as "drunk and disorderly", where "admissions of guilt" fines are paid. Thus police officers patrol with the aim of arresting street vendors (women and children who sell vegetables and other commodities in the streets). The juveniles who are found trading without

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[466]P. Mayhew, D. Elliot and L. Dowds (1989), The 1988 British Crime Survey: Home Office Research Study 111, (London: HMSO), p. 26. The statement supports early studies of victims of various offences. For example see: A. K. Bottomley and C. Coleman (1981), Understanding Crime Rates. (London: Gower); M. Maguire (1982), Burglary in a Dwelling: the offence, the offender and the victim. (London: Heinemann); J. Shapland (1984), "Victims, The Criminal Justice System and Compensation", Brit. J. Criminol. Vol. 24, 2: 131 - 149.

licences are arrested and taken to police stations where they are asked to pay "Admissions of Guilt".[467] The juveniles are forced to pay such fines contrary to the provisions of the Code.[468] The word forced has been used, because juveniles are told of severe consequences if they failed to pay Admission of Guilt and the matter was taken to court; and also the police raise the age to nineteen in the process of compiling papers for the Admission of Guilt, to satisfy the provision of the Code, without the knowledge of the juvenile offender concerned.

In March 1993, a peaceful demonstration by marketeers and street vendors ended up in rioting and looting of shops in Lusaka, when the City Council called in the armed Para-military police.[469] There is harassment of street vendors by the police who do not use their capabilities to detect and arrest criminals. Street vendors do not regard themselves as criminals. As one of them said:

> The police come after us doing geniune business and trying to raise money for our living. They leave pickpockets terrising people at bus stations, who are criminals. How many robbers and burglars do they arrest? None, except those we arrest ourselves in compounds and them to the police stations, and still more they harass us innocent people.[470]

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[467]Section 221 of the Criminal Procedure Code.

[468]ibid., subsection 10 provides:
The provisions of this section shall not apply - (a) where the accused person is a juvenile within the meaning of the Juveniles Act;....

[469]The Times of Zambia 19th March 1993. The majority were children who trade without licences and those assisting their mothers in selling vegetables to supplement their fathers' income. Many of them were detained and had to pay Admission of Guilt fines on release.

[470]Informant: John Bwalya, aged 16 years and sell cigarettes, sweets and chewing gum along Cairo Road, Lusaka.

This study supports the findings of earlier studies that a high proportion of suspects are arrested on information from the victims and their witnesses. In other words, the numbers of offenders and types of offences entering police records, and thereby eventually providing the workload for the Juvenile Courts, correctional institutions and other agencies, appear largely to be determined by the reporting behaviour of victims and witnesses and not initiated by the police (Bottomley and Coleman 1981; Maguire 1982; Shapland 1984).

In 1979, Lundman, in analysing police encounters with members of the public, noted that citizens react negatively to their involvement in police-initiated encounters for various reasons. This mostly arises if the police fail to tell the individuals why they are being questioned; this gives them "an impression that officers are harassing them rather than seeking information".[471]

In this study it was found that even in reactive encounters, complainants and even those reporting on their behalf are often not treated properly. A typical case was observed at Lusaka central police station, where a juvenile was brought by a woman complainant together with a man who had assisted her to apprehend the juvenile. The woman gave her brief story that as she was walking along Cairo Road (the main road in the city centre) the juvenile took from her basket her purse, containing four hundred Kwacha, and passed it to a friend while they were running. She gave chase and the man who accompanied her managed to apprehend the juvenile. The other boy ran away. Her story was supported by

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[471]R. J. Lundman (1979), supra., p. 115.

the man. The juvenile denied having picked her purse and stated that he was only in town and had no friend. The constable at the counter, after recording their statements, told the woman that he would not charge the juvenile with theft because there was not sufficient evidence, as the money had not been recovered and the other boy could not be found. He further stated that he would instead charge him with disorderly conduct and detain him; if he (the offender) failed to pay the ten Kwacha "admission of guilt", the matter would be referred to court; then she would be called as a witness to give evidence. The woman got annoyed and told the police officer to forget about it and never to contact her. She walked away and declined to talk to any one.[472]

This case raises some issues requiring comment, such as the down-grading of crime statistics (to be discussed later in the chapter), the treatment of juveniles and the relationships between the police and members of the public. The manner in which the police officer handled this case would encourage juveniles to pick other people's pockets, as they would continue to operate in a gang so that even if a member was caught he would not reveal the names of his accomplices and so the matter would not be taken to court. The officer could have charged the juvenile jointly with an unknown person for the crime of theft, and it would have been up to the detectives to investigate the matter and if possible go to the juvenile's residential area to look for his associates; and then to hold an identification parade where the woman and the man would be asked to identify the other boy. The

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[472]The woman, later known to be Mrs Martha Lungu of Matero Compound, refused to give her house number; the man was Mr James Bwalya. Constable Phiri dealt with the report.

police officer did not exercise his discretionary powers by taking into consideration the usual factors (the wish of the victim, the nature of offence, the wish and desire of the juvenile to cooperate in solving the problem, etc.,) but acted in ignorance of the law of evidence and investigative practices or as one of the police officers who do not want to appear before courts as they fear cross-examination by defence counsel.

Secondly, police relationships were dented as the woman and the man are not likely to report a future case to the police where tangible evidence might be lacking. They could even discourage others from assisting the police in any way. This study is consistent with previous studies, especially of the British Crime Survey, of why victims do not report incidents. As the 1988 British Crime Survey, reports:

> In a fifth of cases victims felt that the police would not have able to do anything about the incident....Rarely cited was the inconvenience of reporting (2%), dislike of the police (1%), and fear of reprisal (1%).[473]

The feeling that the police could not or would not deal with the offence, as a reason for not reporting the incidents, was of a small proportion in England; but it is the most common factor for not reporting in Zambia. As shown in Chapter Three, in rural areas complainants report cases of stock theft to headmen, instead of reporting to the police, in whom they have lost confidence.

It has been pointed out in section 7:1 that the police officer's action in exercising his discretion to arrest a juvenile offender depends primarily on politeness, violence or

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[473]The 1988 British Crime Survey, supra., p. footnote 13.

nonviolence of the offender, the nature of offence and the wish of the victim. Piliavin and Briar (1960), in their study "Police Encounters with Juveniles", sought to determine whether a juvenile's demeanour, the seriousness of the alleged offence and other factors, affected the exercise of discretion by police officers: they found that demeanour was important in that cooperative juveniles tended to be released while violent juveniles were arrested. Black and Reiss (1970), in their study "Police Control of Juveniles", also sought to determine whether a juvenile's attitude influenced the way police exercised discretionary powers; their findings confirmed that the majority of cooperative juveniles were released.

This study found that the police arrested and detained juveniles for any offence without considering other factors, such as the co-operative or unco-operative behaviour of the juveniles, the seriousness of offence, the wish of the complainant, etc.. As shown above, the armed para-military police are usually mobilised to round up street vendors and accompany detectives to search and arrest suspected thief. It is difficult at times to determine what factors the police do take into account in exercising their discretionary powers of arrest, because a release is often accompanied by a beating and not merely by a warning to avoid deviant behaviour.

A common police practice was observed when a juvenile was seen cycling along the road in Kalingalinga township; without checking whether there any vehicles he crossed the road. He was nearly hit by an on-coming vehicle, which swerved to avoid him. The police vehicle which was following stopped and a constable

went straight to the juvenile and asked him why he did that. Before the boy could say anything the police officer slapped him several times and told him not to repeat that conduct. The police officer then went to his fellow officers and drove away. It seemed that the police officers did not arrest and charge the juvenile with careless cycling under the Roads and Road Traffic Act[474] because they were rushing home for lunch. If they had stopped to take action against the juvenile, they would have missed their lunch. The problem of police brutality has been acknowledged by the government; the beating of suspects by the police is widespread. As Mwansa (1994), Permanent Secretary of the Ministry of Home Affairs, in his Paper on Human Rights in Zambia stated:

> Extrajudicial killings by regular and Paramilitary Police have also remained the most serious human right problem. According to reports more than twenty persons were killed by the police under various circumstances between April 1 and September 30 in 1992 alone. During the same period three persons died while in police custody. According to the police reports, in most cases suspects are shot during the commission of a crime or while allegedly fleeing a crime scene.[475]

The police officers who are the custodians of law are themselves seen to perpetuate injustices and to pay little regard to individual human rights; they even take away human life which they are supposed to preserve and protect. They subject suspects to torture or other inhuman or degrading treatment.

A police officer may warn an individual if he has decided

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[474]Section 195.

[475]K. Mwansa (1994) "The Police and Other Internal Security Organs and Human Rights", Unpublished Paper Presented at a Seminar On Human Rights in Zambia: Constraints and Prospects, Held at Lusaka, on 15th - 16th April 1994, p. 4.

not to charge him with any crime, but physical beating is not a warning but punishment without due process. Yet this is the common police practice. If a juvenile recognises that he has violated the law and sees a police officer coming, he will immediately start running for fear of a beating, as he does not expect fatherly advice or a warning from a police officer. This occurs because of a lack of consistent interaction between the police and members of the public. If a constable regularly patrols in an area, he will develop a good working relationship with juveniles and will be in a position to offer advice to them. But if they meet only in a confrontational situation, where that is likely to be their first and last encounter, the police officer will not generally feel sympathetic with the juvenile; he may treat him harshly as he does not expect to meet him again. But in a beat system police officers would be able to know juveniles and their family backgrounds in their areas; they would have frequent meetings and the officers could give the juveniles advice and warnings of the consequences that would follow, if their advice is not followed. It is then necessary to assess how the beat system operates in Zambia.

7:3:1 The beat system

It has been noted in the last section that the police could have frequent encounters with juveniles, which would reduce some of the tensions between them. The police could be in the position of knowing troubled children, who have to be treated differently from troublesome juveniles. Individual police officers would then

be better able to exercise their discretionary powers properly in dealing with juveniles encountered on their beats.

The beat system is considered as the oldest method of policing, and is at the same time perceived as the only police system that is based on the prevention of crime as the primary object of policing. It is assumed that the presence of a police officer on patrol deters potential criminals and reduces the crime rate. The well-organised system whereby promotion depends on making arrests and traffic citations encourages officers to work more effectively. Consequently, officers are under pressure to generate actions useful "to others in their efforts to document effective policing."[476] However, patrol officers are also influenced by their training and by political pressures, popular attitudes articulated by political leaders and penal policies.

The Police Standing Orders provide:

> "City, municipal and township areas will be divided into beats to be patrolled on a 24-hour basis. All personnel will be carefully instructed in the system and lectured on the duties and responsibilties of men on beat duty."[477]

However, this study found that in the capital city Lusaka, the beat system was not practised; officers at police stations did not know the number of beats in their station jurisdictions.[478] A serious shortage of officers was reported at all the Police

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[476]R. J. Lundman (1980) supra. pp. 62 - 69.

[477]Order 234.

[478]Police stations visited are shown on Map 1. I frequently visited Kabwata police station to see how it operated, to ascertain whether there was a change from what it used to be in the 1970s, when I was stationed there.

Stations visited in Lusaka. Kabwata police station, for example, in the 1970s had 14 constables per shift of three shifts, but at the time of study it had a strength of 5 constables only per shift. It was also observed that at times a shift did not have a Sub-Inspector or Sergeant as a shift officer, but only a constable supervising fellow constables. This situation applies to all police stations in Zambia, as Mr H. J. C. Mtonga, former Inspector-General of Police, has stated:

> There is an acute shortage of both administrative and operational manpower. Crime which could easily be contained has accelerated due to lack of beat and general patrols by the police. The little manpower which is available is engaged in guarding vital installations, banks, and VIPs and only a few are left to patrol and protect the general public.[479]

The lack of preventive measures has led to the continued increase in crime rates, although the increase is not steep, ranging between 10% and 16% of reported crimes. (See Table 6:3 in Chapter Six showing crimes reported to police and the numbers of juveniles dealt with by the courts).

However, the police also claim that they do not have equipment necessary to combat juvenile crime, especially transport and even uniforms for offices. At Kabwata Police Station, it was observed that officers did not have necessary stationery: for example, during the time of study there were no bail or bond forms. As Mtonga (1986) also reported:

> It is not uncommon these days to see an officer on patrol dressed in torn uniform and canvas shoes or sandals. Officers on patrols in operational areas sleep in torn tents and are continuously soaked by rain, cooking their meals in half cut oil drums and have no mosquito nets. This does not raise the morale

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[479] Zambia Police Annual Report, 1986, p. 1.

of the officers.[480]

Officers working under such operational difficulties cannot be expected to work efficiently. But for efficient use of limited resources planning is necessary and this is still needed (discussed later in this chapter).

7:3:1:1 The police officers' views on the beat system

Most police officers did not support the beat system, when asked to comment on its re-introduction at their police stations. Low-ranking officers regard the beat system as old-fashioned and colonial-oriented, unsuitable for application in modern society:

> You do not expect us to work as if we are in colonial days, where a police officer was tied to a piece of land patrolling for eight hours. Criminals use modern cars, and you do not expect a Constable to chase a thief on foot, or in an old land-rover.[481]

This statement shows how police officers misconceive the effectiveness of foot patrols and are ignorant of methods of policing that would assist in the prevention of certain crimes.[482] This is a misunderstanding of the fundamental methods

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[480]ibid., p. 2.

[481]Interview with Constable P. Mwape of Chelston police station.

[482]Personal experience: The present researcher while Officer-in-Charge at Kantanshi police station introduced a 02.00-03.30 hours foot patrol in the Mine townships in Mufulira to stop anyone found walking during that time. Most juveniles were arrested and charged with burglaries as it was discovered that they had broken into the houses of miners who were working night-shifts, especially bachelors who lived in single quarters. They walked from the scenes of crimes during that period, as it was when miners walked to and from the shafts. They (offenders) pretended that they were going to or coming from work. This patrol system reduced the reports of burglary. The reduction (continued...)

of policing. The theme of preventive policing has been advocated and it has been argued that the first great object of a Police Force is to prevent the commission of crime (as one of objectives set out in section 7:2). Pikes (1985) notes that the statement of principle and function was embodied in the instructions to Peel's New Metropolitan Police, as follows:

> It should be understood, at the outset, that the principal object to be attained is the Prevention of Crime. To this great end every effort of the police is to be directed. The security of person and property, the preservation of the public tranquillity and all the other objects of a Police Establishment, will thus be better effected, than by the detection and punishment of the offender, after he has succeeded in committing the crime.[483]

This is based on the assumption that juvenile crime can be controlled more effectively by preventive measures than by repression.

Police officers regard offenders as dangerous people to be dealt with in one way. This occurs because police training does not expose recruits to theories of criminality. If it did, they would treat offenders differently. For example, juveniles, white-collar criminals and professional thieves have different methods of committing crimes. In particular, juveniles generally do not own motor vehicles and they involve themselves in minor property offences for quick rewards, as shown by Table 6:4 in Chapter Six, which shows the distribution of crimes by juvenile offenders

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[482](...continued)
might have been the result of a displacement effect, in which burglars have turned their attention to unpatrolled areas in the town or to committing other types of crimes. But this does not change the position that burglaries were reduced in the Mine Township and this was an indication of the success of the 02.00-03.30 hours foot patrol.

[483]M. S. Pike (1985), supra., p. 138.

interviewed in juvenile correctional institutions.

It is true that motor vehicles could be used in patrols, but this could not be the sole method of policing, given the poor economic situation of Zambia. Patrol vehicles should be complementary to foot patrols. Table 6:5 in Chapter six, has shown a concentration of juvenile offenders the ages between 14 and 18 years. Besides being the age of adolescence, this age, as noted in Chapter Six, includes most of the children who prematurely drop out of the educational system at various levels, employable but unemployed youths.

Juveniles are not generally involved in violent crimes and have no vehicles; it is noted in Chapter Six that crimes of robbery using get-away vehicles are seldom committed by juveniles.

The small number of juveniles brought before the courts (as discussed in Chapter Six and shown in Table 6:3) seems to support the view that a properly manned beat system would prevent juvenile crime, and further reduce the juvenile crime rate, as generally children in Zambia are scared of the police, who are associated with brutality. In this study it has been found that the Para-military police are usually called in if there is a peaceful demostration by women and juveniles.

It has been argued in this section that the lack of the beat system is one of the factors associated with juvenile crime, as crimes that could be prevented are not. If the resources which are now spent on the Mobile Unit, Para-military Unit, Tazara and Protective Police Unit were re-directed to general duties and these Units re-organised to combat crime the situation would

improve and the shortage of manpower stated by Mr Mtonga would be something of the past. One Unit could even be assigned to deal with juvenile offenders. The police could be better equipped (e.g. with walkie talkies for the beat system and more vehicles) to complement a well-organised beat system which is now lacking. This would improve the relationships between the police and the general public. Then how do the police participate in preventive measures to help juveniles?

7:3:1:2 Police discretionary powers: the basis of diversion of juveniles

It has been noted above that the beat system encourages police officers to meet juveniles informally or formal and such meetings can develop into good relationships. At the same time the police in their patrol encounter suspects who have to be arrested and detained, but the police officers have to exercise their discretion whether to arrest or just to warn and release the offender. Thus, a juvenile warned and release will not enter the criminal justice system, as he is diverted from the court process. Hence juvenile diversion programmes resulted from discretionary police decisions about arresting or charging juvenile offenders. Reiss (1971) noted that in informal police diversion patrol officers often gave a strong warning to troublesome youths and did not initiate court procedures. While Bittner (1970) reported that most police officers did not view juvenile offences as very serious. The 1970s have seen the expansion of formal juvenile diversion programmes where juveniles

who were not diverted "by the police were often screened out of the court process by probation officers at intake".[484]

The expansion of formal juvenile diversion programmes in the U.K. and U.S.A. came about because of the increasing calls for limiting the use of the juvenile justice system to control child misconduct, and to avoid the stigma of criminality attached to a conviction (or finding of guilt) or an appearance before a juvenile court. In the mid-1960s there have been many changes in the law relating to juveniles in an effort to improve the procedures and practices of treating juvenile offenders.[485] As Oliver (1973) notes:

> In an attempt to keep abreast of modern thinking and in order to align force procedure with anticipated developments in the relating to children and young persons, the late Sir Joseph Simpsons, then Commissioner of Police of the Metropolis, caused extensive research to be done in this field, and set up a Pilot Scheme of the Juvenile Bureau in the London

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[484]D. M. Altshculer and J. S. Lawrence (1981), A Review of Selected Research and Program Evaluations on Police Diversion Programs, (Washington, D.C: Govt. Printing Office), p. 6. For more information on juvenile diversion programmes: see E. J. Latessa, L. F. Travis III and G. P. Wilson (1984), "Juvenile Diversion: Factors Related to Decision Making and Outcome", in: S. H. Decker (ed.), Juvenile Justice Policy: Analyzing Trends and Outcomes, (Beverly Hills, California: Sage Publications, Inc.), Chap. 7; F. Esbensen (1984), "Net Widening? Yes and No: Diversion Impact Assessed Through a Systems Processing Rates Analysis", in: S. H. Decker (ed.), Juvenile Justice Policy: Analysing Trends and Outcomes, (Beverly Hills, California: Sage Publications Inc.), Chap. 5; A. A. Vass and A. Weston (1990), "Probation Day Centres As An Alternative to Custody: A "Trojan Horse" Examined", Brit. J. Criminol. 30, 2: 189 - 206.

[485]In England and Wales we notice two White Papers: The Child, the family and the Young Offender in 1965 Cmnd 2742 - Home Office and The Children in Trouble in 1968 Cmnd 3601- Home Office. The second White Paper directly led to the enactment of the Children and Young Persons Act, 1969, which was the most influential in the reforms that took place in the police procedures, as it advocated police participation in preventive work.

Boroughs of Bexley and Greenwich.[486]

The success of this Pilot Scheme led to the establishment of Juvenile Bureaux in all police divisions by April 1969, and all this replaced the informal police discretion with the formal administration of a caution to juveniles. This strengthened the co-operation between the police and other statutory agencies: the cautioning is based on information gathered from social services, the probation services and the education services with information from police records. Importantly, a caution is to be administered, if the offender admits the offence, the parents of the child agree and the victim is willing to leave the final decision to the police.[487]

A juvenile will be charged with an offence or be cautioned only in the presence of his parents or guardian; and in most cases juveniles are bailed or released into the custody of the parents.

This study found that the conduct of the police officers and procedures followed in dealing with juvenile offenders does not come near to the cautioning being practised in Britain; even warning is not being encouraged to divert juveniles from the stigmatising and punitive processes of the criminal justice

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[486]I. T. Oliver (1973), "The Metropolitan Police Juvenile Bureau Scheme", Criminal Law Review, 499 - 506 at 501.

[487]For more information on police cautioning of juveniles, see: D. P. Farrington and T. Bennett (1981), "Police cautioning of juveniles in London", Brit. J. Criminol., 21, 123 - 35; C. J. Fisher and R. Mawby (1982), "Juvenile delinquency and police discretion in an inner city area", Brit. J. Criminol., 22, 63 - 76; H. Giller and N. Tutt (1987), "Police cautioning of juveniles: the continuing practice of diversity", Criminal Lwa Rev., 367 - 74; R. Evans and C. Wilkinson (1990), "Variations in police cautioning policy and practice in England and Wales", The Howard Journal, 29, 3: 155 - 176.

system. Even the overseas courses in the U.K. attended by senior officers have not changed police practices in dealing with juvenile offenders. Thus, information on informal warnings is not collected centrally. The changes of law relating to juvenile offenders in England has had no impact whatsoever on police procedures in Zambia when it comes to the exercise of discretion by the police. The legislature has not helped in any way in this regard. There are no plans to establish juvenile units within the police structure. There no real consultative relationships with other social agencies. The co-operative working relationship with the Social Welfare Department that existed in the 1970s is now absent. For example, social welfare officers interviewed stated that police officers arrest and detain juveniles without informing the social welfare officers. At times juveniles appear before courts and are sentenced without involving probation officers.

There is no routine supervision of the police in the exercise of their discretionary powers, and this has led to the abuse of these powers, as we have noted above that juveniles are often beaten up for violation of regulatory laws. The police do not concern themselves with some aspects of preventing deviant behaviour. Their legalistic approach is to have all apprehended offenders dealt with by the courts, and all that is required is to gather relevant evidence in support of the charge. All this is due to the fact that they do not understand the underlying principle of the Juveniles Act, that all agencies who deal with juveniles must do all that is necessary in the best interests of the juvenile and that "love must be the ruling sentiment of all

who attempt to influence and guide children".[488] The contemporary thinking is that diversion from court, through police cautioning, avoids the unnecessary criminalisation of juveniles and the labelling, stigmatisation and consolidation of criminal careers inherent in court proceedings (Evans and Wilkinson 1990).

7:4 The Criminal Investigation Department

It has been shown in section 7:2 that most incidents are reported to the police by victims and their witnesses, while a small proportion are police-initiated. It has also been pointed out that the police and general public relationships are not good. But still the police have to gather relevant evidence to support charges against offenders. This is solely the work of the Criminal Investigation Department (C.I.D), to detect crime and apprehend offenders.

Specialised sections within within C.I.D at Police headquarters, established before independence, include the photographic, ballistics, handwriting and fingerprints sections, which support the general investigations sections. Despite the increased demands on these sections, resources and manpower have not increased: for instance, ballistics and handwriting have remained one-man sections. The photographic section usually lacks paper and films.[489] When the officer in charge of these

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[488]H. J. Richardson (1969), Adolescent Girls in Approved Schools. (London: Routledge & Kegan Paul Ltd), p. 8. The words were used by Mary Carpenter, in her campaign against injustice juvenile offenders experienced in the criminal justice justice in the 1850s.

[489]Zambia Police Annual Report 1986, p. 15.

specialised sections was interviewed, he stated:

> The photographic section which all sections depend on is about to close down because of lack of photographic materials. We do not use this section as routinely as we had in the past: work is done on a priority basis by considering which is an important work that needs photographing. For example, fingerprints requests for determining whether a person has previous convictions hasve been reduced to 30% of the work carried out. We take priority for handwriting analysis for persons charged with forgery and ballistic analysis of firearms used in aggrevanted robberies, if suspects are arrested.[490]

Juvenile offenders who are treated as first offenders may not actually be so, because fingerprint analysis is not done by the fingerprints section. The situation might not be the same if there were special units at station or district levels, as officers would be keeping files of offenders referred to other agencies or courts. Police officers would have developed keen interests in some juveniles and would recognise them when they were arrested.

This section confines itself to general investigations at police station level and assesses the efficiency of police in combating juvenile crime.

In patrol activity the emphasis is on quick responses to any reports lodged at the police station and providing welfare services to the general public (i.e assisting stranded and missing children). In a well planned system patrol activity offers preventive measures against juvenile crime.

The detective work is usually a reactive and routine type of job. It involves interviewing complainants and potential witnesses, visiting scenes of crime, and gathering relevant

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[490]H. K. Chisha, Assistant Commissioner (In-charge of Ballistic, Handwriting, Photographic and Fingerprints).

information for the preparation of cases for the criminal process. It is hard to observe a detective in the field, because of the secretive nature of his work and as it appeared that there was no correlation between what the detective claims to do and how he actually carries out his tasks.

In this study, detectives were accompanied and observed when they encountered juveniles and other persons. While on investigative work detectives encountering known juvenile offenders tend to suspect them of having re-offended.

The police stations visited during this study in Lusaka have their Criminal Investigation Departments divided into various sections: each section is assigned to investigate one or two types of offences (homicide section, breaking-in section, general theft section, stock theft section, theft of motor vehicle section, fraud section and flying squad for aggravated robberies). This encourages officers to be familiar with persons who are prone to commit particular offences and promotes specialization in detective work. But significantly there is no section or unit assigned to handle juvenile offenders.

When detectives were asked whether it was desirable to have a juvenile unit at each police station, the responses were negative; a representative view was given by an Officer-in-charge of C.I.D at Lusaka police station, who said:

> A police officer is empowered under the Criminal Procedure Code to arrest a person who commits an offence, whether he is a child or not as long as he is eight years old or above. Why should I pay special attention to one group of criminals? A child is a criminal and must be treated as other criminals. It is up to the court to send him to an Approved School or a Reformatory, and even punish him in any other way. It is not the police officer's duty to make

discriminatory treatments.[491]

This statement reflects the police understanding of criminality as the training introduces recruits to the powers of arrest and makes them feel they belong to a special class of persons with power to arrest and detain wrong-doers without any discrimination. The wrong-doers are considered as a class of people who are a menace to society and must be locked up, without taking into account any situational factors (immaturity, social-economic conditions etc.).

Following a crime and the detection of the alleged offender, the police can either take no further action or prosecute. No further action may be taken when the offender is below the age of criminal responsibility (i.e below 8 years as shown in Chapter Eight) or if there is insufficient evidence to warrant a prosecution. In addition, the officer-in-charge of a police station may close a docket of case under the following headings:

(a) charge refused by police;

(b) charge withdrawn by complainant;

(c) found false on inquiry; and

(d) undetected.[492]

The rest of cases are then referred to the Prosecutions Department, when sufficient evidence is collected to commence criminal process.

In most cases clear-up rates in England are low on over-all offences but vary on individual offences and even record very high rates on certain offences. For example, in England and Wales

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[491]Interview with Mr B. Simukoko, Superintendent.

[492]Para. 200 of the Zambia Police Force Standing Orders.

Mayhew, et al. (1991), report clear-up rates as follows:

> About 34 per cent of offences recorded by the police in 1989 were cleared up. Clear-up rates were highest for homicide (92 per cent), violence against the person and for sexual offences (both about 75 per cent). This contrasts with low clear-up rates for burglary (27 per cent), robbery (26 per cent) and theft (31 per cent).[493]

The means of clearing includes summons, charge, cautions and those being taken into consideration by the courts.

Table 7:1 below gives a contradictory picture concerning the detection and apprehension of criminals in Zambia. The police have achieved a clearance rate ranging between 53.9% and 64.5% of the recorded offences for 1986 - 1991. The rate appears to be high, but when statistics of two specific offences, theft and assault for 1986, were analyzed as shown in Table 7:2, the clear-up rate reduced to 39.5% for theft, while that of assaults remained within that of the over-all recorded offences at 54.7%.

Table 7:3 shows that 4,815 (21.1%) and 5,527 (23.4%) of recorded theft and assaults, respectively, were taken to court. In each of these two offences the percentage of those convicted was below 20% as shown in Table 7:3. However, it is not possible to ascertain the number of juveniles changed each year for various types of offences. In this study, the analysis was based on the convictions. Thus, Table 7:4 shows that out of 3,832 convictions of theft, 551 (14.7%) were of juveniles; while in assaults 441 (09.7%) were of juveniles from 4,546. The statistics of these two offences are consistent with the view that a small proportion of juveniles are brought before the courts. It is even

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[493]Home Office (1991), A Digest of Information on the Criminal Justice System: Crime and Justice in England and Wales. (London: Research and Statistics Department), p. 32.

logical to say, although large numbers of juveniles drop out of the education system, few of them get involved in criminal activity and this gives more opportunity for preventative measures in the pre-delinquency stage. This includes the parental role in child socialisation: the recognition of cultural values and social-economic and political factors.

However, it must be pointed out that the closing of cases at the police stations contributes to the clear-up rates. As shown in Table 7:3, 29.3% of the recorded assault offences were closed at the police stations, either because the complainants wished to withdraw their cases or because the cases were found false on inquiry, and alternatively the police might have refused to take any action against the offenders.

Table 7:1

REPORTED AND UNDETECTED CASES AND CLEARANCE RATES (1986-91)

Year	Reported	Undetected	Clearance rate
1986	131,872	48,628	63.1%
1987	-	-	-
1988	108,661	50,057	53.9%
1989	120,832	50,439	58.3%
1990	120,349	50,086	58.4%
1991	116,584	41,350	64.5%

Source: Zambia Police Annual Reports (1986 - 1991)

TABLE 7:2

REPORTED AND UNDETECTED CASES OF THEFT AND ASSAULTS AND CLEAR-UP RATE FOR 1986

Offence	Reported	Undetected	Clearance rate
Theft	22,831	13,809	39.5%
Assaults	23,571	10,674	54.7%

Source: Zambia Police Annual Reports 1986.

TABLE 7:3

DISTRIBUTION AND PERCENTAGE OF CASES OF THEFT AND ASSAULTS TAKEN TO COURT AND CONVICTION AND CLOSED AT POLICE STATION IN 1986

Offence	Taken to court	Convictions	Closed at police station
Theft	4,815 (21.1%)	3,832 (16.8%)	3,444 (15.1%)
Assaults	5,527 (23.4%)	4,546 (19.3%)	6,897 (29.3%)

Source: Zambia Police Annual Report 1986.

TABLE 7:4

DISTRIBUTION AND PERCENTAGE OF JUVENILES CONVICTED OF THEFT AND ASSAULTS IN 1986

Offence	Total convictions	Convictions of juveniles
Theft	3,832	551 (14.7%)
Assaults	4,546	441 (09.7%)

Source: Zambia Police Annual Report 1986.

In Chapter One it was noted that official statistics are often queried in criminological research, when it comes to problems concerning the reliability and validity of such data, in measuring criminality or delinquency. As Skogan (1975) notes:

> "every statistic.... is shaped by the process which operationally defines it, the procedures which capture it, and the organisation which interprets it".[494]

In this study it has been taken into account that official records are not free from error. It has been noted above in the case of Martha Lungu, where a report was one of theft but an arrest was made for the offence of disoderly conduct. In such an incident the recorded report of theft would remain undetected,

[494]W. C. Skogan (1975) "Measurement Problems in Official and Survey Rates", in: Talarico M. Sustte, (ed), Criminal Justice Research, (Georgia: Anderson Publishing Co.) 1980. p. 45.

while a person was arrested relating to that incident. A matter must have had been investigated to be closed as undetected by the Officer-in-Charge of a police station;[495] but the report of Martha Lungu was not even referred to the C.I.D section for investigation and the Officer-in-Charge did not authorise its closure. The down-grading of crimes is commonly practised by the Zambia police officers. This could explain the high clearance rate. Therefore it is doubtful whether juveniles dealt with by the courts are arrested for the original reports lodged at police stations. Undetected reports include those not brought to the attention of the C.I.D.

However, Zambia Police Annual Reports are relied on as there is no other dependable source of crime statistics. The statistics tabulated in Tables 7:1, 7:2, 7:3 and 7:4 cover crimes only under the Penal Code and not under other Statutes. The Police Force Standing Orders and Force Instructions lay out regulations for police operations; and in addition, these regulations require the transmission to Police Headquarters of daily, weekly, monthly and yearly returns. These include arrests, convictions, and sentences passed by courts. The recording of the reports or complaints and other records are standardized; thus, the record-books used are the same at all police stations. The C.I.D sections keep the Crime registers, and enter reports or complaints which have been considered as crime.

As in the case of measuring the extent of crime and delinquency just discussed, the determination of the nature of offences presents its own problems. One basic factor is that the

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[495]Zambia Police Force Instructions No. 155 para. 6 (d).

legal definition or classification of offences as indicated in official records does not lend itself to a clear determination or understanding of the exact nature of such offences. Unless one resorts to case records, the legal classification of offences as theft, rape, murder, robbery, housebreaking, burglary, etc., does not indicate the exact nature or gravity of such offences.

This study takes into account the concerns of Sellin and Wolfgang (1964) that the basis of classification and scoring for seriousness of crime must be the event unit scored for index purposes and not merely the number of offences regarded as serious. For example, suppose that a hold-up man robs a bank, kills a teller, injures a customer seriously, steals thousands of pounds from the till; suppose further that in another town, during a fight, one assailant kills someone-- each of these incidents would be classified and scored as one of homicide (murder), ignoring that in the first instance another person was seriously injured and a big sum of money was stolen. Hence, a jurisdiction with this practice of statistical recording has no way of dealing with such a complex event. This happens where offences are recorded by their legal labels (such as burglary, theft, assault).

However, in this study it has been decided to adopt legal labels in crime classification, as the Zambian Penal Code makes provision for dealing with a complex event, where one act constitutes several crimes. The Penal Code provides:

> Where a person does several acts against or in respect of one person or thing, each of the acts is a crime but the whole of which acts are done in the execution of the same design and in the opinion of the court before which the person is tried form one continuous transaction, the person shall be punished for each act

> so charged as a separate crime and the court shall upon conviction award a separate punishment for each act. If the court orders imprisonment the order may be for concurrent or consecutive terms of imprisonment...[496]

The police officers also apply this section on arresting juvenile offenders and other criminals; thus offenders are at times charged with several offences arising from same facts.

In this study it was found that detectives at times raid the homes of juveniles suspected or not of having committed a crime, if they are known to be associates of juveniles already arrested, with a view of discovering any property that would connect them to any crime. If they found some property such as T.V sets and radios the offender would be asked to produce invoices or receipts; if he failed to do so he, together with the items, would be taken to the police stations. Persons who had reported any of those items missing would be called to identify them. Complainants usually identify their property not through serial numbers or producing receipts, but pointing out certain marks such as dents and scratches on the items. Then the juvenile would be charged with burglary or housebreaking relating to those items.[497] If items are not identified by anyone a juvenile would be charged with being in possession of property reasonably believed to be stolen or unlawfully obtained.[498] In this study 8 cases were dealt with by Lusaka Juvenile Courts where juveniles

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[496]Section 36 of the Penal Code.

[497]Personal experience: This is what the in-charge of C.I.D section at my former police station used to do, and we were leading in Mufulira in having more arrests for burglaries and housebreakings.

[498]Section 319 of the Penal Code.

were charged with failing to account for property reasonably suspected of having been stolen or unlawfully obtained. However, there is no such offence under the Penal Code, and those juveniles were found guilty on wrongly framed charges. The section provides:

> Any person who shall be brought before a court charged with--
> (a) having in his possession anything which may be reasonably suspected of having been stolen or unlawfully obtained; or
> (b) conveying in any manner anything which may be reasonably suspected of having been stolen or unlawfully obtained;
> and who shall not give an account to the satisfaction of such court of how he came by the same, is guilty of a misdemeanour.[499]

The failure to account must be the basis on which the court may find the juvenile guilty of the offence charged under this section. But the police are supposed to take such a juvenile before the court on the basis of having found him in possession or conveying the property in question as they suspected it to have been stolen somewhere else and if it was not stolen alternatively it might have been unlawfully obtained. As Cullinan, J. stated:

> The learned trial magistrate correctly observed that the prosecution must establish possession and grounds for reasonable suspicion before any burden falls upon the accused, for the offence of being in possession of property reasonably suspected of having been stolen or unlawfully obtained contrary to section 319 (a) of the Penal Code.[500]

The burden the juvenile offender bears on this charge is not higher than the burden of explanation involved in the so called "doctrine of recent possession". As Baron, J.P. (as then was)

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[499] ibid.,

[500] Kalonga V The people (1976) ZR 124 at 130.

observed in the Court of Appeal case of Maseka V The People:[501]

> Even in the absence of any explanation, either at an earlier stage or during the trial, the inference of guilt cannot be drawn unless it is the only reasonable inference to be drawn from all the circumstances. One further question arises in the present case. The magistrate rejected the appellant's explanation because of the discrepancies to which he referred, as a result of which he disbelieved the appellant;.....the magistrate misdirected himself on the facts, but the matter goes further. An explanation which might reasonably be true entitles an accused to an acquittal even if the court does not believe it; an accused is not required to satisfy the court as to his innocence, but simply to raise a reasonable doubt as to his guilt. A *fortiori*, such a doubt is present if there exists an explanation which might reasonably be true; for the court to be in doubt does not imply a belief in the honesty generally of the accused nor in the truth of the particular explanation in question.[502]

The police officers place a heavier burden on suspects by requesting them to account for the goods found in their possession by receipts; and it is unreasonable to expect persons to keep receipts and invoices of all the goods they purchase.

It is a misdirection on the part of the police to demand a convincing explanation from juveniles found in possession of goods. This leads to total harassment of juveniles by the detectives and violatin of their privacy guaranteed by the Constitution.

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[501](1972) ZR 9.

[502]ibid., p. 13; See the case of D.P.P. V Chirwa (1968) S.J.Z 49 at 51, where it was stated "it would be strange if the burden placed on a person accused of possession of goods reasonably suspected of being stolen was higher than the burden of explanation....."

7:5 The Prosecution Department

The Prosecution Department headed by an Assistant Commissioner is a sub-department at Police Headquarters of the Criminal Investigation Department, which is headed by a Senior Assistant Commissioner, who is senior by one rank. This organisational arrangement is applied to divisions, districts and station levels where police public prosecutors are answerable to the officers-in-charge of the Criminal Investigation Departments.

Nearly all criminal prosecutions in magistrates courts (including Juvenile Courts) are conducted by police prosecutors, who are trained at the National Institute for Public Administration (NIPA). Their training is similar to that of lay magistrates (fully discussed in Chapter Five); they are expected to pass examinations in criminal law, criminal procedure, rules of criminal evidence, police procedure and English language, in order to obtain a Public Prosecutors' Certificate.[503] The police prosecutors act under the general directions of the Director of Public Prosecutions.[504] The head of the department at Police Headquarters is an LL.B graduate, but not admitted to the Zambian Bar as an advocate, and all sections at various formations are headed by NIPA-trained personnel.

It is doubtful whether the head of the department at Headquarters usually applies his legal training when handling

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[503]Personal experience, as the present researcher attended such a course from September 1975 to August 1976, before entering the Law school of the University of Zambia, in November 1976.

[504]Section 86 of the Criminal Procedure Code.

cases. He is constrained by the organisational structure of chain of command; often he has to take orders from his senior or superior officer (the Senior Assistant Commissioner of C.I.D). At times he is compelled to present before the courts cases which are inadequately investigated, or to detain persons on flimsy grounds on information presented by senior detectives.[505]

The Lusaka division prosecutions department has 10 qualified public prosecutors appearing before 15 magistrates; and 5 of the magistrates courts are manned by learner public prosecutors (police officers of the ranks of Sergeant and Constable). This is contrary to the provisions of S.I No. 66 of 1964, which requires public prosecutors to be of the rank of Sub-Inspector. Therefore prosecutions may not be conducted at a sufficiently high standard, as a Constable might not receive full support from an experienced magistrate, who expects him to present cases as a trained public prosecutor, and he would equally be placed at a disadvantage against a very experienced defence advocate. Therefore, juvenile offenders may not have fair trials, as police prosecutors may not be well-versed in the provisions of the Acts that protect juveniles' interests.

This study found that learner public prosecutors try to mislead the courts on procedural issues while handling juvenile

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[505]Personal interview with a Senior detective at Police Headquarters C.I.D who was involved in investigating and detaining UNIP members after President Chiluba re-imposed a State of Emergency in March 1993. Also personal experience: The present researcher while he was in-Charge of Prosecutions Department in the Copperbelt division was ordered by the C.I.D officer to take uncompleted cases involving juveniles to court and asked to object to bail. This was done at times, although in most cases I disagreed and handled the cases in accordance to the provisions of the CPC.

cases. In The People V Moses Mumba and Eddie Mumba,[506] where juvenile offenders were jointly charged with causing grievous harm contrary to section 229 of the Penal Code, the relevant proceedings were as follows:

> 5th Nov. 1991 -- Plea not guilty.
> 2nd Dec. 1991 -- Trial commenced.
> 13th Dec. 1991 --Judgment delivered- offenders found guilty as charged, and the matter adjourned to 6th Jauary 1992 for social welfare report.
> 6th Jan. 1992 -- Public prosecutor (a sergeant) addresses the court "matter coming for the welfare report. I have been approached by the complainant and told me that they want to reconcile".
> -- Order of court: Application to reconcile denied. The charge has been proved against the offenders; matter adjourned to 15th Jan for the welfare report.

The magistrate hearing the case was a resident magistrate. If she had not been experienced and conversant with the procedure, she might have agreed to let the parties reconcile after a finding of guilty.

An illustration of unfair treatment of a juvenile on a misdirection caused by a public prosecutor is the case of The People V Thomas Mubanga,[507] where the juvenile was charged with criminal trespass contrary to section 306 (a) of the Penal Code, which provides:

> Any person who--
> (a) unlawfully enters into or upon any property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property;
> ....is guilty of the misdemeanour termed "criminal trespass" and is liable to imprisonment for three months.

A charge framed under this section must include ingredients of

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[506]Case Record No. 3P/165/91.

[507]Case Record No. 2P/9/91.

the offence to be proved by the prosecution: (1) unlawfully entry, (2) accompanied by intent to commit an offence or to intimidate, insult or annoy a person in possession of the property. Without these elements the charge is defective as it does not disclose an offence.

In the case of Mubanga the public prosecutor (a constable) presented a charge sheet before a lay magistrate of class II, the particulars of offence reading:

> Thomas Mubanga....unlawfully entered into a David Chamtia yard without permission of the owner namely David Chamtia.

This charge sheet was clearly defective as it omitted the aspect of intent. It is essential for the prosecution to prove beyond reasonable doubt the element of inent required. The magistrate, a lay person and inexperienced, did not spot this major omission, tried and convicted the offender and ordered 12 strokes with a cane. She even disregarded the recommendation of conditional discharge by the social welfare officer. She stated:

> I understand the report, but I feel the offender needs some punishment: 12 strokes of a cane.

Juveniles are thus harshly and unfairly treated in the juvenile justice system because public prosecutors and magistrates are not adequately trained.

7:6 Pre-trial Process

This section examines the attitudes of the police towards juveniles after their arrest and before they are taken to court. It explores police practices in the handling of juveniles and argues that there is lack of the participation of parents and guardians in the criminal process. The aspects to be looked at are the principle of separation, the granting of bail and the attendance of guardians.

Pre-trial process begins with the arrest of the juvenile for committing a crime and the subsequent police interrogation of the offender, his detention or the granting of bail and searching him and/or his premises to find out if anything related to the case might be discovered (as shown in section 7:4 above).

7:6:1 The principle of separation

The Criminal Procedure Code empowers police officers to arrest any person believed to have committed any offence, and provides the procedure by which such a person can be disposed of. The rules also apply to the seizure, search and detention of persons arrested.[508] The principle of separation is fundamental to the juvenile justice system, as it has been noted in Chapter One that the 19th century reformers Platt (1969) referred to as "Child Savers" had advocated the removal of juveniles from adult criminal institutions for the purpose of avoiding contamination.

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[508]Sections 18 - 33 of the Criminal Procedure Code.

The framers of the Zambian Juveniles Act had recognised the importance of this principle and adopted it by making a provision to prevent juveniles associating with adults during detention, and made it an obligatory duty of the head of the police to see to it that juveniles are separated from adults:

> It shall be the duty of the Commissioner of Police to make arrangements for preventing, as far as possible, a juvenile while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with an offence, other than an offence with which the juvenile is jointly charged, and for a girl ... shall be under the care of a woman.[509]

The police stations visited in Lusaka do not have separate cells for juveniles, and juveniles were found detained with adults, regardless of the nature of offence charged. For example, juveniles charged with minor offences like "being drunk and disorderly" or trading without a licence, were detained in the same cells as adults. This reflects the attitudes of the police towards juvenile offenders as criminals who do not deserve the differential treatment as required in the juvenile justice system.

However, the police are not solely to blame as the government has improved or extended the existing accommodation for prisoners. Cells built to hold four or five detainees, now accommodate up to fifteen. The toilets are within the cells and when the cell is full some detainees sit by the toilet. There are no bath-rooms in the cells. Offenders remain in police cells for

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[509]Section 58 of the Juveniles Act. The section has not been amended to take into account that the Commander of the Police has been upgraded to Inspector-General from Commissioner.

four or five days without baths.[510] This study found that many juveniles remain in custody standing and squeezed by adults; they are not given blankets to cover themselves, as police stations are not supplied with them. Food is usually not supplied to juveniles detained at police stations, because there are no kitchen facilities, food is brought by their relatives and those whose relatives are unaware of them being detained will live on the mercy of their fellow detainees. Those who had money on their arrest ask the police to buy food for them.

The experience juveniles gain in police cells influences them to become hard-core criminals and feel prepared to face any hardship that could be encountered. It has been observed that juveniles who may have admitted the charge on arrest, end up denying it after staying in cells for a long time, when taken to court for plea.

7:6:2 The granting of bail

It is undesirable to detain arrested persons in custody unnecessarily; in the interests of justice accused persons should be granted bail while awaiting their tial, except for persons charged with murder or treason.[511] The Juveniles Act supplements the provisions of the Criminal Procedure Code by making it imperative for the Officer-in-charge of a police station to admit a juvenile suspect to bail, after inquiring into the case to

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[510]Personal Experience: The present researcher observed this while at Kantanshi as Officer-in-Charge.

[511]Section 123 of the Criminal Procedure Code.

ascertain its gravity. The Act provides:

> Where a person apparently under the age of nineteen years is apprehended, with or without a warrant, and cannot be brought forthwith before a court, the police officer in charge of the station.....shall inquire into the case, and may in any case, and--
>
> (a) unless the charge is one of homicide or other grave crime; or
>
> (b) unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or
>
> (c) unless the officer has reason to believe that the release of such person would defeat the ends of justice;
>
> shall, release such person on a recognizance, with or without sureties, for such amount as will.....[512]

This section restricts the detention of juveniles to those accused of homicide or crimes whose gravity is considered after taking into account all surrounding circumstances of the case. If not the juvenile have to be detained on the basis of discouraging him assocating with reputable criminals or prostitutes. Therefore it is not necessary to consider crimes on the basis of the legal classification of seriousness (legal labels of felonies or misdemeanours as given in the Penal Code); but the section provides for crimes to be scaled on their gravity, as pointed out above in section 7:4 (the Criminal Investigation Department), while discussing the reliability and validity of official statistics. The other aspects to be considered in detaining a juvenile are the principle of separation and the requirement that a juvenile appears before a tribunal for a fair hearing.

Table 7:5 below shows that juveniles frequently are denied bail and remain in custody throughout the criminal process. This does not mean such juveniles were detained on one or more of the

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[512]Section 59 of the Juveniles Act.

grounds provided by the Act. This also confirms that many officers believe that juvenile offenders are to be treated as other labelled criminals, itself indicative of the lack of an underlying principle of juvenile justice.

Table 7:5

POLICE PRACTICES ON BAIL GRANTING BY JUVENILE INSTITUTIONS

Institution	Bail granted	Bail not granted
Reformatory	07	45
Approved school	09	15

The statistics tabulated in Table 7:5 were gathered from the inmates of the two juvenile correctional institutions, who were asked whether, after their arrests, the police granted them bail. The data is representative of police practices as the inmates had come from all the nine provinces and various police stations.

However, it could be said that inmates were presumably denied bail by the police as their cases were considered serious, because they ended up being convicted and sent to juvenile correctional institutions. Yet it is argued in this study that in most cases the courts do not impose custodial sentences on the basis of the gravity of offences; as shown in Chapter Nine, no identifiable factors are taken into account by courts in sentencing offenders, as courts are not often guided by pre-sentence reports and incline to impose deterrent sanctions on the

pretext of protecting society from criminals.

7:6:3 The guardian to be informed once a juvenile is arrested

Chapter One has shown that family breakdown is an important contributing factor in juvenile crime and that it is necessary to have a social inquiry report before a penal sanction is imposed on a juvenile offender. The report investigates the family background and makes recommendations on how best the juvenile and his family could be assisted. It has also been noted that in Western countries there are diversion programmes which encourage parents' or guardians' participation in juvenile justice. Chapter Three demonstrated how parents or guardians in traditional societies were held responsible for their children's wrongdoing. This section assesses the police officers' view of the role of parents or guardians in combating juvenile crime.

The study examined police reactions to the arrest of juveniles. Informing the parent or guardian of the arrest before or immediately after detention would be a reasonable course to take. Studies conducted in this area, especially in the United States, found that the police were more inclined to arrest and frame charges against a juvenile whose parent or guardian, and who himself (the juvenile) were unco-operative and showed no remorse.[513]

Table 7:6 shows that in most cases the police do not inform

[513]I. Pillian and S. Briar (1964) "Police Encounters With Juveniles." American Journal of Sociology. 70: 206 - 214; D. Black and A. J. Reiss, Jr. (1970) "Police Control of Juveniles." American Sociological Review. 35: 63 -77.

the parents or guardians of the arrest of juveniles; and juveniles interviewed at two juvenile correctional institutions stated that their parents heard of their arrest through their friends not from the police. In certain instances where a juvenile was picked from his parents' home and in their presence, they were not asked to accompany the juvenile to the police station. This was supported by an informant in Chief Simwatachela's area who stated:

> The police accompanied by the complainant from Kalomo town came here and found us drinking beer. The complainant pointed at the boy who is my nephew. They grabbed him and forced him in the landrover. The father was there and they never asked the boy who the father or guardian was. They then drove off together with the complainant. We followed to town the next day. The police have no respect for us as parents of children they arrest. The White policeman was good; he could pass through the headman and ask the father of the child and even the mother, and take them to the charge office together with the offender.[514]

The change in police operations has been noted in rural areas. Most informants even stated that the police are never seen in villages. They refer their reports to the chief's messenger (*kapaso*)who would arrest the juvenile if the crime is a serious one and the complainant wishes the matter to be taken to the police. They complained of transport difficulties in travelling to Kalomo police station and of the delays in completing criminal cases at magistrates' court. It over 70 kilometres from Kalomo town to Kabanga secondary school and about 80 kilometres to the chief's Palace. It is really impossible for the police to patrol this area and they could only respond when called upon or when a report is made.

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[514]Personal interview with Mr Noah Mujuku.

Table 7:6

WHETHER POLICE INFORMED PARENTS OF THE ARREST, BY JUVENILE INSTITUTION

Institution	Parent or guardian informed	Parent or guardian not informed
Reformatory	09	43
Approved school	08	16

This current police practice of sidelining the parents in juvenile justice has caused concern to the Supreme Court Judges. In the case of Mbewe V The People, Bruce-Lyle, S. J, had this to say:

> We feel reluctant to lay down any judges' rule in this regard. Section 217 of the Juveniles Act, stresses the importance which the legislature attaches to the attendance whenever possible, during all stages of the proceedings in court, of a parent or guardian of a juvenile, but there is no such provision in the Act for the attendance of a parent or guardian at a police station during the taking down of a statement of a juvenile. We would, however, urge that it is desirable in the interests of both the police and the juvenile to have a parent or guardian whenever possible to be present at the police when a statement is being taken from a juvenile.....[515]

Although this decision was made eighteen years ago, the police practice remains inconsistent with the spirit of these sentiments. This is due to the facts that there are no guidelines for police operations and there is lack of specialisation in the

[515](1976) ZR 317 at p. 319.

juvenile justice system. There is nobody who checks whether the police comply with the provisions of the Juveniles Act. The officers who were promoted on the basis of the Zambianisation policy did not acquire the knowledge pertaining to aims and objectives of the offices they occupied.

7:7 Conclusion

The inherited juvenile justice system advocates protection and rehabilitation of juvenile offenders rather than punishment. It also encourages the application of traditional practices in juvenile justice. The post-independence police officers charged with the responsibility of combating juvenile crime have misconceived the underlying principle of policing in relation to juveniles. Their training and functional organisation prevent them appreciating the need for differential treatment of juvenile offenders. They regard them as criminals belonging to one group of wrong-doers.

The English model of policing they purport to follow has changed the emphasis to diversion of juveniles from criminal process through cautioning. This means juvenile offenders must on the first instance be warned unless for serious crimes. The Zambia Police Force operates contrary to the modern technique and brings every juvenile offender before court and even detains juveniles for minor offences (contraventions). For example, trading outside market areas (street vendors). This is due to the non-existence of a special unit dealing with juveniles.

The beat system, which is an appropriate preventive method,

and traditional practices of involving parents are looked at as old-fashioned. This is due to the training and semi-military structure of the police which does not expose officers to the theoretical understanding of criminality. The re-organisation of combat units could enable a special unit for juveniles and a well-organised patrolling system to be established.

Non-compliance with the provisions of the Juveniles Act leads to harsh and unfair treatment of juvenile offenders. They are not granted bail but are commonly detained with adult criminals in congested police cells whose conditions are unsuitable for human habitation.

CHAPTER EIGHT

8 THE JUVENILE COURT AND ITS OPERATION

8:1 Introduction

As seen in Chapter One, juvenile justice systems developed in western countries to protect juveniles from stigmatization and to maintain family units. Juveniles guilty of serious crimes were to be separated from adult criminals, tried in juvenile courts and, if found guilty, might be sent to reformatories for training and rehabilitation; first offenders were to be separated from hard-core delinquents. Children were not to be removed from their homes unless tthat was essential in their own interests. This led to the investigation of family problems to determine how the family and child could be assisted together. Juvenile Courts in Zambia operate within the underlying principle of the Juveniles Act, which provides for care, guidance and protection for juveniles.[516] But the judiciary has failed to observe this principle due to the lack of special training for magistrates sitting in Juvenile Courts (see Chapter Five). This has led to non-compliance with the provisions of the Juveniles Act and consequently ill-treatment of juvenile offenders.

This chapter describes and evaluates the structure and operation of Juvenile Courts in the context of the judicial system as a whole. Formal procedure in the Juvenile Courts is based on English law, as the enacted laws provide, but in

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[516]The preamble of the Juveniles Act.

practice traditional approaches are increasingly influencing the criminal process: cases are often discontinued on the demand of complainants who wish to settle the matter outside court.

A basic theme of this study is that reform of the juvenile justice system does not require elaborate legal amendment but a re-evaluation of the operational practices of agencies involved in the handling of juveniles. The Juveniles Act has good provisions which, if followed by the Juvenile Courts, would protect the welfare and interests of juveniles; their rights would also then be protected. Finally the aims and objectives of rehabilitative measures would at last be achieved.

Procedural issues in Juvenile Courts will be examined; the study shows that the courts generally ignore the parental role in the criminal process, which is an important procedural issue, and subject offenders to punitive treatment. This chapter provides the setting for Chapter Nine, which deals with the sentencing of juvenile offenders and the role of the High Court in juvenile justice including the exercise of its supervisory powers over the Juvenile Courts.

8:2 The Structure of the Courts

It is first appropriate to outline the structure of the judicial system of Zambia:

(a) the Supreme Court;

(b) the High Court;

(c) the Subordinate Courts(including Juvenile Courts); and

(d) the Local Courts.

8:2:1 The Supreme Court

After independence Zambia retained without any major change the court system that was established during colonial rule, except for the renaming in 1973 of the Court of Appeal as the Supreme Court, the final appeal court.[517] The Supreme Court hears appeals from the High Court, and its decisions are binding on all lower courts.[518] The Supreme Court sits with an uneven number of judges (not less than three).[519] There are nine Judges of the Supreme Court,[520] including the Chief Justice and the Deputy Chief Justice. The Supreme Court judges are appointed by the President, subject to ratification by the National Assembly.[521]

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[517]Art. 107 Constitution Act 1973. It is now covered by Art. 91 of the Constitution of Zambia Act, No. 1 of 1991.

[518]ibid., Art. 92. This was in line with the amendment of section 3 of the Penal Code, by Act No. 5 of 1972, which previously provided that the Code was to be construed in accordance with the English criminal law; it re-affirmed the decision of the Court of Appeal in the case of D.P.P. V Chirwa (1968) Z.R 28, where it stated:

> The Penal Code is in fact a codification of a considerable portion of the criminal law in England for application to Zambia. It does not follow that in all cases the legislature intended entirely to follow the English law, both statute and case, but substantially it did so intend. It is therefore not strange that [the interpretation section] was introduced. It was in the nature of a slip rule to cover the fallibility of draftsmen (p. 32).

[519]Art. 92 (2) (c) of the Constitution Act. 1991.

[520]Specified by Section 2 of the Judges of Supreme Court and High Court Act No. 21 of 1988.

[521]ibid., Art. 93.

8:2:2 The High Court

The High Court[522] serves as a court of first instance for the trial of adults on "specified offences",[523] including all capital offences; but the High Court has only a limited jurisdiction over juvenile crime, for a juvenile accused can only be tried in the High Court for an offence of homicide or attempted murder (or when charged jointly with an adult).[524] The High Court also has an appellate jurisdiction for cases from the Subordinate Courts and exercises supervisory and review powers; it can call for and examine the record of any criminal proceedings before a Subordinate Court, for the purpose of checking on the legality of any finding or the regularity of any proceedings. In such cases the High Court has authority, in case of a finding of guilt in respect of a juvenile offender, to confirm, vary or reverse the decision of the Subordinate Court or to order the juvenile offender to be retried by any other Subordinate Court of competent jurisdiction.[525]

The High Court has seldom exercised this power to confirm reformatory and approved orders made in respect of juvenile offenders (as discussed in Chapter Nine); Offenders are kept in

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[522]The High Court is established by the High Court Act Cap. 50 of the Laws of Zambia.

[523]Section 11 of the Criminal Procedure Code, and these offences are specified in the Schedule by the order of the Chief justice; and they are known as "specified offences".

[524]Section 64 of the Juveniles Act.

[525]Sections 337 and 338 of the Criminal Procedure Code.

custody throughout the criminal trial.

There are now resident judges at every Provincial Headquarters to hold sessions of the High Court, except in Luapula and North-Western Provinces, where High Court sessions are held by judges visiting from Lusaka, Northern and Copperbelt Provinces.

There are nineteen Judges of the High Court, including the Chief Justice, and a further three full-time High Court Commissioners and five part-time High Court Commissioners appointed from among lawyers in private practice. Although the number of Judges of the High Court is fixed at twenty.[526] High Court judges are appointed by the President on the recommendation of the Judicial Service Commission, subject to ratification by the National Assembly.[527] Qualification for appointment as a Judge is seven years' post-call experience as an advocate. Judges of the Supreme Court and High Court hold office until they attain the age of sixty-five years.[528]

8:2:3 The Subordinate (Magistrates') Courts

Most criminal cases are tried by the Subordinate Courts or Magistrates' Courts, established and governed by the Subordinate Courts Act.[529] There are four classes of Magistrates' Courts,

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[526]Section 3 of the Judges of the Supreme Court and High Court Act No. 21 of 1988.

[527]Art. 94 of the Constitution Act 1991.

[528]ibid., Art. 98.

[529]Cap. 45 of the Laws of Zambia.

reflecting the differences in the level of training of magistrates and defined by the lengths of sentences which each might impose. An important distinction is between "lay" and "professional" (legally qualified) magistrates. The hierarchy of Subordinate Courts presided over by lay magistrates is as follows:

a. The Court of Magistrate Class III;

b. The Court of Magistrate Class II; and

c. The Court of Magistrate Class I.[530]

The professional magistrates preside over:

d. The Resident Magistrate's Court;

e. The Senior Resident Magistrate's Court.

f. The Principal Resident Magistrate's Court.

Since the mid-1980s the category of professional magistrates has been reorganised with the creation of the post of the Principal Resident Magistrate as the highest in the hierarchy.[531] This post is similar to that of the Senior Resident Magistrate because the so called Principal Resident Magistrate exercises the powers conferred on a Senior Resident Magistrate, under section 7 of the Criminal Procedure Code, which provides:

> Subject to the other provisions of this Code, a Subordinate Court of the first, second or third class may try any offence under the Penal Code or other written law, and may pass any sentence or make any order authorised by the Penal Code or other written law:

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[530]However a Subordinate Court may be referred as "Subordinate Court Class I" when referring to a Court of professional magistrate (Principal resident magistrate, Senior resident magistrate and Resident magistrate).

[531]Section 3 of Subordinate Courts (Amendment) Act No. 11 of 1990, although administratively the post became operational in 1986.

Provided that---

(i) a Subordinate Court presided over by a Senior Resident Magistrate shall not impose any sentence of imprisonment exceeding a term of nine years;[532]

This section was not revised when the Subordinate Courts' Act was amended to create the post of Principal Resident Magistrate, so that the Senior and Principal Resident Magistrates have the same powers.

While a Resident Magistrate can impose a sentence of up to seven years' imprisonment, the Court of a Magistrates class I can impose a maximum sentence of five years' imprisonment; magistrates class II and class III can impose sentences not exceeding three years' imprisonment.[533] These powers refer to any person found guilty of an offence charged, whether an adult or a juvenile offender; however, for this purpose "juvenile" means a "young person" over sixteen years of age but under nineteen years.[534] Sentences of imprisonment imposed by lay magistrates are subject to confirmation by the High Court before they can take effect, if the term exceeds three years (Magistrate class I), one year (Magistrate class II) and six months (Magistrate class III).[535]

There are four Principal Resident Magistrates, who preside over the Subordinate Courts in Lusaka Province, Southern Province, Ndola and Kitwe respectively.

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[532]Section 7 of the Criminal Procedure Code.

[533]Section 7 of the Criminal Procedure Code.

[534]Sections 2 and 72 (2) of the Juveniles Act.

[535]ibid. Section 9 (1) (3) and (5).

8:2:4 The Juvenile Court

A Juvenile Court is any Subordinate Court trying a charge against a juvenile or hearing a case of a child alleged to be in need of care. The Juveniles Act section 63 provides:

> A Subordinate Court sitting for the purpose of--
> (a) hearing any charge against a juvenile; or
> (b) exercising any other jurisdiction conferred on Juvenile Courts by or under this or any other Act;
> is in this Act referred to as a Juvenile Court.

A juvenile is defined as person who has not attained the age of nineteen years.[536] This includes persons of eighteen years and below, but eighteen years is the age at which a person attains legal majority involving the right to vote.[537] It also conflicts with the age of maturity under traditional societies, wherein a girl at the age of 13 or 14 undergoes a puberty initiation ceremony and thereafter is considered to be an adult capable of entering into a valid contract of marriage. After the *Mukanda* circumcision ceremony boys among the Luvale become adults (discussed in Chapter Two).

In this study the informants among the Tonga were of the view that it is not a crime for a boy or man to elope with a girl aged 14 or 15 years, as long as she has undergone an initiation ceremony. But this is an offence under section 136 of the Penal Code, which provides:

> Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against

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[536]Section 2 of the Juveniles Act.

[537]Art. 75 of the Constitution Act, 1991.

> the will of such father or mother....is guilty of a misdemeanour.[538]

This is an offence of abduction of a girl under sixteen. The Tonga regard elopement as a method of entering a contract of marriage; they do not report such incidences to the police as crimes. The Colonial Annual Reports from 1955 to 1962 and the Zambia Police Annual Reports from 1978 to 1986 show that no charge of abduction was ever brought. The age limit will continue to cause conflict between the legislation and the traditional societies, when it comes to the age of legal majority (discussed in Chapter One).

A Juvenile Court has territorial jurisdiction within district in which it sits (as shown in the map of Zambian districts in Chapter One).

The Act distinguishes between two categories of juveniles: those in need of care, and those who have committed offences (dealt later in the chapter).

8:2:5 The Local Courts

The Local Courts, as shown in Chapter Four, were originally created by the British authorities as "Native Courts" in 1929. While their criminal jurisdiction has expanded, however, the application of customary criminal law has been replaced by the enforcement of statutory criminal law; from independence the Constitution provided:

> No person shall be convicted of a criminal offence unless the offence is defined and the penalty

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[538]Section 136 of the Penal Code.

therefore is prescribed in a written law...[539]

This guarantee spelt the end of the enforcement of unwritten customary law offences. The statutory offences enforced by the Local Courts include many of those defined in the Penal Code and other statutes, and those defined in By-laws passed by individual local authorities.

The presiding justices of Local Courts are appointed by the Judicial Service Commission,[540] on the basis of the historical legacy that they are conversant with local customs and customary law. But this is not the main criterion these days, although they must be fluent in the language generally spoken in the area. Most of the presiding justices are retired civil servants (teachers, policemen, clerks etc.). The presiding justices are expected to enforce tribal norms and traditional values in the changing society influenced by urbanization and economic development.

Below the Local Courts and without statutoty recognition as courts, are the village headmen's courts, which are called "Village Committees".[541] In the 1970s the UNIP government, in implementing its philosophy of decentralisation in rural areas, established a territorial developmental infrastructure based on

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[539]Although the operation of this constitutional provision was suspended until 1970 to allow time for customary law offences to be written down (Zambia Independence Order (Prescribed Date) Act No. 55 of 1966); it later became Art. 20 (8) the Constitution 1973 and now Art. 18 (8) of the Constitution 1991.

[540]Section 6 (2) of the Local Courts Act. Cap. 54.

[541]As the one attended during the fieldwork in Chief Simwatachela's area (discussed in Chapter Three). This is a council comprise the headman who sits as a Chairman, a secretary, treasurer and two other members. It sits to settle disputes in the village and also attends to other social matters in the village. They have no statutory backing, as they were established through political pronouncements.

hierarchical structure in each province: highest being the Provincial Development Committees, District Developmental Committees, Ward Developmental Committees and Villages Productivity Committees. The aim of these committees was proposed as follows:

> The purpose of these committees is to improve organisation for economic development at the people's level. Improved organisation will lead to the creation of decision-making centres in rural areas, and therefore, provide further administrative decentralisation.[542]

These committees had administrative, social, economic and political goals, including maintenance of the family as a vital socio-economic unit (Nag 1990). In addition, the Village Committees by implication assumed the headmen's judicial powers and sit to resolve disputes between members of the village. A person intending to have his case referred to the Local Court must obtain a letter from his Village Committee as a form of appeal; without this his case will not be entertained by the Local Court.[543]

As shown in Chapter Three, sessions of such Village Committees were observed during fieldwork; the Local Courts and Village Committees are frequently used by members of communities in urban and rural areas and are still regarded as "people's courts" where justice is dispensed within a reasonable time. In rural areas cases involving juveniles are frequently taken before

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[542]Ministry of Development Planning and National Guidance, Second National Development Plan, (Lusaka: Govt. Printer) 1971, p. 34.

[543]Informants: Chief Simwatachela and Mr Josiah Kachota, the presiding justice at Choboola Local Court, in Chief Simwatachela's area.

Village Committees.

The Local Courts and Village Committees operate in an informal way. No formal pleadings are filed in the court and advocates are barred from appearing before them; rules of evidence are not followed and hearsay evidence is admissible. They are not courts of record. If one party, dissatisfied with the decision of a Local Court, appeals to a Magistrate's Court, the magistrate in determining the case will not rely on the record of proceedings from the Local Court, but will try the case *de novo*.

Generally, the remedy awarded by a Local Court is compensation to the offended party by the offender, or if he is a juvenile by his parents or guardian. An example cited in Chapter Three was the case of Rhoda Beneya V Law Miyanda, which was witnessed at the Village Committee of headman Chilundika's village. This supports the findings in the study of the Mungule Local Court conducted by Canter (1976), in which he noted that since most Local Court decisions involve compensation, litigants work out a plan for payment of the compensation; he concluded that in:

> ....that way an "adjudicated" decision can become a "compromise in compliance" between litigants, who are given a decision backed by force through order of the court, but left to decide the actual means of compensation themselves.[544]

The compensation is seen as a reconciliatory measure, whereby the parties are expected to return to their homes to live in harmony.

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[544]R. Canter (1978), "Dispute Settlement and Dispute Processing in Zambia: Individual Versus Societal Constraints", in: Laura Nader and Harry. F. Todd Jr. (eds.), The Disputing Process -- Law in Ten Societies, (New York: Columbia University Press), p. 268.

The litigants before traditional courts in most cases do not claim a specific remedy, but a litigant may sue the other party for behaviour considered to be contrary to that required by the community's norms, and seek the court's advice (Epstein, 1958; Gluckman, 1965). Epstein (1958) points out that the African Local Court in its application of customary law follows:

> a process in which judges and litigants alike work towards the reaffirmation of norms and values of the community.[545]

It has been pointed out that Local Courts have lost their criminal jurisdiction under the customary law. The people themselves contribute to the reduction of criminal cases in the Local Courts, as the civil cases they bring before Local Courts include those which should be taken before the police, including rape, assaults, theft and abduction (Canter, 1976; Colson, 1976). As Colson notes:

> cases of disguised theft are brought before Local Courts as civil suits because the plaintiffs are interested in compensation and restoration of property rather than the punishment of offenders, which would be the result if they laid charges of theft before police.[546]

This not only reduces crime rates, but also reduces the number of juvenile offenders who enter the juvenile justice system, especially in rural areas, where serious crimes such as stock theft and the abduction of girls under sixteen years are not

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[545]A. L. Epstein (1958) Politics in an Urban African Community, (Manchester: Manchester University Press), p. 211.

26 E. Colson (1976), "From the Chief's Court to Local Court", in: Myron J. Aronoff (ed), Freedom and Constraints. (The Netherlands: Van Gorucum and Comp. B. V.), p. 268. See Kalombo T. Mwansa (1991), "Property Crime in Lusaka", Ph. D Dissertation. (University of London).

reported to police but taken before Local Courts and Village Committees, where the parent or guardian becomes the principal wrongdoer, instead of the juvenile offender. Chief Simwatachela during the interview at his Palace stated:

> ..Over 75% of stock theft and 100% of abduction of girls under sixteen committed by juveniles in my area are taken before Chaboola Local Court here at my Palace or before Village Committees in my area, without going to the police, where cases take years to be completed, and by the time they come up for hearing, the complainant might have died or witnesses have had changed their stories in favour of the offender. Our courts hear and determine the matters in the shortest possible time, for the interests of both parties.[547]

The statement of the Chief reflects the importance of Local Courts and Village Committees in the eyes of traditional communities, and the common reluctance of people to report crimes to the police. Moreover, rural communities still have problems in appreciating the general legal system, which is perceived as being remotely technical and alien.

The Local Courts and Village Committees in Zambia make a valuable contribution in dealing with juveniles who commit crimes. They encourage parents and guardians to play a vital role in controlling juvenile crime and are easily accessible to the people generally. Their operation in dealing with juveniles would be more effective if they had statutory backing.

8:3 The Jurisdiction of the Juvenile Court

As shown above, the Juveniles Act addresses two categories of juveniles: children in need of care and those who commit

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[547]Personal interview held at his Palace on 4th April 1993.

crimes. Therefore the examination of the operation of the Juvenile Court will begin by discussing how the Juvenile Courts deal with these two categories of juveniles and consider whether they are treated in accordance with the provisions of the Act.

8:3:1 Juveniles in need of care

The Juveniles Act recognises certain situations not necessarily involving misconduct which are considered to be potentially harmful to juveniles. The Juvenile Court is empowered to make orders in respect of juveniles who are brought before it in such circumstances including training at the Approved School or probation. Such juveniles are placed in the non-delinquent class of "juveniles in need of care", defined as including a juvenile who:

> having no parent or guardian or a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardiansip, is either falling into bad associations or is exposed to moral or physical danger or beyond control;.... and such juvenile requires care, control or protection....[548]

This includes juveniles found wandering without any fixed abode and visible means of subsistence and those found begging or singing for reward in a street or public place or found selling goods or farm produce in a street. Section 9 (2) of the Act provides:

> For the purpose of this section, the fact that a juvenile--
> (a) is found destitute; or
> (b) is found wandering without any settled place of abode and without visible means of subsistence; or

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[548]Section 9 (1) (a) of the Juveniles Act.

(c) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing or offering anything for sale); or
(d) is found loitering for the purpose of begging or receiving alms;

shall, without prejudice to the generality of the provision of paragraph (a) of subsection (1), be evidence that he is exposed to moral danger.

This section is broad: most of juveniles who drop out of the educational system, as discussed in Chapter Six, find themselves in the informal sector and are labelled as street children wandering in urban centres: they could be brought before the Juvenile Courts under this provision.

The police and social welfare officers are empowered to bring such juveniles before a Juvenile Court. The Commissioner for Juvenile Welfare has a statutory duty to assist juveniles who are found in such a situation. If he receives a report of such circumstances he should bring the juvenile concerned before a Juvenile Court for an order committing him to a fit person or on probation or alternatively sending him to the Approved School.[549]

However, these provisions appear to be a dead letter. This study found no juvenile in the correctional institutions under this provision. Moreover, no such cases had been recorded during the period 1980 - 1993. It is even doubtful if there had been any in the 1970s. However, juveniles who were found selling in the streets were picked up by the police, charged with trading without licences and ordered to pay penalties as admissions of guilt. This procedure was witnessed on several occasions at Lusaka Central and Kabwata police stations.

However, it is not appropriate to criminalise the juveniles'

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[549] ibid., section 10.

activities in street selling. As shown in Chapter Two, in traditional societies children were incorporated into economic activities at an early stage in their lives. This has continued in the cash economy, where juveniles supplement family incomes by selling in the streets produce grown by their parents jointly with the children by utilizing patches of vacant land in urban areas and other crops brought from the rural areas. This is not being idle but carrying on a profitable enterprise which helps to maintain the living standards of juveniles' and their families.

The Juvenile Court does not exercise its power over juveniles in need of care because the Department of Social Welfare and the police fail to bring such juveniles the Juvenile Courts. Therefore juveniles who may be deprived or neglected are not accorded the protection of law, even where such deprivation could seriously endanger their well-being and even where such neglect is due to parental fault. No reason was given by the police or the Department of Welfare and Social Services why this provision of the Act is not enforced. The only plausible explanation that could be given is that all remand homes and places of safety established during the colonial era which catered for such juveniles no longer exist; most charitable organisations who were interested in children's welfare no longer run children's homes.

8:3:2 Juveniles beyond parental control

The Act authorises a parent to prove before a Juvenile Court

that he is unable to control the juvenile and if the court is satisfied that this is so it may send the juvenile to an approved school, place him under the supervision of a probation officer or commit him to a fit person, who may be a relative. The Act provides:

> Where the parent or guardian of a juvenile proves to a juvenile court that he is unable to control the juvenile, the court, if satisfied--
> (a) that it is expedient so to deal with the juvenile; and
> (b) that the parent or guardian understand the results which will follow from and consents to the making of the order;
> may order that the juvenile be sent to an approved school.....[550]

This section refers to juveniles who are considered to be beyond parental control, the *basichisampi* (unruly juveniles), as shown in Chapter Three, who are disrespectful to their parents or elders. These juveniles in traditional societies were usually dealt with within the family and now because of the reliance on the state such misconduct in urban centres is brought before the courts. These are activities which should be be dealt with by Local Courts and Village Committees.

This study found one juvenile at Nakambala Approved School who had been brought before the court under this section. The juvenile stated that he had been taken before the court because the magistrate was a friend of his father.[551] It may be true that the magistrate was aware of family problems at the juvenile's home and advised the father to take such action. Mongu, where the case originates, is a small town with three hotels, where most

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[550]ibid., Section 14.

[551]Muyunda Namutulo, an inmate at Nakambala interviewed on 22nd February 1993.

high ranking executives and civil servants meet. It is possible that it was at one of these places that the magistrate might have met the juvenile's father. Often boys differ with their step-mothers and their fathers usually side with their wives.

8:3:3 Juvenile offenders

The third class of juveniles recognised by the Act are those who are alleged to have committed delinquent acts. Special procedures for the trial of juvenile offenders are prescribed by the Act; some of dispositions relating to juveniles will be examined in the next chapter, under sentencing.[552]

The Juvenile Courts have exclusive jurisdiction to try all criminal charges against juveniles, except where a juvenile is charged with a crime of homicide or attempted murder or is charged jointly with an adult. The Act provides:

> Where a juvenile is brought before a juvenile court for any offence other than homicide or attempted murder, the case shall be finally be disposed of in such court.[553]

Thus whether a case is grave or trivial it must be disposed of in a Juvenile Court.[554] This includes offences normally specified (in the cases of adults) to be tried by the High Court, as noted earlier. The Supreme Court has decided that if a person is being tried by the High Court and during the proceedings it comes to the notice of the court that the accused is a juvenile, the trial

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[552]Section 73 of the Juveniles Act.

[553]Section 64 (1) of the Juveniles Act.

[554]Siwale V The People (1973) ZR 218.

must be abandoned and the case referred to the Juvenile Court. Baron, D.C.J (as he then was), stated:

> In the present case the indication arose for the first time when the statements of the appellants were received in evidence. At this point the trial court should immediately have conducted an inquiry as to the appellants' ages, and having found that they were both juveniles...should have ordered that the matter be heard and disposed of in a juvenile court. The High Court had no jurisdiction to hear this matter....[555]

The appeal was allowed and a re-trial ordered. The decision of this case emphasises the exclusive jurisdiction of the Juvenile Court over criminal cases involving juveniles. But Subordinate Courts do not follow this simple procedure of enquiring into the age of an immature accused, which, if appropriate, would validate their status as Juvenile Courts.

As the age of the accused is the vital factor in founding the jurisdiction of a Juvenile Court, a court has a duty to ascertain the age of any accused juvenile appearing before it. This means that the court must inquire into and determine the age of a "juvenile".[556] As Mr Justice Skinner once stated:

> ...It appears to me that the magistrate did not appreciate that he was dealing with a charge against a juvenile, and this was an irregularity which arose from his failure to inquire as to the age of the appellant.[557]

The court must show in the record that it has ascertained the age of the juvenile, and if it fails to comply with the provision of the Act, the whole proceedings that follow may be nullified on appeal. However, perusal of case records at Lusaka Juvenile

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[555]Musonda and Other V's The People (1976) ZR 218 at 220.

[556]Section 118 of the Juveniles Act.

[557]Chipendeka V The People (1969) ZR 82 at p.83.

Courts, revealed that most magistrates did not endorse the ages of juveniles and never even enquired about it.

8:3:4 The age of criminal responsibility

As shown in Chapters One, and Nine age plays a critical role in juvenile justice. It is a determining factor for the court in exercising its jurisdiction, in deciding on the criminal responsibility of the accused and in selecting the sentence imposed on conviction, especially in deciding whether to impose a term of imprisonment or an approved school order.

It is necessary first to consider the age of criminal responsibility. The Penal Code of Zambia has retained the common law rule that eight years is the lower limit of the age of criminal responsibility, so that a child of seven years or less is immune from criminal liability. Section 14 of the Penal Code provides:

> A person under the age of eight years is not criminally responsible for any act or omission.[558]

One case was found in this study where a juvenile was arrested and charged with causing malicious damage to property; his age was given as eight years. When the case came up for plea on 10th April 1991 the father informed the court that his son had been born on 24th October 1984, and gave his age as seven years. The court's order was that "since the child is under or about seven years, he is doli incapax; case dismissed -there is no case

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[558]Section 14 (1) of the Penal Code, Cap. 146 of the Laws of Zambia.

against him".[559] This case showed a lack of police investigation into the social background of juvenile offenders; the information could have been supplied earlier by parents or guardians. This suggests that police officers fail to contact the parents when a juvenile is taken into custody.

Other Commonwealth countries in Africa have retained similar provisions in their Penal Codes. For example, Malawi has an even lower age limit:

> A person under the age of seven years is not criminally responsible for any act or omission.[560]

In other countries eight years is the lower limit.[561]

England has raised the age of criminal responsibility to ten years, although juvenile offenders between the ages of 10 and 14 years are very frequently dealt with under the police cautioning system without being brought to the Youth Court, as shown in Chapter Seven. It is a system intended to divert young juveniles from the criminal justice system and reduce the number of juveniles labelled criminals. Although, as noted in Chapter One, the system is being criticised as widening the door to bring in those who formerly would not have been taken to the police station in the same circumstances, but informally warned in the street by an officer exercising his discretion. Section 70 of the Criminal Justice Act 1991 renames Juvenile Courts as Youth Courts to deal with juveniles aged between 14 and 17 years.

The Uganda Child Law Review Committee (1992) proposes to

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[559]Case Record No. 2P/49/91.

[560]Section 14 of the Penal Code, Cap. 7:01 of the Laws of Malawi.

[561]Section 15 of Penal Code, Cap. 08:01 of Laws of Botswana.

raise the lower limit of criminal responsibility to 14 years.[562] In China the Youth Court has jurisdiction over juveniles between the ages of 14 and 18 years; those under 14 years are not criminally responsible. A victim is supposed to take civil proceedings against the parents of the juvenile.[563] Amendment of Zambian provision is overdue as it does not take into account the immaturity of children under 10 years.

It must be noted that no International Convention defines an age limit of criminal responsibility. Article II of African Charter on the Rights and Welfare of Child defines a child as a person under the age of 18 years; while dealing with the administration of juvenile justice, it provides:

> There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.[564]

The age limit of criminal responsibility is left for national governments to determine, as a recognition that social and cultural factors must be taken into consideration in each particular country.

A juvenile of eight years and above may be charged with any criminal offence. However, in Zambia a juvenile aged between eight and twelve years may not be found guilty of an offence unless the prosecution adduces evidence to show that the juvenile

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[562]Uganda: Child Law Review Committee 1992, (Department of Probation and Social Welfare: Ministry of Labour and Social Welfare), p. 60.

[563]Ms Zuo Yan, Deputy Chief, Criminal Division, Chang Ning District People's Court, Shanghai Municipality, presented a seminar paper as a member of a Visiting Chinese Juvenile Justice Delegation at SOAS on 3rd December 1993.

[564]Art. XVII of the African Charter on the Rights and Welfare Child 1990.

had "mischievous discretion": an ability to understand the act and to know or appreciate its consequences. The Penal Code provides:

> A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission.[565]

The juvenile's criminal responsibility and his capacity to know that what he was doing was wrong can be proved only from all the circumstances of the case, including his conduct after the alleged offence, for example, if he concocted an ingenious and perfectly untrue story to excuse himself.[566] This special, rebuttable presumption of innocence in favour of juveniles aged from eight to eleven years as in common law, does not apply to those of twelve years and above, although by statutory definition a person under 14 years is a child. In Lesotho, this presumption applies within the definition of a child, as a person under 14 years. Mr Justice Mofokeng (1985), stating the age of criminal responsibility, relied on the decision *per* Harragin, C.J., in R V Mothankana Sera (1926) 53 H.C.T.L.R 147 at 148:

> Now the law on the subject is quite simple. Had a fully grown man done what he did, he would have been guilty of murder. But the law with regard to children of his age (estimated by the court) is somewhat different. A child between seven and fourteen years of age is assumed to be incapable of criminal conduct, but this presumption will be rebutted if it be proved by evidence or by the circumstances that his mind was sufficiently matured to understand and that he did understand the wrongful character of his conduct in

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[565]Section 14 (2) of the Penal Code.

[566]R V F.C (A Juvenile) 2 N.R.L.R 185.

question.[567]

In Zambia, it seems the presumption conforms with some traditional tribal practices. For example, among the Luvale boys between the ages of 9 and 13 years undergo a *mukanda* initiation ceremony, whereby they learn their social responsibilities in the society. Thereafter, they are expected to have the intellectual capacity to distinguish wrong from right. They have attained the status of manhood in the eyes of their community. For example, they are expected to distinguish consent from refusal by girls in sexual relationships.

The Penal Code prescribes an irrebutable presumption that a boy under 12 years of age is incapable of having sexual intercourse.[568] But, as noted above, a boy of 11 years through the initiation ceremony is taught sexual techniques and after the ceremony is considered to be fully capable, with knowledge of herbs believed to increase his sexual strength. In traditional customary laws a boy of 11 years of age could be accused of rape, but not under the Penal Code. The statutory presumption was based on English law but it is doubtful whether Zambia will follow the recent abolition of the presumption in England, where section 1 of the Sexual Offences Act 1993 now provides:

> The presumption of criminal law that a boy under the age of fourteen is incapable of sexual intercourse (whether natural or unnatural) is hereby abolished.

In any event the presumption applies in Zambia only to the age of twelve (not as formerly in England, fourteen) years.

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[567]M. Mofokeng (1985), Criminal law and Procedure Through Cases, (Morija: Morija Sesuto Book Depot), pp. 6 - 7.

[568]Section 14 (3) of the Penal Code.

8:4 The Criminal Process in Juvenile Courts

8:4:1 Fundamental rights and legal representation

A juvenile accused of a criminal offence is guaranteed by the Constitution same rights as adult. These include the right to a "timely" trial, the right to notice of the charges, the right to cross-examine witnesses and the right to remain silent.[569] Juveniles also have the right of representation by a counsel of their choice; furthermore, in cases of rape, murder, aggravated robbery, incest, and other "specified offences", legal counsel must if necessary be provided by the State. When a person is brought before a court charged with any of these specified offences, the court is under a legal obligation, before taking a plea, to issue a legal aid certificate, which requires the Director of Legal Aid to provide a counsel to represent the juvenile in court. Section 9 (1) of the Legal Aid Act provides:

> Whenever--
> (a) a person is:
> (i) charged with a specified offence, or
> (ii) charged with an offence other than a specified offence and any court before which he appears considers that, having regard to all the circumstances of the case, it is desirable in the interests of justice that the accused should have legal aid;.....
> the Court shall issue a legal aid certificate.

The section does not apply specifically to juveniles, but to all

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[569]Art. 18 (1) and (2) of the Constitution Act 1991, and also sections 205 and 207 of the Criminal Procedure Code and section 64 of the Juveniles Act.

accused persons. In the case of Tembo V The People,[570] a juvenile pleaded guilty without the issuing of a certificate and there was no legal aid representative in attendance before the trial court. On appeal Baron, D.C.J., stated:

> Once again we cannot overstress the importance of complying with clear statutory provisions, particularly when such provisions are designed for the protection of accused persons. Here we have a mandatory provision for the issue of a legal aid certificate and it would of course be absurd to imagine that all the legislature had in mind was simply the issue of such certificate; clearly the intention of the legislature was to ensure that the accused actually had legal representation at his trial.[571]

The intention of the legislature that the accused (including juveniles) must have legal representation is reflected by making it obligatory for the Director of Legal Aid to assign a counsel to represent the accused. Section 10 of the same Act provides:

> (1) The Director shall grant legal aid to any person in respect of whom a legal aid certificate has been issued under this part.

The Juvenile Courts do not comply even with mandatory provisions, as noted in the above case; the Supreme Court could not overstress that mandatory provisions must be followed.

Case records at Lusaka Subordinate Courts over two years (1991-92) show that, out of 118 juvenile cases advocates appeared in 2 cases only. It is difficult to determine why advocates are not involved in juveniles' cases; it may be that the high fees charged by lawyers discourage juveniles and their parents from seeking their services.

Criminal proceedings in a Juvenile Court follow the full

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[570](1974) ZR 286.

[571]ibid., p. 288.

adversarial process by which a criminal trial of an adult is normally conducted. The prosecution adduces evidence to establish the guilt of the juvenile offender beyond reasonable doubt.

The juvenile or his parent or guardian, if present in court, can cross-examine the prosecution witnesses, "at the close of evidence in chief of each witness".[572] In most cases juveniles fail to cross-examine witnesses and instead make statements. If this happens the Juvenile Court is empowered to put questions to the witnesses on behalf of the juvenile, and thereafter the public prosecutor has the right to re-examine the witness on the answer given. The Act provides:

> If in any case where the juvenile is not legally represented, the juvenile, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the juvenile ..... provided the prosecution shall have the right to re-examine the witness upon the answers to such questions.[573]

It was observed that courts did not comply with this provision: they insisted that juveniles put questions to witnesses and, if they failed to do so they were ordered to be silent and sit down.

Juveniles have the right to appeal within 14 days to the High Court against a finding of guilt or against the order imposed.[574] These rights are provided in the Constitution[575] and in various Acts, but it does not mean that in practice they are always respected.

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[572]section 64 (4) of the Juveniles Act.

[573]section 64 (5) of the Juveniles Act.

[574]Section 322 of the Criminal Procedure Code.

[575]Art. 18 of the Constitution Act, 1991.

8:4:2 Preliminary Procedural Issues

Unfortunately Juvenile Courts do not comply with important provisions of the Juveniles Act, which pertain to the separation of juveniles from adult criminals and require proceedings of these courts not to be held in open court. The magistrates interviewed took the view that taking a plea or mentioning a juvenile case in open court was not a serious violation of the provision of the Juveniles Act. It is therefore necessary to ascertain how the courts handle juveniles in relation to preliminary procedural issues; this raises the question: is there effectively a separate system of juvenile justice in Zambia?

This question can only be answered by examining the provisions of the Juveniles Act and the operational practices of Juvenile Courts, which are Subordinate Courts hearing charges against juveniles. Chapter One showed that the nineteenth century "Child savers" (social reformers) advocated the separation of juveniles from adult criminals, to avoid dangers of corruption and stigmatization. Criminal trials in Juvenile Courts, although matters of public interest, differ from adult criminal proceedings in being closed to the general public, except for the relatives of the juvenile and of the victim if he is a juvenile too. Also, the juvenile accused does not stand in the dock but in a particular place at the front of the court, where he can speak to the magistrate and be spoken to without any difficulty.

In relation to the sittings of Juvenile Courts the Act provides:

> A juvenile court shall sit in a room other that in which any court other than juvenile courts ordinarily

> sit, unless no such other room is available or suitable, and if no such room is available, the juvenile court shall sit on different days or at different times from those on or at which ordinary sittings are held.[576]

Further:

> No person shall be present at any sitting of a juvenile court, or at any sitting of the High Court when hearing charges against a juvenile not jointly charged with a person who is not a juvenile...[577]

However, the section gives an exception to persons with an interest in the matter or in the work of the court. These include lawyers, complainants and their witnesses and members of the press, who are restrained from publishing information that could identify the juvenile (such as name, school or address). But the press report cases involving juveniles without giving their names and residential addresses; the offence charged, facts presented before court and the order of court are usually given.

The Juveniles Act conforms with the principles of rehabilitation, by providing for criminal proceedings in Juvenile Courts to be heard in sessions closed to members of the public, on the grounds that public hearings would be detrimental to the juvenile.

Despite the clear provisions of the Act, in this study it was found that juveniles are tried by the same magistrates, on the same days, at the same times and in the same rooms as adults. The juveniles were seen being conveyed together with adult criminals, in a troop carrier designated as a prisoners' van, from police cells or remand prisons to the courts. They were then

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[576]Section 119 (1) of the Juveniles Act.

[577]ibid., subsection (2).

locked together in cells at the Subordinate Courts while waiting to be taken inside the courtrooms. When the courts began hearing cases juvenile accused together with adults were brought into the courtrooms and sat on the same bench waiting for their cases to be called.

The public prosecutor called the name of the juvenile and the interpreter then handed the case record to the Magistrate. The offender moved and stood in front of the bench, behind the public prosecutor, and did not enter the dock. The magistrate asked the offender preliminary questions, such as name, age, residential address and parents' names. It was at this stage that the Magistrate declared the court to be a Juvenile Court and ordered other persons not connected with the case to go outside when in fact the identity of the juvenile had already been revealed to the general public. Adult accused persons not jointly charged with the offender remained in court. At no stage were juvenile accused separated from adults nor did the courts concern themselves to arrange sittings at different times or in different rooms, as the Act requires. This fundamental procedural requirement is routinely ignored. Although the Juveniles Act establishes a separate juvenile justice system, the Juvenile Courts themselves do not appreciate this fundamental factor distinguishing them from ordinary criminal courts for the trial of adults.

8:4:3 Court Attendance by Parents or Guardians

As seen in Chapter Two, a child internalizes basic beliefs,

values, attitudes and general patterns of behaviour that give direction to his or her subsequent behaviour within the family. The family is the initial transmitter of the culture through the socialization process and therefore the parental role in juvenile justice is vital. It has also been seen that in the traditional criminal process the juvenile's liability was understood in the context of the parent's role in the criminal process. It was the parent or guardian who was summoned before a chief's court or council of elders. Chapter Three showed that the Village Committee Courts in rural areas do summon the parent unless the parent has brought the case before the court on behalf of his child. This is vital for the maintenance of the family unit and the recognition of the parental responsibility for determining the personality, characteristics and conduct of children. It assists the court to assess whether the parents have contributed to the juvenile's misconduct through their neglect in instilling in him the necessary norms and cultural values.

In the Juvenile Court the Juveniles Act provides for the attendance of a parent or guardian to be required:

> Where a juvenile is charged with an offence.... before a court, his parent or guardian...shall if he can be found and resides within a reasonable distance, be required to attend at court before which case is heard... during all stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance....;[578]

The terms of this provision have been held by the High Court and Supreme Court to be mandatory; in Lumsden V The People Ramsay, J., stated:

There is nothing in the record to show that the

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[578] ibid., section 127.

> requirements of section 125 (as it then was)... were complied with. In my judgment, this section is mandatory in its terms and a Juvenile Court must either ensure that a juvenile's parent or guardian attend or make an order that, in the circumstances, it is unreasonable to require the attendance. This was not done in the instant case... accordingly I quash the finding of guilt...[579][Emphasis supplied].

If such attendance is dispensed with, the Juvenile Court should make an order that, in the circumstances, it was unreasonable to require such attendance. The attendance of parents is vital and the provision is designed for the protection of juveniles. As Gardner, J., has stated:

> We cannot over-emphasise that provisions such as these, which are designed for the protection of juveniles, are there to be complied with and not ignored....The important consideration is that if these provisions are not complied with they may prejudice juveniles. In this case, having once indicated his wish to plead not guilty, the juvenile changed his plea. We do not know whether this was the fairest course for him to take without the advantage of advice from a parent or guardian. In the circumstances we are of the opinion that, because of the possibility of prejudice, it would be proper to allow this appeal which we do.[580]

This case indicates that, in the absence of a lawyer, a juvenile offender is expected to seek guidance from his parents and that every opportunity should to be given to him to do so. This provision does not apply to a Juvenile Court only, but to any court where the juvenile appears: whether jointly charged with an adult or not, the guardian must be summoned.[581]

As stated in Chapter One, the completed case records of

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[579]Lumsden V The People (1967) ZR 142 at p. 145; see also Tembo V The People (1974) ZR 286, Chalimbana V The People (1977) ZR 283, Mumba and Others V The People (1978) ZR 404.

[580]Chalimbana V The People (1977) ZR 283 at 284.

[581]Mumba and Others V The People (1978) ZR 404.

Lusaka Juvenile Courts were examined, for the period between January 1991 and December 1992, totalling 118 cases (61 for 1991 and 57 for 1992). Analysis of these cases demonstrates that Juveniles Courts routinely hear and determine cases in the absence of parents or guardians. Table 8:1 shows that in 57% of cases handled in 1991, parents did not attend, while in 1992 the proportion rose to 70%. Most of magistrates interviewed stated that if this provision was complied with juvenile cases would never be commenced; if commenced they would take a long time to be completed.

Table 8:1

PERCENTAGE OF CASES ATTENDED BY PARENTS LUSAKA JUVENILE COURTS 1991 - 92

Year	Parent(s) attended	Parent(s) did not attend
1991	43	57
1992	30	70

In cases where the Court shows a concern over the attendance of a parent, the matter tends to drag on without a plea being taken. This means that offenders remain in custody unnecessarily and therefore operates to their disadvantage. Such moves are never in the interests of juvenile offenders, as can be seen from this representative extract from the proceedings in the case of

The People V Alifa Sale:[582]

11th February 1992 - For plea; adjourned to 14th February.
14th February 1992 - Juvenile offender not present; adjourned to 17th February.
17th February 1992 - Public prosecutor addresses Court "offender not present".
- Order of Court: Case adjourned to 24th February.
24th February 1992 - Public prosecutor addresses Court "the juvenile offender not present and is reported to be sick at Emmasdale police station".
- Order of Court: Adjourned to 2rd March for plea.
2nd March 1992 - Offender present; Guardian absent.
- Order of Court: Adjourned to 6th March to allow police to summon the father.
6th March 1992 - Offender present; Public prosecutor "father absent applying for more time to summon him".
- Order of Court: Adjourned to 13th March.
13th March 1992 - Offender present; Public prosecutor "father absent, I intend to summon the Social welfare officer".
- Order of Court: Adjourned to 23rd March.
23rd March 1992 - Offender present, father and Social welfare officer absent. Public prosecutor "I talked to the Social welfare officer who indicated that he would attend court, but he is not here today".
- Order of Court: Adjourned to 30th March Social welfare officer to be contacted.
30th March 1992 - Offender present; Father and Social welfare officer absent. Public prosecutor "I have tried to get hold of any social welfare officer, but I have not been successful. I am applying for another adjournment.
- Order of Court: Adjourned to 2nd April.
2nd April 1992 - Offender present; Guardian absent. Public prosecutor "The guardian is at the High Court, who is our hope. I am informed he will start work on 26th April.
- Order of Court: Adjourned to 21st April for mention and 29th April for plea.
21st April 1992 - Offender present; Guardian present. Public prosecutor "the matter is

[582]Case Record No. 3P/53/92.

for mention.
- Order of Court: Adjourned to 29th April for plea.

30th April 1992
- Offender not present. Public prosecutor "the offender was not brought from the remand prison".
- Order of Court: Adjourned to 5th May for plea.

4th May 1992
- Offender present; Father present. Public prosecutor "the matter is for plea".
- Court reads out the charge, and explained in Nyanja language to the offender.
- Offender denies the charge; plea of not guilty entered.
- Order of Court: Adjourned to 18th May for mention, and 21st May for Trial.

Therefore in this case the offender remained in detention for about four months before a plea could be taken, and it took three of those months to summon the father. Even when the juvenile was said to have been sick in police cells, the court did not enquire why he was over-detained or whether he had been taken to the hospital for treatment while he was in police cells.

A person not charged with an offence punishable with death, if not released on bail, is supposed to be brought before a Court within twenty-four hours of his or her arrest.[583] In this case the juvenile accused was in custody for twenty-one days, and even when his guardian attended, he was not released on bail or to the custody of the father, who was said to be employed. The case records perused showed that in over 70% of those cases offenders were not granted bail. This means that juveniles remain in custody throughout the criminal process (as shown in Table 7:2 in Chapter Seven, they are denied bail by police on arrest).

Let us see what happened on the date set for trial:

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[583]Section 33 (1) of the Criminal Procedure Code, Cap. 160 of the Laws of Zambia.

27th May 1992	- Offender present; Guardian present. - Public prosecutor: "it is supposed to be a Trial, but the complainant has an application to make". - Complainant: "I would like to withdraw the matter against the juvenile offender, my parents and those of the juvenile offender have stayed together for a long time. I pity him". - Ruling by the Court: Application granted. The charge against the juvenile is withdrawn. The juvenile offender is hereby acquitted in accordance with section 201 of the Criminal Procedure Code.

It is surprising to note that it took three to four months to trace the father, who was a neighbour to the complainant. This shows how inefficiently the public prosecutors prepare cases for trial, in that they do not take a keen interest in the whereabouts of fathers of offenders; it also shows that investigating officers do not try to see the complainants together with the offenders in order to settle the matter out of Court, especially for cases of assaults such as the one quoted above. If they did this they would find that more cases ended at police stations; this really would be one way of diverting juveniles from the criminal justice system and reducing the caseloads of Juvenile Courts.

8:5 Justification for the Discontinuance of Cases in Juvenile Courts

As shown above (8:4), in a Juvenile Court a criminal prosecution is normally conducted to establish the guilt of the juvenile accused beyond reasonable doubt. However, in some cases pleas of not guilty were entered but the matters were

discontinued without holding trials. It appears that traditional cultural influences dictate the withdrawal of most charges brought against juvenile offenders, and such withdrawals are not usually recorded as acquittals by public prosecutors because that would reflect inefficiency in police prosecution. The traditional inspiration to restore social harmony is imported into the Juvenile Courts by ending cases with reconciliation as an agreed remedy.

8:5:1 Withdrawal of cases by complainants under Sect.201 of C.P.C

The complainant has a right to apply to court with convincing reasons for the withdrawal of a charge against an offender. Section 201 of the Criminal Procedure Code provides:

> If a complainant, at any time before a final order is passed in any case, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same, and shall, thereupon, acquit the accused.

Thus the final order of the court is an acquittal, not withdrawal. However, in these circumstances public prosecutors endorsed the docket of the case as "case withdrawn" and this is sent to police headquarters for statistical purposes. Therefore police annual reports in their column of withdrawals include cases which were in fact acquittals following discontinuance by complainants.

Table 8:2 shows that in each year some 20% or more of cases are withdrawn by complainants. In 1991 19% of juvenile cases completed that year were withdrawn by complainants, while in 1992

the proportion increased to 32%. It is relevant to sample the reasons given by complainants for withdrawal:

1. In the case of The People V Oscar Chola[584]: When the case came for trial on 28th May 1991, the public prosecutor addressed the court, "the complainant has an application to make". Then the complainant was called to address the court and stated: "I wish to withdraw the case, because I have forgiven him, and we are neighbours". Aplication granted and accused acquitted under section 201 of the C.P.C.

2. In the case of The People V Kakwende Penjani and Patrick Litebaula[585]: Case came for mention on 25th November 1992, the public prosecutor addressed court: "The complainant is here and wants to make an application". The complainant called and stated: "I wish to withdraw the case before this court, so that we agree and solve it outside court". Aplication granted and accused acquitted under section 201 of the C.P.C.

3. In the case of The People V Brian Nyeleti[586]: when case came for plea on 28th October 1992, the public prosecutor addressed the court and stated: "The matter is for plea, but the complainant has something to tell the court". The complainant called and addressed the court: "I would like to withdraw the charge against the juvenile offender. He is my neighbour and is a school boy". Application granted and the accused acquitted under section 201 of the C.P.C.

4. In the case of The People V Mark Mukazo[587]: Case came for trial on 2nd May 1991, the public prosecutor informed the court that the complainant had an application to make. The complainant addressed the court: "I would like to withdraw the case because I saw the young boy, I felt that the punishment is too enough (sic) as he had been in custody for a long time". The offence was Housebreaking and theft of property valued at ten thousand kwacha. Application granted and accused aquitted under section 201 of the C.P.C.

Thus various reasons were given, and importantly included traditional "extended family" ties, now regarded as the basis of neighbourhood (Epstein 1958). However, the study further shows

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[584]Case Record No. 2P/64/91.

[585]Case Record No. 2P/213/92.

[586]Case Record No. 2P/131/92.

[587]Case Record No. 2P2/119/91.

neighbourhood (Epstein 1958). However, the study further shows that complainants have at times looked at the future of juveniles. If criminal proceedings continued, apart from the hardships experienced in police and remand detentions, they would ruin the juvenile's educational opportunities, which are supposed to be the court's concern. The traditional neighbourhood obligations of attending to others' family problems are imported into juvenile justice; and complainants are given an upper hand in the criminal process by being allowed to address courts as to the continuance of cases and not being restricted to the part of witnesses. This withdrawal can occur at any stage of the proceedings (i.e at plea, mention or trial).

It is suggested that it is a misconceived practice to allow complainants to withdraw charges which are instituted and conducted on behalf of the State (the people) by public prosecutors.[588] Section 201 of the Criminal Procedure Code must be construed or read with section 91, which deals with the institution of criminal proceedings; these two sections cannot be segregated from each another. Section 91 provides:

> (1) Proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without warrant.....
> (3) A complaint may be made orally or in writing, but if made orally shall be reduced to writing and in either case shall be signed by the complainant.
> (4) The magistrate, upon receiving any such complaint, shall--
> (a) himself draw up and sign; or
> (b) direct that a public prosecutor or legal practitioner representing the complainant shall draw up and sign; or
> (c) permit the complainant to draw up and sign;

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[588]Section 86 of the C.P.C as read with section 2 of the said C.P.C.

> charge has been drawn up and signed no summons or warrant shall issue and no further step shall be taken in the proceedings.

Thus under sect. 201 the complainant can withdraw a charge which he/she is personally pursuing under subsection 4 (c), but not one which the public prosecutor, has taken over under 4 (b). Therefore public prosecutors are mistaken in allowing complainants to withdaw charges under this provision, perhaps under the common traditional misunderstanding that the victim in the criminal process may direct the manner in which the case should proceed and even inform the court that he or she does not need any remedy from the offender, whom the court should just warn.

In certain cases where the court thinks the offence is sufficiently grave in nature it may deny the application. For example, in one case of rape the application to withdraw the charge was refused and a trial was ordered to be held. The complainant on the day fixed for trial did not turn up and was reported to have left the country for Zimbabwe;[589] the matter was withdrawn under section 88 (a) of the C.P.C (discussed later). This shows the importance of complainants in criminal process. The complainant had made up her mind to discontinue the charge against the juvenile and to honour her wish was obliged to leave the country before the trial date. The Court could do nothing to change her expressed sympathy with the juvenile. It is possible that if the Court had granted her application for a withdrawal she would have not left the country. But knowing that if she stayed away from court on the trial date she would be arrested

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[589]Case Record No. SP2/46/92.

for contempt of court, she opted to leave the country. The court did not even make such an order knowing that she might in future return to Zambia. The court had no alternative but to honour her wish and withdraw the charge against the juvenile accused. The order should have been an acquittal because there is no possibility of re-instituting the charge against the juvenile.

8:5:2 Withdrawal of cases under Section 88 (a) of the C.P.C

A criminal charge may be withdrawn by the prosecution at any stage before it closes its case. Such withdrawal is not a bar to any subsequent proceedings on the same facts. Section 88 (a) of the Criminal Procedure Code, provides:

> In any trial before a Subordinate court, any public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon such withdrawal.....if it is made before the accused person is called upon to make his defence, he shall be discharged, but such discharge ....shall not operate as a bar to subsequent proceedings against him on account of the same facts.

There are various reasons for withdrawing cases in this way.

Table 8:2 shows that in 1991 7% of cases were withdrawn under section 88 (a), in 1992 18% of cases dealt with were withdrawn. But such withdrawal occurs only after the offender has been in custody for several months, as shown in the cases already cited in this chapter. The reason frequently given by public prosecutors applying to withdraw cases is the non-attendance of witnesses at court. Thus, in the case of The People V Davy

Samenda,[590] the public prosecutor stated:

> "Your worship, the matter comes today for trial, unfortunately I am unable to proceed, because there are no witnesses present. Summonses were sent out and there is no return of service. I therefore apply to withdraw the charge against the offender under section 88 (a) of the C.P.C".

However, at the prosecutions office at Lusaka police division headquarters, it was disturbing to discover the manner in which summonses are sent to witnesses: bundles of summonses are usually dispatched to a police station where the offender was arrested and charged with that particular offence and not to a particular officer. There is no follow-up until the day of trial, when the prosecutor checks to see whether there were returns of service for summonses which might have been sent two or more months previously. The prosecution department no longer has summons servers as it once had. But there is no justification to withdraw a charge where there is possibility of re-arresting the juvenile accused. After the withdrawal the case remains hanging over the juvenile for life and if he sees the arresting officer again in his area, he always thinks the officer has come to pick him up. The provision is being misused by both the public prosecutors and the trial magistrates who grant such applications.

Some cases are withdrawn because a co-defendant pleads guilty to the charge and is found guilty and sentenced.[591] It therefore becomes necessary to have the matter heard before a different magistrate unfamiliar with the facts of the case. In most cases offenders are set free and not taken before other

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[590]Case Record No. SP/48/92.

[591]Case Record No. SP/20/92.

courts. In other situations the public prosecutor may apply to withdraw the matter against an accused for the purpose of jointly charging him with some other suspect who has been arrested by the police, and who was at large when the accused was arrested.[592] A charge may also be withdrawn against an offender if he is to be charged with more offences that have been discovered subsequent to the charge.

8:5:3 Nolle prosequi

A matter may be discontinued by the public prosecutor presenting a *nolle prosequi* from the Director of Public Prosecutions, at any stage before judgment is given, and this is usually in terms of instructions in writing from the Director of Public Prosecutions (DPP).[593] It was found that this practice is not popular in Juvenile Courts.[594] This may be so because most crimes committed by juveniles are against property or are not those triable by the High Court which attract public interest, and victims may direct the manner in which the cases should be handled and play a major role in criminal process. It is impossible to know the reasons leading to the entering of a *nolle prosequi*, because the DPP is not obliged to disclose such reasons. This applies to any officer who files a *nolle prosequi*

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[592]Case Record No. 2P2/53/91; Case Record No. SP/217/91.

[593]Section 81 of the Criminal Procedure Code.

[594]Case Record No. 2P2/155/92. In this case a charge of infanticide against female juvenile offender aged seventeen years was discontinued by entering a nolle prosequi.

under his authority.[595]

8:5:4 Reconciliation

The Criminal Procedure Code has incorporated the basic customary law principle of reconciliation. Section 8 of the Criminal Procedure Code provides:

> In criminal cases, a subordinate court may promote reconciliation, and encourage and facilitate the settlement in an amicable way, of proceedings for assault, or for any other offence of a personal nature, not amounting to felony and not aggravated in degree, in terms of payment of compensation or other terms approved by such court, and may, thereupon, order the proceedings to be stayed.

Chapter Three showed that the aim of customary law was to maintain social harmony, and that litigants went to the chief's court, headman's court or council of elders with no specific claim, but seeking their guidance and advice. It is expected that such cases would be dealt in a reconciliatory manner.

Table 8:2 shows that reconciliation is one of the common reasons that lead to the discontinuation of criminal proceedings in Juvenile Courts. In 1991 18% of completed cases ended in reconciliation, and in 1992 7%. But if we look at withdrawals by complainants at the same time, we can observe that the percentage of cases which were withdrawn was very high in 1992, and that may account for the fall in reconciled cases. As it has been shown, one of the reasons for the withdrawal of cases by complainants was to have the matter settled out of court as an indication that the parties have reconciled.

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[595] D.P.P V Mbao (1972) ZR 265.

The courts have even allowed reconciliation in charges of serious offences amounting to felonies. For example:

1. In the case of The People V Elliot Wowa,[596] the accused, aged thirteen years and charged with unlawful wounding,[597] had been reconciled with the complainant on payment of three thousand Kwacha. This offence is defined under section 232 (a) of the Penal Code, as, " any person who unlawfully wounds another ..... is guilty of a felony and is punishable for three years".

2. In the case of The People V Patricia Nkonde,[598] a school girl aged 11 years, was charged with causing grievous bodily harm,[599] and agreed to reconciliation in the sum of forty thousand Kwacha. The court made an order: "K40,000=00 to be paid in seven months' instalments with the supervision of the court".

This second case continued to come before the Court until the final instalment was paid. But it raises a question of the court's power to make such an order for a very serious offence, and also of the procedure followed in Court, which was not provided in the Criminal Procedure Code.

This shows how Juvenile Courts employ traditional practices perhaps misconceived as the application of English common law rules. In the second case (Nkonde) above the court handled the matter as if it was a Local Court or Village Committee, by allowing a small girl to agree to pay an amount of money which was far beyond her means. But bearing in mind traditional practices it was the parent or guardian who was ordered to pay

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[596]Case Record No. SP1/79/91.

[597]Section 232 (a) of the Penal Code, classifies it as a felony and a person convicted thereof is liable to three years.

[598]Case Record No. 3P/67/92.

[599]ibid., Section 229. In section four, grievous harm is defined "as any harm which endangers life or ...amounts to a maim or which seriously or permanently injuries health or which extends to permanent disfigurement, or serious injury to any external or internal organ or member or sense".

this amount. This was reflected in the public prosecutor's address to court: "Matter for reconciliation - guardian to the juvenile offender agrees to pay the complainant". The guardian to the juvenile accused agreed to pay and paid the whole amount to the complainant as ordered by the Court. Thus Juvenile Courts invoke customary law, although not expressly, to handle criminal matters in traditional ways.

8:5:5 Offering no evidence

Public prosecutors are at times forced to offer no evidence, if the court denies the application to withdraw under section 88 (a) of the C.P.C. This is the method which public prosecutors are supposed to follow if they discover that the complainant intends to withdraw the charge. But they try to avoid this move as it could show a high percentage of acquittals in their reports to headquarters; this could reflect their inefficiency in prosecution work. Table 8:2 shows a small percentage of cases which terminated through this method.

Table 8:2

PERCENTAGE OF DISCONTINUED CASES AND ACQUITTALS IN LUSAKA JUVENILE COURTS 1991 - 92

Year	Under S.88 (a)	Nolle prosequi	under S. 201	Reconci liation	Offer no evidence	Acquit
1991	7	0	19	18	2	3
1992	18	2	32	7	2	0

The percentages given refer the total sample of case records (118) examined at Lusaka Juvenile Courts.

8:6 Conclusion

The establishment of Juvenile Courts in 1953 was supported by a renewed belief in the "rehabilitative ideal" and the "treatment" of delinquency and "neglected children". The provisions of the Act were in line with the English Children and Young Persons Act 1933, based on the principle of parens patriae, and at that time this judicial approach was exercised in favour of juveniles, because the magistrates, social welfare officers and other personnel had theoretical and cultural understanding of the juvenile justice system.

The assumption is that magistrates who sit in Juvenile

Courts have received special instruction in social work and probation services. Leniency and understanding are expected to be evident as the Juvenile Courts were intended to help juveniles rather than to punish them. In this study it was found that the same magistrates hearing adult criminal cases also tried juveniles, and sat as an open court in so doing. This is contrary to the provisions of the Juveniles Act, which provides for separate court-rooms or different times of sitting. Charges against juveniles are not heard first and given precedence as they should be. Over-detention is common and parents are often not summoned to attend court sessions. The Courts have completely abandoned their jurisdiction over juveniles in need of care; neglected and deprived children therefore have no redress from courts. The Juvenile Court exists on paper but not in practice, for important provisions of the Act which validate its status are not complied with in its operation.

Some charges against juveniles were discontinued for the purpose of having the matter settled outside court in a traditional way. This means that traditional influences at times determine the outcome of cases. It is necessary to assess the position of Local Courts and customary law in the changing society of Zambia, and to appreciate the need to educate the magistrates, rather than to declare traditional practices inapplicable in modern society.

It is therefore argued that at times Juvenile Courts are neither modern nor traditional courts in their operation; this is due to the absence of a proper theoretical and historical understanding of the juvenile justice system, as the training of

magistrates is not broad enough to cover criminological explanations of juvenile crime, and they misconceivedly apply provisions of the Act which embody the philosophy of the juvenile justice system. The role of parents in juvenile justice is recognised as vital in the Act and under customary law practices, but not by police, prosecutors or courts.

For those juveniles tried and found guilty by the courts, the important object is, of course, the sentence or order imposed; this will be the subject of the next chapter.

CHAPTER NINE

9 SENTENCING OF JUVENILE OFFENDERS

9:1 Introduction

The previous chapter discussed the Juvenile Courts' jurisdiction and operation generally; this chapter examines the sentencing of juvenile offenders by Juvenile Courts.

The Constitution of Zambia, like the constitutions of most Commonwealth African countries, contains a Chapter entrenching certain fundamental rights and freedoms.[600] A convicted offender must be dealt with under the rule of law. Article 15 of the Constitution provides:

> No person shall be subjected to torture, or to inhuman or degrading punishment or other like treatment.

The sentencing court must not impose a penal sanction which violates the provisions of the Constitution. Thus, the High Court may declare a penal sanction to be unconstitutional. Sentencing is a constitutional responsibility of the judiciary, leaving considerable sentencing discretion in the hands of a trial court to impose a specific penal sanction upon an offender, after taking into account aggravating and mitigating factors.

This chapter examines the prescribed dispositions available in Juvenile Courts and briefly discusses the general sentencing rationales. The Zambian approaches to sentencing will be discussed, comparing, where appropriate, the approaches of

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[600]Articles 11 to 26 of the Constitution Act, 1991.

Zambian courts with those of neighbouring countries and other common law jurisdictions. It will be shown that the Zambian courts lag far behind those of its neighbours in their condemnation of what, in other progressive countries, are regarded as infringements of human rights by the imposition of certain penal sanctions. For example, the legality of caning (corporal punishment) as a form of punishment has been questioned and condemned in other common law jurisdictions. Zambian approaches to sentencing will also be considered in the context of the African Charter of Human Rights and the Universal Declarations of Human Rights of the United Nations, in particular in relation to Children's Rights. The role of the High Court in juvenile justice will also be examined as it pertains to its supervisory power and its authority to develop the law relating to juveniles in the exercise of its appellate jurisdiction.

9:2 Prescribed dispositions available in Juvenile Courts

The Juveniles Act, section 73 (1), sets out the dispositions that may be imposed on a juvenile on a finding of guilt, as follows:

> Where a juvenile charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this Act or any written law, the case should be dealt with, namely:
> 1. by dismissing the charge;
> 2. by making a probation order in respect of the offender;
> 3. by sending the offender to an approved school;
> 4. by sending the offender to a reformatory;
> 5. by ordering the offender to be caned;
> 6. by ordering the offender to pay a fine, damages or costs;
> 7. by ordering the parent or guardian of the offender

to pay a fine, damages or costs;

8. by ordering the parent or guardian of the offender to give security for the good behaviour of the offender;
9. where the offender is a young person (thus has attained the age of 16 years, but not yet attained the age of 19 years), by sentencing him to imprisonment; [Emphasis supplied] or
10. by dealing with the case in any manner in which it may be legally dealt with.

It is assumed that these dispositions were prescribed on the basis of the rehabilitative ideal which emphasised in the juvenile justice system the notion of individualization, that is, the disposition imposed on the offender should be calculated to fit the offender's needs. As a model of sentencing the court is expected to take into consideration the seriousness of the offence, the personal characteristics of the offender, whether he or she is a first offender, his or her social background including family history (stable or unstable), housing and economic position (parents employed or self-employed), education and whether the offender has psychiatric problems. Such a situation necessarily means that the trial magistrate must possess a great deal of discretionary power in assigning a truly individualistic response to the alleged offence. At the same time he must receive much information regarding the offender through pre-sentencing reports.

A conviction of murder, treason and aggravated robbery committed with the use of a firearm carries with it a mandatory death penalty. However, a person under the age of 18 years at the time of the commission of such an offence cannot be sentenced to death; instead he is ordered to be detained at the President's

pleasure, on conditions that may be set out.[601] Thus a juvenile aged 18 years at the time of committing one of these offences can be sentenced to death.

The personal experiences of a trial magistrate and his understanding of theories of punishment are likely to influence his judicial decision-making in each particular case. The magistrate is also constrained by legislation, which provides alternative dispositions upon specified conditions. Magistrates must comply with decisions of higher courts on principles or rules of sentencing law (Hogarth 1967). The magistrate should also take into consideration the circumstances and needs of the local community within which the court is situated.

However, the apparent arbitrariness of decisions made by the courts in other jurisdictions has led to serious allegations that courts have too much unfettered discretionary power. Kaliel (1974) writing on the juvenile justice system in the U.S.A. argues that the amount of discretion available to the court in dealing with juvenile offenders is so great "that ...conceivably a child who is charged with jaywalking could receive the same treatment as the child charged with bank robbery".[602] This is so because in the U.S.A. juvenile crimes are considered to fall under the broad umbrella term of "delinquency", and from the beginning the juvenile justice system was based on a welfare approach, with the proceedings informally conducted up to the mid-1960s, when juveniles were accorded the same rights as adults

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[601]section 25 (2) of the Penal Code.

[602]B. Kaliel (1974), "Civil Rights in Juvenile Courts", Albert Law Review 12, 341.

before the courts.[603] In Zambia juveniles have the same constitutional rights before the courts as adults (as shown in the last chapter). Von Hirsch (1976) argues that wide-open discretion in the "name of individualization has caused disparity in sentencing".[604] Much of this sentencing disparity has been attributed to the different orientations of magistrates in juvenile justice systems, the lack of agreed objectives of the juvenile justice systems and the absence of a legislative framework of guidelines for sentencing. It is therefore necessary to look at general sentencing rationales before examining how Zambian courts deal with juvenile offenders.

9:3 The General Sentencing Rationales

Chapter One showed that basic issues underlying the disposition of offenders have not yet been resolved even in the developed countries, and the theoretical arguments about deterrence, retribution, rehabilitation and incapacitation continue to be debated. It has further been suggested that the basic purposes and goals of criminal law are the deterrence of the offender and others from participation in crime, retribution for the crime committed, the rehabilitation of the offender and the protection of society through the incarceration of

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[603]See In Re Gault 387 U.S. (1967) 1; Miranda V Arizona 384 U.S (1966) 436; In Re Winship 397 U.S (1970) 358.

[604]A. Von Hirsch (1976), Doing Justice. (New York: Hill and Wang), p. 28.

offenders.[605] Compensation of the victim as an African approach to maintain social harmony was discussed in Chapter Three.

As uncertainty persists about the fundamental objectives of the criminal justice system, particularly the juvenile justice system, magistrates tend to differ in their approaches to sentencing. The emphasis is more on severe sanctions by which it is hoped to punish and discourage certain types of crimes; this reflects the influence of deterrence as an aim of punishment. A disposition may be ordered on the basis of punishing the offender proportionately to the perceived seriousness of the crime committed. Finally, the focus may be on rehabilitative measures, taking into account the offender's situation and the prerequisites for improving his future conduct.

Hogarth (1971) in his study of Canadian magistrates noted that the "imposition of sentences is one of the more important mechanisms through which society attempts to achieve its social

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[605]For more information on this topic see: T. Eriksson (1964), "Society and Treatment of Offenders", in: Stanley E. Grupp, (ed), Theories of Punishment. (London: Indiana University Press, 1971), p. 268.; see also D. F. Cousineau and J. E. Veevers (1972), "Incarceration as a Response to Crime: The Utilization of Canadian Prisons", in: Graig L. Boydell, Carl F. Grindstaff, and Paul C. Whitehead, (eds.), Deviant Behaviour and Societal Reaction. (Toronto: Holt, Rinehart and Winston of Canada Ltd.), p. 135-152.; A. Ashworth (1984), "Techniques of Guidance on Sentencing", Crim. Law Rev., 519 - 530; D. Moxon and P. Jones (1985), "Sentencing Practice in Juvenile Courts: Is There a Tariff?", Research Bulletin No. 19. (London: Home Office, Research and Planning Unit).; E. Stafford and J. Hill (1987), "The Tariff, Social Inquiry Reports and The Sentencing of Juveniles", Brit. J. Criminol. 27, 4: 411 - 420.; M. Wasik and A. Von Hirsch (1990), "Statutory Sentencing Principles: The White Paper", The Modern Law Rev. 53, 508 - 517.; A. Ashworth (1990), "The White Paper on Criminal Policy and Sentencing", The Criminal Law Rev. 217 - 224.; A. Ashworth (1992), Sentencing and Criminal Justice. (London: Weidenfeld and Nicolson), chaps. 3, 4 and 11.

goals".[606] But there is no agreement as to what those social goals are and it is the difficult task of the sentencing magistrate to reconcile these conflicting goals of the criminal justice system. Thomas (1973) refers to this obligation as sentencing policy and describes it as a dual system of sentencing, based on the concepts of retribution and deterrence on one hand, and concerns for rehabilitation of the offender and individualized treatment on the other hand. He discusses sentencing policy as follows:

> The primary decision of the sentencer in a particular case is to determine on which side of the system the case is to be decided; is one of the individualized measures to be used, or is the case to be dealt with on a tariff basis? Once the primary decision has been made, the secondary decision follows.... where on the tariff is the sentence to be located, or precisely what individualized measure is to be used.[607]

Therefore according to Thomas, the sentencing magistrate has to resolve two conflicting penal objectives in establishing a framework for determination of a disposition. But in second edition of his book Thomas (1979) argued that the application of tariff principles depends on the offender's culpability, "a process which involves relating the gravity of the offence to the established pattern of sentences for offences of that kind, and making allowance for mitigating factors present which tend to reduce the offender's culpability".[608] This argument is based on

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[606]J. Hogarth (1971), Sentencing As A Human Process. (Toronto: University Press), p. 3.

[607]D. A. Thomas (1973), Principles of Sentencing. (London: Heinemann), p. 3.

[608]D. A. Thomas (1979), Principles of Sentencing: The sentencing policy of the Court of Appeal Criminal Division. (London: Heinemann), p. 9.

the concept of proportionality to be discussed later.

Sentencing is an explicit act of the society towards the offender, condemning the deviant behaviour perpetuated. As Ashworth (1992) states:

> Sentencing has an expressive function and, as Durkheim argued, "the best punishment is that which puts the blame...in the most expressive but least costly form possible".[609]

It is necessary briefly to examine the major rationales of sentencing.

9:3:1 Deterrence

Deterrence is often cited by the courts on passing a sentence on the offender deemed to be effective in reducing crime rates. Ashworth (1992) has described deterrence as "consequentalist" in the sense that it looks to the preventive consequences of sentences.[610] This is based on the assumption that crime is reduced by the fear of punishment. A deterrent sentence is assumed to work at two levels: firstly, it aims at deterring a particular offender from re-offending in future (special or individual deterrence); secondly, the aim is to deter other potential offenders (general deterrence). However, the determining factor is not the gravity of the offence but the propensity to re-offending (Ashworth 1992). In criminological terms, deterrence is the classical approach which regards

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[609]A. Ashworth (1992), supra., p. 57.

[610]A. Ashworth (1992), supra., p. 59.

criminality "in terms of deliberate wicked acts".[611] This is based on the assumption that individuals are rational beings free to choose what they do.

Therefore, deterrence works when a potential offender, in deciding whether or not to commit a crime, weighs the chances that he or she might be caught and punished. However, he may be influenced by other factors, including his personality, moral and social values, awareness and knowledge of the law and surrounding circumstances such as the behaviour of peers and family concerns. Fattah (1977) notes that studies of the impact of sanctions on:

> the specific offences do not offer an ultimate proof for or against the deterrence hypothesis. Some offences are more likely to be deterred than others by threats of punishment.[612]

Harding (1990), in a study of robberies, found that robbers tended to desist from arming themselves with guns if there was a significant extra penalty for carrying a firearm.[613] Obviously, if punishment is to have any deterrent effect, potential offenders must know about it.

However, general deterrence may not be justified where the court imposes a disproportionately harsh "exemplary sentence" on an offender in order to deter other potential offenders from committing like offences. Offenders should be punished for their own offences, not to deter others.

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[611]A. Ashworth (1992), supra, p. 60.

[612]E. Fattah (1977), "Deterrence: A Review of Literature", Canadian Journal of Criminology, Vol. 19, 2: 9 - 100 at 100.

[613]R. Harding (1990), "Rational-Choice Gun Use in Armed Robbery", Criminal Law Forum, 1: 427.

9:3:2 Rehabilitation

Rehabilitation in sentencing aims at resocialisation of the offender as the way to achieve prevention of crime. A person sentenced must undergo treatment programmes to modify his attitudes and behavioural problems. The rehabilitative approach is associated with positivist criminology, which finds causes of criminality in personal maladjustment or social conditioning. The sentencing court must take into account the offender's need for help and protection. This theory has been more prominent in the juvenile justice system in the 1950s and 1960s.

Rehabilitation is considered as a scientific control of deviant behaviour. This is based on the assumption that criminal behaviour has certain symptoms which, when discovered, can be "cured".[614] A sentence is then imposed on therapeutic grounds; it is often indeterminate or semi-determinate, the offender's release depending on how he adjusts himself in the correctional institution.

The "treatment model" in juvenile justice has led to a lack of consensus over sentencing criteria, and has been blamed for the disparity in sentencing between different magistrates with respect to offences of similar gravity. However, uniformity in sentencing, regardless of the circumstances of individual offenders, would mean the imposition of fixed sentences, which has been seen as equally undesirable (Hogarth 1971). In such a situation the court uses its discretion in resolving the conflict

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[614]F. A. Allen (1964), "The Borderline of Criminal Justice", Essays in Law and Criminology. (Chicago: University Press).

and in imposing an appropriate disposition that meets both the prescribed statutes and the conflicting array of social and political values that influence the outcome.

Haldane et al. conducted a study in Canada to determine the criteria used by judges in sentencing juveniles for particular types of offences. The research found that the relevant criteria used in sentencing were not universal but that the judicial process had so much particularism built into it: judges paid more attention to some factors than to others, although "there was relatively little room for judges to manouevre, when it comes to extra-legal factors".[615] The authors further noted that some social characteristics were important factors that influenced judges through a conventional belief that "evil-causes-evil". Such past background was assumed to be responsible for delinquent acts. It was further found that a broken home "may foster further delinquent behaviour unless the child is removed from such environment temporarily".[616] Finally, the authors state:

> ...where discretion is exercised on a greater than chance basis it tends to occur in terms of factors...possibly being part of "evil-causes-evil" view of the etiology of delinquency.[617]

Other researchers have argued that courts generally use the "tailor-made" rather than the "tariff" system, where the magistrate gives the greatest weight to the factors personal to

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[615]L. H. Haldane, D. H. Elliot, and P. C. Whitehead (1972), "Particularism In The Sentencing of Juvenile Delinquents", in: Craig L. Boydell, Carl F. Grindstaff, and Paul C. Whitehead (eds), Deviant Behaviour and Societal Reaction. (Toronto: Holt, Rinehart and Winston of Canada Ltd.), p. 242.

[616]ibid., p. 240.

[617]ibid., p. 242.

the offender, in order to make the sentence as apt as possible. As Loftus (1975) in reference to his study in Australia has stated:

> The results of this study indicated that in respect of the types of orders made by the courts, each showed a characteristic constellation of personal, social, educational, and familial factors....[618]

These researchers suggest that extra-legal factors are an important consideration in the judicial decision-making process and are related to the severity of dispositions handed down. Once the emphasis is on tailor-made dispositions, there is a tendency to circumvent the application of the tariff system.

Other researchers argue that extra-legal factors play a very minor role in determining the range of dispositions meted out by juvenile courts. Kueneman and Linden (1983), in their study of Winnipeg Juvenile Courts in Canada, found that courts were relatively legalistic and that variables like class and race were seen not to have had a significant impact on sentencing:

> both prior record and number of current offences, on the other hand, had an important influence on dispositional decision-making.[619]

In England the issue has been whether a sentencing tariff exists in the juvenile justice system and how the Social Inquiry Report recommendation influences the magistrate to arrive at a sentence (Osborne 1984, Moxon and Jones 1985, Stafford and Hill 1987). Moxon and Jones (1985) defined the sentencing tariff as

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[618]A. P. T. Loftus (1975), "Factors Associated With The Juvenile Court Orders", Australia and New Zealand Journal of Criminology, 218.

[619]R. Kueneman and R. Linden (1983), "Factors Affecting Dispositions in the Winnipeg Juvenile Court", in: Ray R. Corrado, Marc LeBlanc, and Jean TrePanier (eds), Current Issues in Juvenile Justice. (Toronto: Butterworths), p. 234.

esentially meaning two things:

> First, the more serious the case the more severe will be the penalty, and second, this relationship will operate in a fairly consistent and predictable way.[620]

The seriousness of the offence usually depends on how that offence is perceived by the court and local community, and the extent of the harm done. Previous offences are taken into account in assessing the seriousness of the offence charged. The severity of sentences is usually considered in the restriction of liberty, whether a particular sentence involves custody or not. The individualised measures pay more attention to the offender's background through a Social Inquiry Report, which makes a recommendation as to the penal sanction that is considered to be of a benefit to the offender. Stafford and Hill (1987) in their study of juveniles sentenced in Birmingham during 1985 found that "social inquiry report recommendations had considerable influence on magistrates' decision-making".[621]

The studies reviewed above have contradictory results in resolving the issue of disparity in the dispositions imposed by juvenile courts, where the emphasis may be on legal (age, sex, offence etc.) variables on one hand, and on extra-legal (education, employment, family status etc.) variables on the other hand.[622] This is due to the fact that courts try to impose

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[620]D. Moxon and P. Jones (1985), supra. p. 27.

[621]E. Stafford and J. Hill (1987), supra., p. 418.

[622]M. Clinard (1963), The Sociology of Deviant Behaviour. (Columbia: University Press); E. Green (1961), The Attitudes in Sentencing. (London: Macmillan & Co.); R. Hood (1972), Sentencing the Motoring Offenders. (London: Heinemann); E. Schur (1973), Radical Non-Interventions: Rethinking the Delinquency Problem. (Englewood Cliffs: Prentice-Hall); T. Hirsch (1975), "Labelling (continued...)

on the offender a sentence considered to be in his best interests. Such a finding brings into play the issue of rationality of judges and magistrates, and the extent to which magistrates are affected by factors that go beyond the realm of evidential proof.

Sellin (1935) attributes most of the disparities in sentencing to the "human equation in judicial administration".[623] It has also been argued that the personal attitude and individual sentencing habit of the magistrate has an influence on the severity of dispositions in most cases.[624]

A judge or magistrate has discriminative and reasoning powers that would assert themselves over time, and that there is a capability of self-criticism and insight, while dealing with each particular case before him. Through this process, the magistrate is faced with alternatives among which he has to

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[622](...continued)
Theory and Juvile Delinquency: An Assessment of the Evidence", in: W. Gove (ed), The Labeling Of Deviance. (New York: Halsted); T. P. Thornberry (1973), "Race, Socioeconomic Status and Sentencing in the Juvenile Justice System", Journal of Criminal Law and Criminology, 64, 90-98; T. P. Thornberry (1979), Sentencing Disparities in Juvenile Justice System", Journal of Criminal Law and Criminology, 70, 164-171; L. E. Cohen and J. R. Kiuegel (1978), "Determinants of Juvenile Court Dispositions: Ascriptive and Achieved Factors in the Two Metropolitan Courts", American Sociologigal Review. 43, 162-176; S. Obsorne (1984), "Social Inquiry Reports in One Juvenile Court: An Examination", Brit. J. of Social Work, 14, 316 - 378; D. Moxon and P. Jones (1985), supra; A. Morris and H. Giller (1987), Understanding Juvenile Justice. (London: Croom Helm); D. A. Parton, M. Hansel and J. R. Stratton (1991), "Measuring Crime Seriousness", Brit. J. of Criminol. 31, 2: 72 - 85.

[623]T. Sellin (1935), "Race prejudice in the Administration of Justice", American Journal of Sociology, 41, p. 215.

[624]S. Shoham (1959), "Sentencing Policy of Criminal Courts in Isreal", Journal of Criminal Law, Criminology & Police Science, 50, 330-332; R. Hood (1972), op. cit., p. 148.

choose. "It is not an easy task to accomplish because of the inherent complexity of the task and the knowledge of the hardship that the offender may have to endure".[625] However, Hogarth in his later study suggests that sentencing must be done within a systematic analysis of legal, sociological, and psychological factors which at times also:

> raise the difficulty of selecting those variables from each area that are likely to be relevant...to have a logical consistency.[626]

But all this can be achieved by adapting to the prevailing social, economic, and political conditions in a particular country.

However, the issues of judicial discretion and rationality have now been considered on the basis of the principle of judicial independence in sentencing (Ashworth 1992). Thus the trial magistrate must impose a penal sanction without fear or favour, affection or ill will, and "discretion should not be exercised on personal or political grounds: it should be an exercise of judgment according to legal principle".[627] Ashworth (1992) went on to say:

> "the principle of judicial independence is a principle of impartiality in administering justice, not a principle which demarcates a certain sphere of policy-making as the province of the courts".[628]

This statement implies that a magistrate must impose a sentence free from bias and undue influence, and that it is possible to

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[625]J. Hogarth (1967), op. cit., p. 156.

[626]J. Hogarth (1971), op. cit., p. 17.

[627]A. Ashworth (1992), supra., p. 35.

[628]ibid.

have a sentencing policy laid down in a legislative framework in order to achieve coherence and consistency in sentencing, while taking into consideration the offender's best interests and protection from inherent abusive conditions.

9:3:3 Incapacitation

Incapacitation aims at protecting the public from the offender for a certain period of time when the offender is incapacitated. For example, an offender while detained in a correctional institution is unable to commit any offence against a member of the public. This theory is usually discussed under deterrence and is often targetted at "dangerous" offenders, career criminals or persistent offenders (Ashworth 1992). In traditional societies, offenders had had their hands amputated to incapacitate them from further stealing (see Chapter Three). Therefore, this justification can permit crude and cruel sanctions and disproportionate sentences more severe than the offenders deserve.

9:3:4 Restoration and reparation

Chapter Three showed that compensation and reconciliation were the underlying principles of customary laws traditional Zambian societies. This was noted even in Chapter Eight, where complainants were seen to withdraw cases against juvenile offenders to have the matters settled outside court, in anticipation of the payment of compensation.

In the 1980s, there has been increasing recognition of the rights of victims of crime. It was clearly noted by the United Nations in its "Declaration on the Basic Principles of Justice for Victims and Abuse of Power" (1985) and has led the British Government to adopt the Victim's Charter in 1990. It is argued that an offender should compensate the victim for the results and effects of his crime, if justice is to be seen to be done.[629] If the juvenile justice system adopts this approach most offenders will not be sentenced to custodial sentences.

9:3:5 Desert

The 1960s heyday of the rehabilitative approach began to lose ground after the conclusions of a widely-publicised survey of the research by Martinson and others, represented as "nothing works".[630] This led to the mid-1970s and 1980s being characterised by the re-emergence of desert as a primary rationale of sentencing. Andrew Von Hirsch led the debate through the American report entitled Doing Justice (1976) and other writers joined his camp.[631] The main thrust of the desert theory is the principle of proportionality: a sentence must be

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[629]For more information see: M. Wright (1991), Justice for Victims and Offenders, (Open: University Press)

[630]D. Lipton; R. Martinson; and J. Wilks (1975), The Effectiveness of Correctional Treatment. (New York: Praeger Publishers Inc.).

[631]D. A. Thomas (1979), supra.; M. Wasik and A. Von Hirsch (1990), supra.; A. Ashworth (1984), "Techniques Guidance on Sentencing", Crim. Law. Rev., 519 - 530; A. Ashworth (1990), supra.; A. Ashworth (1992), supra.; A. Von Hirsch and N. Jareborg (1989), "Sweden's Sentencing Statute Enacted", Crim. Law Rev., 275 - 281.

proportionate to the seriousness of the offence committed. Chapter 29 (1) of the Swedish Criminal Code, introduced in 1989, provides that sentences should be based on the penal value of the offence:

> The penal value is determined with special regard to the harm, offence or risk which the conduct involved, what the accused realised or should have realised about it, and the intentions and motives of the accused.[632]

The English Criminal Justice Act 1991 introduced "a new legislative framework for sentencing, based on the seriousness of the offence or just deserts".[633] As shown in Chapter One, the 1991 Act provided that neither rehabilitation nor deterrence were to be guiding rationales in sentencing, but the quantum of the sentence should be commensurate with the seriousness of the offence. Hence in England desert is the primary rationale guiding juvenile courts in sentencing offenders and any sentence imposed on the basis of deterrence or rehabilitation would be considered unlawful as disproportionate.

In sum, the U.S. and Canadian juvenile courts still impose sentences on the basis of rehabilitation, except where the offence is serious and calls for punishment, while the English and Swedish juvenile justice systems are guided by the principle of proportionality and penal sanctions are on a hierarchical basis: custodial orders are on the upper level followed by community-based orders and discharges (absolute and conditional) on the lowest level. Therefore, if the court feels it is appropriate to move up from discharges to a community-based

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[632]A. Von Hirsch and N. Jareborg (1989), supra., p. 278.

[633]A. Ashworth (1992), supra., p. 80.

sentence, it must be first satisfied that the case is serious enough to warrant it. For a custodial sentence, the court must be satisfied that the offence is so serious that only custody can be justified, or that custody is necessary in order to protect the public from serious harm from the offender.[634] But the length of detention must be commensurate with the seriousness of the offence. The old practice of classifying sentences as custodial and non-custodial (being alternatives to custodial) has been abandoned.

9:4 Sentencing in Zambia

Sentencing is the crucial stage of criminal justice systems, where the trial court demonstrates the objectives of the criminal justice system; this is particularly true of juvenile justice systems. It brings the criminal law and criminal process in focus and, as shown above, constitutes the point at which the juvenile justice system most consciously and explicitly expresses the condemnation of criminal behaviour, by attempting to deter and incapacitate individuals from further wrongdoing or to rehabilitate offenders to become useful citizens, and even making orders perceived to redress the harm done. To achieve this courts have acquired wide discretionary powers, but as shown in Chapter Four, the legislature has restricted the use of these discretionary powers in certain crimes by enacting minimum mandatory sentences.

As there is no legislative guidance in respect of

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[634]section 1 (2) (b) of the Criminal Justice Act 1991.

sentencing, courts are left to determine for themselves the sentences for particular offenders. In such cases the Zambian Juvenile Courts have adopted a deterrent approach in dealing with juvenile offenders. The Supreme Court and High Court at times gave judgments guiding the lower courts on principles of law and procedural issues, and even on sentencing principles; however, surprisingly the lower courts do not necessarily follow them. This is due to lack of supervision on the part of the higher courts as the High Court does not confirm reformatory and approved school orders (discussed later).

Dispositions available to Juvenile Courts will be analysed in the order of severity:[635] corporal punishment, imprisonment, reformatory and approved school orders, fine, compensation, probation and absolute/conditional discharge.

9:4:1 Corporal Punishment (Caning)

The law of Zambia provides for the corporal punishment of male juvenile offenders, although the constitutional validity of this law is now questionable in the light of recent judicial decisions in neighbouring States. The Zambian courts reaffirmed and maintained decisions of colonial courts in respect of corporal punishment, while in Botswana, Zimbabwe and Namibia the courts have considered the constitutional validity of this form of punishment.

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[635]Section 73 (1) of the Juveniles Act, which provides the methods of dealing with juvenile offenders.

9:4:1:1 Law and practice of corporal punishment

A juvenile (or older) offender found guilty of an offence punishable by imprisonment for a term of three months or more may be ordered to be caned in substitution for a term of imprisonment or as an addition to it. Section 27 (2) of the Penal Code provides:

> Where any person under the age of twenty-one years is convicted of any offence punishable by imprisonment for a term of or exceeding three months, a court, in its discretion, may order him to be caned in addition to or in substitution for such imprisonment...

The court must specify the number of strokes, not exceeding twelve.[636] Howeverin one case a seventeen-year-old juvenile was ordered to receive eighteen strokes of a cane;[637] he had been found guilty of causing malicious damage to property, a misdemeanour punishable by a maximum of two years imprisonment.[638] In most cases such offences could be resolved by compensation, rather than this harsh sanction which in any event was unlawfully imposed.

Once an order of corporal punishment is made against a juvenile, Form Sc. Criminal 34 is completed in respect of the offender (specifying the offence found proved, the number of

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[636]Section 27 of the Penal Code subsection 5 (a) provides: The sentence of caning shall be to be caned once only and shall specify the number of strokes which shall not exceed twelve in the case of a person under nineteen years of age nor twenty-fur in any other case.

[637]Case Record No. 2P/68/91.

[638]Section 335 (1) of the Penal Code, which states: Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdeanour and is liable ...to imprisonment for two years.

strokes ordered and the District of the Court). It is authority for the detention of the offender in a prison, where the caning is inflicted by a prison warder using a cane specified by the Minister of Home Affairs.[639]

Corporal punishment is a harsh penalty which cannot normally be inflicted in the absence of a medical officer who has examined the offender and certified that he is fit to undergo caning. Section 27 (5) (d) of the Penal Code provides:

> Caning shall, whenever practicable, be inflicted in the presence of a medical officer after the convicted person has been certified by him to be fit for such punishment. The medical officer shall immediately stop the infliction of further punishment if he considers that the convicted person is not in a fit state of health to undergo the remainder thereof and shall certify the fact in writing. [Emphasis supplied].

Thus in some circumstances which cannot be defined but appear to give a wide discretion to the officers, ("whenever practicable") a juvenile may be caned in the absence of medical attendance. There is no provision for the attendance of a parent or guardian (as provided in Zimbabwe).

Surely, this disposition is retributive/deterrent in nature, as it causes personal suffering to the offender. When being administered an offender is stripped naked, and the caning leaves scars on his body. The aim is to punish the offender and deter him from offending again, without necessarily changing him in any other way. It is economically cheap and swift in its application, but it does not take into account human dignity. It is calculated

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[639]Section 27 (5) (c) of the Penal Code. The cane used is only seen by prison officials; effort was made to see it but it was not possible. Reliable information stated that it is a bamboo stick of one metre in length and made to the Minister's specifications.

on the tariff basis, and is one of the oldest forms of treatment for crime.

The data collected from case records at Lusaka Juvenile Courts for the period January 1991 to December 1992 is tabulated in Table 9:1 below; this shows that caning is one of the most popular dispositions. In 1991 caning was the most common disposition imposed on juveniles (31%); in 1992 caning was second (22%). Generally offenders were ordered to receive about ten strokes of the cane. In this study juvenile offenders were frequently ordered to receive 8 strokes of the cane; only 2 were ordered to receive 12 strokes of the cane and 1 received 18 strokes.[640]

However, it was unsafe to make a general statement based on the analysis of data collected from Lusaka Juvenile Courts as to the sentencing practices in Zambia. An effort was made to assess the nationwide sentencing practice by collecting data on corporal punishment, imprisonment and fines, including the leading offences under each disposition, from Zambia Police Annual Reports for 1982 - 1986 and from Northern Rhodesia Colonial Annual Reports for 1960 - 1962. This information is presented in Tables 9:2 (a), 9:2 (b), 9:3 (a) and 9:3 (b) below.

Table 9:2 (a) shows that, except in one year, corporal punishment was the most common penalty, imposed on over 40% of juveniles found guilty annually. Corporal punishment had been frequently imposed under colonial rule, as shown in Table 9:3 (a), in 1960-62 accounting for over 80% of sentences each year. But we find a different picture if we look at the cases that

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[640]Case Record No. 2P/68/91

received this disposition in Tables 9:2 (b) and 9:3 (b). Juvenile Courts in Zambia impose corporal punishment on juveniles convicted of minor offences, such as assaults, affray and even being drunk and incapable and disorderly. In 1984, when corporal punishment accounted for only 27% of cases (Table 9:2 (a)), more than half of these were of minor offences; and the same offences accounted for the majority of fines 57% of cases. These offences in Table 9:2 (b) are more less the same under fine and corporal punishment. It is now possible to generalise that Juvenile Courts impose corporal punishment on juvenile offenders regardless of the offences committed.

In the colonial era, caning was imposed on juveniles convicted of serious offences against property and public order as there was political instability in the country (theft, store breaking, house breaking and theft), as shown in Table 9:3 (b). The courts then recognised the fact that caning, being a severe penal sanction, must be imposed upon those offenders found guilty of serious offences, which is not the case with Zambian courts today.

9:4:1:2 Historical justification and constitutionality

It may be argued that in traditional communities corporal punishment was common. However, under tribal laws, corporal punishment was inflicted by a member of the family on the juvenile, after other members of the family or victims complained of misconduct. But corporal punishment within the family differs from judicially imposed corporal punishment, as the juvenile

usually has affection or respect for the person who beats him, and because of their continuing relationship there are many opportunities for reconciliation. These conditions do not exist in the prison environment where corporal punishment is carried out.[641] The Bushe Commission of Inquiry into the Administration of Justice in Kenya, Uganda and Tanganyika Territory in Criminal Matters (May 1933) also rejected the argument that corporal punishment was to be reserved for native Africans. It has been shown in Chapter Four, section 4:3, that corporal punishment was used by missionaries in forcing children to attend school and Church Sunday services. But even at that time some missionaries were against it and argued that it exercised a most baneful influence upon children's personal characters and largely tended to prevent the spiritual progress of the missions. Therefore, judicial corporal punishment has no justification even in the traditional context. Itcauses offenders to develop fear and contempt towards the authority, as it is seen as a physical assault that violates an offender's dignity in the manner it is administered, "where the offender is stripped naked, and leaves scars on his body".[642]

Corporal punishment was considered to be inappropriate for adult criminals in Northern Rhodesia, as stated in R V Chongo & Others,[643] where Law C.J., in support quoted a paragraph from the

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[641] ibid., p. 533 - 534; These arguments were also made and rejected in the case of The State V Petrus and Another (1985) LRC (Const.) 699, where the Court discussed the writings of I. Schapera on Tswana law and custom.

[642] Ex Parte Attorney-General of Namibia, In Re Corporal Punishment (1992) LRC (Const.) 515 - 538, at 533.

[643] (1938-42) L.R.N.R 93.

Report of the Bushe Commission:

> 178. We are unable to subscribe to the view that caning and flogging should be made legal as a punishment for adults, whether generally or for natives only, for any but the most serious crimes. Such a form of punishment must be damaging to self-respect, particularly to those Africans who have advanced to a certain stage of civilisation, and may even tend to brutalise its victims. Any extension of the use of corporal punishment we consider a retrogade step which we must oppose.[644]

The High Court of Northern Rhodesia in R V Subulwa[645] held that sexual offences are not proper cases for corporal punishment "unless there is brutality as against mere brutishness". This meant that corporal punishment could be imposed on an adult criminal who had inflicted very severe physical injuries with gross brutality on the victim. The Court went on to say "if the offender is below the age of 18 years caning may be necessary as a means of keeping him out of prison".[646] In Alakazamu V The People[647] and other decisions[648] Zambian courts have accepted these Northern Rhodesia cases as good precedents; they recognise that corporal punishment may be imposed on adult criminals as a deterrent for the general community. Baron, J.P. (as he then was), in the case of Alakazamu V The People, had this to say:

> ....Caning can only be justified as expedient in the interests of the community if its primary aim is to deter other members of the community. It might be valid to consider ordering a first offender to be caned if the court felt that a local outbreak of, say,

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[644] ibid., p. 93.

[645] (1945-48) L.R.N.R 61.

[646] ibid., p. 62.

[647] (1973) ZR 31.

[648] Malaya V The People (1973) ZR 236; Nsondo V The People (1974) ZR 110; Kaambo V The People (1976) ZR 122.

burglary had reached epidemic proportions.[649]

In Berejena V The People,[650] after reviewing the above cases the Supreme Court had on the question of the validity of corporal punishment and endorsed the above proposition as the justification for the caning of adult criminals. Silungwe, C.J., observed:

> As corporal punishment is a form of inhuman or degrading punishment, it is our considered view that it should be imposed very sparingly; but even then, this should be done only in the most serious outbreak of crime; mere prevalence of crime is not enough. We think that in this modern day and age, this form of punishment should be discouraged in Zambia.[651]

It is surprising to note that, after finding that caning was a form of inhuman or degrading punishment, the Court failed to make a declaration that it was therefore unconstitutional, as provided under Article 15 (then Article 17) of the Constitution (see p. 3). Kabanje (1993) noted that in the absence of a Bill of Rights, "the Northern Rhodesia courts were excusably justified in not considering that aspect". However, it is noted in this study that the Northern Rhodesia courts were justified in imposing corporal punishment on juvenile offenders, because there were no probation services in the territory and no institution for the specialised treatment of juvenile delinquents.[652] However, these facilities are now found in the country and there is no excuse to retain corporal punishment as a form of punishment against juvenile offenders. The Zambian courts have

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[649](1973) ZR 31 at p. 35.

[650](1984) ZR 19.

[651]ibid., p. 21.

[652]Colonial Annual Reports 1946, p. 35.

not even considered the aspect of torture or inhuman or degrading treatment when it comes to juvenile offenders and have accepted the Northern Rhodesia cases as appropriate for juveniles.

The courts of Botswana, Zimbabwe and Namibia have gone much further than the Zambian courts by declaring corporal punishment unconstitutional. In a unanimous decision of the Court of Appeal of Botswana in The State V Petrus and Another,[653] a full bench of five judges considered *inter alia*, whether corporal punishment, as prescribed by the Criminal Procedure and Evidence (Amendment) Act 1982, was ultra vires section 7 of the Constitution of Botswana, which prohibits inhuman or degrading punishment, and declared that the provision for the repeated and delayed infliction of strokes by instalments offended against the constitutional provision. Maisels, P., stated:

> Speaking for myself, whether the corporal punishment under discussion is declared to be discretionary or mandatory, the result would be the same. Because of the factors of repetition and delay it is inhuman and degrading.[654]

The punishment, which involved caning in repeated and delayed instalments, was declared *ultra vires* section 7 of the Botswana Constitution, which is in terms virtually identical to Article 15 of the Constitution of Zambia (quoted at beginning of chapter), Article 3 of the European Convention of 1950, Article 5 of the African Charter of Human and Peoples' Rights of 1981 and Article 5 of the Universal Declarations of Human Rights of the United Nations of 1948, prohibit torture, inhuman or degrading punishment or treatment. In arriving at its decision, the court

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[653][1985] LRC (Const.) 699.

[654]ibid., p. 715.

reviewed cases from the common law world and relied particularly on the decision of the European Court of Human Rights in the case of Tyrer V United Kingdom.[655]

However, the Court of Appeal of Botswana did not go so far as to declare the corporal punishment of an adult *per se* to be inhuman and *ultra vires* section 7 (1) of the Constitution. After reviewing decisions of other jurisdiction in support of such a declaration, the court concluded that this form of punishment might be saved by sub-section (2), which preserves penalties in force at the date of the Constitution. Aguda, J.A., in his supporting judgment, stated:

> What I do not think I should do is make a final pronouncement on the issue. Suffice it to say that whatever views one may have of corporal punishment of an adult as a form of punishment for an offence, it is, in so far as Botswana is concerned, saved by sub-section (2) of section 7 of the Constitution.[656]

This means that subject to sub-section (2) the prohibition of torture or inhuman or degrading punishment is absolute and any form of punishment to be justified must have been authorised and practised at the time of independence (the issue will be further discussed later in relation to Zambia).

The Supreme Court of Zimbabwe, in the case of Ncube and Others V The State,[657] declared judicial corporal punishment of an adult unconstitutional, and this concerned the interpretation of section 15 (1) of the Constitution of Zimbabwe, which is in the same terms as Article 15 of the Constitution Act 1991 of

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[655][1978] 2 EHHR 1.

[656]ibid., p. 725.

[657][1988] LRC (Const.) 442.

Zambia and similar to the provisions of the international instruments mentioned above. The Court, in allowing the appeal, placed reliance upon the adverse features which were inherent in the infliction of a whipping; and in delivering his judgment Gubbay, J.A (as he then was), had this to say:

> .....the manner in which it is administered....is somewhat reminiscent of flogging at the whipping post, a barbaric occurrence particularly prevalent a century or so past. It is punishment, not only inherently brutal and cruel, for its infliction is attended by acute pain and much physical suffering, but one which strips the recipient of all dignity and self-respect. It is relentless in its severity and is contrary to the traditional humanity practised by almost the whole of the civilised world, being incompatible with the evolving standards of decency.[658]

This argument was adopted in A Juvenile V The State,[659] where the Supreme Court of Zimbabwe by a majority similarly ruled that the judicial corporal punishment of juveniles was unconstitutional. Gubbay, J.A., in approving Tyrer V United Kingdom,[660] added that judicial whipping, no matter the nature of instrument used and the manner of execution, "is punishment inherently brutal and cruel; for its infliction is attended by acute physical pain....that is precisely what it is designed to achieve". He continued:

> In short whipping, which invades the integrity of the human body, is an antiquated and inhuman punishment which blocks the way to understanding the pathology of crime. It has been abolished in very many countries of world as being incompatible with the contemporary concepts of humanity, decency and fundamental fairness.[661]

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[658] ibid., p. 466.

[659] [1989] LRC (Const.) 774.

[660] [1978] supra.,

[661] ibid., p. 796.

He had also interpreted the Constitution of Zimbabwe in accordance with international law and considered that the treatment of juvenile offenders must comply with the relevant international instruments. In conclusion, he stated:

> Although there is no explicit reference in international human rights instruments to corporal punishment as a judicial sanction, a recent inroad has been made by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules). According to rule 17: 3: "Juveniles should not be subject to corporal punishment".[662]

But the definition of who is a juvenile is left to national laws and practices. This decision has opened the way for progressive nations to reconsider the position of corporal punishment in their criminal law statutes.

However, this decision was overturned by constitutional amendment.[663] It may be said that this amendment found support in the dissenting judgments, which upheld the imposition of corporal punishment on juveniles in order to avoid more unsuitable alternatives, citing the differences between the way in which the punishment is executed on adults and juveniles respectively and arguing that an adult whose character was already formed and hardened may be adversely by punishment which humiliates him; yet a juvenile will not be adversely affected "by similar punishment because he is accustomed to subordination and open to correction. This humility is part of the very nature of

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[662] ibid.

[663] Constitution of Zimbabwe Amendment Act No. 11 of 1990. This amendment was ably discussed by J. Hatchard (1991), "The Rise and Fall of the Cane in Zimbabwe", Journal of African Law, 35, 198.

youth, however rebellious".[664] But the legislature has blocked the progressive thinking of the Supreme Court and forced the Courts of Zimbabwe to lag behind contemporary thinking on the validity of corporal punishment (Hatchard 1992).

However, this reflects the political interferences on judicial functions in African states, where the legislature overturns the decision of the court.

The newly independent State of Namibia has also proceeded on this progressive road. The decision of the Supreme Court in Ex parte Attorney General of Namibia, In re Corporal Punishment by Organs of State,[665] is equally important. In that case, the Supreme Court of Namibia was petitioned by the Attorney General under the Constitution to determine the question whether the official infliction of corporal punishment in any situation (judicial, quasi-judicial or in government schools) was in conflict with Article 8 of the Constitution of Namibia; the Court declared that any sentence of corporal punishment by a judicial or quasi-judicial authority, and the imposition of corporal punishment in government schools, were indeed invalid as being in conflict with Article 8 of the Constitution. The Court approved the decided cases in Bostwana and Zimbabwe (discussed above)[666] and shared their views. Mahomed, P., delivering the judgment of the Court, stated:

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[664]Juvenile V The State (1989) op. cit., p. 799.

[665][1992] LRC (Const.) 515. See also a discussion of this case by J. Hatchard (1992), "The Fall of the Cane Again: Corporal Punishment in Namibia", Journal of African Law, 36, 81 - 85.

[666]The State V Petrus and Another, supra.; Ncube and Others V The State, supra.; A Juvenile V The State, supra..

> It would seem to me that most of the six objections against corporal punishment in general .... would be of equal application to both adults and juveniles. Juveniles also have an inherent dignity by virtue of their status as human beings and that dignity is also violated by corporal punishment inflicted in consequence of judicial or quasi-judicial authority.[667]

The Namibian court went further than any court in declaring that once corporal punishment is said to be unconstitutional *per se*, it could not become authorised because it seeks to achieve what is a permissible object, such as avoiding an undesirable alternative of imposing custodial sentences upon juveniles. Mahomed, P., said:

> .....If it does, it is unlawful even if the motive behind such practice is to keep young offenders, who need to be punished, out of prison. Means otherwise unauthorised by the law do not become authorised simply because they seek to achieve a permissible and perhaps even a laudable objection. The provisions of Article 8 (2) of the Constitution do not permit of a derogation on such grounds. The duty of the court is to apply the clear provisions of the Constitution.[668]

This decision reached beyond decisions of other courts in the region, which had left the matter unattended, by holding that no justification for corporal punishment on the ground of reasonableness is to be entertained. The imposition of corporal punishment on juveniles was declared unconstitutional by the Supreme Court of Namibia on the basis of the adverse features which were inherent in its infliction. Mahomed, P., stated:

> A deliberate and systematic assault with a cane on the buttocks of an individual, inflicted by a stranger as a form of punishment authorised by a judicial or quasi-judicial tribunal, is inherently a demeaning invasion on the dignity of the person punished. It must, in these circumstances, be degrading or inhuman.

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[667] ibid., p. 531.

[668] ibid., p. 532.

> It does not become less so because a juvenile might conceivably recover from such a basic infliction on his dignity sooner than an adult might in comparable circumstances.[669]

Corporal punishment remains an invasion of human dignity and is an unacceptable practice that delibarately inflicts pain and suffering on the punished, and the punisher is free to use any degree of force, regardless of the size of the cane being used.

The Zambian Courts have been left out of touch with these judicial developments and far behind contemporary thinking on this issue. They have failed to adopt International Human Rights norms as part of domestic laws to enhance the standards of decency "that mark the progress of a maturing society", to adapt the words of Dumbutshena, C. J in A Juvenile V The State (supra, p. at 775). They have even failed to re-assess the ideologies, values and social conventions that underly the origin of corporal punishment, which was generally inflicted on people by judicial and quasi-judicial organs during colonial rule. However, in the pst, had they considered it, the Zambian Courts might have upheld the validity of corporal punishment on the ground that it was protected by sub-section (2) of the Constitution since independence, as it has been shown above in the Supreme Court of Botswana. Sub-section 2 of section 17 of the Constitution (Appendix 3 to the Laws of Zambia 1965 edition) provides:

> Nothing contained in or done under the authority of any lawshall be held to be inconsistent wit or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in the former Protectorate of Northern Rhodesia immediately

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[669]Ex Parte Attorney-General of Namibia, In Re Corporal Punishment (1992) Supra., p. 533.

before the coming into operation of this Constitution.[670]

But the present Art. 15 of the Constitution 1991 has no saving clause and Silungwe, C.J., observed in Berejena V The People that corporal punishment is inhuman or degrading. The conclusion appears to be inescapable that corporal punishment on juveniles and adults in Zambia is unconstitutional.

[670] Constitution Act No. 27 of 1973, Art. 17 (2) saved it as being lawful as it had been authorised before the Constitution became operative.

Table 9:1

DISPOSITIONS IMPOSED ON CONVICTED JUVENILES AT LUSAKA JUVENILE COURTS 1991-1992 BY PERCENTAGES

Year	A	B	C	D	E	F	G
1991	31	10	03	00	20	13	23
1992	22	29	00	00	10	10	29

Source: Lusaka Juvenile Courts Records.

N.B: Dispositions represented by letters are as follows:

A Corporal punishment

B Imprisonment

C Reformatory order

D Approved School order

E Fine

F Probation order

G Absolute/Conditional discharge

Table 9:2 (a)

DISPOSITIONS IMPOSED ON CONVICTED JUVENILES 1982-1986 BY PERCENTAGE

Year	Dispositions		
	Caning	Imprisonment	Fine
1982	46	27	27
1983	43	22	35
1984	27	16	57
1985	-	-	-
1986	47	25	28

Source: Zambia Police Annual Reports 1982 - 1986.

N.B: In 1985 crime statistics were not tabulated in the usual manner where it is possible to ascertain dispositions which relate to juvenile offenders. Reformatory and approved school orders and discharges are not given in the police annual reports and when they are indicated elsewhere, it is not possible to relate them to any offence.

Table 9:2 (b)

THE FIRST FOUR OFFENCES UNDER EACH DISPOSITION 1982-1986 BY PERCENTAGE

Year	First four offences under each disposition by percentage		
	Caning	Imprisonment	Fine
1982	Theft - 15 Assaults - 13 Under other laws - 10 Burglary - 05	Theft - 29 Assaults - 16 Other breakings - 14 Burglary - 12	Drunk and incapable and disorderly -28 Under other laws - 24 Assaults - 21 Affray - 10
1983	Theft - 36 Assaults - 17 Drunk and incapable and disorderly -13 Affray - 11	Theft - 25 Burglary - 14 Theft from person - 09 Assaults - 07	Drunk and incapable and disorderly -45 Assaults - 09 Under other laws - 05 Affray - 03
1984	Theft - 28 Drunk and incapable and disorderly -13 Assaults - 13 Affray - 03	Theft - 29 Assaults -13 Other breakings -13 Housebreaking - 09	Drunk and incapable and disorderly -58 Under other laws - 21 Affray - 11 Ussaults - 04
1985	-	-	-
1986	Theft - 29 Assaults - 13 Unlawful wounding - 11 Burglary - 08	Theft - 20 Burglary - 11 Theft from person - 10 Assaults - 08	Assaults - 26 Affray - 19 Under other laws - 14 Under local govt. laws -08

Source: Zambia Police Annual Reports 1982 - 1986.

N.B: This Table must be read in conjunction with Table 9:2 (a).

Table 9:3 (a)

DISPOSITIONS IMPOSED ON CONVICTED JUVENILES 1960-1962 BY PERCENTAGE

Year	Dispositions		
	Caning	Imprisonment	Fine
1960	89	02	09
1961	89	02	09
1962	82	03	15

Source: Northern Rhodesia Colonial Annual Reports 1960 - 1962.

Table 9:3 (b)

THE FIRST FOUR OFFENCE IN EACH DISPOSITION 1960-1962 BY PERCENTAGE

Year	The first four offences under each disposition with percentage		
	Caning	Imprisonment	Fine
1960	Theft - 32 Theft by servant - 10 Housebreaking &theft - 08 Store breaking - 07	Theft - 23 Under public order - 15 Forgery - 15 Housebreaking & theft - 08	Against Township Ordi. - 59 Against Traffic Ordi. - 17 Under public order - 08 Theft - 03
1961	Theft - 34 Under public order - 10 Housebreaking & theft - 09 Theft by servant - 08	Theft - 39 Forgery - 17 Obtaining by fraud/pretences - 11 Housebreaking & theft - 06	Against Traffic Ordi. - 56 Under public order - 13 Under other laws - 10 Against Township - 08
1962	Theft - 31 Storebreaking - 10 Housebreaking & theft - 10 Under public order - 07	Housebreaking & theft - 38 Storebreaking - 17 Theft - 07 Rape - 03	Against Traffic Ordi. - 47 Against Township Ordi. - 16 Under other laws - 08 Theft - 04

Source: Northern Rhodesia Colonial Annual Reports 1960 - 1962.

N.B: This Table to be read in conjunction with Table 9:3 (a).

9:4:2 Imprisonment

9:4:2:1 Law and practice

Juveniles may be sentenced to terms of imprisonment although they must serve them in adult prisons mixing with adult prisoners, as there is no prison for juveniles in Zambia. They are treated as other prisoners and earn remission on the same basis as adult prisoners (by showing good behaviour and obeying prison regulations).

Where minimum sentences of imprisonment have been presribed by legislation no exemptions have been provided for juveniles, who are therefore subject to the same minimum sentences as adults (discussed in Chapter Five).

However, the imprisonment of juveniles is restricted as the Juveniles Act provides:

> Section 72 (1) No child shall be sentenced to imprisonment or to detention in a detention camp.
> (2) No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other manner.[671]

Hence a juvenile under sixteen years cannot be sentenced to imprisonment while the Supreme Court has interpreted sub-section (2) to mean that the court can exercise its discretion not to sent a juvenile to prison even for an offence with a minimum

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[671]We have noted under Chapter one that child means a person below sixteen years; and young person is of sixteen and below nineteen years.

mandatory prison sentence.[672] A juvenile offender is supposed receive more lenient and especially community-oriented penalties. But if the circumstances of a particular case call for a juvenile to receive a custodial sentence, the first institution to be thought of must be a reformatory. The Supreme Court has recognised that one of the major objectives of the juvenile justice system is to attempt to rehabilitate the offender so that he may become a useful member of society; he should be sent to a juvenile correctional institution which is assumed to have that capacity to reform him. In such cases, the court has stated:

> the question for the court is to choose the least unsuitable method of dealing with an offender; it is entitled to weigh the unsuitability of a long prison sentence against the unsuitability of a reformatory order, taking into account the circumstances of the offence, the antecedents of the offender, and all other relevant factors, and to decide which is the less unsatisfactory of the two unsatisfactory courses....We have come to the conclusion that the less unsatisfactory course in the present case is to send the appellant to a reformatory, and not a fifteen years mandatory minimum imprisonment term.[673]

Imprisonment it may thus be imposed on juveniles are aged between 16 and 18 years, if they are found guilty of serious offences and are persistent offenders who are considered not to have benefitted from previous more lenient disposition. These offenders may be said to be unable or unwilling to respond to lenient dispositions as argued in Burney's (1985) study.

Imprisonment is frequently imposed by juvenile courts. Table 9:1 shows that in 1991 10% of offenders proved guilty in Lusaka Juvenile Courts were sentenced to imprisonment, while in 1992

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[672]Chisala V The People (1975) ZR 239; see also Mvula V The People (1976) ZR 80.

[673]Chisala V The People op. cit., p. 241.

imprisonment was the leading disposition imposed (29%). There was a remarkable increase, but it is impossible to give a plausible explanation. Perhaps when the new government assumed power under multi-party in 1992 magistrates, the other public servants, were imbued with a new sense of purpose and motivation.

The longest term imposed in Lusaka 1991-92 was three years' imprisonment with hard labour for the offence of defilement of a girl under sixteen years.[674] However, the offence was a serious one involving personal violence against the victim. The offender was jointly charged with an adult and the court imposed the sentence upon him, as the same sentence that was imposed upon the adult. Although they pleaded guilty to the charge and admitted the brief facts read out, it is doubtful whether his liability was on the same basis as that of the adult. This case was dealt with in the same manner as Chisala V The People (cited above), where the juvenile was jointly charged with two adults with aggravated robbery and the trial court sentenced them all to the prescribed minimum of fifteen years' imprisonment; in respect of the juvenile this was reduced to a reformatory order on appeal. In such cases, juveniles are perceived as adult criminals in all aspects of the case, and the aspect of differential treatment does not arise (juveniles are to receive the same sentence imposed upon adult accused jointly charged with them). This is contrary to the underlying principles of the juvenile justice system, whereby juvenile offenders should be dealt with leniently. If the court feels it is appropriate to impose a

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[674]Case Record No. SP2/270/92. The juvenile offender pleaded guilty to the offence under section 138 (1) of the Penal Code.

custodial sentence, such sentence must normally be a reformatory or approved school order.

The Juvenile Courts often do not take into account the offender's future and other social factors as emphasised in the Supreme Court decision of the case of Chisala V The People cited above, which argues that the aim of the juvenile justice system is rehabilitation. For example, in a typical case, The People V Samende[675], the proceedings were as follows:

20th February 1992	- Charge of store breaking read out and offender pleaded guilty. The matter adjourned to 3rd March, for facts.
3rd March 1992	- Public prosecutor read out the facts which were admitted by the offender as being correct. The court found the offender guilty on his own admission. - Offender gave mitigation: "I am at Monze secondary school and if I am sent to prison, I will loose my educational chances". - Court's comments: "Store breaking is a serious offence and is becoming prevalent in Lusaka. I have heard what you have said in mitigation. I order twelve months imprisonment with hard labour with effect from 9th February 1992, the day of your arrest".[676]

In this case that the court did not request a pre-sentence report to find out whether the juvenile was at school or not. The family social background, which should also be presented to the court before imprisonment is imposed, was not submitted. This was all in violation of section 64 (7) of the Juveniles Act, which

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[675]Case Record No. SP/48/92.

[676]Efforts were made to see him at Lusaka Central Prison, but he had been transferred to Kabwe Medium Prison. Kabwe reported that he had been released in November 1992 after nine months in prison. This means that he had no remission and the reason why was sought from the prison authorities.

provides:

> If the court is satisfied that the offence is proved, the juvenile shall be asked..... to say anything in extenuation or mitigation of the penalty or otherwise. Before deciding how to deal with him, the court shall, if practicable, obtain such information as to his general conduct, home surroundings, school record, and medical history as may enable it to deal with the case in the best interests of the juvenile, and may put to him any question arising out of such information....

The court failed to obtain relevant information relating to the offender. It was practicable to obtain his school record as the name of the secondary school was given. This would have justified the court's imposition of a tariff sanction, if it was discovered that the offender was a persistent wrong-doer, with a poor school record. However, the juvenile was a first offender who deserved leniency; and if the court wished to impose a custodial sentence a reformatory or approved school order would have been more appropriate. It has been noted in Chapter Four, that in such cases a probation order should have special conditions that the offender continued to attend school and in vacation report to a probation officer, rather than imposing imprisonment.

The Juvenile Courts also disregarded the Supreme Court's decisions in Alakazamu V The People and Berejena V The People (discussed in section 9:4:1 above). These cases held that if a deterrent punishment is intended by the court, such penalty must not be imposed simply because of an increasing incidence of a particular kind of offence on the basis of "prevalence"; a severe disposition may not be imposed, "save to deal with exceptional outbreaks of crime that have reached epidemic proportions".[677] Moreover such an outbreak must not be the only justification for

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[677]Alakazamu V The People (1973) supra., p. 34.

sentencing a juvenile to imprisonment; the court must also be satisfied that juveniles are persistently involved in a particular kind of crime that raises concern. The courts sent the offenders to prison to protect society despite the youthfulness of the offenders which is generally considered a mitigating factor, (as required by section 72 (2) of the Juveniles Act), was not considered, the offenders having been treated in the same way as an adults. This study found that most juveniles sent to prison had pleaded guilty to the charges, were first offenders and had no parent in attendance at the court proceedings; social inquiry reports were not submitted to courts. Therefore, the courts imposed imprisonment terms on juveniles without relevant information pertaining to offenders. Such sentences cannot be said to have been imposed in a rational manner as the courts are not exposed to the various alternatives for them properly to exercise their discretionary powers.

However, Juvenile Courts regularly impose imprisonment on convicted juveniles; Table 9:2 (a) shows that imprisonment accounts for over 20% of sentences in most years 1982-86. A number of juveniles convicted of assaults were sentenced to imprisonment. But Tables 9:3 (a) and 9:3 (b) show that in the colonial era, Juvenile Courts complied with the requirements of the Juveniles Act not to impose imprisonment on juveniles convicted of any offence, but to deal with them in some other manner. Imprisonment accounted for less than 04% of cases in each year 1960-62 (Table 9:3 (a)); those imprisoned had committed serious offences, such as housebreaking and theft, store breaking and rape, but not assaults (Table 9:3 (b)).

9:4:2:2 Comments on the imposition of imprisonment

The central premise of the Juvenile Courts is that children should be treated differently from adults. Thus courts are to handle juveniles on the basis of the least restrictive measures, and dispositions should be based on individualised treatment (Thomas 1973, 1979). This has led to separate juvenile correctional facilities and a wide disparity in sentencing, as discussed in section 9:3 above. However, in some western countries there has been increasing concern that juveniles are sent to prison, with attempts to limit the imprisonment of juveniles. For example, Burney (1985) in her study of the impact of the English Criminal Justice Act 1982, which restricted the imposition of custodial sentences on persons under the age of 21, noted that such restriction had a historical beginning commencing in 1948, and that imprisonment for juveniles had finally been abolished by 1973. Her study was based on section 1 (4) of the 1982 Act, which provides:

> Where a person under 21 years of age is convicted or found guilty of an offence, the court may not
> (a) make a detention centre order in respect of him..
> (b) pass a youth custody sentence on him...
> (c) pass a sentence of custody for life on him...
> unless it is of the opinion that no other method of dealing with him is appropriate because it appears to the court that he is unable or unwilling to respond to non-custodial penalties or because a custodial sentence is necessary for the protection of the public or because the offence was so serious that a non-custodial sentence cannot be justified.

She noted that although there are three statutory grounds on which a trial court can impose a detention centre order or a youth custody sentence, magistrates applied the section differently and their reasons to justify a custodial sentence

varied considerably. She concluded:

> It has been shown above that all three statutory grounds for custody have been used in different ways in magistrates' courts to justify custody in light of antecedents, although "record" in itself is not one of the statutory grounds. The "unable/unwilling to respond" often means simply "we've tried everything else." "Protection of the public can mean "his record shows that he's a menace/nuisance--so we must lock him up." And "seriousness" can sometimes express the view "he ought to know better by now so...."[678]

It impliedly means that persistent offenders more frequently received custodial sentences, based on information contained in social inquiry reports. Reynolds (1985), monitoring the pattern of orders made upon juvenile offenders under the same 1982 Act, concluded:

> the "welfare of child" philosophy of juvenile justice contained in the Children and Young Persons Act 1969 has come into conflict with a rising "law and order" reaction, encouraged by the Criminal Justice Act which gave wider powers on custodial sentencing to magistrates and made solicitors rather than social workers the child's representatives in court.[679]

The study indicated abandonment of the aims of the 1969 Act, where the emphasis was community-oriented sanctions such as probation and community service orders and diversionary practices through police cautioning (discussed in Chapter Seven and above 9:3). The 1982 Act reduced the wide judicial discretionary powers by requiring persistent offenders to be sent to youth custody or detention centres for serious offences.

However, the Zambian Juveniles Act does not set out grounds on which a juvenile aged 16 years and above could be sentenced

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[678]E. Burney (1985), "All Things to All Men: Justifying Custody Under the 1982 Act", Criminal Law Rev., 284 - 293 at 292.

[679]F. Reynolds (1985), "Magistrates' Justifications for Making Custodial Orders on Juvenile Offenders", Criminal Law Rev., 294 - 298 at 298.

to imprisonment. The only aspect the Juvenile Court has to take into account before imposing imprisonment is whether other dispositions are unsuitable for the offender. To achieve the desired objective in section 72 (2) Juvenile Courts should have before it all relevant facts pertaining to the case. This could be attained by requesting social inquiry reports in each case. But this is not done, as shown above. Zambia still has the principles of the English Children and Young Persons Act 1933, without the later amendments adopted in England and specifying the grounds on which the imposition of custodial sentences on juvenile offenders could be justified.

9:4:3 Reformatory Order

A reformatory order under section 73 of the Juveniles Act is authority for the detention of the offender at Katombora Reformatory for a fixed period of four years.[680] As shown in Chapter Four, this disposition originates from the former "Borstal training" in England and is based on rehabilitative principles. The court can make such an order after evaluating all the information available about the offender and deciding that individualised treatment is necessary in his best interests. As shown in 9:3 above the Juvenile Courts acquired wide discretionary powers for the purpose of choosing an appropriate disposition that was suitable to an individual offender (Thomas 1973, 1979). It was noted in Chisala V The People (above) that it is appropriate to send juveniles to the Reformatory rather

[680]Section 93 of the Juveniles Act.

than prison, because one of the aims of the Reformatory is to attempt to rehabilitate the offender so that he may have a meaningful future. This aspect of disposition will be considered in more detail in the next Chapter, under the rehabilitative programmes and treatment of juveniles.

Reformatory orders are not frequently imposed. In Table 9:1, in 1991, only 03% of the juveniles who were convicted by Juvenile Courts in Lusaka were ordered to undergo reformatory training, while in 1992 none was so ordered. There is no plausible explanation why it is not more often imposed by Courts, and various speculative reasons could be advanced. The implication that can be drawn from Table 9:1 is that the Juvenile Courts prefer the deterrent sanctions of caning and imprisonment. Alternatively, lack of understanding of the Juveniles Act might be the causes of the infrequent use of this penal sanction, as it has been shown that Courts do not comply with the provisions of the Act. For example, Courts do not request social inquiry reports to assist them in their judicial decision-making. Stafford and Hill (1987) noted that social inquiry reports with recommendations had considerable influence on magistrates in England. This means that when a custodial sentence was imposed on a juvenile it was understood and justified, taking into account all circumstances of the offence, the antecedents of the offender, his family background etc. More reasons will be advanced in the next chapter why this approach is not adopted by the Zambian courts. Other aspects of this disposition are discussed under confirmation in section 9:4:5 below.

9:4:4 Approved School Order

An approved school order is an authorization for the detention of a juvenile offender at Nakambala Approved School, Mazabuka in Southern Province, normally for a period of three years, which is a semi-indeterminate sentence, regardless of the offence committed.[681] It is semi-indeterminate, in the sense that an offender was supposed only be released from the school, when in the opinion of the experts (staff), he had been rehabilitated. This disposition is a custodial sentence which is more appropriate for juveniles aged 14 years and below. As section 78 of the Juveniles Act provides:

> An approved school shall be an authority for the detention of the person named therein in an approved school---
> (a) if at the date of the order he has not attained the age of fourteen years, until the expiration of a period of three years or the expiration of four months after he attains the age of fifteen years, whichever is the later;
> (b) if at the date of the order he has attained the age of fourteen years but has not attained the age of sixteen years, until the expiration of a period of three years from the date of the order; and...

This recognises the philosophy of the juvenile justice system, which assumes that children or adolescents are immature and less responsible for their actions, who need protection. As shown in the last chapter, the Juvenile Court when dealing with children must bear in mind that some of them are deprived juveniles who are in need of care and they should be protected, while those troublesome children involved in criminal activities should be treated differently from adult criminals.

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[681] ibid., Section 78.

Therefore, an approved school order is considered as a disposition allowing the courts to send juveniles to a specialised institution which is a school for instruction, rather than to a prison, which is generally considered as a place for punishing offenders. Hence, the court has to decide whether a juvenile is to receive this order on the basis of individualised treatment and on exercising its discretion it must have before it relevant information through a social inquiry report.

However, Table 9:1 shows that in the period of two years Lusaka Juvenile Courts never made any such order, and unnecessarily dispensed with social inquiry reports required under section 64 (7) of the Act in respect of juveniles. For example, in The People V Chisenga Lungu,[682] the matter was adjourned for pre-sentence report. On the adjourned date, the social welfare officer did not attend court and the court dispensed with the social inquiry report, giving no reasons for that action. The court imposed twelve months imprisonment on the offender. The attitude of courts in dispensing with reports instead of insisting on having them discourages social welfare officers from taking a keen interest in preparing reports. The main conclusion is that Lusaka Juvenile Courts prefer to impose deterrent sanctions upon juvenile offenders; other reasons pertaining to this disposition will be given in the next Chapter, especially the aspect of duration and under-utilisation by the courts. The issue of confirmation is discussed below.

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[682]Case Record No. SP2/128/92.

9:4:5 The legality of reformatory and approved school orders: the requirement of confirmation.

Reformatory and approved school orders provide the authority for the detention of inmates, and the basis of rehabilitative measures carried out, in correctional institutions (discussed in next Chapter). These orders are dispositions of a Juvenile Court as discussed above in sections 9:4:3 and 9:4:4.

However, the Juveniles Act provides that an approved school order is not to be carried into effect until it has been confirmed by the High Court. Section 79 provides:

> (1) No approved school order made by a juvenile court shall be carried into effect until the record of the case or a certified copy thereof has been transmitted to, and the order confirmed by, the High Court. (Emphasis supplied).

It is thus mandatory for a juvenile court to transmit the case record of the proceedings to the High Court; in the absence of any other guidance, it can reasonably be concluded that it is then for the High Court to confirm the order, if it considers that the order is based on the finding of guilt supported by the evidence adduced, and was the appropriate sanction, in the light of the offender's record and background. The High Court should also take into account the available institutional facilities, considering whether they may provide the necessary rehabilitative measures.

Pending such confirmation, the court making the order prepares a temporary order committing the offender to a place of safety, which was normally Chilenje Remand Home. However, if a

juvenile offender escaped from such temporary detention he could not be charged with the offence of escaping from lawful custody, as an approved school order is authority for the detention of the offender named therein in an approved school and not anywhere else.[683] Now when a Juvenile Court makes an approved school order the juvenile offender is immediately conveyed to Nakambala Approved School at Mazabuka. This is contrary to the provisions of the Act, which have not been amended,[684] but administrative arrangements were made to have juveniles immediately conveyed to the Approved School. This was due to delays in the confirmation of orders and frequent escapes of juveniles from Chilenje Remand Home.[685] It is unjustifiable and wrong that an administrative arrangement has been allowed to supersede an Act of Parliament

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[683]Kachingwe V The People (1965) ZR 159. However, juveniles are arrested and charged with escaping from lawful custody, namely Chilenje Remand Home, and the present researcher, while working as a public prosecutor in Lusaka, has prosecuted such juveniles between 1974 and 1980, regardless of this case having been decided in 1965. This was due to the facts that police prosecutions were based on treating juvenile offenders in the same way as adults, and the lack of special training in juvenile justice. It was not only the police who did not abide by the decision in Kachingwe, but even social workers, who made complaints at the police station. The courts also acted contrary to the spirit of this case and law. This reflects the widespread misconception of the Juveniles Act and the failure of law enforcement agents to follow the law relating to juveniles.

[684]Section 79 (2) provides:
Pending the confirmation of an approved order.....or pending arrangements for the admission of the juvenile to an approved, the court making the order may make a temporary order committing the juvenile to the care of a fit person...or to a place of safety.....provided that a temporary order as aforesaid shall not remain in force for more than twenty-eight days...it may make a further temporary order.

[685]Chilenje Remand Home was closed and now accommodates the Lusaka District Social Welfare Offices. There is now no Remand Home in Zambia.

without anyone questioning it. This change has made it possible for offenders to start working at the School before their orders have been confirmed.

A similar section provides that a reformatory order cannot be carried into effect until it has been confirmed by the High Court;[686] as in the case of an approved school order, the juvenile court is under an obligation to transmit the record of the case containing the proceedings; the High Court is to assess the regularity and conclusion of the proceedings and to determine whether the order is justified and appropriate.

In the case of a reformatory order, the juvenile offender concerned is supposed to be conveyed immediately to Katombora Reformatory or to any prison, as prisons are gazetted as receiving centres for offenders ordered to the Reformatory. The offender should then wait for confirmation of the order by the High Court, while detained at the Reformatory,[687] and meanwhile should not start working or commence any training.

It has already been shown that Lusaka Juvenile Courts rarely impose reformatory and approved school orders on juvenile offenders. Nevertheless, this study examined the confirmation of these orders by the High Court, by analysing data collected from the two juvenile correctional institutions pertaining to the 76

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[686]Section 94 provides:
(1) No reformatory order made by a juvenile court shall be carried into effect ..... until the record of the case or certified copy thereof has been transmitted to and the order confirmed by the High Court. (Emphasis supplied).

[687]Section 94 (2) Provides: Any juvenile with respect to whom a reformatory order has been shall be conveyed forthwith to the receiving without awaiting the confirmation of the order by the High Court.

inmates (52 at the Reformatory and 24 at the Approved School). The data is tabulated in Table 9:4 below.

Table 9:4

DISTRIBUTION OF CONFIRMED ORDERS AT INSTITUTIONS

Institution	Confirmed	Confirmation unnecessary (trial by High Court)	Not confirmed	Total
Reformatory	01	03	48	52
Approved school	01	01	22	24

Table 9:4 shows that only one individual inmate at each of the institutions had had his order confirmed by the High Court and was therefore lawfully detained. This means that the overwhelming majority of inmates begin and end their purported treatment programmes at these institutions without their orders having been confirmed by the High Court as the law requires.

This is an important and obligatory supervisory role which the High Court is required to exercise, in order to examine the legality of such orders, to ensure that the finding of guilt is based on cogent evidence and that all provisions of the Act have been complied with. It is regrettable to discover that the High Court is not fulfilling its statutory obligation. It was difficult in this study to find out who was responsible for this

consistent ommission. The provisions of the Act impose the duty on the Subordinate Courts to transmit the case records of proceedings to the High Court, and thereafter require the High Court to make appropriate confirmations.

This study revealed that most juvenile offenders had their orders implemented and were detained in, and ultimately discharged from, these correctional institutions without their orders ever having been confirmed. This means that, whether or not they were rightly found guilty, they had been subjected to treatment programmes, strictly illegally, without the confirmation by the High Court required by the Juveniles Act.

Furthermore, this study found that not only were juveniles detained without their orders having been confirmed, but 75% of them were even conveyed to the Reformatory without reformatory orders[688] and were detained under Prisons Form 2, which is an administrative form prepared by prison warders in respect of each prisoner serving a short-sentence and used when transferring an inmate from one prison to another. It is not a warrant of commitment to undergo a sentence of imprisonment (signed by a magistrate). It is a prisoner's record form kept at a prison, and cannot be substituted for a reformatory order.

The Chief Justice of Zambia was unaware of the situation and was of the opinion that no offender would be received at the Reformatory or prison without a reformatory order or committal

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[688]This is contrary to section 94 (3) of the Juveniles Act, which provides:

> The court making a reformatory order shall cause it to be delivered to the person conveying the juvenile to the receiving centre, and such person shall deliver it to the officer in charge of the centre.

warrant. He undertook to investigate the matter with a view to correcting the situation.[689]

As pointed out in this study, while it was difficult to find out who was to blame for these improprieties, it was assumed that the Subordinate Courts were responsible; but the High Court must share the same blame on the basis of a case-review. As section 337 of the Criminal Procedure Code, provides:

> The High Court may call for and examine the record of any criminal proceedings before any subordinate court, for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

If the High Court had exercised its powers of reviewing cases from the Subordinate Courts, it would have discovered cases where confirmation was required. The High Court is also expected to peruse the monthly returns from Subordinate Courts and through this process cases involving juveniles should be noted and sanctioned. Such cases should be noticed by those Judges who are assigned to carry out this statutory review. This could be achieved if there was a functionally well organised judicial system. As shown above, such a system does not exist in Zambia and the High Court thus does not contribute to the reformation of juveniles sent to correctional institutions. It is very difficult for the law relating to juvenile offenders to develop without the involvement and guidance of the High Court.

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[689]Personal interview with Mr Justice Matthew Ngulube, the Chief Justice in his Chambers on 27th May 1993.

8:4:6 Fine

The Penal Code provides for the imposition of fines as alternative sanctions for most crimes and as supplementary penalties for all misdemeanours.[690] As shown in section 9:4:2 above, persons (including juveniles) found guilty of offences defined as misdemeanours may be sentenced to imprisonment and in addition be ordered to pay fines or alternatively may be ordered to pay fines only.[691] On conviction of a felony, however, a fine may be ordered only in addition to term of imprisonment.[692]

The English Criminal Justice Act 1991 introduced the concept of proportionality as the basis of all penal sanctions, including those traditionally classified as non-custodial penalties. The unit-fines introduced were considered as a system "of proportionate fining, which impinges upon a percentage of an offender's disposable income...which is a more just penalty than the current tariff system".[693]

Ashworth (1992) noted that any financial penalty imposed on a juvenile is to be paid by the parents and their means are to be taken into account. However, practical difficulties in the operation of this system led to its repeal only two years later

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[690]Section 28 of the Penal Code.

[691]section 26 (4) of the Penal Code.

[692]ibid., sub-section (3).

[693]M. Wasik and A. Von Hirsch (1990), "Statutory Sentencing Principles: The 1990 White Paper", The Modern Law Rev., 508 - 517 at 512; see for more information M. Wasik and R. D. Taylor (1991), Criminal Justice Act 1991. (London: Blackstone Press Ltd.), Chap. 3.

(Criminal Justice Act 1993). The unit-fines system was fair in principle as it had taken into account that wealthier offenders previously paid lower fines than those in the low salary scales. It is unfortunate that the system was coupled with problems relating to implementation procedures which provoked its repeal.

Table 9:1 shows that Juvenile Courts often impose fines on offenders and in 1991 fines were the third most numerous form of disposition. Of the offences for which fines were imposed, the majority were of unlicensed driving under the Roads and Road Traffic Act, for which a fine is usually an appropriate sentence. The remainder were assaults, which under customary law were resolved on a reconciliatory basis. The imposition of a fine when a juvenile is found guilty of assault may be in line with the justifications of discontinuance of criminal charges, as shown in the last chapter, where complainants wished to settle such matters outside court.

However, nationwide, Juvenile Courts impose fines for assaults, affray and drunkenness and being incapable and disorderly. "Drunk incapable and disorderly" covers various offences or other deviant behaviour where no sufficient evidence has been gathered to prove an offence. For example, in the case of Martha Lungu, who took an offender to the police station for pickpocketing, the stolen purse was not recovered because the co-defendant who had taken it ran away; the police officer stated that there was no sufficient evidence to frame a charge of theft from person against the offender, but would charge him with disorderly behaviour (discussed in Chapter Seven in section 7:3). Fines also include "admissions of guilt" paid at police

stations. Juvenile Courts often impose fines on convicted juveniles as shown in Tables 9:2 (a) and 9:2 (b). But before independence fines were imposed on juveniles who had been convicted of offences under other laws, especially under Traffic and Roads Traffic Act, Local government Acts (Townships Regulations) etc., as shown in Tables 9:3 (a) and 9:3 (b).

In certain cases a guardian may be fined, if the court considers that he has contributed to the commission of the offence.[694] As section 74 (1) of the Juveniles Act provides:

> Where a court thinks that a charge against a juvenile is proved, the court may make an order on the parent or guardian of the juvenile under the last preceding section for the payment of a fine....
> Provided that no such order shall be made unless the court is satisfied that the parent or guardian has conduced to the commission of the offence by neglecting to exercise due care of the juvenile.

It has to be noted that under this provision there must be cogent evidence proving that the parent had neglectfully contributed to the commission of the offence; not merely that a weapon used in the alleged crime was found in the family home.[695] However, the provision accords with customary law and practice, whereby parents have always had been held responsible for the criminal behaviour of their children (see Chapter Three).

It has now been recognised that fining can cause hardship to the offender, as the English 1991 Act recognised, because it affects an individual's liberty; where his income is reduced, he

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[694]Case Record No. 2P2/362/91. Case Record No. 2P/209/91 in this case the pre-sentence report recommended a conditional discharge on a charge of assault occasioning actual bodily harm, but the court did not abide itself with this recommendation, and fined the guardian.

[695]Mkandawire and Others V The People, (1978) S.C.J. Judgment No. 4.

will have less money to spend on certain activities. But it represents a lesser degree of deprivation of the offender's liberty, in that he remains in the community, if he is able to pay the fine, compared to the one who receives a custody-based sentence. This means that family unity can be maintained. However, it is not appropriate to juveniles for, as shown in Chapters Two and Five, the majority of juveniles are unemployed and those who are self-employed struggle to supplement their family's income. Therefore, there is a high probability that many juveniles may be forced to commit further offences to get money to pay off the fines.

The guiding principle of this disposition is this: it should be imposed "within the means of the convicted person to pay".[696] The Zambian Courts regard this disposition as lenient. Bruce-Lyle, J.S.,(as he then was) in Chamoto V The People,[697] delivering the judgment of the Supreme Court stated:

> The general practice is well recognised that where the legislature has prescribed a sentence of a fine or imprisonment or both it is not customary in the case of a first offender to impose a custodial sentence without the option of a fine.....Having regard to the circumstances prevailing in the country and the ever marked increase in the incidence of offences involving firearms, the offence of being found in possesion a firearm is considered to be a serious one and calls for a deterrent punishment.[698]

A custodial sentence was not justified in that case and a fine was substituted as the appellant was a first offender and the increased incidence of violent offences had nothing to do with

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[696]Anderson V The People (1968) ZR 46 at p. 50.

[697](1980) ZR 20.

[698]ibid., p. 22.

his possession of a firearm. He was punished for the actions of other persons; and if the matter had been dealt on the basis of proportionality a fine would have been imposed.

9:4:7 Compensation

When a court imposes a fine it may direct that part of the money be paid to the complainant as compensation.[699] Section 177 (1) of the Criminal Procedure Code, provides:

> Whenever any court imposes a fine....the court may, when passing judgment, order the whole or any part of the fine recovered to be applied--
> (b) in the payment to any person of compensation for any loss or injury caused by the offence....

However, the methods set out above for dealing with juveniles in section 9:2 (section 73 (1) (f) of the Act) uses the word damages, which may be interpreted to include compensation. This disposition could be more frequently used, which would be appropriate as it reflects a traditional way of settling disputes under customary law as shown in Chapter Three. It could at least encourage parents to be more involved in the juvenile justice system and to accept responsibility for the offences of their children. It has been shown in section 9:3 that the western countries are giving more concern to the victims who should be compensated by the state or by offenders in certain cases (Maguire 1982; Shapland 1984). In the last chapter it has been shown that many complainants withdrew charges against juveniles, preferring to settle matters outside court, no doubt often in anticipation of receiving compensation for the injuries

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[699]Case Record No. 2P2/103/91.

sustained.

9:4:8 Probation order

A probation order requires the offender to be under the supervision of a probation officer for a specified period of time, not less than one year and not more than three years.[700] This disposition is at the same time a treatment programme in which final action in an adjudicated offender's case is suspended, so that he remains at liberty, subject to conditions imposed by the court, and under the probation officer and guidance (more fully discussed in the next Chapter under Probation Services).

This disposition is ideally based upon the individualisation of offenders, where the trial magistrate has to weigh the "past in terms of the future of a particular offender".[701] This means that the court will have to examine the social inquiry report giving the offender's background (including antecedents, education, family background, offence etc.), and determine whether the available facilities can reform him, without jeopardising the community. In such a case, the court can impose special conditions which the probationer must observe: for example, that the probationer attend school, reside in a particular district, not associate with a co-defendant, join a boy's club such as "Boy Scouts" or be indoors by 20.00 hours in

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[700]Section 3 of the Probation of Offenders Act Cap. 147 of the Laws of Zambia.

[701]P. Dressler (1965), Practice and Theory of Probation and Parole. (New York: Columbia University Press), p. 104.

the evenings.[702]

It is one of the dispositions which have always been considered alternatives to custodial-based sentences.[703] It has been argued that non-custodial sentences are not really alternatives to as these dispositions have done more harm than good: they tend to widen the net of surveillance and control.[704] But Vass and Weston (1990) stated that there should no generalisation, as some community-based dispositions have acted as real alternatives to custody, "and each such penal measure must be subjected to scrutiny and analysis for its end result".[705]

Table 9:1 shows that this form of disposition is frequently imposed in contrast to reformatory and approved school orders. As shown above, it is a penal sanction designed to facilitate the social readjustment of offenders. This order in most cases is misinterpreted or misconceived by offenders and their guardians as a dismissal of the charge, because the courts do not fully explain to the offenders and their parents its objective. The courts do not impose any special conditions as was done in the

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[702]Northern Rhodesia Department of Welfare and Probation Services Annual Report, 1957 p. 4.; in this year special requirements were inserted in probation orders in 57 cases and 10 of them required the probationer's attendance at school, 17 of them non-association with co-defendants.

[703]P. Lerman (1975), Community Treatment and Social Control. (Chicago: University of Chicago Press); S. Cohen (1985), Visions of Social Control: Crime, Punishment and Classification. (Cambridge: Polity Press); A. A. Vass and A. Weston (1990), "Probation Day Centres As An Alternatives to Custody", Brit. Journal of Criminol., 30, 2: 189 - 206.

[704]S. Cohen (1985), supra., p. 38.

[705]A. A. Vass and A. Weston (1990), supra., p. 201.

colonial era. Once a probation order is made the offender goes to his home, instead of going to the probation officer's office for instructions in what is expected of him. No counselling sessions are held. The probation order may have a condition of residence at the probation hostel; this study found that only Ndola Juvenile Courts order offenders to be detained at Insankwe Probation Hostel (fully discussed in next chapter). In the majority of cases where this disposition was imposed, pre-sentence reports were submitted and the courts followed the recommendations contained therein.

9:4:9 Absolute and conditional discharge

The court after finding the offender guilty may make an order discharging him absolutely or subject to the condition that he commits no offence during a period of twelve months from the date of the order.[706] Discharges represent the most lenient sanction presently available in the Penal Code. Section 41 (1) of the Penal Code provides:

> Where a court by or before which a person is convicted of an offence, being an offence the sentence for which is fixed by law, is of opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order under the Probation of Offenders Act is not appropriate, the court make an order discharging him absobutely or subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, as may be specified therein.

On the imposition of an absolute discharge order, the sentencing court demands nothing of the offender, and imposes no

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[706]Section 41 of the Penal Code.

restrictions on his future conduct. While on a conditional discharge order, the court warns the offender that it is not prepared to make a penal sanction against him for the offence on which he has been found guilty, on condition that he commits no offence within 12 months. Secondly, discharges are not treated as convictions for any purposes other than for the offence of which the offender has been found guilty and also on the offender's committing another other within 12 months of his being conditionally discharged.[707] An offender who re-offends can be sentenced for the original offence and for the later one.[708]

Table 9:1 shows that this disposition is frequently imposed on juvenile offenders and in 1991 and 1992 it was the second most frequent form of disposition. In closely examining the cases it was found that such orders were made in the majority of cases where pre-sentence reports were submitted. The majority of offences involved were assaults. The offenders had also pleaded guilty to the charges. However, it is important to note that no offender was brought before a court for having re-offended during the period of a conditional discharge.

9:5 Conclusion

The sentencing stage is the climax of the criminal process when the Juvenile Court explicitly tries to reconcile the perceived objectives of the criminal justice system. The debate continues in this area over whether the sentence should be

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[707]section 41 (5) of the Penal Code.

[708]section 42 of the Penal Code.

imposed on a basis of deterrence, rehabilitation, retribution or incapacitation principles and/or with a view to compensate the victim for the harm done. Lacking statutory guidelines, Zambian courts have wide discretionary powers to select appropriate sentences.

Zambian courts continue to impose penal sanctions whose constitutional validity has been denied in neighbouring jurisdictions, for denying fundamental human rights. For example, corporal punishment has been declared to be inhuman and degrading and prohibited under the African Charter of Peoples' and Human Rights 1981 and the U. N Convention of the Welfare and Rights of the Child 1989. Supreme Courts of the newly-independent, neighbouring countries of Zimbabwe and Namibia have shown themselves to be in the forefront of contemporary international thinking by declaring corporal punishment unconstitutional, while the Zambian courts have not been called on to consider the question.

Corporal punishment is one of the sentences most frequently imposed on juvenile offenders. It has even been imposed unlawfully, by sentences of strokes in excess of those permitted by the Act. This form of punishment has no basis even in local culture as most parents do not use it in family discipline or in child socialisation.

The Juvenile Courts have adopted a deterrent approach in their sentencing practices, continuing to impose terms of imprisonment regardless of the statutory restriction provided by the Act. This has continued country-wide and extends to reformatory and approved school orders (which are also custodial

sentences). Application of the rehabilitation principles is lacking, as the courts do not consider imposing probation orders. This is due to the fact that the courts make sentencing decisions without having adequate and relevant information about the offender through social inquiry reports, as the submission of these reports is unjustifiably dispensed with. Even those reports presented to courts, Hatchard (1989) notes, are inadequate. In this study it was found that they are not only inadequate, but they are not routinely requested or demanded by courts, contrary to section 64 (7) of the Juveniles Act. Hence courts deal with juvenile offenders without relevant and vital information; consequently they frequently impose custodial sentences and probation orders are seldom used. Such decisions cannot be said to have been made rationally, as the courts had no alternatives before them, calling on them to exercise their judicial discretion. Without social inquiry reports being submitted to courts, it is difficult to determine what factors the Juvenile Courts rely on in sentencing. It has been seen that severe penalties are imposed even on first offenders and, as seen in Chapter Six, juveniles mainly commit property offences, excluding robberies, and therefore they deserve to be dealt with leniently.

The Juvenile Courts not only fail to comply with the provisions of the Act, they also do not usually follow guiding judgments of the Supreme Court and of the High Court on sentencing. This practice is indirectly condoned by the High Court which neglects to exercise its supervisory power, especially by the confirmation of reformatory and approved school orders. Therefore, it is impossible for the law relating to

juveniles to develop in the country: courts do not react to current international thinking on controversial issues by applying theoretical arguments given in other jurisdictions, like decisions given in Namibia, Zimbabwe and Botswana on caning, and the High Court neglects adequately to guide Juvenile Courts.

CHAPTER TEN

10 THE FAILURE OF INSTITUTIONAL CARE

10:1 Introduction

It has been noted in Chapter One and Chapter Nine that many criminal justice systems, in particular those in Western countries, have shifted their emphasis from punitive policies to the "rehabilitation ideal" in the 1950s and 1960s. A differential approach to the treatment of juveniles was adopted. These juvenile justice systems now emphasise rehabilitative measures, based on an individualistic approach to the treatment of juvenile offenders.

The juvenile correctional institutions inherited at independence in Zambia were not fully developed, but were in the process of adopting treatment-oriented policies. The aim was to provide rehabilitative measures to juvenile offenders in institutional settings. This raises the question whether juvenile correctional institutions, probation services and charity organizations adequately comprehend the principle of training and reforming offenders. It is argued that the former colonial authority left the juvenile justice system in its infancy, but with aims and plans to expand institutional capacities. For example, to have specially trained personnel in social work and probation services; to have more remand homes, reformatories and approved schools and to strengthen the working relationships between the police, the courts, other social agencies and

charitable organisations in providing treatment programmes to offenders.

After independence Zambians were appointed who were ill-prepared to take up positions in the juvenile justice system. Some officers were appointed not on merit, but on political grounds (loyalty to the ruling party). Alternatively, untrained persons were appointed on economic grounds receiving lower salaries than qualified personnel. These unqualified personnel at times found their traditional cultural values in conflict with the western ideas which inform the structure and purposes of the juvenile justice system. The Zambianisation programme that was instituted after independence emphasised quantity at the expense of quality. The personnel recruited lacked full appreciation of the aims and objectives of the Juveniles Act as originally conceived by the colonial officers who initiated it.

This chapter focuses on the issues of the treatment and rehabilitation of offenders. It will show that rehabilitative measures as envisaged by the Juveniles Act are not adequately offered to juvenile offenders, because the Act is widely misunderstood by law enforcement agents, who have insufficient training and lack adequate guiding principles. First, brief descriptions of the two juvenile correctional institutions, including access, buildings, the general atmosphere and welfare of inmates, are given. Then the meaning of treatment in this context will be briefly discussed, in order to assist in the assessment of rehabilitative measures, which cover correctional treatment programmes and other activities that assist juvenile offenders to harmonise their personal aspirations and behaviour

with the requirements of society, and to lead full and satisfying lives in the future. In particular, the courses offered and the qualifications of the instructors employed in the juvenile correctional institutions (the Approved School, Reformatory and Probation Hostel) will be evaluated. The department responsible for juvenile welfare will be assessed and the chapter will also examine the role of charitable organizations in the system of juvenile justice.

Many questions arise as to why the juvenile correctional institutions have effectively collapsed. Is it that the Government has no interest in them? Is it due to financial constraints? Is it the fault of the personnel themselves? More of such questions can be asked on seeing the sad state of institutional care.

10:2 General Conditions of Correctional Institutions

The juvenile correctional institutions share the same basic concern as prisons, in caring for the lives of their inmates who are separated from the outside world; but, further, They concern themselves with the task of rehabilitating the inmates. The control of inmates begins from the time they are received into the institutions. As De Berker (1966) states:

> The first contact between prison and prisoner and the beginning of the role-stripping, new role-indoctrination processes, take place in the reception block in which the new prisoner arrives...from the court. Here the prisoner is stripped of his clothes, his possessions, all important extensions of his personality which help to identify him as an

individual in the world beyond the institution.[709]

Inmates are given uniforms which make them look the same. Inmates at Nakambala Approved School and Katombora Reformatory use similar khaki uniforms. It is relevant first to desribe briefly access to, general welfare and the atmosphere of each of the two institutions.

10:2:1 Nakambala Approved School: General welfare

10:2:1:1 General setting

Nakambala Approved School is run by the Department of Welfare and Social Services and is situated in Mazabuka town in the Southern Province. It was opened in 1963 with 49 boys and was chosen to enable the boys to engage in agricultural pursuits. In December 1964 it had 50 inmates. It is about 25 metres away from the Great North Road running through the town. The School is surrounded by high density residential areas and local people often meet inmates working in the school fields or other local residents walking along the fence. The School is fenced off, but access to it is not difficult and it is within walking distance from the rail and bus stations. The administrative block faces the gate and on the right hand side of this block are staff houses. Behind the administrative block are the living quarters of the inmates in the form of cottages. The boys are given two blankets each which are not enough in the cold season. The inmates cook for

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[709]P. De Berker (1966), "The Sociology of Change in Penal Institutions", in: Hugh J. Klare (ed.), Changing Concepts of Crime and Its Treatment. (London: Pergamon Press), p. 141.

themselves; the meals are poor as they daily eat beans without cooking oil and inmates complained bitterly about poor state of the meals. The School has no house-masters nor a matron qualified in nursing, so that problems facing inmates and needing immediate attention, including illness, must be tackled in normal working hours. In such circumstances none interpersonal relationships are established between inmates and members of the staff.

In front of the administrative block are patches of gardening land where the boys grow their own vegetables. On the far right-hand-side there is a workshop and class-room block. The buildings look old and need to be painted. Just outside the fence there is a football pitch and a school field where the inmates grow maize. Some local residents have even built their houses on the school land.

10:2:1:2 Recreational facilities

There are no recreational facilities whatsoever - not even footballs. Inmates are denied a sport which is nationally popular but especially among children: it is a common sight in Zambia to see children play football with balls, sometimes home-made of bound pieces of cloth. Considering that Zambia has an internationally successful football team, it is surprising that the sport is not encouraged at the institution, to keep inmates from boredom and reduce cases of escaping from the School. If it was encouraged inmates would benefit, because on release they might be encouraged to join sporting clubs in their respective towns. The institution could even act as a nursery for major

sporting clubs in the country. But as well as recreational facilities, the Approved School lacks a trained physical educational teacher.

There is neither a radio nor a television set to occupy the inmates in the evenings. These items, especially radios, are generally found in nearly all homes today even in the villages. The denial of such facilities to inmates cannot possibly assist in rehabilitating, but only serve to alienate, them.

However, there seemed to be a good working relationship between the staff and inmates, as the atmosphere was good. The staff were very friendly and open to discussion of various matters. Lunch was offered by the Deputy Principal and a Senior Social Welfare Officer at their homes. But young boys complained of bullying by older and senior inmates, which the authority was not able to control. The Deputy Principal stated that inmates usually stole School property and sold it to the local community, and at times even stole from the local residents.

10:2:2 Katombora Reformatory: General welfare

10:2:2:1 General setting

Katombora Reformatory was turned into a reformatory in 1953, from being a juvenile prison that had held juveniles serving imprisonment sentences ranging from 2 to 5 years. The establishment is based on a population of 120 inmates. The Reformatory is the responsibility of the Ministry of Home Affairs, and the staff who run it are appointed under the provisions of the Prisons Act.[710] The staff are all serving prison officers, except the social case officer seconded from the Department of Social Welfare Services and a junior secondary teacher seconded by Namwianga Church of Christ Mission from Kalomo.

Katombora Reformatory is situated in an isolated area along the Zambezi river sixty kilometres from the main town of Livingstone in the Southern Province. There is no bus service to the Reformatory, which is reached by using private vehicles going to Sesheke, Western Province; it is about 8 kilometres from the main road. On entering the Reformatory, on the right there are deserted quarters for inmates, two big workshops and then the administrative block. On the left there is a roofed dining hall without walls, with a deplorable kitchen, then the quarters being used by inmates and two storage rooms. Thirty to forty metres

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[710]Section 96 of the Juveniles Act; see also Prisons Act Cap. 134.

from the administrative block is a club-house for the staff, which used to be a canteen for the Reformatory, and further on is the house of the Officer-In-Charge. To the left about thirty-five metres from the club-house there is a football pitch, and next to it there is Katombora Basic School for the children of the staff and neighbouring villages. Thereafter come the staff houses. To the right there is a clinic about 150 to 200 metres from the pitch, and a similar distance beyond the clinic there is an open prison for adult prisoners. The clinic also serves the surrounding villages.

The open air prison was established in the 1970s. The adult prisoners mix with the juveniles at will. The only distinguishing feature is that adult prisoners wear white cotton uniforms, while Reformatory inmates wear khaki uniforms. They mix and move together in the bush and to the Zambezi river. As pointed out by the Christian counsellor, they smoke dagga together and the adults exert bad influences on the juveniles. Although the adult prisoners are considered to be trustworthy, their presence and influence on the juveniles are detrimental to the whole idea of juvenile justice. As seen in Chapter One, juvenile correctional institutions were established for fear of contamination from adult offenders; separation of juveniles from adults was seen as the main basis of juvenile justice and the most important aspect of rehabilitative measures.

There are no beds at the reformatory and inmates are given only one blanket each; in the cold season they are forced to sleep in pairs or even threes. This encourages homosexual activities, although this aspect was not pursued in this study.

It is difficult to investigate such activity as generally it is not heard of in Zambia and those who practice it never come in the open. This really needs research of its own.

The Reformatory has no cook; the inmates do the cooking. The sad aspect at this institution is that there are no plates and no wooden tables; some inmates eat from the concrete floors on to which food is poured, others eat from small tins. The diet is usually nshima with beans. Inmates are reduced from being human beings to animals. There can be little doubt that the inmates are treated in violation of the Constitution for this treatment is surely inhuman and degrading.[711] This place does not deserve to be called a Reformatory.

10:2:2:2 Recreational facilities

There are no recreational facilities and inmates are always in a state of boredom. The institution is situated near the big river where inmates were supposed to have well-organised water sporting activities, especially in the hot season, and it is an ideal place for camping. It is believed that was the original reason for siting it there, to enjoy the fun of a wilderness, which is good for children. However, this should not be a surprising state of affairs, as it is not a Zambian way of life

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[711]Art. 15 of the Constitution Act 1991, provides:
No person shall be subjected to torture, or to inhuman or degrading punishment or other like treatment.
Nobody tries to correct the situation, because the Chief Justice acknowledged witnessing such state of affairs when he paid a surprise visit to the Reformatory; and the Chairman of the After Care Committee also acknowleged the bad state of Katombora Reformatory even if his Committee is responsible to ensure that good quality of food is given to inmates.

to go out on camping or picnic trips, visiting game parks or mountain climbing. It is only well-to-do families, especially senior executives of parastal companies, who at times go on holidays to the Luangwa National Parks or other places of interest.

However, it seemed that most inmates really needed some psychiatric assistance as they appeared aggressive, paying no attention when interviewed. Others appeared depressed and worried and kept to themselves. The inmates indicated that the staff do not allow them to write or post letters to their parents. Few members of staff showed interest in the study, and two of them even failed to fill the questionnare. The Principal referred all queries to the social case officer. The whole atmosphere was that of a prison, wanting not to disclose anything to the outside world; all operations were treated as secret. Bullying is very live and one inmate was found with his fractured leg in plaster as a result of a beating from his fellow inmate.

10:3 Aspects of Treatment Programmes

The purpose of treatment programmes can only be understood by assessing what the correctional institution perceives as its goals, and this can be done by examining the conception of the organisation's aims held by those responsible for directing it. The leaders' conception of aim or purpose is usually expressed in their views of the organisation's desired end product. The organisation will work with the ideal and the practical requirements of that purpose; and these may limit its operations.

Street (1965) noted that staff of a correctional institution may express their views of the organisation's aims as:

> (i) to keep the inmates in safe custody in order to protect the society, or
> (ii) to bring about desirable changes in forms of social behaviour so that on release into the community the inmates will not again engage in delinquent behaviour.[712]

The second aim implies a deliberate and planned programme of action that offers academic and vocational training, recreation, work programmes and moral training which are related to and co-ordinated with the institution's needs for the maintenance of order. Such programmes must also provide medical, social and spiritual guidance to the inmates. Techniques of psychotherapy applied require one-to-one relationships; psychiatrists and psychologists should be employed as counsellors. Only when an institution provides such activities can it be regarded as offering an adequate programme of treatment.

The task of protecting society is custody-oriented, the emphasis being placed on the need to protect the community by containing the inmates within the institution. However, in custody-oriented institutions academic and vocational training could be offered with emphasis on the modern view of the roles of man as a breadwinner. As Street (1965) states:

> ...at custodial extreme, major emphasis is placed on the need to protect the community by containing the

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[712]D. Street (1965), "The Inmate Group in Custodial and Treatment Settings", American Sociological Review. 30, 40 - 55; B. Berk (166), "Organisational Goals and Inmate Organisation", American Journal of Sociology. 71, 522 - 34, and for more information on correctional institutions see R. C. Sarri and R. D. Vinter (1965), "Group Treatment Strategies in Juvenile Correctional Programs", Crime and Delinquency. Vol. II, 326 - 40; R. V. G. Clarke (1966), "Approved School Boy Absconders and Corporal Punishment", British Journal of Criminology. Vol. 6, 364.

> inmates...The inmates are seen as simple, similar, and relatively unchangeable creatures who require simple, routine, conventional handling...[713]

Hence in such an institution training would involve home craft, home upkeep, gardening, carpentry, brickwork and counselling on family problems. The activities would not include specialised areas such as psychiatric and psychological problems.

Dunham (1958) ranked these different measures in order of their desirability. Thus, the pure treatment disposition includes referrals and services to psychiatric clinics, mental hospitals, foster homes, residential schools and community programmes. A second treatment disposition involves placing committed juveniles under probationary supervision or in special recreational, educational or correctional programmes. The third, least desirable treatment disposition, involves committing juvenile offenders to correctional institutions.[714]

It is necessary to examine the operation of correctional institutions in order to see whether changes of attitudes and of the law in western countries has had any influence or impact on juvenile justice in Zambia, in particular on rehabilitative measures. It is on this basis that the correctional officials' attitudes towards the control of delinquent behaviour in general is assessed. It is necessary to ascertain whether they regard child misconduct as a traditional crime, *chisampi* (rudeness or unruly behaviour) as discussed in Chapter Three, or in the modern western understanding of a delinquent child as being in need of

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[713]D. Street (1965) op. cit., p. 43.

[714]H. W. Dunham (1958), "The Juvenile Court: Contradictory Orientation in Processing of Offenders," Law and Contemporary Problems, 23, 3, 508 - 527.

care and whether such misconduct must be viewed in the context of certain detrimental environmental factors (family break-down and other socio-economic factors) which may have influenced the child's behaviour.

10:3:1 Correctional staff's views on the treatment of juveniles

A questionnaire was administered to the correctional staff at Katombora Reformatory and at Nakambala Approved School, to collect information on the aspects of delinquent behaviour in general, and in particular, on how such behaviour is to be controlled. Specifically, I wanted to know the officers' views on the treatment of juvenile offenders.

This study shows that correctional staff at both institutions regard their social responsibilty for the protection of society as being based on the restraint and control of juvenile offenders. They clearly recognise that the staff's aim is the isolation of juvenile offenders from society. The primary aim is control with, as a secondary aim, through effective supervision to help the inmates recognise their mistakes.

As Tables 10:1 (a) and (b) show, strictness and firmness are seen by officers as pre-requisites for achieving the reformation of juvenile offenders. This is so because juvenile offenders are regarded as a unique class of children who could be dangerous to society and even to the officers. In such cases the primary concern may not be treatment but punishment, to serve as a deterrent to juvenile crime. There was general approval of the idea that society should pursue tougher policies towards

offenders than it has done if it is going to reduce delinquent tendencies and juvenile crime; 50% and 56% were of that view at the Reformatory and Approved School respectively.

It is interesting to note that 58% of the staff were of the view that genuine friendship between officers and offenders is vital before inmates respond favourably to the Reformatory's aim; and at the Approved School 66% held the same view. But at the same time the staff felt it was important that they be firm with the inmates. It is understandable that the staff at the Reformatory would have a custody-orientation, as they are prison warders; but the staff at the Approved School are expected to use interpersonal relationships effectively when dealing with inmates.

Table 10:1 (a)

CORRECTIONAL STAFF OPINIONS ON DELINQUENT BEHAVIOUR -REFORMATORY

(Percentages of respondents)

Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	33	42	00	17	08
B	33	17	00	33	17
C	00	58	17	12	08
D	25	25	08	42	00
E	17	58	08	17	00

N.B The statements posed were:

A. Understanding the peculiar behaviour of delinquents may be important in helping juvenile offenders, but what is needed is strictness and firmness.

B. Unless you take precautions a delinquent may attack you.

C. Most juvenile offenders will respond favourably to genuine friendship.

D. Society should be much tougher than it has been if it is going to reduce delinquent tendencies.

E. Firmness will help inmates to learn right from wrong.

Table 10:1 (b)

CORRECTIONAL STAFF OPINIONS ON DELINQUENT BEHAVIOUR -APPROVED SCHOOL.

(Percentages of respondents)

Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	22	33	00	22	22
B	11	45	00	33	11
C	22	44	22	12	00
D	12	44	22	11	11
E	00	34	00	44	22

N.B The same statements posed above were used in this table.

It is interesting to note Table 10:1 (b) shows that at the Approved School, where social welfare officers are employed, twenty-two and twelve percent respectively were "not sure" or "disagreed" that most offenders would respond favourably to genuine friendship.

This shows that perceptions of their tasks held by the staffs of the juvenile correctional institutions are based on the assumptions that juvenile crime is reduced by the fear of punishment and that strict law enforcement supposedly prevents crime. This theme is reflected in the failure to adapt traditional practices and values in correctional institutions.

It also raises the question of whether the social workers really understand the objectives of the Juveniles Act, and the aims of an Approved School. In Table 10:1 (b) it is seen that 56% of social workers agreed to the proposition that inmates are dangerous and must be handled with care. This is contrary to the social case-work's psycho-social techniques, which are designed to promote personality growth and child guidance. It is doubtful whether the social workers in this regard would consider rehabilitative measures important.

10:3:2 Correctional staffs' attitudes towards traditional practices

As discussed in Chapter One, family background and environmental surrounding are vital influences on the child's personality; once such environmental circumstances have broken down the family and child need to be helped through counselling. This means that the child socialization process is conducive to the development of the individual personality. The parents of juveniles are viewed as providing care and emotional support. This was emphasised among the informants from both institutions. The majority considered that parents could play a vital role in helping juvenile offenders, as it was considered that offenders had violated the traditional ethic of paying respect to elders. At the Reformatory 75% of respondents considered that it was disobedience to parents that had led the juvenile offenders to be in trouble with the law. This reflects the authoritative view of prison warders, which is supported by 44% of social workers

at the Approved School.

In Table 10:2 (a) it is shown that 84% of the respondents at the Reformatory agreed that parents or guardians should play major roles in assisting juvenile offenders to reform; and in Table 10:2 (b) at the Approved School all agreed with this. But these responses do not indicate precisely what role could be played by parents, as the proposition was wide: when a specific role was mentioned of employing traditional elders as counsellors in juvenile justice system, the responses changed.

However, Tables 10:2 (a) and (b) show strong disapproval of introducing traditional practices and values in the treatment programmes; officers were opposed to the employment of traditional elders in correctional institutions as counsellors or in any other capacity in the system of juvenile justice.

Table 10:2 (a)

CORRECTIONAL STAFF OPINIONS ON THE ROLE OF TRADITIONAL PRACTICES (REFORMATORY)

(percentages of respondents)

Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	42	42	00	16	00
B	25	50	00	25	00
C	00	25	08	42	25

N.B The figures are in percentage, and statements posed were:

A. Parents or guardians are to play a major role in helping juvenile offenders to reform.

B. The trouble with juvenile offenders is that they have not learned to treat adults with respect and obedience.

C. Traditional elders should be in Institutions like this one as counsellors.[715]

The responses of the correctional officials reflect the traditional view of child misconduct as *chisampi* (unruly and

[715]Traditional elders were specified here because other persons or officials are at times involved in correctional institutions. For example, the police have officers who sit as members of administrative committees at the two institutions; and religious organisations are free to meet inmates or hold prayers at the institutions.

rebellous behaviour), the usual remedy for which is corporal punishment within the family. They then regard juvenile offenders as rebels who must be dealt with punitively. Parents should not be formally involved in the system of juvenile justice because they have failed to teach their children good manners and are not expected to do any better if brought into the system. Their views are in conflict with the principles of the Act, the aims of which are to assist offenders to reform, as they are regarded as being children in need of care. As this conflict persists it is not possible for the correctional institutions to offer adequate rehabilitative measures, and some elements which are vital to rehabilitation are not encouraged. For example, inmates are denied home visits which encourage family-ties (discussed later in the chapter).

Table 10:2 (b)

CORRECTIONAL STAFF OPINIONS ON THE ROLE OF TRADITIONAL ELDERS (APPROVED SCH.)

(percentages of respondents)

Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	56	44	00	00	00
B	33	11	00	56	00
C	00	33	00	45	22

N.B The figures are in percentages, and the same statements in Table 10:2 (a) above were posed.

As shown in Chapter Two, traditionally in all Zambian communities children are expected to show respect to elders and must kneel down while talking to an adult. This practice still exists: wherever I went during the fieldwork, children knelt down while greeting me or on giving me a stool or chair. This was also done when setting food on the table. But in urban areas such good manners are not generally practised; this is because of the issues relating to equality and the recognition of children's rights that are emerging, while at the same time traditional values relating to child socialization, especially those involving respectful obedience to adults, persist. This fact is

recognised by correctional staff. Sharp conflicts occur where the juvenile offender is brought through the criminal process. As Tables 10:2 (a) and (b) show, traditional elders who are considered to be conversant with traditional practices are not expected to influence the modern system of dealing with juveniles, even if it is considered that most parents can make a vital contribution to the rehabilitation of offenders. When asked to specify the role which parents should play, the usual answer was that parents are to visit inmates at any time and to provide them with soap, sugar, clothing and others essentals. The traditional elders are viewed as practitioners in the Local Courts where customary law is applicable, and not in the juvenile justice system.

10:3:3 The maintenance of family ties

For rehabilitation to be achieved family ties should be maintained. As stated above, correctional officials regard the visiting of inmates by relatives as an important aspect that contributes to reformation. The inmates when visited feel they are loved and expected to return to their homes with a clear vision of being accepted in society.

But visits are not the only form of family contact that can have an effect on the rehabilitation of offenders. The Juveniles Act provides for home visits on leave of absence:

> (i) Section 84:
> The Commissioner for Juvenile Welfare may grant leave of absence to any person detained in an Approved School within Zambia for such periods and on such conditions as may be prescribed and may at any time revoke such leave and direct such person to return to

his school.[716]
(ii) Section 99:
The Chief Inspector of Reformatories may grant leave of absence to any person detained in a Reformatory for such periods and on such conditions as he thinks fit....[717]

The period of leave is not stipulated in the Act, but it was found that inmates are allowed home visits for 28 days. This prepares them for re-integration in society. Inmates at both institutions are entitled only to one home visit for 28 days, and also to a compassionate leave on special occasions. For example, to attend a funeral of his mother or father (not any other relation); and this depends where such sorrowful event takes place: if it is in a distant remote area the leave would not be granted. Inmates at the Reformatory are entitled to receive one visit in a month from three persons and such visit must be for 30 minutes, and those individuals visiting must be approved by the staff.[718] Inmates at the Reformatory are entitled to write one letter in a week to approved persons and to receive letters as often as authority permits. However, at the Approved School the frequency and duration of visits are not specified; but inmates may write letters at least once in a month.[719]

As noted above the Reformatory is remotely situated over 60 kilometres from the town of Livingstone. It is difficult for parents to visit as there is no bus service and travel within

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[716]The Juveniles Act.

[717]ibid., The Chief Inspector of Reformatories is the Commissioner of Prisons, appointed under the Prisons Act, Cap. 134.

[718]Rule 39 (c) of the Reformatory Schools Rules, Juveniles Act.

[719]Rule 11 (1) (2) of Approved Schools Rules, Juveniles Act.

Zambia is expensive.

The Commissioner for Juvenile Welfare and the Chief Inspector of Reformatories have respectively delegated their powers under the quoted sections to visiting committees appointed by them at each institution. These committees are supposed to meet at least monthly to assess progress reports of inmates. It therefore depends on the discretion of these committees to decide whether an inmate can be allowed a home visit, after examining his progress reports. In practice the Commissioner for Juvenile Welfare and the Chief Inspector of Reformatories continue to grant leave of absence, because the visiting committees only recommend the granting of leave and the final decision is made by the Commissioner or Chief Inspector of Reformatories. The visiting committees are not really active and do not meet regularly. When correctional officers were asked what percentage of inmates were given home visits in the last six months, they generally indicated twenty or more percent and gave an impression that inmates are often granted home visits.

Table 10:3

PERCENTAGE OF INMATES GIVEN HOME VISITS

(Throughout their detention)

Institution	Yes	No
Reformatory	00	100
Approved school	21	79

Table 10:3 shows that the facts contradict the impression given by the officers. A juvenile offender sent to the Reformatory apparently has no chance of seeing or visiting his parents for a period of two years although there is no apparent reason for this. In this study inmates at the reformatory in April 1993 had been in detention from September 1991, and none of them had been granted a home visit, while at the Approved School in February 1993, 79 percent had not been granted a home visit, one inmate having been in detention since April 1990.

This means that the maintenance of family ties and concern for re-integration is given little weight at these institutions; the emphasis is on retaining inmates within the costodial regime. The maintenance of family ties is one of the elements that may significantly contribute to the rehabilitation of juvenile offenders, as the offenders are encouraged to be reconciled with their parents, to show remorse for what has happened and to acknowledge the shame which they have brought on their families.

Leave of absence, if properly planned and conducted, could be an important rehabilitative measure. It could form part of a training programme which encourages personal and social responsibility and promotes inmates' re-absorption into their home communities. The correctional officials failed to recognise this aspect.

This contributes to the punitive character of reformatory and approved school orders, because juvenile offenders remain in detention for longer periods even compared to adult criminals who serve shorter periods in prison for similar offences. For example, a juvenile sent to one of these correctional institutions for theft will be in custody for a longer period, on the pretext of rehabilitation,[720] than an adult convicted of the same offence and sentenced to six months imprisonment, who will remain in custody for four months only, after remission. While an offender at the Reformatory or Approved School is unable to speculate on the exact duration of detention, as his release depends on the discretion of the authority. In short, approved school orders and reformatory orders, although they can run for up to three and four years respectively, are effectively indeterminate sentences; based on the capacity to predict whether the offender has reformed or not.

10:4 The Treatment of inmates at the Approved School

The Approved School should provide sufficient facilities for

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[720]I have used the word pretext because the courses offered are not adequate, as will be shown later in the Chapter.

the education and training of inmates. It is under-utilized, with accommodation for 75 inmates but only 24 in residence at the time of this study. It is difficult to give a plausible explanation, except on the speculation that the courts prefer to order caning. Another reason may be that magistrates lack confidence in the effectiveness of the Approved School, especially if they are aware of its operational difficulties. It may also be that they lack theoretical understanding of juvenile justice, as discussed in Chapter Nine.

In this section the examination will be of the operational features of the Approved School, including its staff, visiting committee, educational and training facilities and other factors related to rehabilitative measures.

10:4:1 Staff

The staff of the Approved School are expected to be specially selected as much for their ability to deal with juvenile delinquents as for their technical or educational qualifications. It has been stated earlier in the Chapter that the aim of rehabilitation requires well co-ordinated training programmes which not only emphasize academic and vocational activities but also assist inmates to overcome their psychological and psychiatric problems. Therefore an individualistic approach to treatment is essential and the correctional staff must have special skills. It was impossible to ascertain the normal establishment of the Approved School, but members of staff met on the visit gave the impression of a normal

situation existing at the school. Six of the ten members of staff are not trained in social work or in juvenile justice.

The following staff were found at the Approved School: the Principal and Deputy Principal, both trained social workers; two social workers; one agricultural instructor. one remedial teacher; one care-taker, who was formerly employed as a cook; three clerical officers who perform duties of social workers and have no basic training in social work.

This staff establishment is insufficient even for the present number of inmates; more staff members are required for the institution to function well and effectively. When it was opened it had three teachers and boys competed well against normal schools, as in 1963 10 boys attained standard IV (Grade VI) certificates.[721] In 1964 there was an active Scout Troop at the School led by a trained social welfare organiser. The Deputy Principal suggested that the following additional staff members are needed:[722] three more social workers; three more teachers; one brickwork instructor (the one who was there retired in 1988 and has been not replaced); one carpentry and joinery instructor; one metal fabricator instructor; one tailoring instructor; one psychologist; one cook; and one store-man to deal with stores and other school requisites.

These additions would be justified, but not for present number of inmates. In particular, psychologically or/and

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[721]Northern Rhodesia Annual Reports of Department of Social Welfare and Probation Services 1963, p. 10.

[722]Personal interview with Mrs. M. B. Muttendango, the Deputy Principal on 22 February 1993; the Principal was away at a meeting in Lusaka at the time of the visit.

psychiatrically trained social workers are needed to investigate inmates' social problems and pave the way for the introduction of child guidance clinics. Recreational facilities are vital for the psychological well-being of inmates and a sports-teacher is needed.

10:4:2 The visiting committee

The Act provides for the establishment of a visiting committee at the School, to advise the Principal:

> The Commissioner shall appoint at least four persons to be members of a visiting committee. Such persons shall reside within a reasonable distance of the school and shall act in an advisory capacity to the Principal....[723]

Its main function is to consider applications for home visits and to make recommendations for release on licence. This Committee comprises: a police officer, the Officer-in-charge of Mazabuka Police Station or one delegated by him; the Officer-in-charge of Mazabuka Prison; a Local councillor; and two members of the public.

The Deputy Principal and any other member of staff appointed by the Principal sit as ex-officio members. As pointed out earlier while discussing home visits, this Committee is expected to sit once a month. The minutes of the meetings and recommendation made therein are transmitted to the Commissioner for Juvenile Welfare, for his action. The Committee is also expected to inspect the school and assess its programmes and other facilities, and to

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[723]Rule 5 (1) of the Approved School Rules made by a Minister responsible of the Ministry of Social Services, in accordance with section 90 of the Juveniles Act.

make observations if possible to the Principal and finally to the Commissioner. A member of staff acts as secretary to the Committee. The Rules provide that the Commissioner will appoint members of the Visiting Committee, but in practice the Principal selects a prospective member and obtains the Commissioner's confirmation.

The Rules also require committee members to be residents within reach of the School; this restricts the selection as many qualified and experienced persons reside far from the School. The academic and other researchers with personal skills in juvenile justice are excluded from consideration as members of this Committee, to which they could offer invaluable assistance in the form of advice.

Table 10:3 shows that the Committee seldom exercises its power to grant 28 days leave of absence. This may be because law enforcement officers outnumber the members of public on the Committee and those members of public have been choosen by the Principal. It is likely that he would choose those who favour his views as to the aims of the School, emphasising the importance of custody to protect the public.

The power of release of inmates on licence is exercised solely by the Commissioner for Juvenile Welfare, but his decision is usually based on the recommendation of the advisory Committee. The Committee takes into consideration the School's progress reports on each inmate and consider an application only after the inmate has been in detention for a period of two years.

10:4:3 Educational and training programmes

On the principles which apply in many countries, institutions such as these should have screening and diagnosis centres, which would assess whether a particular inmate would reform if given a certain type of training. In practice there is no such centre and inmates are not screened at all; they are obliged to take the training courses offered by the institution. This again ignores a very relevant aspect of rehabilitation.

Full educational and training programmes should be the basis of the main activities at the Approved School. As shown above, however, there are no instructors in brickwork, carpentry and tailoring so that such programmes canot be offered.

The agricultural instructor teaches inmates gardening and when the School was visited they were busy working in the school maize field, cultivating and weeding. In their spare time they worked in their individual pieces of land, gardening. They raise enough money by selling vegetables to marketeers who come to the School for the same, to buy their essentials (sugar, bread and soap). However, the experience they gain in gardening is never used in their future life because, as shown in Chapter Six, the majority are from urban areas and squatter townships where there are no backyards or spaces for gardening. Therefore the training offered does not prepare them to be useful citizens, but to serve their time while in custody. When inmates were asked to state their preferred occupation, the majority of them at the School wished to be mechanics, a trade in which training is not offered.

For academic lessons one inmate goes to Namulonga, a local primary school, for grade seven tuition; he raises the money needed for his uniform by doing piece-work for members of the staff. During the interview with the Deputy Principal, this boy entered the office and informed the Deputy Principal that he had been sent from school because he had no socks. The Deputy Principal told him that he should go and finish weeding in her field and then he would be given money to buy a pair of socks. The inmates are supposed to be offered free primary education to the level of Grade 7 and are not required to buy their own uniforms. As the Approved School Rules provide:

> Lower primary education shall be afforded to all pupils in a school and further education may be provided for individual pupils according to their age, aptitude and capacity.[724] [Emphasissupplied]

The problem of obtaining money for school requisites is one of the factors inmates would have faced at their homes, as many parents are unable to afford uniforms for them; as shown in Chapter Six, 25% of inmates had completed Grade 4 only. Juveniles sent to institutions are supposed to receive substitute parental care and assistance from officials, but in practice that is not the case and they continue with lives of deprivation. One inmate, designated to start in grade nine at a local secondary school, could not do so because lacked a uniform.

The other inmates are put in one class, regardless of the age and grade, and are taught by one teacher. The combination of grade one and higher grade pupils (grades two to five) together was said to be possible because the remedial teacher was trained

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[724]Ibid., Rule 8 (1).

for that kind of teaching. However, this is far from adequate and appears intended to keep inmates occupied and reduce the boredom which exists at this institution. A meaningful education which prepare a child for his future cannot be secured in these conditions. At the time of the visit no classes were being held, but inmates were working in the school maize fields and clearing the school surroundings. It was not a school holiday, but through lack of a well-planned programme of tuition: the teacher apparently assembles the inmates in class when he wishes to.

10:4:4 Case-work services

Case-work services are provided by two social workers who meet individual inmates at least once a week, either formally or informally. They discuss issues relating to the inmate's life in an effort to correct and rehabilitate him. Considering that there are only two officers for 24 inmates, it is doubtful whether such meetings can have sufficient impact on the inmates. The counselling sessions are supposed to be detailed with adequate time to make them meaningful for the inmates, as a means of inculcating self-discipline, which forms an essential part of rehabilitation. But this could only be done adequately if the institution had the services of qualified and experienced psychologists and psychiatrists. There was no session on the visit due to the fact that at that time the inmates were doing manual work and working in the maize field.

In short, the fact remains that there is a lack of a well-planned programme of action at the School. In 1964 there were

plans to expand the School to accommodate 100 inmates, but this has not been achieved and the only move remaining is to close the institution because it has failed to keep to its own and the public's expectation of providing training and reforming offenders.

10:5 The Treatment of Inmates at the Reformatory

The Reformatory is established under section 91 of the Juveniles Act and, as noted with regard to the Approved School, the reformatories in nearby countries are authorised to detain juvenile offenders for Zambia also.[725] The institution is under-utilized; although it has accommodation for 120, it has only 52 inmates. It appears that magistrates are reluctant to send juveniles there, perhaps because of its bad state and the possibility that offenders may turn into hardened criminals. It has been remarked:

> Inmates are badly ill-treated by warders, and it is not a reformatory but a juvenile prison, and must be abolished.[726]

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[725]Section 114 (1) of the Juveniles Act, provides:

> It shall be lawful for the President to enter into any agreement with the Government of any scheduled territory, on such terms and conditions as he think fit, for the reception into the scheduled territory and detention in any reformatory, approved school...therein of any person who has been ordered by a court under the provisions of this Act to be detained in a reformatory, approved school....

While subsection two of the same section, provides:

> The agreement set forth in the Third Schedule shall be deemed to have been lawfully entered into under the powers conferred by this section.

[726]Personal interview with Mr Mebeelo Kalima, a Senior resident magistrate stationed at Mongu, on 22nd February 1993.

This statement is in line with the argument presented in this Chapter, that the juvenile correctional institutions are failing adequately to provide inmates with the intended treatment programmes; their operations fall far below those required in a reformatory or approved school.

10:5:1 Staff

There are about twenty members of staff at the Reformatory, of whom only thirteen are wholly involved in the running of the institution. Except for two they are all trained prison warders. However, some of these are involved in purported instructional programmes, as follows:

(i) two tailoring instructors;

(ii) two carpentry instructors;

(iii) two agricultural instructors;

(iv) one plumbing instructor;

(v) one teacher;

(vi) one Christian counsellor/teacher; and

(vii) one social case-worker.

The Principal is a senior prison warder, holding the rank of Assistant Superintendent.[727]

Five of the instructors have completed Grade Twelve education plus college training in a relevant field; one holds a diploma in adult education. The Christian counsellor is a

[727]He was a reserved man, who regarded the operations of the Reformatory as secrets which could not be discussed with outsiders; he refused a detailed interview and referred all questions to the social case-worker.

junior secondary school trained teacher, while the social case worker has a diploma in social work. The rest are Grade Nine school leavers.

There are no specially trained psychologists and psychiatrists at the Reformatory, and inmates needing some specialised attention are never assisted; matters that require knowledge and insight derived from a study of human behaviour, such as psychology and sociology, are not taken into account when dealing with each inmate. Hence inmates with emotional problems are not assisted in any way.

10:5:2 The Reformatory Board

There is a Southern Province Reformatory Board constituted under the provisions of the Juveniles Act.[728] The Board has powers to inspect the cells at the reformatory and the quality of food offered to inmates. It is headed by the Permanent Secretary of the Province, and other members are mostly heads of government departments in the Province(i.e Provincial Education Officer, Provincial Youth Development Officer, District Council Secretary, Police Officer Commanding Southern Division, Representative of Namwianga Mission and Assistant Director of Social Welfare, Lusaka). Members of the staff attend Board meetings. The minutes of Board Meeting No. 3/92/4 state:

> ...Board was informed that the material for renovations of the juveniles' dormitories and kitchen, had already been purchased and delivered to the

[728]Section 95 (3).

school.[729]

At the time of study the renovations were in progress and 2 big pots were fixed in the kitchen. The Board was not concerned with food and kitchen utensils which were in a bad state, because it had not discussed such matters in its meetings.

The Board is entrusted to appoint an After Care Committee which has responsibility for matters relating to the release, employment and supervision of inmates. The After Care Committee also comprises nine members from various government departments. This Committee has decided that inmates must be released after two years of confinement, to reduce tension between new-comers and existing inmates. The Chair of the Committee stated that the released inmates disappear "in thin air and avoid any contacts with social welfare officers for fear of being taken back to the Reformatory, as prison warders are feared and contribute to the running away of lads".[730] This means that the purpose of being released on licence is defeated because inmates are not being counselled after their release.

The practice of fixing a two-year confinement period also defeats the underlying principle of treatment that an inmate may be released on the basis of having responded favourably to a treatment plan of action. This practice is within the prison's remission of term sentences applicable to adults. The treatment ideal is based on indeterminacy of sentence, so that an individual could be released on signs of reformation at any time

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[729]Southern Province Reformatory Board Fourth Meeting, held on Friday 18th December 1992.

[730]Personal interview with Mr. M. Mubbunu, the Chairman of the Committee, on 23rd April 1993.

before the expiry of the maximum four-year period. Such an individual once released on licence is supposed to have some counselling sessions with a social case worker in the district where he resides. But with the adopted practice of release after two-year detention in the Reformatory, counselling after release is not possible, and is not within the spirit of the rehabilitative ideal. Therefore, the Reformatory now operates on the principles of a prison; to detain inmates and have them serve their time, and have nothing to do with them after their release.

This practice could be attributed to the selection as members of the Board, which in turn appoints members of the After Care Committee, of civil servants holding specific posts in government departments, without an interest in or knowledge of juvenile justice, persons who have no understanding of the role of a reformatory, but might be guided solely by cultural values about deviant behaviour, and who consider punishment is appropriate for *sichisampi* (rude boys). In such cases the Reformatory is a place for punishment.

This contradicts the aim of the Reformatory, which is treatment focusing on the offender needing help from the society. Therefore, if these bodies (the Board and the After Care Committee) are guided by some cultural values in discharging their responsibility of releasing and supervising inmates, the result would be to disregard the principles of treatment, as these are alien to the members of these bodies. Members of these bodies must have interest and knowledge relating to the functions of the Reformatory, if institutional care is to succeed and the inmates' well-being to be preserved. Appointment should be made

on voluntary basis application.

10:5:3 Treatment programmes

Members of staff generally stated that the following programmes are being offered: carpentry; tailoring; agriculture; plumbing; and academic.

There are nine inmates taking carpentry. The section is ill-equipped as it has only three planes and six saws. This means inmates have to share the equipment. The emphasis is on the practical side and no theory is taught to the inmates; the reason advanced for this is that they are of a low educational levels, making theoretical study difficult. There are no trade tests held at the end of the programme.

The tailoring section has five machines and twenty rolls of cotton material. There are five boys under this programme. The training does not include theory or note-taking. The instructors cut the material and show the lads how to sew. They only sew their uniforms and there was nothing else which was sewn by the inmates. The instructors stated that they still need more machines and other equipment.

The plumbing training is offered to a few inmates who are frequently called upon to work on blocked drains at the Reformatory. The emphasis is to have persons working on the drainage system at the institution, but not to train inmates to be able to get jobs in future. The section lacks adequate equipment.

Agricultural training (gardening) is the main programme

which the school emphasises. Every inmate on admission will be assigned to gardening for a period of six months, before he may opt for another section. There are a number of agricultural activities at the school (i.e goat and poultry keeping, vegetable growing, fish rearing and horticulture). The school has a big area of fish ponds along the Zambezi river and various vegetables are also grown there. There could be seen lying all over the place broken down farming equipment (tractors and cultivators) which were used in colonial days and the early days of independence. In 1964 the Reformatory was the leading farming centre in the District. The Prison Annual Report (1964) notes:

> The School exhibited its produce at the Livingstone show and gained 28 prizes. It was also awarded the David Livingstone Cup for winning the most prizes.[731]

Farming was one of the chief occupations at the Reformatory before and immediately after independence; it is supposed to have now increased its farming activities with modern equipment. But this is not the case the cattle herd and pigs which had increased in 1964 are no longer there.

A few inmates are allowed to mix with the children of members of staff at Katombora basic school. These attend academic lessons in low grades (Grades 4, 5, 6, and 7). At the time of the visit there was a suggestion that inmates should to be excluded from that school lest they harmfully influence other children. This meant that when school opened in May 1993, inmates were to be taught separately at the Reformatory itself instead of going to the Basic School which in situated in the camp. This is against the spirit of integration of inmates with the local

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[731] Zambia Prison Annual Reports, (1964), p. 11.

community, so that they could feel part of the society.

The social case-worker stated that he conducted personal counselling at various times, and these were with each of the individual inmates. It is hardly possible for one officer to carry out a well-planned programme of treatment that would be beneficial to 52 inmates. This problem has been discussed by the Board:

> Arising from minutes SPRB/5/92/1 the Board was informed that the Department of Social Welfare would second two additional staff early 1993 as soon as the social workers were recruited.[732]

By 2nd June 1993, no new officers had been sent and the Director of Social Services indicated that the situation would remain unchanged for some time to come. This means that there would be no proper counselling programmes at the reformatory, and this is a vital form of treatment which inmates are denied.

The Christian counsellor has stated that religious counselling has successfully converted inmates into responsible people, as previously the boys at the reformatory:

> ...ate snakes like green mamba and pythons which made them wild and courageous...this made them beat warders....my persistent counselling has made them divert from dagga (Indian hemp) smoking, eating snakes, stealing and beating warders to attending classes.[733]

This shows that more counselling officers are needed, and also specially trained psychiatrists, at this institution. If what was stated by the Christian counsellor is true, immediate action is needed, as the mental status of inmates is questionable. They need psychological and psychiatric assistance.

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[732]Minutes of Board Meeting op. cit., Para. 6.

[733]Personal interview with Ridon Sikalima.

During the visit no inmates were following any treatment programme, except agricultural activities and cleaning the School premises. In 1964 some inmates were employed in other trades, such as basket-making and shoe-making, which, on release from the Reformatory, they would have been able to continue on a self-employment basis. This should be the emphasis of training in institutional care.

The Boy Scout Troop which was active at this Reformatory during the colonial era is no longer heard of and there are no housemasters who are supposed to take the inmates out for weekend fire camps.

10:6 The Role of the Department of Social Services

As from January 1992 the statutory functions under the Juveniles Act and the Probation of Offenders Act were transferred to the Department of Child Development of the Ministry of Sport, Youth and Child Develoment.[734] However, during the time of this study the Department of Social Services, under the Ministry of Community Development and Social Services, continued to carry out these statutory functions as before.[735] Ms. K. Mutti, the Chief Child Care Welfare Officer of the Department of Child Development, stated that it was not possible for them to carry out functions under the Juveniles Act and Probation of Offenders Act because they did not have manpower and infrastructure for that type of work. The social welfare officers who are trained

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[734]Government Gazette No. 3925, dated 24th January 1992.

[735]Government Gazettee No 39251 24th January 1992.

for that work are still under the Department of Social Welfare Services. She also informed me that there was a Joint Committee set up to work out how these statutory functions are to be carried out. These functions cover supervisory services and probation services (see Section 10 of Juveniles Act and Section 3 of Probation of Offenders).

Efforts made to seek clarification from the Ministers of Community and Social Services and of Youth, Sports and Child Develoment, proved fruitless. Mrs. Helen Matanda, Permanent Secretary of Community and Social Services, stated that it was not possible at that time to give any reason for such a move as the Ministry was awaiting a report from the Committee. However, the move seems to be misconceived for, as discussed in Chapter Five, probation services can be effectively carried out by Social Services Department as long as it is staffed with trained personnel. Even if these statutory functions are transferred to the Child Welfare Department it will not solve anything, if the Department lacks trained personnel as Ms. Mutti indicated.

Social workers are supposed to be in the forefront of juvenile crime prevention and control; and social workers in the Department of Social Services are appointed as Probation Officers and Juveniles Inspectors to perform the statutory functions conferred by the Probation of Offenders Act and the Juveniles Act respectively.[736]

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[736]Section 15 of Probation of Offenders Act, and section 6 of the Juveniles Act.

10:6:1 Social workers

As far as dealing with juvenile offenders is concerned, social welfare officers are usually brought into the juvenile justice system as law enforcement agents as they get cases referred to them for the purpose of conducting social investigations and submitting reports and recommendations to the courts.[737] However, courts are not bound by such recommendations, although they are nevertheless assisted and guided in deciding on the most appropriate dispositions to be handed down. Depending on the decision or order made by the courts, social welfare officers may be called upon to implement or execute such decisions or orders.

In this study it was found that over 90% of the inmates at Katombora Reformatory had not been interviewed by social welfare officers, as their files did not contain social investigation reports; where reports were submitted, especially at the Approved School and Insakwe Probation Hostel, they were based on inmates' stories, as parents or guardians had not been interviewed. This shows how inefficiently the Department operates and the general misconception of the importance of such reports, as perceived by social workers. They prepare the reports as a routine task, not as vital pieces of information necessary to guide the court to reach a fair and just decision. The reports seen contained no references or reports from heads of schools the inmates had

[737]See Appendix III, a form usually sent to the Social Welfare officers' offices.

attended and no psychiatric reports; such reports are supposed to assist the court to choose the appropriate institution to which to commit an offender.

It has also been shown in Chapter Eight that social welfare officers do not always attend Juvenile Courts even when summoned and that leads to the over-detention of juvenile offenders before their pleas can be taken. The failure of social welfare officers in Lusaka to attend courts was found to be due being understaffed, as the establishment at Lusaka is ten but the existing staff at the District office total three,[738] without any transport. The staffing is bad even at the Ministry Headquarters, as the Co-ordinator between the Approved School, Reformatory and Probation Hostel is a clerical officer without training in social work, who cannot therefore give professional advice to the staff in the field. In the 1960s this position was held by a senior social welfare organiser, who was trained in social sciences.[739] The majority of social workers are diploma holders, and those few with B.A. degrees in social work are occupied in administration and less involved in the counselling of offenders and their parents.

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[738]Personal experience: in the 1970s when working as a public prosecutor in Lusaka, there were nine social workers at the District office; this was due to the fact that officers trained in community development were incorporated in social services. But now community development officers are separated from social workers.

[739]Department of Social Welfare Annual Reports, (1960-65).

10:6:2 Probation services

As shown in Chapter Four, probation is often a non-custodial, community-based mode of treatment for offenders which allows offenders to undergo statutory supervision under a gazetted probation officer, while the offender remains within his own family or community set up; thereby leading as normal a life as possible, participating in and contributing to community and national development. Probation is much less costly than institutional rehabilitation and likely to be more effective.

In this study it was discovered that probation is not operating effectively in Zambia. Once a probation order has been made the offender disappears, and may never meet a probation officer for counselling. During the study Lusaka District probation offices were visited; at no time was a counselling session found in progress. Probation orders in Zambia are generally regarded as dismissals of the charge, because offenders are never seen to be supervised. The practice is the same as for those released on licence from the Reformatory and Approved School, who are never supervised, although the records kept by the Department and correctional institution indicate the numbers of juveniles on probation or released on licence.

Table 10:4 below shows the number of probation orders in force or the number of persons on probation during the years 1971 to 1990. In the 1970s the number of probation orders varied between 436 and 578, while in the late 1980s the number fell to about 200. This is contrary to the trend which might have been reflected: an increase in community-based dispositions,

especially probation orders, could have been predicted as acts of hooliganism, vandalism, pickpocketing and general lawlessness increased among the youth, particularly in urban areas, attracting considerable public attention and concern.

Table 10:4

PROBATION ORDERS IN FORCE FOR YEARS 1971 TO 1990

Year	NO. of Cases	Year	NO. of Cases
1971	436	1981	361
1972	469	1982	345
1973	504	1983	306
1974	504	1984	307
1975	578	1985	344
1976	511	1986	303
1977	493	1987	251
1978	422	1988	215
1979	480	1989	227
1980	370	1990	201

Source: Reports of the Department of Social Development.

The decline in probation orders may be attributed to the

courts' perception of the probation service, recognising its diminished effectiveness. The courts may now have resolved to impose punitive, rather than rehabilitative, measures.

10:6:3 The probation hostel

A probation hostel is primarily a means of providing non-institutional treatment for offenders. It is sometimes an essential preliminary to rehabilitation that a juvenile offender be removed from unsatisfactory home circumstances or undesirable influences, while preparing for his eventual return. Where long-term and intensive approved school or reformatory training is not called for, probation coupled with a condition of residence in a hostel for not more than one year may have an important part to play in the juvenile's rehabilitation.

There is only one such institution in Zambia, at Ndola in the Copperbelt Province: Insakwe Probation Hostel. In 1993 it had six convicted inmates and two others. The Hostel caters for 24 inmates and is therefore under-utilised, like the other juvenile institutions. All six convicted inmates had been sent there by an Ndola magistrate's court. When interviewed, they stated that they had had some meetings with the probation officer. The other two inmates had been sent there by Kasisi Children's Home for misbehaviour; they had not been brought before the court as children in need of care. There appears to be no authority for a social case-worker to detain a child without a court order, on the pretext of rehabilitation, and even to hold counselling sessions with the child. This is an abuse of authority and a

violation of the children's rights at the hands of people expected to care for them.

At the time of the study, the inmates were found painting the buildings under the supervision of the office orderly. The social case-worker, when interviewed, stated that there is no planned programme of training and no recreational facilities.

The institution does not offer any treatment programme, but is used as a place of safety; it is custody-oriented. It protects society during the period of the inmates' incarceration, but does not prepare them to be useful citizens in future.

10:7 Charitable Organisations' Contributions to Juvenile Justice

In the absence of adequate provision by the state, there is pressing need for assistance in juvenile rehabilitation from charitable sources. Little contribution is made by charitable organisations in the field of juvenile justice. The only organisation involved at present is the Namwianga Mission of Kalomo (Church of Christ), which provides carpentry and tailoring machines to Katombora Reformatory School and also donated building material (cement) for the renovation of dormitories and the kitchen. It has seconded a secondary school teacher to the institution who also acts as a Christian counsellor. He has done a commendable job at the Reformatory, as the behaviour of the inmates improved because of his persistent counselling, although he has commented that the moral department of the institution's efforts has been hampered by lack of facilities to keep the inmates occupied.

As an example of what can be achieved by a very limited input of human and other resources, the Norwegian Authority for Development (Norad) gave significant assistance to Nakambala Approved School between 1988 and 1992 by assigning two volunteers and donating carpentry and tailoring machines. During this period 22 Trade tests certificates were awarded to inmates in carpentry and brickwork. The volunteers also took inmates out for camping and rock-climbing exercises. Since these volunteers left the tailoring wing has been closed, no inmates have taken Trade Tests at Mwawangali Trades Training Institute in Choma and no camping activities have taken place.

The World Food Programme of United Nations used to supply Nakambala Approved School with mealie meal, cooking oil, beans, milk and fruits. Since this organisation stopped supplying the institution with cooking oil, no alternative supply has been available.

The United Nations Children's Fund (UNICEF) and Zambia Red Cross are involved in helping street children, taking children found roaming the streets to give them some form of training at their centre. They are not really concerned with children who have gone through the juvenile justice system. Their action is more a preventive than a rehabilitative measure.[740] Furthermore, their approach, of treating a family in the western sense, is inappropriate in Zambia, where old customs and traditions are still important, the extended family system is very much alive

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[740]Personal interview with Ms. Nicola Bull, Senior Information Assistant, United Nations Children's Fund, Lusaka, Zambia; and also Ms. Roisin Burke, Project Co-ordinator, Zambia Red Cross Project For Street Kids.

and children in rural areas are still reared in commual way. The death of one parent does not necessarily mean a break-down of the whole family, as children will still be cared for and the necessities of life provided for them by the family. Therefore the approach of treating all children found in the streets as having come from broken homes should be re-assessed or abandoned. The most important aspect to be taken into account is whether the child comes from a home that has an effective head, regardless of the sex of that head, and also whether there good relationship exist within that home with other members of the family. In this study, as already stated in Chapter Four, inmates indicated that they had good relationships with their mothers' kinsmen. It is therefore necessary when a child is found in need of care to find out from him which person he is fond of or attached to, besides his parents, rather than to conclude that a child has no capable person to look after him because he is in the street, because it is possible that members of his extended family whether in the rural or urban area will be able to look after him or her.

Usually an individual's failures, successes, sorrows, fears, expectations and even suspicions are shared in common with age groups, friends and relatives. In a patrilineal society, a girl would discuss her intimate problems with her paternal aunt or paternal grandparent but not with her mother, sister or maternal aunt, while a youth in a matrilineal society would have such a discussion with his maternal uncle and not with his father, brother or paternal uncle. Hence, a child on running away from home may wish to go and live with his or her paternal aunt or maternal uncle, depending on the society from which he or she

comes. He or she may be found in the street before tracing such an individual (the relative sought of), and taking him or her to any other place would not help. It must be noted that the street children fall within the definition of juveniles in need of care (see Chapter Eight).[741]

10:8 Conclusion

This Chapter has analyzed how various institutions and organisations handle juvenile offenders in the post-disposition process, in order to assess the provision of rehabilitative measures. The discussion was based on an assumption that for rehabilitation to succeed the underlying principles of juvenile correctional institutions should be followed as they were propounded by the early social reformers in the last century, and by those who first advocated the establishment of such institutions.

It has been argued that these institutions in Zambia have failed to comprehend the underlying principles of the Juveniles Act, possibly because traditional cultural values are in conflict with the rehabilitative policies. The institutions are failing to provide the necessary rehabilitative measures, and are far from providing a system of juvenile justice. The system is neither traditional nor rehabilitative. The traditional interpretation of child misconduct as *chisampi* has mis-guided the correctional officials to apply punitive policies in the treatment of juvenile offenders. They regard them as rebellious

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[741]Section 9 of the Juveniles Act.

and a menace to the society because they have no respect for the elders and the law, and no form of treatment will help. While in detention they should engage in activities that are beneficial to society. Therefore the emphasis is on agricultural activities based on the Government's policy of "go-back to the land", as shown in Chapter Five.

The correctional institutions are staffed with inadequately qualified personnel who lack professional expertise and the understanding which should reinforce the principles of juvenile justice. It has been shown that one of the major fundamental bases of a juvenile justice system, dealing with juvenile offenders with separate personnel and facilities, is being ignored as juveniles are mixed with adult prisoners who work at the Reformatory and the same personnel control them both. The separation of juvenile offenders from adult criminals is essential to enhance the concept of differential treatment of young offenders, avoid contamination and promote the rehabilitation of juveniles.

The Approved School functioned well in three years when experienced persons were attached to it, providing training which enabled the inmates to obtain trade certificates in various trades. It shows that these volunteers comprehended the underlying principles of the Act, and the aims of the institution. They took inmates out for camping and kept them busy.

Instead of expanding and recruiting more qualified personnel, the Department of Social Services has declined in its operation. All this has happened in the post-independence era.

The social workers neglect their statutory responsibilities by failing to counsel juvenile offenders on probation. It was surprising to find two juveniles detained at the Probation Hostel without having been taken to court as children in need of care. They were taken there by the Kasisi Orphanage because of misconduct and the social workers detained them without orders of court. This shows how the law enforcement agencies misconstrue their statutory responsiblities and apply non-rehabilitative measures.

Responsibility for all this lies on the Government that has failed to come up with a policy on how to tackle the problem of juvenile crime and to give some guidance to correctional officials on how deal with inmates. Additionally, correctional officials fail to utilise well the very limited resources at their disposal.

PART IV: CONCLUSION

CHAPTER ELEVEN

11 CONCLUSION

11:1 Introduction

This has been a largely historical, descriptive study whose main purposes have been to give information on the nature, weaknesses and deficiencies in the structure and operation of the juvenile justice system of Zambia and to make recommendations for reforms. It shows clearly that the system of juvenile justice is based on a "treatment model" but the officers of the various institutions and organisations that handle juvenile offenders have failed to comprehend the underlying principles of such a model, possibly because the customary law, that embodies the traditional cultural values which play an important role in the life of the peoples of Zambia, has been largely neglected. The result has been the ill-treatment of juvenile offenders. Moreover the resources provided for the treatment of juveniles have never been adequate.

The traditional systems are still applicable to a significant extent: the infrastructure exists in the form of Village Committees which settle many local disputes, including those arising from juvenile misbehaviour (see pp. 382-385); many of the elders who sit on these Committees have retired from work in the urban areas, where some of them, as police officers or magistrates, once enforced national laws. Even in the urban areas Local Courts often resort to traditional law and procedures (see

p. 235).

The fundamental problem in this area since independence has been the failure of the Government to define and apply a policy to deal with juvenile offenders. Nor is it possible to identify a policy from the relevant legislation, all of which was enacted by the colonial government; and in any case significant parts of that legislation are not implemented: for instance, juveniles are found in prison, contrary to the express provisions of the Act. There is an urgent need to address the problem of youth crime and to define an appropriate practical policy.

It is therefore argued here that the juvenile justice system should be remodelled on the lines of the contemporary criminological theory of "just desert" and should largely adopt and mobilise the values and institutions of customary law and its procedures.

The rise in juvenile delinquency in England in the nineteenth and early twentieth centuries provided a focus for the concern of penal and social reformers to reduce the treatment of juvenile offenders on the principles of deterrence, but to substitute rehabilitative treatment. Hence prisons were not to be places for punishment, but correctional institutions. The emphasis was not to punish children but to assist them by means of treatment programmes. This has been the general sentencing rationale of juvenile courts in England from where it has extended to other jurisdictions including Zambia.

Contemporary thinking is guided by the principle of proportionality and penal sanctions are classified in order of severity: custodial sentences are on the upper levels followed

by community-based orders on the lower levels (see pp. 427-441). It is therefore necessary for the system of juvenile justice in Zambia to apply a mixed model of just desert and welfare principles with an emphasis on customary law and procedures, as the traditional legal systems were more or less community-oriented: the family was responsible for its children's misconduct. In short, a juvenile justice system for Zambia must be community-based.

Although the Local Courts have been integrated into the national legal system (see Chapter Eight), customary law is still neglected and restricted in its application. The rules applied in customary law reflect the social, religious, political and economic structures in the society at the time they developed; where these have changed customary law should adapt or readjust itself (as shown in Chapters Two, Three and Eight). Therefore, persistent and serious juvenile offenders should be punished in accordance with the gravity of their crimes, but for many other juvenile offenders traditional community-based treatment would be more appropriate.

As the country is experiencing economic hardships through structural adjustment programmes of IMF and World Bank, it would be difficult to implement situational crime prevention programmes (i.e. target-hardening) e.g. by improving street lighting and employing more beat police officers; and it is even impossible to find qualified personnel with professional expertise and the understanding to implement the principles of juvenile justice. Social prevention is more appropriate and pre-delinquency prevention can be achieved through traditional child

socialisation (as shown in Chapter Two).

The aim of diversion from judicial and penal institutions must be encouraged in juvenile justice through a community-based model, which encourages NGOs', churches, international organisations and various sporting club to play a contributive role.

The probation services should be expanded with trained personnel, who should be assisted by traditional elders employed on a voluntary basis in counselling juvenile offenders, and compensation would be appropriate in many cases. Community service orders would also be appropriate, as extra-mural penal employment is already applicable to convicted male persons, who may be ordered to perform public work outside prison in lieu of committal to prison. As section 135 of the Prisons Act provides:

> (1) Where in any declared area a male prisoner is --
> (a) sentenced to imprisonment for a period not exceeding three months; or
> (b) committed to imprisonment for non-payment of any fine, compensation, costs or other sum adjudged to be paid under any law written law;
> the court so sentencing or committing that person may, with his consent, order that he shall perform public work ..... outside a prison for the duration of such imprisonment.

Therefore a juvenile who fails to pay a fine or compensation ordered by court could still be dealt with within the community by requiring him to do some work in the local community. A welfare community-based system of juvenile justice would work with committed personnel carrying out their duties in the interests of juveniles. There is a need for some lawyers to concern themselves with juvenile justice, as at present juveniles on trial are seldom represented by advocates (see Chapter Eight).

11:2 Comparative Analysis

For comparative purposes, before making a final conclusion on the findings of this study, some ideas and principles presented in the modern literature on juvenile justice, especially from the U.K., U.S.A and other African countries, will be discussed. Given the political, social and economic variations between developed and developing countries, not all aspects of juvenile justice could be assumed to be comparable. At certain levels of abstraction differences become minimized, and certain recurring issues emerging can be addressed in all jurisdictions, as some uniformities are derived from common social processes. For instance, as shown in this study, juvenile justice institutions were imported into Zambia from England and statutory provisions in most cases were drafted in the same terms as English legislation. It is fruitful to examine how such provisions are applied or adapted by the established institutions by analysing their operational practices. To date, perhaps the most fruitful area of comparison has been the "love, care and protection accorded to juveniles" in their families and under the criminal justice systems.

11:1:1 Western countries

The historical development of juvenile justice systems in the western countries, as shown in Chapter One, reflected the recognition of "childhood" as a special phase in the human life cycle, set apart from adulthood. Earlier, some child misconduct was treated with no distinction between juvenile and adult criminal behaviour, and punitive sanctions were imposed on convicted juveniles (Aries 1962; Gillis 1974; Empey 1982; Morris and Giller 1987). Thereafter arose a "child-saving" movement advocating the reform of the criminal justice systems and this led to the concept of "juvenile delinquency", an umbrella term which covers various acts of misconduct by juveniles, including status offences, and intended to protect deprived and neglected children (Platt 1969). Mary Carpenter (1851) categorised juveniles into two: (a) the "perishing" class, destitute yet not involved in criminal activities; (b) the "dangerous" class, who had already received a prison brand (Richardson (1969)). This was based on contemporary perspectives about the nature of juvenile crime and ways of responding to it. She demanded reformation of juveniles through care, nurture and affection rather than alienation by corporal punishment. Reformatories were established in 1854 and industrial schools in 1857 on the basis of reformation. Deterrence principles were not to be applied but rather love, guidance and teaching. The principles underlying these correctional institutions were later imported into Zambia.

As seen in Chapter One, the Court of Chancery in England

played a leading role in developing the doctrine of *parens patriae*, which remained the guiding principle in juvenile justice: law enforcement agents are only to interfere with the natural parents' control over children when the need arises, in the interests of the children concerned. With those concerns a separate juvenile court was established in 1908 with its own personnel, to deal with matters pertaining to juveniles, including juveniles in need of care. In Zambia, the doctrine of *parens patriae* reinforced the customary law principles that existed in the country. Caring for the needy and for children had been a communal responsibility and the traditional legal systems were based on forms of community justice (as shown in Chapters Two and Three).

However, the juvenile court's power in relation to juveniles in the U.K. had continually been amended, due to changing political, social and economic conditions. Section 44 (1) of the Children and Young Persons Act 1933 provides a general principle (as shown in Chapter Four) that every court dealing with a juvenile brought before it, whether as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings and for seeing that proper provisions is made for his education and training. Thereafter certain principal statutory provisions have been enacted in the Children and Young Persons Act 1969 and the Criminal Justice Acts of 1982, 1988 and 1991. The Children Act 1989 made changes to the courts' power to sentence juveniles, by abolishing care orders; custodial sentences are to be imposed only as a last resort after

evaluating social inquiry reports submitted to the court,[742] and such a sentence must be proportionate to the gravity of the offence of which the offender has been convicted,[743] as shown in Chapters One and Nine. Therefore, the juvenile courts in England are guided by the "just desert" principle in sentencing juveniles and pay much attention to social inquiry reports.

The juvenile justice systems in western countries adopt various theories of causation and it has been noted that no one theoretical view is predominant. Those which could have a bearing on the Zambian situation include sociological theories of delinquency causation, such as those dealing with social class and/or family differences[744] or premissed on the basis of blocked educational and occupational goals,[745] or Sutherland's "differential association", which combines the notion of learning taking place in interaction within social groups and depending on the duration of reinforcement and the individual's identification of different situations as being appropriate for

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[742]Under section 1 (4) of the Criminal Justice Act 1982 as amended by section 123 of the Criminal Justice Act 1988.

[743]As provided by sections 1 and 2 of the Criminal Justice Act 1991.

[744]A. K. Cohen (1955), Delinquent Boys: The Culture of the Gang. (New York: Free Press); W. B. Miller (1958), "Lower Class Culture as a Generating Milieu of Gang Delinquency," Journal of Social Issues, 14, 3: 5 - 19; R. A. Cloward and L. E. Ohlin (1960), Delinquency and Opportunity: A Theory of Delinquent Gangs. (New York: Free Press); R. Quinney (1975), Criminology. (Boston: Little, Brown & Co.).

[745]R. K. Merton (1955), Social Theory and Social Structure. (New York: Free Press), particularly pp. 131 - 160.

law-abiding or law-violating behaviour.[746] Some question the impact of criminal process "labelling".[747]

These theories may have been appropriate between the 1930s and 1960s in western countries, and they still have a bearing in Zambia, as shown in Chapter Six. The educational system has failed during the post-independence era: thousands of children drop out of the system each year, inadequately prepared for competitive jobs. Parents and their children are frustrated as the government has failed to expand the educational system and generate employment opportunities to cope with the increasing population. Children do not understand the situation when they compare their educational qualifications with the lower ones of their grandparents or parents, who still managed to find employment and maintain good living standards. Those who try to get a small income to meet daily needs or supplement the family's income are arrested for street vending and treated as common criminals.

Shireman and Reamer (1986), after analysing the history of juvenile justice as having been characterized by the decline in the spirit of child-saving that supported the formal creation of the system of juvenile justice, noted in their conclusion that offenders' behaviour must be controlled and that "much of the responsibility is ours and lies in the defect-laden communities,

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[746]For more detailed discussion of this theory, see E. H. Sutherland and D. R. Cressy (1974), Criminology. (New York: J. B. Lippincott co.), pp. 75 - 91.

[747]H. S. Becker (1963), The Outsiders. (New York: Free Press).

schools and families into which these youths have been born".[748] The emphasis is on the communities and families which must play a vital role in controlling juvenile crime and must encourage appropriate preventive measures. The authors end by saying:

> There is no doubt that we have capacity to alter some behaviour in some youths in some instances. This is probably the best we can ever hope to achieve, unless we resort to drastic measures of control that citizens of democracy - no matter how flawed - would not tolerate. Our principal task is to acknowledge the complexity of the challenge, along with the responsibility both we and youthful offenders share in pursuing it.[749]

This means that juveniles require proper socialisation to minimise tendencies for deviant behaviour. This is within the argument of this study, that pre-delinquency prevention through child socialisation is vital.

Krisberg and Austin (1993) advocate that juvenile crime must be reconceptualized as "a public health problem as well as a law enforcement problem".[750] They argue:

> As with most other health issues, this perspective would immediately direct our attention to preventive strategies....A public health perspective would allow juvenile offenders to be understood as both victims and victimizers. The linkage is undeniable among physical abuse, parental neglect, and violent youth crime. This does not mean that young people are unaccountable for their behaviour. However, a public health approach offers the possibility of comprehending the origins of youthful violence and formulating rational responses.[751]

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[748]C. H. Shireman and F. G. Reamer (1986), Rehabilitating Juvenile Justice. (New York: Columbia University Press), p. 171.

[749]ibid., p. 172.

[750]B. Krisberg and J. F. Austin (1993), Reinventing Juvenile Justice. (Newbury Park, California: Sage Publications inc.), p. 182.

[751]ibid.

This approach focuses on the reforming of juvenile justice that takes into account social and economic changes of society; preventive programmes and juvenile justice have to be built on adequate knowledge about adolescent development. In conclusion, they state that the objective of intervention programmes "should be treating the whole child in his or her family and community context".

This approach can be applied to recognise the Zambian traditional practices. Its appropriateness is the focus on child upbringing which recognises the traditional socializing institution of the community - the family, with some scientific assistance from education psychologists. This is due to the perceived mixture of cultures, reflected in television, movies and newspapers, that have weakened traditional values in urban areas.

Zambian societies differ from those of Europe, especially in that, since the pre-colonial era, children have been considered the central and validating elements of a family and the basis on which their parents attained the status of adulthood. A child had to be nurtured, to acquire the education which would serve throughout his or her life; any misconduct by the child led the parents to be held responsible for having failed to produce a disciplined child (as shown in Chapters Two and Three). But the categorisation of juveniles into two classes (i.e juveniles in need of care and juvenile offenders) has been adopted from English law in the Juveniles Act, and it is considered to be the basis of the Juvenile Court. Although it is one of the areas in which the Zambian juvenile justice system has

failed; as neglected children are not in fact given any legal protection whatsoever. In certain instances they are being criminalised unnecessarily, or detained without any due process.

11:1:2 Some studies in other African countries

Other African countries have experienced the growth of juvenile crime in the same manner as Zambia, with the growth of urban settlements, although in "absolute terms it is still very far from the volume of juvenile crime familiar in the more highly industrialised countries".[752] This gives African countries a chance to plan and implement meaningful preventive programmes.

Clifford (1974) analysed some studies carried out in African countries on juvenile delinquency, and concluded:

> ...This is further confirmation of the idea of growing delinquency in its full sense being a function of the urban culture with all its implication.[753]

This conclusion was made after analysing the trends of juvenile crime in three Zambian towns (Lusaka, Kitwe and Livingstone),[754] where he noted that there was a correlation between the growth of crime and the rate of growth of cities. This was in line with the findings of studies in Ghana[755] and Nigeria.[756] In the Ghana

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[752]W. Clifford (1974), The Introduction to African Criminology. (London: Oxford University Press), p. 149.

[753]ibid., p. 154.

[754]W. Clifford (1967), "Juvenile Delinquency in Zambia," United Nations Trends Study SOA/SD/CS. 5.

[755]S. K. Weinberg (1964), "Juvenile Delinquency in Ghana: A Comparative Analysis of Delinquents and Non-Delinquents", Journal of Criminal law, Criminology and Police Science, 55, 471.

study, Weinberg provided a comparative analysis of delinquent and non-delinquent groups. He analyzed records of 107 male delinquents from the Boys' Remand and Probation Home and the records of 67 female delinquents from the Girls' Industrial School in Accra. He then compared this group with a group of 95 male and 74 female non-delinquents selected from Grades 4, 5 and 6 of one primary school in Accra. He found that *inter alia* delinquents more frequently than non-delinquents (i) were truants from the family, (ii) were affected by the broken home and (iii) were alienated from school values and practices. In conclusion, he stated:

> The findings of our study indicate that the employment of the mother would or would not contribute to the delinquency of her child depending upon her capacity to achieve a satisfying and restraining relationship with the child.[757]

This present study differs from Weinberg's study as it had no female in the sample because there is no girls' institution in the country; but it supports Weinberg's conclusion that with less controlling and less secure relationships with their parents, children accept deviant norms and practices of their delinquent peers amidst the rapidly changing context of the urban communities. This study also adopts Clifford's assertion that juvenile crime in African states must be cautiously analysed as it is in the period of transition, as traditional values of rural societies are being transformed to those of modern communities.

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[756](...continued)

[756]T. A. Lambo and P. Clairemonte, cited by Clifford and privately communicated to him, "Attribution of Stigma as a Factor in Juvenile Recidivism in Nigeria: A Preliminary Enquiry", (undated).

[757]S. K. Weinberg (1964), op. cit., p. 481.

It is therefore possible that some juvenile crimes are preventable, if well-organised action plans are set up to combat juvenile crime; this can be achieved through strengthening child socialisation. There is need to reassess the reliance on formal educational systems which do not expose children to practical skills as did the traditional education, which was followed also by the mission schools.

Hatchard (1989), in his study of policy and perspectives on juvenile justice in Zambia, analysed three studies done in African countries.[758] He found that all three studies indicated that there were considerable difficulties for juveniles with regard to educational and employment prospects; his own Zambian study concluded "that the vast majority of juveniles had, at best, no more than basic primary education".[759] This present study supports these findings, as it found that the majority of inmates at the Approved School and the Reformatory had just completed Grade 7, and some inmates had never attended school. Importantly, Hatchard also acknowledges the fact that the family plays a vital role in social control; but he does not specify the nature of that role, or how the family should influence children to be law-abiding citizens.

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[758]Studies analysed are as follows: (i) Coordinated by him - Joint Study by the University of Zimbabwe and the Zimbabwe Prison Service entitled "Recidivism in Zimbabwe" in 1986; (ii) A United Nations Study of Juvenile Delinquency in two cities: Dakar, Senegal and Lagos, Nigeria, "Juvenile Social Maladjustment and Human Rights in the Context of Urban Development", 22/UNSDRI in 1984; (iii) In Kenya: E. Munga (1975) "Crime and Delinquency in Kenya", East African Literature Bureau.

[759]J Hatchard (1989), "Policy and Perspectives on Juvenile Justice", in: K. Osei-Hwedie and M. Ndulo (eds.), Studies in Youth and Development. (Lusaka: Multimedia Publications), p. 383.

This thesis goes further by identifying the traditional means of child socialisation (e.g through ceremonies, proverbs, riddles and story-telling) and advocating their continuance. However, traditional practices may not be available - for example, the parents may be from different communities, perhaps even one parent is not Zambian; in such situations traditional practices may not be appropriate. For instance, one parent might come from North-Western Province, where *mukanda* circumcision is practised; the other may object to their child undergoing this ritual ceremony. Nevertheless some effort must be made to have the child grow up within the acceptable cultural values and norms. Where appropriate he or she must be exposed to economic activities and trained in trade skills at an early opportunity and school syllabuses should include educative traditional folk-tales, proverbs and riddles.

11:1:3 International standards

As seen in Chapter One, the international community lays down certain standards that each nation should adopt:

> (i) protective legislation designed to protect the rights and interests of children and to prohibit certain acts which are detrimental to the rights and interests of children, and (ii) promotive legislation designed to promote children's interests and welfare - thus providing health, education, recreation and cultural services.

The results of this study will now be analysed in the context of the United Nations Guidelines for the Prevention of Juvenile

Delinquency (Riyadh Guidelines 1990),[760] the United Nations Convention on the Rights of the Child 1989 and the African Charter on the Rights and Welfare of the Child 1990.

The importance of the family in the prevention of delinquency is also recognised in the Riyadh Guidelines, as some of the fundamental principles laid down are:

> 2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.
>
> 3. For the purposes of the interpretation of these Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialisation or control.
>
> 4. In the implementation of these Guidelines, in accordance with national legal systems, the well-being of young persons from their childhood should be the focus of any preventive programme.
>
> 5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognised. These should avoid criminalising and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others.....
>
> 11. Every society should place a high priority on the needs and well-being of the family and its members.

A workable and constructive social policy for juveniles must be based on these guidelines which in brief reinforce the aims of traditional child socialisation in Zambia (discussed in Chapter Two). In traditional societies a child is taught throughout his life the essentials of the society and is prepared for the

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[760]Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in 1990, of the General Assembly, adopted the draft resolution: United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) A/Conf.144/26 of 5th September 1990.

uncertainty of future life, in such ways that he or she becomes self-reliant. The socialisation process leads him or her to acquire religious, political, economic and legal techniques from imitation, experience and participation in relevant activities (see Chapters Two and Three). Such activities reduce stress and tendencies to delinquency as the child is under constant supervision.

However, the Riyadh Guidelines reinforced the Beijing Rules 1985, which recognised the importance of the family and the community in dealing with juvenile offenders and discouraged custodial sentences; any sentence imposed on the juvenile should take into account his or her well-being. As rule 1.3 provides:

> Sufficient attention shall be given to positive measures that involve the full mobilisation of all possible resources including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.[761]

This is in line with the definition of crime prevention adopted by the English Home Office, as involving three strategies: (i) the reduction of opportunities which bring about crime, (ii) the improvement of the social environment for both the offender and the potential offender, and (iii) the application of sanctions.[762] The improvement of the social

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[761]United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985 (General Assembly resolution 40/33 of 29 th November 1985).

[762]T. Bennette and R. Wright (1984), Burglars on Burglary. (London: Aldershot), p. 19; For more information about crime prevention measures undertaken in U.K in the 1980s, see A. E. Bottoms (1990), "Crime Prevention Facing the 1990s", Policing and Society, Vol. 1, 1: 3 - 22.

environment may include giving encouragement to effective means of socialisation for children, to enable them to acquire personality characteristics beneficial to their well-being, in accordance with Guideline 2.

This reinforces the traditional modes of rearing children within the extended family which this thesis advocates. Families should be encouraged to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child.

However, the concerns of the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child are matters covered by the Juveniles Act and the Constitution and to that extent these matters are taken care of by the laws of Zambia. But in the treatment of juvenile suspects by police and courts and in the institutional care of inmates the rights of children are often abused. It is sad to witness the declining standards in the institutions of the juvenile justice system (see Chapters Seven, Eight, Nine and Ten).

11:2 Analysis of the Findings

Chapters Two, Three and Four of the thesis indicate the dualistic context to the juvenile justice system in Zambia, where traditional legal systems have adapted themselves to the proper functioning and acceptance of imposed colonial and national legal systems. This process was referred to as "legal adaptation" by Epstein (1953) in his study of the development of Urban Courts

in Northern Rhodesia. The constant change that was taking place had not caused any difficulties in dispute settlement between litigants from different ethnic groups. Epstein notes that legal adaptation was occurring in the urban areas at an accelerating rate, but undoubtedly slowly in the rural areas as shown in Chapter Four (Canter 1976, Coldham 1990). This was due to social and economic changes in the Copperbelt and other urban areas. Epstein's policy statement on "The Future of Urban Courts" in terms of the law recommends:

> That codification has been suggested at all is a recognition of the fact that the needs of the rural and urban areas are wholly different. Although the vast majority of claims that are brought before the Urban Courts are based in the customary law, considerable modifications have already been introduced by these courts in entertaining them. If the contention is correct that the primary problem is the further adaptation, rather than resurrection, of customary law, any thought of codifying on a "tribal" basis must be rejected at once.[763]

It might be possible today to contemplate the "further adaptation" Epstein was referring to in the 1950s for criminal justice in both urban and rural Zambia. Canter (1976) states that the direction of legal adaptation is still unclear as it depends on many variations. He notes:

> Now this adaptation could be posed in terms of various social differences; urban-rural, cash-cropping-subsistence, role of male-role of female, educated-uneducated, progressive-conservative, etc.[764]

As shown in Chapter Four, Zambians have two kinds of explanation for a given event; when a person feels sick and is

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[763]A. L. Epstein (1953), The Administration of Justice and the Urban African, (London: H.M.S.O), p. 95.

[764]R. S. Canter (1976), "Law and Local Level Authority in Zambia", Ph.D Dissertation, (University of California, Berkeley: University Microfilms International), pp. 244 - 245.

with his or her family group, members will solicit assistance from a herbalist or African witch-doctor; while with a European friend a sick person will go to a hospital or see a medical doctor. In these two instances the cause of illness might be said to be that he or she was bewitched or possessed by spirits; alternatively, stress due to hard work or malaria might be blamed. Similarly varied explanations could be given of a child who misbehaves or becomes a deviant and various ways would be suggested to assist him, including legal process, witch-finding and family counselling.

Zambians have continually and constantly readjusted themselves under the pressures of change - missionary influence, BSAC rule, colonial rule, independence and multi-party rule, One-Party democratic rule and now again multi-party rule. The word readjusted is used because it speaks of accommodating new changes rather than resisting them. Although this does not mean accommodating easily all changes encountered, but rather over time adapting to the prevailing conditions (i.e. translated into the existing political, economic, social, religious and legal systems).

Missionaries migrated and formed enclaves spread through the country. They influenced traditional societies where their establishments were formed. Traditional beliefs in the spiritual world gave way to belief in the Supreme Being; although offerings are still made to ancestral spirits. Missionary education was in line with the traditional education, based on imitation and practical experience; converts were taught bricklaying and carpentry without the necessity of formal education. Children

were compelled to attend mission schools and corporal punishment became a recognised form of punishment that has continued to be imposed on juveniles (see Chapter Nine).

The idea of centralised hereditary leadership spread over the acephalous societies (e.g the Tonga and the Lenje) in the 1800s. The political organisation of all traditional societies has changed and turned to chieftaincies. The complex organisation of the chieftaincy did not eradicate all of the social organisations of the former acephalous societies. This present study supports the findings of Canter's (1976) Lenje study that the description of the concepts of kinship and descent serves more than a purely ethnographic purpose. Although like other social forms kinship and descent have adapted to the realities of new economic and political systems, they are still useful in child socialisation. The grandparents still play a vital role in instilling moral and cultural values in the younger generation. They even train them in trade skills, such as housework, basket-making and crafts. The wisdom teachings through proverbs, riddles and story-telling are still used (see Chapter Two). Children are allowed to observe and participate in dispute settlements at Village Committee Courts and the use of proverbial maxims by children themselves is encouraged.

Many social factors have been touched, but legal change or more correctly adaptation or readjustment provides the primary focus for understanding change in general. It is difficult to identify the juvenile justice system as being either "traditional" or "modern"; it can be best viewed as an "adjusting system", in the sense that it readjusts itself in response to the

current prevailing circumstances, relating to juveniles.

The thesis has described and analyzed the operations of the formal system of juvenile justice (i.e the police, courts, correctional institutions and probation services) as they were observed during the fieldwork from December 1992 to May 1993. One could deduce a number of legal issues variously associated with differential application of the principles of juvenile justice, but many claim to enforce the rules of law in the best interests, and for the protection, of juvenile offenders. Most significantly, however, the policies of juvenile justice as provided under the Juveniles Act were misunderstood and in certain respects were not complied with.

11:2:1 The Juvenile Court

In theoretical context, the Juvenile Courts are assumed to apply the principles of rehabilitation and make provisions for juveniles in need of care. This study found that the courts are not exercising their jurisdiction over juveniles in need of care and all the supporting infrastructure has disappeared. For example, children's homes for safety and remand homes established in the colonial era have been turned into Departmental offices.

It has been seen that there is no coherent sentencing policy applied in Juvenile Courts, although the existing rules and theoretical arguments favour attempts to rehabilitate offenders. Despite the former president's speeches advocating a man-centred approach under the philosophy of humanism, which guided the nation for over 27 years, Juvenile Courts in sentencing pursue

a deterrent policy. This is evidenced by the courts' non-compliance with the Juveniles Act, which restrains them from imposing sentences of imprisonment on juvenile offenders; yet juveniles are imprisoned even for assault cases, traditionally settled by shaking hands. This may be due to the legislative imposition of mandatory minimum sentences for certain offences, with no exceptions stated for juvenile offenders. Alternatively, it may be due to the lack of special juvenile courts and the fact that magistrates have to adjust themselves in each particular case, as the same magistrates hear both juvenile and adult cases in succession. There is no special training for magistrates sitting in Juvenile Courts.

The superior courts (the High Court and Supreme Court) have failed adequately to fulfill their role of supervising the Juvenile Courts. They do not even regularly review and confirm the approved school and reformatory orders, as the legislation requires to do.

To assess the adaptations or readjustments which occurred in the operation of the Juvenile Court, the thesis focused on the reasons for the discontinuance of criminal matters. The majority of cases in Juvenile Courts are discontinued on the wishes of complainants, evidently intending to settle the matters outside the court, and in certain instances complainants stay away from the court if their wishes are not honoured by the courts. Others apply through the public prosecutor to have the matter end in reconciliation with the offender. In short, complainants prefer traditional remedies to apply in matters before Juvenile Courts, such as compensation, restitution, reconciliation and warnings

to offenders to maintain social harmony (see Chapter Eight).

In Epstein's (1953) study, claims were brought before Urban Courts based on the customary law, but in the present study it was found that matters brought before Juvenile Courts under the provisions of the Penal Code were resolved more or less by applying customary law remedies. Complainants appeared before the courts not as witnesses but as persons with power to control the direction of the criminal process or even as prosecuting their own cases. Therefore, courts adopt traditional practices.

11:2:2 The Police

As shown in Chapter Seven, the police force is a statutory creature, with the function to prevent and detect crime as well as to apprehend offenders, preserve life and protect property.[765] It is assumed that the police initiate the investigative machinery to apprehend the offender once a crime has been committed. It was found that very often the police depend on the victims, their witnesses and other persons for information leading to the discovery of the offenders.

It has also been shown that the police have abandoned many of the former preventive measures. Thus they have stopped the beat system that existed in the colonial era, and the former good working relationships with the local communities are no longer there since the abolition of Special Constables and the institution of a vigilante scheme, which was politically motivated. The establishment of a vigilante scheme by Parliament

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[765]Section 5 of the Police Act, Cap. 133.

in effect legalised "instant injustice mobs".

The increase in juvenile crime can be attributed to the lack of viable crime prevention strategies, as the beat system was abandoned, and this has led people to feel alienated from the police and to take their own steps to control deviant behaviour. This includes not reporting criminal cases to the police but taking such matters to Local Courts and Village Committee Courts. Canter (1976) considers that the Lenje were not reporting cases to the police because of the conflict between local-level and national-level concepts of law and procedure. As he states:

> Specifically, self-help or mob violence was the consequence of conflict between local and national law and procedure. Mob violence can be viewed as an attempt to effect legal change and bring it back in line with local-level social/legal values.[766]

The juvenile offenders arrested by the police are often mishandled and denied bail and are even detained without their parents or guardians or even probation officers being informed. It was even difficult to ascertain what factors the police took into account in making an arrest and detaining an offender. This was attributed to a lack of proper and specialised training and the lack of guideline rules from the government. Although there have been some changes in police operations in the U.K, such as the use of police cautioning to divert juveniles from the criminal justice system, there has been no meaningful change in in police practice in Zambia, in relation to juvenile justice. Special juvenile units are needed in the police (discussed later in 11:3).

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[766]R. S. Canter (1976), "Law and Local Level Authority in Zambia", Ph.D Dissertation, (University of California, Berkeley: University Microfilms International), p. 251.

11:2:3 Correctional institutions

The juvenile correctional institutions have really collapsed and lost their usefulness; as the government does not provide them with adequate resources. There is inadequacy in the present law. The Juveniles Act distinguishes juveniles in need of care from juvenile offenders but provides for similar disposals, so that a juvenile adjudged to be beyond parental control or in need of care may be committed by a court to Nakambala Approved School. A juvenile committed to the Approved School or the Reformatory may be in custody for three or four years, respectively. A report in Uganda (1992) stated that in the nine institutions (approved schools, remand homes and reception centres) "conditions were very unsatisfactory ...The children's rights are daily grossly violated".[767] The proposed recommendation of the Uganda Report is adopted: the proper course for them is to be closed and replaced by a properly resourced national rehabilitation centre, where a juvenile should be detained for no more than 12 months. This present study also found that inmates at the Reformatory were daily denied their rights and lived in unbearable conditions. If correctional institutions have to be retained, there should be major changes in their operations.

Improved staffing of the institutions is an urgent necessity. There should be more social welfare case-workers at

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[767]Uganda: The Report of the Child Law Review Committee (1992), (Department of Probation and Social Welfare, Ministry of Labour and Social Welfare), para. 2.2.5. For more information on this Report, see J. S. Read (1993), "Protecting Uganda's Children: a new model child law for an African state?", Journal of Child Law, vol. 5, 4, 13 - 20.

the Approved School, with qualified psychiatrists and psychologists who are not found there now. The School should have more teachers and operate as a real school, as it did in the colonial era, when inmates set for examinations together with other students.

Improvements are urgently needed in the training available to the inmates. Vocational skills offered must be relevant to the future needs of inmates, such as shoe-repairing, basket-making and running small scale enterprises, so that on release inmates may be able to set up their own small businesses, which do not require big starting capital. Gardening should be offered to those who come from agricultural areas, where they would be able to use their acquired training. In short, training should be in line with indigenous education which prepared children to be self-reliant.

The organisation of the institutions needs urgent reform. Responsibility for the Reformatory should be transferred from the Prisons Department to the Social Welfare Department, to fall within the responsibility of the Commissioner for Juvenile Welfare. The educational courses to be offered should be the same as those outlined above. The older juveniles (say those aged 16 years and above), those with previous convictions and those convicted of serious offences should be the ones sent to the Reformatory. The general welfare must be really improved: e.g. enough blankets and plates should be supplied to inmates. The constantly increasing cost of maintaining such correctional institutions is an added reason why they should be replaced with traditional community-based penalties.

In a warning to African governments, Coyle (1993) states:

> If Africans are seriously interested in dealing with the problems of crime in (their) respective societies, rather than looking to the Western example of locking up more and more people in prison, (they) would do well to examine (their) heritage and to look to traditional forms of community justice.[768]

The historical development of the juvenile justice systems in western countries (e.g England and Wales) can provide important lessons to be learnt by Zambia. In particular, Zambia should consider following some of the proposals being made in other progressive countries in Africa, for example Uganda, e.g. to replace existing reformatories and approved schools by one national rehabilitation centre.[769]

11:2:4 Probation services

As shown in Chapter Nine, the Department of Social Welfare Services is understaffed and the existing officers are inadequately trained. Diploma and Degree certificate-holders are needed as professional social workers in the Probation Services, hopefully with specialised training in juvenile justice.

The probation officers are supposed to prepare pre-sentence reports on juvenile offenders and to submit them to court, but Chapter Nine shows that they fail in this statutory duty. Hatchard (1989) notes that the compilation of these reports requires considerable improvement. This study argues not only

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[768]A. Coyle (1993), "Penal Reform: Prisons in Africa", West Africa, 1977.

[769]Uganda: The Report of the Child Law Review Committee (1992), supra.

that these reports should contain more valuable information for the courts, but also that probation officers should actually prepare and submit them to courts which often does not happen at present. To encourage attendance at court and the preparation of these reports, it is suggested that probation officers be transferred to the Judicial Department to facilitate close supervision of their work by the courts. This would also ease case-loadings on the part of social welfare officers, who also deal with adoption and matrimonial matters.

11:4 Reform of the Juvenile Justice System

It is relevant to emphasize here that the dual character of the criminal justice system and the complex nature of child socialisation, which raises conflicts between traditional and modern social norms and values in contemporary Zambia, especially in urban areas, make it difficult to make recommendations that can be applicable to all individuals. Therefore any recommendation made should take into account the economic and social factors of diversity between different sections of the population, as well as the variety of contemporary values that prevails in Zambia. Importantly, for the system of juvenile justice advocated here to function well, there must be an explicit policy to combat juvenile delinquency on the part of the Government, and on the other hand there must be a committed work-force on the part of law enforcement agencies, not restricted to performing official duties during office hours only.

The reform of the juvenile justice system cannot be achieved

merely by codifying the laws relating to juveniles; it is important to re-evaluate the operations of each relevant institution to find out why it is not functioning well. Mistakes so identified can then be rectified, but the enactment of further legislation may establish new institutions which might fail to perform even as well as the existing ones, unless the root causes of present weaknesses are identified and rectified.

11:4:1 The selection and training of personnel

As shown in the thesis, all law enforcement agencies are lacking officers specially trained in juvenile justice; there should be no post to which candidates of poor academic qualification are appointed. The training courses should include more emphasis on the understanding of criminality. In particular, for the police and magistrates there should be special courses on juvenile justice, especially on arrest and detention for officers working in Lusaka and the Copperbelt towns. They should be exposed to different levels of crime, as most offences committed by juveniles are minor ones.

In general, the study programmes of law enforcement agents must be designed to present the fundamentals (both philosophical and academic) of social control. They should include:

(i) Introduction to theoretical criminology and law enforcement;

(ii) Administrative concepts;

(iii) Delinquency prevention and control;

(iv) Criminal law, procedure and evidence;

(v) Customary law and practices;

(vi) Comparative studies

(vii) Corrections;

(viii) Field training; and

(ix) Seminars.

11:4:2 Research unit

An important aspect of reform not based on traditional practices is the promotion of research on which policy formulation and preventive programmes must be based. This is the aspect of juvenile justice which is most conspicuously lacking in Zambia, where few scholars work on this topic and in isolation from the policy-makers who never consult them. Hence the research and its results are not utilised. Hatchard (1989) notes that the development of a sound criminal justice policy based on adequate research is essential.

There should be a National Research Unit, possibly under the Ministry of Home Affairs, which would formulate and implement research proposals within the context of community-based system of juvenile justice and seek to provide reliable information on the operation of the institutions of juvenile justice system and patterns of offending by juveniles. The results of the researches would be used by the Government to formulate policy on juvenile justice. It may be started with a small number of researchers. Apart from undertaking its own programme of research, the Unit would provide advice on administrative matters to the correctional institutions, probation and police departments. If

it could grant funds for criminological research undertaken by researchers from the University of Zambia, this would create good working relationships between academics and policy-makers. For that purpose it may attract funds from international organisations. It would be responsible for the publication of research reports on a regular basis, and could also fill the present gaps in the publication of police and judicial statistics.

If properly funded and supervised the Unit would provide policy-relevant research reports on a short-term basis into the causes and prevention of juvenile delinquency, and the trends in juvenile delinquency could also be analysed for each year. The position of female juvenile offenders would be assessed through research, as now police statistics do not furnish this data.

Suggestions for research include:

(i) the desperate need for reliable statistical data from courts, police and probation services;

(ii) because of the police practice of not analysing fingerprints, it is not possible to assess the re-offending juveniles, juvenile crime and age distribution of offenders; all these need to be investigated;

(iii) female juvenile offending should be assessed;

(iv) samples from urban and rural populations should be analysed to assess popular views on the traditional sanctions;

(v) a research survey among magistrates and judges across the country should be conducted, to determine judicial attitudes to corporal punishment. Secondly, an attitude-

measuring questionnaire could be administered to the general public, constructed in such a way that traditionalists, social welfare-oriented and legalistically-oriented attitudes would be identified.

(vi) A research survey among the general public should be conducted, to ascertain how local courts are viewed, especially inviting reactions to proposals to transfer criminal jurisdiction over juveniles to Local Courts.

11:3:3 Organisational structure

11:3:3:1 The police

The police force claims to be understaffed (see Chapter Seven). However, if the available manpower is properly used, there could be improvements in police operations. For example, if the combat units (Paramilitary, Mobile, Tazara and Police Protective units) were redeployed in police work *per se*, there would an increase in the operational manpower. There is no need for the Paramilitary unit, now that neighbouring countries (Zimbabwe, Namibia, South Africa) are friendly after gaining their independence, and Zambia itself was able to return to a multi-party constitutional democracy in 1991 without any major conflict between the parties. Zambia has become a political model in Africa in this regard.

If all Paramilitary officers were redeployed to the police stations in Lusaka urban, each station would have over 150 officers, 100 of whom could be utilised to revive the beat system. The three shift units would have roughly over 30 officers each. Thereafter, patrols could be increased in certain targeted areas where identified crimes are frequently committed. The remaining 50 officers would be able to assist in setting up juvenile unit branches at station level with 5 or more officers each. The Mobile Unit officers could be redeployed in Copperbelt police stations, the Tazara and Police Protective units in stations along the line of rail and in rural provincial stations.

This reorganisation could achieve five possible things:

(i) the establishment of juvenile units at police station levels and higher;

(ii) the reestablishment of the beat system;

(iii) close working relationships with parents and guardians would be realised;

(iv) over-detention and ill-treatment of juvenile prisoners would be minimised; and

(v) some of the officers with good qualifications could be trained in specialised areas, to fill vacant positions in fingerprints, handwriting and ballistics sections at Police Headquarters.

The officers redeployed in juvenile unit branches would have to undergo special training, as discussed above.

11:3:3:2 The Juvenile Court

Zambia is experiencing economic constraints and is not able adequately to fund the law enforcement agencies. But it has an abundant vital asset on which to build its juvenile justice system: traditional cultural values. It is up to the government to mobilise the people in this regard, to encourage traditional customs and socialisation practices which are not prejudicial to the health or life of the child.[770]

The Local Courts, applying customary laws, have remained popular in rural areas and even in urban areas among certain

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[770]As provided under Article XXI (1) (a) of the African Charter on the Rights and Welfare of the Child 1990.

individuals. In rural areas people opt to take criminal cases before local courts, instead of reporting them to the police, as evidenced in this study, confirming earlier studies done among the Lenje (Canter 1976, Colson 1976). Coldham (1990) found that decisions of Local Courts in Lusaka are infrequently appealed against. It would be better to transfer the jurisdiction of the Juvenile Court to the Local Court for certain offences (e.g assaults, theft, malicious damage to property, etc.), where compensatory and reconciliatory remedies would be appropriate. These courts are widely spread throughout Zambia and would be able to apply customary law and to appreciate traditional practices.

Uganda also has this progressive approach for re-emphasizing customary law, in preference to the wholesale westernisation of national legal system (Read 1993). The recent Report on Child Law in Uganda recommends that Village Resistance Committee Courts should be vested with criminal jurisdiction to try children charged with common assault, theft, malicious damage to property etc.[771] Such courts would impose any of these dispositions on a convicted juvenile: reconciliation, compensation, restitution, apology and caution. The traditional courts should be reevaluated and given a vital role to play, given the duality characteristic of the system of juvenile justice and of the society at large.[772]

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[771]Uganda: Child law Review Committee (1992) op. cit., para. 4 (b).

[772]Malawi had allowed "Traditional Courts" to operate and hear serious crimes as burglary, rape, housebreaking and theft, etc. side by side with the imposed judicial system, for more information see, L. J. Chimango (1975), "Traditional Criminal Law in Malawi", The Society of Malawi, 28, 25 - 36; L. J. Chimango (continued...)

Alternatively, special separate juvenile courts should be instituted with their own trained personnel. If this cannot be done, at least one magistrate in each major town should be appointed to hear all juvenile cases.[773] Such magistrates would eventually develop understanding and effective approaches to juvenile offenders, as they gain insight into juvenile crimes.

11:3:4 Sentencing policy

Juvenile Courts are not influenced by contemporary ideas on sentencing. The Zambian Supreme Court has failed to declare corporal punishment unconstitutional[774] as superior courts in neighbouring countries (Zimbabwe, Botswana and Namibia) have done on the ground that this form of punishment is degrading both the offender and the prison officer and inhuman in the manner it is inflicted. It could be persuasively argued that corporal punishment violates Art. 15 of the Zambian Constitution 1991, and also Art. 37 (a) of the United Nations Convention on the Rights of the Child 1990 and the African Charter on the Rights and Welfare of Child 1990. It is unfortunate that Zambia, which has

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[772](...continued)
(1977), "Tradition and the Traditional Courts in Malawi", Comparative and International Journal of Southern Africa, 10, 39 - 66.

[773]This arrangement was done in 1974 and 1975 in Lusaka, where Mr M. Moodley (then Senior Resident Magistrate) assigned Mr M. F. Burgess, Class II to hear all juvenile cases and the present writer was prosecuting before Mr Burgess. The system worked well and it did not cause problems to probation officers as they had to appear before one court.

[774]As shown in Berejena V The People (1984) ZR 19 discussed in Chapter Eight.

fought against injustice in the neighbouring countries for over 27 years, has continued to impose degrading penalties on juveniles. While judges in those countries have held, since the attainment of their independence, that corporal punishment is repressive and coercive, and is associated with colonialism. As Berker, C.J, in Ex parte Attorney-General of Namibia, stated:

> ...the decision which this court will have to make in the present case is based on a value judgment which cannot primarily be determined by legal rules and precedents, as helpful as they may be, but must take full cognisance of the social conditions, experiences and perceptions of the people of this country. This is all the more so as with the advent and emergence of an independent sovereign Namibia, freed from the social values, ideologies, perceptions and political and general beliefs held by the former colonial power, which imposed them on the people...the Namibian people are now in the position to determine their own values free from such foreign values imposed by their former colonial rulers.[775]

As shown in Chapter Four, early missionaries used corporal punishment to compel children to attend school and church services. This was a severely method of dealing with children, even if the purpose was thought to be in the interests of the children themselves.

With this historical heritage of corporal punishment: is it not time for the Zambian courts to reassess their sentencing policies and practices to reflect traditional values which emerged in their operations?

Many jurisdictions have moved away from deterrence and rehabilitation as the guiding rationales for sentencing, for these rationales have proved failures in preventing crime, reducing recidivism or satisfying the victims and the society at

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[775]Ex parte Attorney-General of Namibia, In re Corporal Punishment by Organs of the State (1992) LRC (Const.) 515 at 536.

large. It has been noted that in England and Wales the courts are now guided by the principle of proportionality provided in the Criminal Justice Act 1991.[776] Any sentence imposed must be proportionate to the gravity of the offence committed. It therefore means that those juveniles who commit serious offences deserve to receive severe penalties, because they do not deserve care and protection, in the name of rehabilitation. As Shireman and Reamer (1986) states:

> It is difficult for most lay people, and even for many professionals in the juvenile justice field, to comprehend how it is possible to care - in the true and nontrite sense of this word - for a human being who has seriously injured another, often with malice.....It would be naive, overly simplistic, and moralistic for us to merely assert that professionals have a duty to aid even those who are cruel, vicious, and thoughtless in their ways.[777]

It is now time for the courts to deal with juveniles on the basis of the gravity of the offence committed. It would even be appropriate to reconsider the traditional remedies of compensation and restitution for, as seen in Chapter Six, most juvenile offences are directed against property. After all, compensation and restitution are being recognised as appropriate penalties in western countries (Ashworth 1992), and it is a return to what prevailed under African customary laws. Guideline 9 (h) of Riyadh Guidelines advocates victim-compensation programmes in which offenders are to participate.

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[776]In sections 2 (2) (a) and 6 (2) (b) which lay down that the length of custodial sentences and the obligations of a community sentence must be "commensurate with the seriousness of the offence"; see A. Ashworth (1992), Sentencing and Criminal Justice, (London: Weidenfeld and Nicolson), Chap. 4 that deals with elements of proportionality.

[777]C. H. Shireman and F. G. Reamer (1986), supra., p. 168.

11:4:5 Legislative measures

It is now relevant to appreciate the changing values of certain penalties and it is necessary to apply legislative measures.

In this regard, section 14 of the Penal Code should be amended to raise the age of criminal responsibility from 8 to at least 10, and preferably 12 years. This will be moving with other progressive countries; in Uganda it has been proposed to raise this age to 14 years.[778]

Secondly, section 27 of the Penal Code and section 73 of the Juveniles Act must be amended to abolish corporal punishment as a form of punishment for both adults and juveniles.

Thirdly, there is need to decriminalise certain conduct now considered criminal. For example, street vending, whereby juveniles try to supplement family incomes. These activities do not harm members of communities, but encourage self-reliance. If this is encouraged it would be within Guideline 5 of the Riyadh Guidelines as a progressive prevention policy.

Fourth, a council should be established by legislation at each district, comprising an elder conversant with local customary law (preferably a Local Court justice or a retired person holding a post in the traditional polity, for example, the Paramount Chief of the Lozi, who was once Commissioner for the Welfare of Juveniles), a serving probation officer and a police officer.

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[778]Uganda: Child Law Review Committee 1992, (Department of Probation and Social Welfare, Ministry of Labour and Social Welfare).

This council would be guided by concern with the impact of the criminal process (i.e. the labelling process): diverting juveniles from the criminal process to avoid the counter-productive consequences of labelling; measures such as the restructuring of outside court settlements would guarantee the minimum effects of stigma and degradation by criminal proceedings. There should be a circular or statutory guidelines (e.g. that no court should entertain a criminal charge against a juvenile in the absence of his a parent or guardian, or without a report from the said council).

The council shall from time to time consult the elders of each community in its area on aspects of customary law, as these persons are regarded as the most learned people of their communities in customary law, including child socialisation.

The main functions of the council would include:

(a) Scrutinising juvenile cases before referral to a Juvenile Court; this system could reduce the frequency of juvenile offenders being criminally processed even in trivial cases.

(b) Interviewing the victims together with parents or guardians of offenders to determine whether a reconciliation is possible or a discontinuance of the matter or compensation. This could strengthen the familial control, rather than relying heavily on the formal social control. This would be in line with the the Zambian societies that have maintained their traditional features of communal life, and the duality characteristic of the juvenile justice system, evidenced by the discontinuance of

criminal charges against offenders (see Chapter Eight).

(c) Visiting correctional institutions to inspect the facilities and programmes (and incidentally to ascertain whether approved school or reformatory orders put into effect have been confirmed).

(d) Considering whether a juvenile referred to a Juvenile Court needs a lawyer to represent him and to recommend for legal aid for this purpose.

(e) Soliciting for assistance from charitable organisations. (f) Acting as a co-ordinator between the various agencies involved in juvenile justice.

In conclusion, the thesis has shown the weaknesses and deficiencies in the structure and operations of the institutions of the juvenile justice system of Zambia and made recommendations for reform, especially the formulation of a policy for juvenile justice, improvement of resources and re-evaluation of customary law. But to a considerable extent juvenile delinquency should be tackled by the Zambian people through their traditional institutions, by instilling cultural values to the young generation and thus maintaining the Zambian peoples' heritage of loving, nurturing and educating their children.

APPENDICES

APPENDIX I

SECOND SCHEDULE (to the Juveniles Act)
(Sections 2, 75, 115, 116, 117 and 132)
SCHEDULED TERRITORIES

Botswana.
Malawi.
South Africa.
Southern Rhodesia (now Zimbabwe).
(As amended by S.I. No. 63 of 1964)

APPENDIX II

THIRD SCHEDULE (to the Juveniles Act) (Section 114)

AGREEMENT WITH THE UNION

Agreement under Section 14 of the Prisons and Reformatories Act No. 46 of 1920.

WHEREAS it appears that provision has been made by section fourteen of the Prisons and Reformatories Act Amendment Act No. 46 of 1920, authorising the Governor-General of the Union of South Africa to enter into an agreement with the Officer administering of any territory in South Africa of the Equator (being a portion of the British Dominions or a Territory under the Protection of the Crown), for the purposes specified in the said section;

AND WHEREAS the Administrator of Northern Rhodesia desires to enter into such an agreement as aforesaid;

AND WHEREAS the Officer administering the Government of the Union of South Africa has consented thereto;

NOW, THEREFORE, it is hereby agreed between the Officer administering the Government of the Union of South Africa, and the Administrator of Northern Rhodesia that, subject to the provisions of the said Act, and to conditions hereinafter appearing, an arrangement shall exist-

(a) for the reception in the Union and detention in any prison or goal therein of any person sentenced by a competent court of Northern Rhodesia according to law in force therein to imprisonment with or without hard labour; and

(b) for reception in the Union and detention in any juvenile reformatory or juvenile adult reformatory therein of any person who, being a juvenile or juvenile adult, has been ordered by a competent court of Northern Rhodesia according to law in force therein to be detained in a juvenile or juvenile adult reformatory.

And the Officer administering the Government of the Union of South Africa, and the Administrator of Northern Rhodesia hereby agree on behalf of the Union Government and the Northern Rhodesia Administration, respectively, that when accommodation is available, and the Union Government has agreed to accept any prisoner or juvenile, there shall be paid by the Administrator of Northern Rhodesia to the Union Government in respect of each prisoner or juvenile the sum of three shillings per head per day, or such other amount as may be mutually agreed upon between the Adminstration and the Prisons Department of the Union of South

Africa, and that the Union Government shall be entitled to a refund of any expenses incurred by the latter Department in returning such persons to their homes on discharge from custody.

This Agreement shall take effect as provided by law on the publication of a summary of the terms thereof in the *Gazette* of the Union of South Africa, and shall be terminated on three month's notice being given by either of the parties to the Agreement.

Given under my Hand and the Great Seal of the Union of South Africa, at Pretoria this 5th day of November, One thousand Nine Hundred and Twenty.

J. ROSE INNES,
Officer administering the Government.

Given under my Hand and Seal at Livingstone this 17th day of November, One Thousand Nine Hundred and Twenty.

HUGH C. MARSHALL,
Acting Administrator.

APPENDIX III

DEPARTMENT OF SOCIAL WELFARE
(for use by the Court)

State V. _____

_____

Charge _____

_____

Address _____

_____

Welfare Report required for _____

_____

_____

Received by _____

APPENDIX IV

FIRST SCHEDULE (to the Zambia Police Act)

(section 4)

COMPOSITION OF THE POLICE

Inspector-General of Police
Commissioner
Deputy Commissioner
Senioner Assistant Commissioner
Assistant Commissioner
Senior Superintendent
Superintendent
Assistant Superintendent
Chief Inspector
Inspector
Sub-Inspector
Sergeant
Constable

N.B These of the rank of Assistant Superintendent and above are superior police officers; those of the rank of inspector and Chief Inspector are subordinate police officers; and those below the rank of Inspector are other rank and non-commissioned.

APPENDIX V

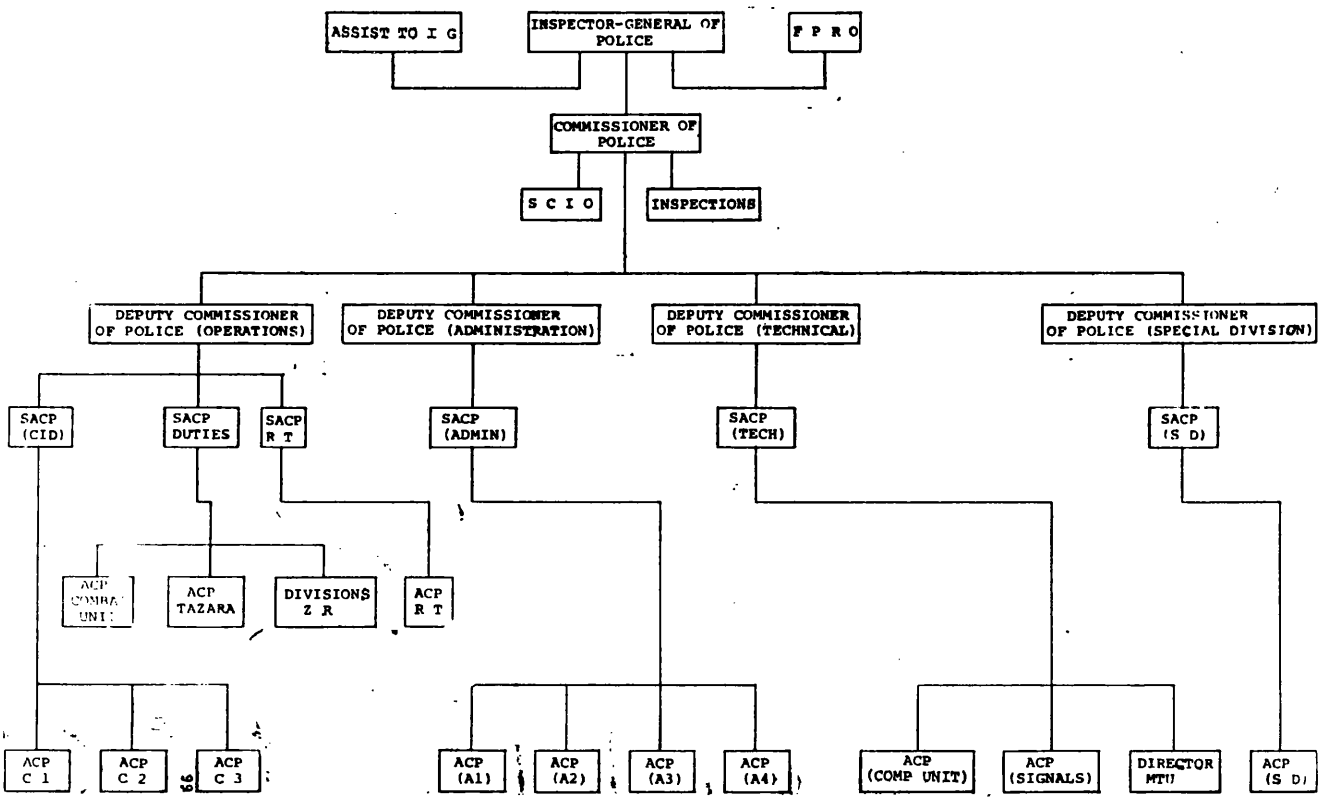
DIVISIONS OF THE POLICE FORCE AND THEIR HEADQUARTERS

Division	Headquarters
Lusaka	Lusaka
Copperbelt	Ndola
Central	Kabwe
Southern	Livingstone
Northern	Kasama
Western	Mongu
Luapula	Mansa
North-Western	Solwezi
Eastern	Chipata
Lilayi Police Training School	Lilayi (Lusaka)
Other Units:	
State House	State House (Lusaka)
Mobile Unit	Kamfwinsa (Kitwe)
Para-Military	Lilayi (Lusaka)
Tazara	Mpika
Protective Unit	Lusaka

N.B Divisions are under the command of Assistant Commissioners, except Lusaka which is under a Senior Assistant Commissioner and Copperbelt under the Deputy Commissioer.

APPENDIX VI

ZAMBIA POLICE HEADQUARTERS
ORGANISATION CHART



APPENDIX VII

RESEARCH ON THE JUVENILE JUSTICE SYSTEM OF ZAMBIA

THE JUVENILE OFFENDERS' QUESTIONNAIRE (An abridged version)

Your answers to these questions will be seen only by the research staff.

A. Social Background Characteristics of the juveniles

1. Name: _____
2. Age:_____ When were you born?
   _____ Day _____ Month _____ Year
3. Birth Place: _____ Village _____ Chief _____ Town/City _____ Province _____
4. Nationality: Zambia _____ Other (Specify) _____
5. Place where youth was spent: Province _____ Village _____ Chief _____ Town/City _____
6. Education: What level of education have you attained before you were sent here?
   _____ 1. Completed Grade 1 - Grade 4
   _____ 2. Completed Grade 5 - Grade 7
   _____ 3. Completed Grade 8 - Grade 9
   _____ 4. Completed Grade 10 - Grade 12
   _____ 5. Never went to school
7. Ethnic group: Which is your ethnic group (Specify)_____
8. At the time of your arrest, if you were not at school, what were you doing? Specify below:

_____

B. Family Social Backgroup Characteristics

9. Marital status of parents: What were the marital status of your parents before you were sent to this institution?
   _____ 1. Married-living together
   _____ 2. Married not living together
   _____ 3. Never married to each other
   _____ 4. Divorced
   _____ 5. Father dead
   _____ 6. Mother dead
   _____ 7. Other (Specify) _____
10. How big is your family? Number of children including yourself.
   _____ 1. One
   _____ 2. Two-three
   _____ 3. Four-six
   _____ 4. More than six

C. Kinship Network

11. Whom were you living with immediately prior to your commitment to this institution or at the time of your arrest?
   _____ 1. Both natural parents
   _____ 2. Mother and stepfather

_____ 3. Father and stepmother
_____ 4. Mother only
_____ 5. Father only
_____ 6. Grandparents or one of them
_____ 7. Brother or sister
_____ 8. Uncle (specify maternal or paternal _____)
_____ 9. Friend
_____ 10. Other (specify) _____

12. Since you were born or childhood you have never visited or lived in the village?
_____ Yes _____ No
13. Since you were born or childhood you have never visited or lived in an urban area?
_____ Yes _____ No.
14. The relatives who are good to you are from your:
_____ Father's side _____ Mother's side

D. About the Offence

15. Can you state the offence(s) you were convicted, that led you to be sent here.
_____
_____

16. Were you on bail?
_____ Yes _____ No
17. When you were detained by the police, were you take home to inform your parents or guardian about the case?
_____ Yes _____ No
18. Were the police friendly to you?
_____ Yes _____ No
19. If no, how were you treated? Specify briefly below:
_____
20. Have you ever been convicted of any offence before?
_____ 1. None
_____ 2. Once
_____ 3. Twice
_____ 4. Thrice or more
21. Have ever been sent to Nsankwe Probation Hostel, Nakambala Approved School or Katombora Reformatory?
_____ 1. None
_____ 2. Once
_____ 3. Twice
_____ 4. Thrice or more
22. Have you ever been placed on Probation order?
_____ 1. None
_____ 2. Once
_____ 3. Twice
_____ 4. thrice or more
23. Have you ever been ordered to caning?
_____ 1. None
_____ 2. Once
_____ 3. Twice
_____ 4. Thrice or more

E. Opinion About the Institution

24. We would like your opinion about certain things at this institution. Check for each one whether you agree, disagree, or not sure.

(a) We get enough food at meals

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

(b) There are not enough things to do during free time.

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

(c) We are not allowed to have frequent family ties with parents.

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

(d) The food does not taste as good as what I am used to.

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

(e) Some supervisors here are too strict.

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

(f) Boys here should be able to suggest changes in work programs, family visiting rules, and activities.

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

(g) The staff here are not strict enough with certain boys.

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

(h) There are too many boys here who push other boys around.

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

(i) The institution has no good relationship with the local community.

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

(j) The families play no role at this institution.

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

(k) Boys here get enough help in preparing for jobs they want in the future.

_____ 1 Agree _____ 2 Disagree _____ 3 Not sure

25. How many of the boys you have met here would you like to see again after you get out?

_____ 1. All or almost all
_____ 2. Most
_____ 3. Some
_____ 4. A few
_____ 5. None

F. <u>Operation and Activities at the Institution</u>

26. Which of the training have you undergone?
Specify _____

27. Do you have recreation facilities here at this institution?
_____ Yes _____ No

28. Do you have academic program here?

_____ Yes _____ No

If Yes what Grade are you in?

specify _____

29. Are academic or other trade training programs compulsory?

_____ Yes _____ No

30. Have any of your parents visited you here?

_____ Yes _____ No

31. If you had completed school, what job would you have preferred?

_____ 1. Teacher
_____ 2. Doctor
_____ 3. Lawyer
_____ 4. Judge
_____ 5. Carpenter
_____ 6. Mechanic
_____ 7. Driver
_____ 8. Other (specify _____)

32. Religion: Do you attend Church services according to your religious affiliation?

_____ Yes _____ No

33. If No in the last question, which religious organization conduct services at the institution?

_____ 1 Catholic
_____ 2 Anglican
_____ 3 Seventh Day Adventist
_____ 4 New Apostolic Church
_____ 5 United Church of Zambia
_____ 6 Other (specify _____)

34. What things you should be improved on this institution?

1. _____
2. _____
3. _____

APPENDIX VIII

CORRECTIONAL STAFF'S QUESTIONNAIRE (An abridged version)

A. Ideas About Juvenile Offenders

Thinking about deliquents in general - thus, children who commit crimes and come to attention of law enforcement agencies , we would like to know how you feel about the following statements. There are no right or wrong answers. If you "strongly agree" check the line below strongly agree, if you "agre" check the line below agree and so forth.

1. Understanding may be important in helping juvenile offenders but what is needed is strictness and firmness.
   _____ 1 Strongly agree
   _____ 2 Agree
   _____ 3 Not sure
   _____ 4 Disagree
   _____ 5 Strongly disagree
2. Unless you take precautions, a deliquent may attack you.
   _____ 1 Strongly agree
   _____ 2 Agree
   _____ 3 Not sure
   _____ 4 Disagree
   _____ 5 Strongly disagree
3. Most juvenile offenders are rejected children who need help.
   _____ 1 Strongly agree
   _____ 2 Agree
   _____ 3 Not sure
   _____ 4 Disagree
   _____ 5 Strongly disagree
4. Parents or guardians are to play a major role in helping juvenile offenders to reform.
   _____ 1 Strongly agree
   _____ 2 Agree
   _____ 3 Not sure
   _____ 4 Disagree
   _____ 5 Strongly disagree
5. Traditional cultural values are important when trying to help juvenile offenders.
   _____ 1 Strongly agree
   _____ 2 Agree
   _____ 3 Not sure
   _____ 4 Disagree
   _____ 5 Strongly disagree
6. Juvenile deliquency is a sign of the break down of traditional child socialization.
   _____ 1 Strongly agree
   _____ 2 Agree
   _____ 3 Not sure
   _____ 4 Disagree
   _____ 5 Strongly disagree
7. Most juvenile offenders will respond to genuine friendship.
   _____ 1 Strongly agree

_____ 2 Agree
_____ 3 Not sure
_____ 4 Disagree
_____ 5 Strongly disagree

8. Society is to be much tougher than it has been if it is going to reduce deliquency tendencies.
_____ 1 Strongly agree
_____ 2 Agree
_____ 3 Not sure
_____ 4 Disagree
_____ 5 Strongly disagree

9. The trouble with juvenile offenders is that they have not learned to treat adults with respect and obedience.
_____ 1 Strongly agree
_____ 2 Agree
_____ 3 Not sure
_____ 4 Disagree
_____ 5 Strongly disagree

10. Traditional elders are to be in at institutions like this as counsellors.
_____ 1 Strongly agree
_____ 2 Agree
_____ 3 Not sure
_____ 4 Disagree
_____ 5 Strongly disagree

B. <u>About the Juvenile Offenders</u>

Below are some statements about the boys you have in this institution. Write the answer that comes to closest to the way you think things actually are.

11. What per cent of the boys here are bully/assaultive and hostile? _____%

12. Who do boys miss while here? (check the most common).
_____ 1 Boys while here think of their parents a lot
_____ 2 Boys always talk of missing their brothers and sisters
_____ 3 Boys always talk of missing their peers

C. <u>Different Institutions for Juvenile Offenders Have Different Ideas of What their Purposes are.</u>

13. Below are a set of statements about purposes.
1. Our purpose is to punish deliquent behaviour.
2. Our purpose is to teach boys good social habits.
3. Our purpose is to train and educate these boys.
4. Our purpose is to change a boy's social attitudes and values.
5. Our purpose is to help each boy gain an undertaking of the kinds of things that got him into trouble.
6. Our purpose is to protect the home community for a period of time.
(a) Now look over the list and write down the numbers of the two statements which in your opinion best describe what your superior or the in-charge thinks are the purposes of this institution?
1 _____ 2 _____
(b) Which two statements are furthest away from what the

In-charge thinks are the purposes of the institution?
1 _____ 2 _____
(c) Which two statements best desrcibe the way things actually are at this institution?
1 _____ 2 _____
(d) Which one statement least applies to the way things actually are?
1 _____
(e) Which two statements best describe how you think things should be operated?
1 _____ 2 _____
Now, in your own words, what do you think the purpose of this institution?

_____

D. Tasks of Staff at the Institutions

Staff have different tasks at any institution. We would like your opinion on the following statements about the staff. Check one which describes them.

14. How much influence do each of the following groups have in making decisions about how the boys should be handled at this institution?

(a) Social worker, psychologist (if any):
_____ 1 Very little influence
_____ 2 Some influence
_____ 3 Same as anyone else
_____ 4 A good deal of influence

(b) Academic teacher (if any):
_____ 1 Very little influence
_____ 2 Some influence
_____ 3 Same as anyone else
_____ 4 A good deal of influence

(c) Vocational instructor (if any):
_____ 1 Very little influence
_____ 2 Some influence
_____ 3 Same as anyone else
_____ 4 A good deal of influence

(d) Recreational staff (if any):
_____ 1 Very little influence
_____ 2 Some influence
_____ 3 Same as anyone else
_____ 4 A good deal of influence

(e) Probation officer (if any):
_____ 1 Very little influence
_____ 2 Some influence
_____ 3 Same as anyone else
_____ 4 A good deal of influence

(f) Other (specify _____)
_____ 1 Very little influence
_____ 2 Some influence
_____ 3 Same as anyone else
_____ 4 A good deal of influence

15. How important is the social welfare development department in running this institution?

_____ 1 The institution could run okey, even if we did not have social welfare officers.

_____ 2 Social welfare officers are fairly important in running the institution.

_____ 3 Without good social welfare officers it would be almost impossible for the institution to function.

16. What do you think about introducting the following traditional arts as part of training programs at this institution?

(a) Baskets and mat making.

_____ 1 Strongly agree
_____ 2 Agree
_____ 3 Not sure
_____ 4 Disagree
_____ 5 Strongly disagree

(b) Crafts (i.e making traditional wooden spoons, bowls etc.)

_____ 1 Strongly agree
_____ 2 Agree
_____ 3 Not sure
_____ 4 Disagree
_____ 5 Strongly disagree

(c) Clan elders as counsellors/probation officers

_____ 1 Strongly agree
_____ 2 Agree
_____ 3 Not sure
_____ 4 Disagree
_____ 5 Strongly disagree

17. About charitable organizations. Do you receice any assistance or contributions from charitable or volunteer organization?

_____ Yes _____ No

18. Can you briefly describe what each organization contribute or assistance that is being rendered to the institution:

_____

19. What is the per cent of juveniles in your care had visited their parents or guardians in the past six months? _____%

E. <u>The Background and Experience of Members of Staff</u>

Finally, we would like to learn something about the background and experience of all the staff members who responded to this questionnaire. We would appreciate your responses to the following questions concerning demographic and work related variables.

20. When were you born?

_____ Day _____ Month _____ Year

21. Sex: 1 _____ Male 2 _____ Female

22. _____ 1 Single
_____ 2 Married
_____ 3 Divorced
_____ 4 Other (specify _____)

23. Education: Please tick only the highest level attained.

_____ 1 Completed Grade 7
_____ 2 Completed Grade 9
_____ 3 Completed Grade 12
_____ 4 Completed Community or technical College
_____ 5 Some University (Specialization:_____)

_____ 6 University degree(Specialization: _____)
_____ 7 Post-graduate studies(Specialization: _____)

24. Briefly describe any special training you may have had in the juvenile justice field, or social work:

_____

THANK YOU FOR YOUR COOPERATION.

BIBLIOGRAPHY

Abrahams, R. D. (1970), Deep Down in the Jungle...Narrative Folklore from the Streets of Philadelaphia. Chicago: Aldine Publishing Co.

Ageton, S. S. (1983), "The Dynamics of Female Delinquency, 1976-1980". Criminology, 21, 4: 555 - 584.

Allan, W. (1948), Land Holding and Land Usage and The Plateau Tonga of Mazabuka District. Oxford: Oxford University Press.

Allott, A. N. (1957), "The Judicial Ascertainment of Customary law in British Africa". Modern Law Review, 20, 244-263.

----------(1965), "The Future of African Law", in: H. Kuper and L. Kuper (eds.), African Law: Adaptation and Development. Berkeley: University of California Press.

----------(1970), New Essays In African Law. London: Butterworth.

Alstshculer, D. M. and Lawrence, J. S. (1981), A Review of Selected Research and Program Evaluations on Police Diversion Programs. Washington, DC: Govt. Printing Office.

Andeneas, J. (1952), "General-Prevention-Illusion or Reality"? Reprinted in: S. E. Grupp, (ed.), Theories of Punishment. Bloomington: Indiana University Press 1971.

Aries, P. (1962), Centuries of Childhood. Harmondsworth: Penguin.

Ashworth, A. (1984), "Techniques of Guidance on Sentencing", Crim. Law Rev., 519 - 530.

----------(1990), "The White Paper on Criminal Justice and Sentencing." Criminal Law Rev., 217 - 224.

----------(1992), Sentencing and Criminal Justice. London: Weidenfeld and Nicolson.

Austin, J. (1885), Lectures on Jurisprudence or the Philosophy of Law. London: John Murray.

Baker, C. (1967), "Criminal Justice In Malawi". Journal of African Law, 11, 147-151.

Barnes, J. (1954), Politics In A Changing Society: A Political History of The Fort Jameson Ngoni. Oxford: Oxford University Press.

Barrett, D.B. (1968), Schism and Renewal in Africa: An Analysis of Six Thousand Contemporary Religious Movements. Oxford: Oxford University Press.

Beattie, J.H.M. (1960), Understanding an African Kingdom: Bunyoro. New York: Holt, Rinehart and Winston Inc.

----------(1964), Other Cultures: Aims, Methods and Achievement in Social Anthropology. New York: The Free Press.

Beccaria, C. (1764), On Crimes and Punishments. translated by H. Paolucci. Indianapolis: Bobbs-Merrill Educational Publishing Co. 1963.

Becker, H. S. (1963), The Outsiders. New York: Free Press.

Beidelman, T.O. (1964), "Pig (Guluwe): an essay on Ngulu sexual symbolism and ceremony". Southwestern Journal of Anthropology, 20, 359-392.

Bennette, T. and Wright, R. (1984), Burglars on Burglary. London: Aldershot.

Berk, B. (1959), "Organisational Goals and the Behaviour of Informal Leaders." American Journal of Sociology, LXV, 1, 59 - 67.

Besharov, D. (1974), Juvenile Justice Advocacy-Practice in Unique Court. New York: Practising Law Institute.

Bittner, E. (1970), The Function of the Police in Modern Society. Washington, DC: Govt. Printing Office.

Black, D., and Reiss, A. J. Jr., (1970), "Police Control of Juveniles." American Sociological Rev., 35, 63 - 77.

Blumer, H. (1971), "Social Problems as Collective Behaviour". Social Problems, 18, No. 3, 298-306.

Bottoms, A. E. (1990), "Crime Prevention Facing the 1990s", Policing and Society, Vol. 1, 1, 3 - 22.

Bottomley, A. K. and Coleman, C. (1981), Understanding Crime Rates. London: Gower.

Brelsford, W. V. (1950), "Some Cases of Witchcraft". The Northern Rhodesia Journal, 1, 54.

Bruce, N. (1982), "Historical Background of Scottish Juvenile Justice System". in: F. M. Martin and K. Murray, (Eds.). The scottish Juvenile Justice System. Scottish Academic Press.

Bruwer, J. P. (1948), "Kinship Terminology Among the Cewa of the Eastern Province of Northern Rhodesia". African Studies, 85-187.

----------(1955), "Unkhoswe: The system of Guardianship in Cewa Matrilineal Society". African Studies, 12, No.3, 113-

122.

Canter, R. S. (1976), Law and Local Level Authority in Zambia. Ph. D Dissertation, University of California, Berkeley, Michigan: University Microfilms International.

Carpenter, M. (1851), Reformatory Schools for the Children of the Perishing and Dangerous Classes and for Juvenile Offenders. London: Gilpin.

----------(1853), Juvenile Delinquents: Social Evils, their Causes and their Cure. London: Cash.

Chilala, M. K. (1976), "Instant Justice and the Law in Zambia", in: R. Robins and K. Rennie (eds.), Social Problems in Zambia Vol. I. Lusaka: University of Zambia.

Chimango, L. J. (1975), "Traditional criminal law in Malawi". The Society of Malawi, 28, 25-36.

----------(1977), "Tradition and The Traditional Courts in Malawi". Comparative and International Journal of Southern Africa, 10, 39-66.

Chinyanta, M. and Chiwale C. C. (1989), Mutomboko Ceremony and the Lunda-Kazembe Dynasty. Lusaka: Kenneth Kaunda Foundation.

Church, L. (1974), "The Common Law and Zambia". Zambia Law Journal, 1-54.

Clarke, R. V. G. (1966), "Approved School Boy Absconders and Corporal Punishment." British Journal of Criminology, 6, 364 - 380.

Clifford, W. (1960), Crime in Northern Rhodesia. Lusaka: Rhodes-Livingstone Institute.

----------(1974), An Introduction to African Criminology. London: Oxford University Press.

Cloward, R. A. and Ohlin, L. E. (1960), Delinquency and Opportunity: A Theory of Delinquent Gangs. New York: Free Press.

Cohen, A. K. (1955), Delinquent Boys: The Culture of the Gang. New York: Free Press.

Cohen, S. (1985), Visions of Social Control: Crime and Punishment and Classification. Cambridge: Polity Press.

Coillard, F. (1897), On the Threshold of Central Africa: Record of Twenty Years' Pioneering Among the Barotsi of Upper Zambezi. translated by C. W. Mackintosh. London: Hodder and Stoughton.

Coldham, S. (1990), "Customary Marriage and Urban Courts in Zambia", Journal of African Law, 67 - 75.

Colson, E. and Gluckman, M. (1951), Seven Tribes of British Central Africa. Manchester: Manchester University Press.

Colson, E. (1958), Marriage and the Family among Plateau Tonga of Northern Rhodesia. London: Manchester University Press.

----------(1962), The Plateaut Tonga of Northern Rhodesia: Social and Religious Studies. Manchester: Manchester University Press.

Cooper, G. (1951), "Village Crafts in Barotseland: Human Problems in British Central Africa". The Rhodes-Livingstone Journal, 11 MUP.

Cotran, E. (1965), "Integration of Courts and Application of Customary Law in Tanganyika". East African Journal of Law, 1, 108-124.

----------(1967), "The position of Criminal law in East African countries". in: G. F. A. Sawyer (Ed.). East African Law and Social Change, Nairobi: East African Publishing House.

----------(1963), Report on Customary Criminal Offences in Kenya. Nairobi: Govt. Printer.

Coyle, A. (1993), "Penal Reform: Prisons in Africa", West Afrika, 977.

Critchley, T. A. (1967), A History of Police in England and Wales, 900 - 1966. London: Constable.

Cunnison, I. (1959), The Luapula peoples of Northern Rhodesia. Manchester: Manchester University Press.

Davidson, V. G. (1968), "Reforms in Evidence and Criminal Procedure: The Malawi Experiment considered". East African Law Journal, 31-35.

Doke, C. M. (1931), The Lamba of Northern Rhodesia: A study of their customs and beliefs. London: George Hurrap & Co.

Dressler, D. (1965), Practice and Theory of Probation and Parole. New york: Columbia University Press.

Driberg, J. H. (1970), "The African Conception of Law". Reprinted, in: E. Contran and N. N. Rubin, (Eds.). Readings in African Law. London: Frank & Cass.

Durkheim, E. (1964), The Division of Labour in Society. translated by G. Simpson, New York: Macmillan Co.

Elias, T. O. (1956), The Nature of African Customary Law.

Manchester: Manchester University Press.

Empey, L. T. (1979), "From Optimism to Despair: New doctrines in juvenile justice". in: C. A. Murry and L. A. Cox, (eds.), Beyond Probation: Juvenile Corrections and Chronic Delinquent. Beverly Hills: Sage.

----------(1982), American Deliquency: Its Meaning and Construction. Homewood: The Dorsey Press.

Epstein, A. L. (1951), "Some Aspects of the Conflict of Law and Urban Courts in Northern Rhodesia", The Rhodes-Livingstone Journal. 12, 28-40.

----------(1953), "The Role of African Courts in Urban Communities of Northern Rhodesia Copperbelt". The Rhodes-Livingstone Journal, 13, 1-20.

----------(1953), The Administration of Justice and the Urban African. London: University Press.

----------(1981), Urbanization and Kinship: The Domestic Domain on the Copperbelt of Zambia 1950-1956. London Academic Press.

Eriksson, T. (1971), "Society and Treatment of Offenders". in: S. E. Grupp, (ed.), Theories of Punishment. Bloomington: Indiana University Press.

Esbensen, F. (1984), "Net Widening? Yes and No: Diversion Impact Assessed Through a Systems Processing Rates Analysis", in: S. H. Decker (ed.), Juvenile Justice Policy: Analyzing Trends and Outcomes. Beverly Hills, California: Sage Publications Inc.

Evans, R. and Wilkinson, C. (1990), "Variation in Police Cautioning Policy and Practice in England and Wales." Howard Journal, 29, 3, 155-176.

Farrington, D. P. and Bennett, T. (1981), "Police Cautioning of Juveniles in London", British Journal of Criminology, 21, 123-135.

Fattah, E. (1977), "Deterrence: A Review of Literature", Canadian Journal of Criminology, 19, No. 2, 9-100.

Finnegan, R. (1970), Oral Literature in Africa. Oxford: Clarendon Press.

Fisher, C. J. and Mawby, R. I. (1982), "Juvenile Deliquency and Police Discretion in an inner-City Area", British Journal of Criminology, 22, 63-75.

Ford, D. (1975), Children, Courts and Caring: A study of the Children and Young Persons Act, 1969. London: Constable and Company Ltd.

Gann, L. H. (1958), The Birth of a Plural society in Northern Rhodesia 1894-1914. Manchester: Manchester University Press.

----------(1969), A History of Northern Rhodesia: Early Days to 1953. New York: Humanities Press.

Gibbins, T. C. N. and Ahrenfeldt, R. H. (1966), Cultural Factors in Delinquency. London: J. B. Lippincott.

Giller, H. and Tutt, N. (1987), "Police Cautioning of Juveniles: The Continuing Practice of Diversity", Criminal Law Review, 367-374.

Gillis, J. (1974), Youth and History. London: Academic Press.

Gluckman, M. (1941), "Economy of Central Barotse plain". The Rhodes-Livingstone papers, 7 MUP.

----------(1943), "Essays on Lozi Land and Royal Property". The Rhodes-Livingstone Papers. 10 MUP.

----------(1955), The Judicial Process Among the Barotse of Northern Rhodesia. Manchester: Manchester University Press.

----------(1963), "Order and Rebellion in Tribal Africa". Reprinted, in: E. Contran and N. N. Rubin, (Eds.). Readings in African Law. London: Frank Cass & Co. Ltd 1970.

----------(1965), The Ideas in Barotse Jurisprudence. London: Yale University Press.

----------(1969), Ideas and Procedures in African Customary Law. London: Oxford University Press.

Goldstein, J. (1960), "Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice." Yale Law Journal, 69, 543 - 88.

Gray, J. C. (1921), The Nature and Source of Law. New York: Columbia University Press.

Hall, R. (1965), Zambia. London: Pall Mall Press.

Handler, J. (1965), "The Juvenile Court and Adversary System: Problems of Function and Form". Wisconsin Law Review, 9.

Hatchard, J. (1984), "Crime and Punishment in Zambia". in: M. Ndulo, (ed.), Law in Zambia. Nairobi: East African Publishing House.

----------(1985), "Crime and Penal Policy in Zambia", The Journal of Modern African Studies, Vol. 23, 485 - 505.

----------(1989), "Policy and Perspective on Juvenile Justice". in: K. Osei-Hwedie and M. Ndulo, (eds.), Studies in Youth and Development. Lusaka: Multimedia Publications.

Hedlund, H. and Lundahl, M. (1983), Migration and Change in Rural Zambia: Research Report. No. 70. Uppsala: Scandanavian Institute of African Studies.

Herskovits, M. J. (1971), Life in a Haitian Valley. New York: Doubley and Company incl.

Holub, E. (1975), Emil Holub's Travels North of the Zambezi 1885-6. Manchester: Manchester University Press.

Hoover, E. L.; Piper, J. C.; and Spalding, F. O. (1984) "The Evolution of the Zambian Courts System", in: M. Ndulo (ed.), Law in Zambia. Nairobi: East African Publishing House.

Horton, R. (1971), "African Conversion". Africa, 41, 2.

Kanganja, J. L. (1981), "Courts and Judges in Zambia: The Evolution of the Modern Judicial System". Unpublished Ph.D dissertation. SOAS, London: University of London.

Karibi-whyte, A. G. (1988), Criminal Policy: Traditional and Modern Trends. Lagos: Nigerian Law Publications Ltd.

Kassebaum, G. (1974), Deliquency and Social Policy. Englewood Cliffs, New Jersey: Prentice-Hall, Incl..

Kaunda, K. D. (1966), A Humanist in Africa: Letters to Collin M. Morris from Kenneth D. Kaunda, President of Zambia. Nashville: Abingdon.

----------(1967), Humanism in Zambia and a Guide to Its Implementation: Part I. Lusaka: Govt. Printer.

----------(1974), Humanism in Zambia and a Guide to Its Implementation: Part II. Lusaka: Govt. Printer.

Kenyatta, J. (1959), Facing Mount Kenya: The Tribal Life of the Gikuyu. London: Martin Secker and Warburg Ltd.

Krisberg, B., and Austin, J. F. (1993), Reinventing Juvenile Justice. Newbury Park, California: Sage Publications, Inc.

Langworthy, H. (1972), Zambia Before 1800: Aspects of Pre-Colonial History. London: Longman Group Ltd.

Latessa, E. J.; Travis III, L. F.; and Wilson, G. P. (1984), "Juvenile Diversion: Factors Related to Decision Making and Outcome", in: S. H. Decker (ed.), Juvenile Justice Policy: Analyzing Trends and Outcomes. Beverly Hills, California: Sage Publications Inc.

Lerman, P. (1975), Community Treatment and Social Control.

Chicago: University of Chicago Press.

----------(1984), "Policing Juveniles in London: Shifts in Guiding Discretion 1893-1968", British Journal of Criminology. 24, 168 - 184.

Lewis, D. E. (1986), "The General Deterrent Effect of Longer Prison Sentences", British Journal of Criminalogy. 26, 47.

Lipton, D.; Martinson, R.; and Wilks, J. (1975), The Effectiveness of Correctional Treatment. New York: Praeger Publishers Inc..

Lundman, R. J. (1980), Police and Policing: An Introduction. New York: Holt, Rinenhart and Winston.

Lundman, R. J.; Sykes, R. E.; and Clark, J. P. (1978), "Police Control of Juveniles: A Replication." Journal of Research in Crime and Delinquency, 15, 74 - 91.

Maguire, M. (1982), Burglary in a Dwelling: The Offence, the Offender and the Victim. London: Heinemann.

Maine, H. J. (1906), Ancient Law. edited by Sir F. Pollock. London: John Murray.

Mair, L. (1934), An African People in the Twentieth Century: Buganda. London: G. Routledge & Sons.

Makouta-Mboukou, J. P. (1973), Black African Literature: An Introduction. Washington, D. C.: Black Orpheus Press.

Malinowiski, B. (1926), Crime and Custom in Savage Society. London: Kegan Paul.

Marwick, M. G. (1952), "The Social Context of Cewa Witchcraft Beliefs". Africa, 22, 120-135.

---------------(1965), Sorcery in its Social Setting: A Study of the Northern Rhodesia Cewa. Manchester: Manchester University Press.

Maxwell, K. B. (1983), Bemba Myth and Ritual: The Impact of Literacy on an Oral Culture. New York: Peter Lang.

Meek, C. K. (1937), "Law and Authority in a Nigerian Tribe". Reprinted in: E. Cotran and N. N. Rubin, (eds.). Readings in African Law. London: Frank Cass & co. Ltd 1970.

Merritt, D. (1980), The Dew Breakers. Winona, Missippi: J. C. Choate Publications.

Merton, R. K. (1955), Social Theory and Social Culture. New York: Free Press.

Mbiti, J. S. (1975), Introduction to African Religion. New York:

Praeger Publishing, Incl.

Milner, A. (1972), The Nigerian Penal System. London: Sweet & Maxwell Ltd.

Mofokeng, M. P. (1985), The Criminal Law and Procedure Through Cases in Lesotho. Morija: Morija Sesuto Book Depot.

Morris, A. and Giller, H. (1987), Understanding Juvenile Justice. London: Groom Helm.

Morrison, W. D. (1897), Juvenile Offenders. New York: D. Appleton.

Moumouni, A. (1968), Education in Africa. London: Andre Deutsch Ltd.

Moxon, D. and Jones, P. (1985), Sentencing Practice in Juvenile Courts: Is There a Tariff? Research Bulletin No. 19. London: Home Office, Research and Planning Unit.

Mpashi, S. A. (1978), Uwauma Nafyala. Lusaka: Neczam.

Mushindo, P. B. (1958), Amapinda mu lyashi. London: University of London Press.

Mwansa, K. T. (1989), "Juvenile Deliquency in Zambia: The Law and Parental Role in its Control". in: K. Osei-Hwedie and M. Ndulo, (eds.). Studies in Youth and Development. Lusaka: Multimedia Publications.

---------- (1992), "Property Crime in Lusaka." Unpublished PhD dissertation. SOAS, University of London.

Nag, P. (1990), Population, Settlement and Development in Zambia. New Delhi: Concept Publishing Co.

Ngulube, N. M. J. (1989), Some Aspects of Growing Up in Zambia. Lusaka: Nalinga Consultancy/Sol.Consult A/S Ltd.

Nwanunobi, C. O. (1992), African Social Institutions. Nsukka: University of Nigeria Press.

O'Donnell, M. (1986), "Social Order, Social Change and Socialization". in: P. McNeill and C. Townley, (eds.), Fundamentals of Sociology. London: Hutchinson.

Oliver, . T. (1973), "The Metropolitan Police Juvenile Bureau Scheme". Criminal Law Review, 499-506.

Osborne, S. (1984), "Social Inquiry in One Juvenile Court: An Examination", Brit. J. of Social Work, 14, 361 - 378.

Parsloe, P. (1978) Juvenile Justice in Britain and the United States: The Balance of Needs and Rights. London: Routledge & Kegan Paul.

Phillipson, D. W. (1972), National Monuments of Zambia. Lusaka: Zambia Information Services.

Pike, M. S. (1985), The Principles of Policing. London: MacMillan Press.

Pillian, I., and Briar, S. (1964), "Police Encounters with Juveniles." American Journal Sociology, 70, 206 - 214.

Platt, A. M. (1969), The ChildSavers. Chicago: University of Chicago Press.

Poewe, K. (1989), Religious, Kinship, and Economy in Luapula, Zambia. Lampeter: The Edwin Mellen Press.

Purchas-Tulloch, J. A. (1976), "Jamaica Anansi: A Survival of the African Tradition". Ph D Thesis. Howard University: University Microfilms International.

Quinney, R. (1975), Criminology. Boston: Little, Brown & Co.

Rader, D. A. (1991), Christian Ethics in an African Context: A Focus on Urban Zambia. New York: Peter Lang Publishing, Incl.

Radcliffe-Brown, A.R. (1952), Structure and Function in Primitive Society. London: Routledge and Kegan Paul.

Raum, O. (1940), Chaga Childhood. London: Oxford University Press.

Rendleman, D. R. (1971), "Parens Patriae: From Chancery to the Juvenile Court". South Carolina Law Review, 23, 205.

Read, J. S. (1964), "Crime and Punishment in East Africa: Twilight of Customary Law". Howard Law Journal, 10, 164-189.

----------(1972), "Customary Law Under Colonial Rule". in: H. F. Morris and J. S. Read, Indirect Rule and the Search for Justice: Essays in East African Legal History. London: Oxford University Press.

----------(1974), "Kenya, Tanzania and Uganda", in: A. Milner (ed.) African Penal Systems. London: Routledge & Kegan Paul.

----------(1993), "Protecting Uganda's Children: a new model child law for an African state?", Journal of Child Law, Vol. 5, 4, 13 - 20.

Read, M. (1956), The Ngoni of Nyasaland. London: Oxford University Press.

Reiss, A. J. (1971), The Police and the Public. New Haven, CT: Yale University Press.

Reynolds, B. (1968), The Material Culture of the Peoples of the Gwembe Valley. Manchester: Manchester University Press.

Reynolds, P., and Cousins, C. C. (1993), Lwaano Lwanyika: Tonga Book of the Earth. London: Panos Publications Ltd.

Richards, A. I. (1949), "The Bemba of North-Eastern Rhodesia". in: E. Colson and M. Gluckman, (eds.), Seven Tribes of British Central Africa. London: Oxford University Press.

----------(1956), Chisungu: A Girl's Initiation Ceremony among the Bemba of Northern Rhodesia. London: Faber and Faber.

Richardson, H. J. (1969), Adolescent Girls in Approved Schools. London: Routledge & Kegan Paul Ltd.

Roberts, A. (1976), A History of Zambia. London: Heinemann.

Rodger, J. J. (188), "Social Work as Social Control Re-examined: Beyond the Dispersal of Discipline Thesis." Sociology, 22, 563 - 81.

Rotberg, R. I. (1965), Christian Missionaries and the Creation of Northern Rhodesia 1880-1924. Princeton, New Jersey: Princeton University Press.

Salmond, J. (1946), Jurisprudence. London: Sweet & Maxwell.

Sangambo, M. K. (1979), The History of the Luvale People and Their Chieftainship. edited by A. Hansen and and R. J. Papstein. Los Angels: African Institute for Applied Research.

Sarri, R. C., and Vinter, R. D. (1965), "Group Treatment Strategies in Juvenile Correctional Programs." Crime and Delinquency, II: 326 - 340.

Scanlon, D. G. (1964), "Indigenous Education: The Poro of West Africa". Traditions of African Education. New York: Columbia University Press.

Schapera, I. (1938), "Responsibility and Intent", Reprinted in: E. Cotran and N. N. Rubin, (eds.). Readings in African Law. London: Frank Cass & Co. Ltd. 1970.

Schuster, I. M. G. (1979), New Women of Lusaka. Palo Alto, California: Mayfield Publishing Company.

Shapland, J. (1984), "Victims, the Criminal Justice System and Compensation", British Journal of Criminology, Vol. 24, 2, 131 - 149.

Shaw, C. R. and McKay, H. D. (1942), Juvenile Delinquency and Urban Areas. Chicago: University of Chicago Press.

Skjonsberg, E. (1989), Change in an African Village: Kefa Speaks. West Hartford, Connecticut: Kumarian Press.

Smith, E. W. and Dale, A. M. (1920), The Ila-Speaking Peoples of Northern Rhodesia. London: Macmillan & Co. Ltd.

Snell, G. S. (1954), "Nandi Customary Law". Reprinted in: E. Cotran and N. N. Rubin, (eds.). Readings in African Law. London: Frank Cass & Co. Ltd. 1970.

Stafaniszyn, B. (1964), Social and Ritual of the Ambo of Northern Rhodesia. London: Oxford University Press.

Stafford, E. and Hill, J. (1987), "The Tariff, Social Inquiry Reports and The Sentencing of Juveniles", Brit. J. of Criminol., 27, 4: 411 - 420.

Steele, B. F. (1982), "Discovery of Children at Risk for Juvenile Deliquency". in: F. N. Dutile; C. H. Foust and D. R. Webster, (eds.) Early Childhood Intervention and Juvenile Deliquency. Massachusetts: D. C. Heath and Company.

Sumbwa, N. (1993), Zambian Proverbs. Lusaka: Multimedia Publications.

Sutherland, E. H., and Cressey, D. R. (1974), Criminology. New York: J. B. Lippincolt Co.

Taiwo, O. (1967), An Introduction to West African Literaure. London: Thomas Nelson & Sons Ltd.

Timpunza Mvula, E. S. (1987), Women's Oral Peotry As A Social Strategy in Malawi. Ph D dissertation. Indiana University: University Microfilms International.

Turner, V. (1967), The Forest of Symbols: Aspects of Ndembu Ritual. Ithaca, New York: Cornell University Press.

Vansina, J. (1965), Oral Tradition: A Study in Historical Methodology. Middlesex: Routledge & Kegan Paul.

Vass, A. A., and Weston, A. (1990), "Probation Day Centres As An Alternative To Custody: A "Trojan Horse" Examined." British Journal of Criminology, 30, 2, 189 - 206.

Vinter, R. D. (1963), "Analysis of Treatment Organisations." Social Work, 8, 3 - 15.

Von Hirsch, A. (1976), Doing Justice. New York: Hill and Wang.

Wasik, M., and Taylor, R. D. (1991), Blackstone's Guide to the Criminal Justice Act 1991. London: Blackstone Press Ltd.

Wasik, M., and Von Hirsch, A. (1988), "Non-custodial Penalties and the Principles of Deserts." Criminal Law Rev., 555 - 572.

---------- (1990), "Statutory Sentencing Principles: The White Paper." Modern Law Rev., 508 - 517.

Weber, M. (1946), "The Theory of Social and Economic Organisations", in: H. H. Gerth and C. Wright Mills (trans.), Max Weber: Essays in Sociology. New York: Oxford University Press.

Webster, H. (1942), Taboo: A Sociological Study. London: Oxford University Press.

Weller, J. and Linden, J. (1984), Mainstream Christianity to 1980 in Malawi, Zambia and Zimbabwe. Gweru: Mambo Press.

White, G. (1977), Socialisation. London: Longman.

Whiteley, W. H. (1964), A Selection of African Prose 1, Traditional Oral Texts. Oxford: Clarendon Press.

Wrong, D. (1961), "The over-socialised conception of man in modern society", American Sociological Review 26, 184 - 93.

Zald, M. N., and Street, D. (1964), "Custody and Treatment in Juvenile Institutions." Crime and Delinquency, 10, 40 - 55.