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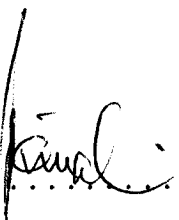
THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

I recommend that the Obligatory Essay prepared under
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entitled:

THE JUVENILE JUSTICE SYSTEM
IN ZAMBIA

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(ii)

***THE JUVENILE JUSTICE SYSTEM
IN ZAMBIA***

By

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An Obligatory Essay submitted to the Faculty of Law of
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DEDICATIONS

To my mother, Mrs Ethel Fridah Muya, my loving wife Betty, and my sons Chrispin, Kwame and my daughter Ethel, for their unfailing love, support and encouragement and for enduring my long absences from home. Special dedication to my wife for looking after the children single-handed during my absence. God bless them.

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I wish you all God's abundant blessings.

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CHAPTER 1

1.1 Introduction

The genesis of the juvenile justice system in Zambia owes much to the efforts of social workers such as Mary Carpenter of the United Kingdom. In none developed and industrialized societies the problem is massive. It is not either a new phenomenon. This reflects the social economic advancement of these societies. In this regard, the development of the juvenile justice system in England dates as far back as¹ 1800's, at the time that the public became more conscious of the need to treat offenders differently from adult offenders and at the same time to shelter them from the negative impact of association with such adults. The concern was the dangers of holding children and adults in the same institutions. This being the case by² 1800 asylums had been established under the Poor Laws which empowered certain officials to be overseers of Poor children regarded as vagrant or neglected delinquents. Poor Houses or work-Houses were established to meet the child's physical, spiritual and educational needs.

Criminal law was also in line with deterrence theory and harsh penalties were handed down similar to those imposed on adult offenders. As a result reformative measures were advanced to avoid corrupting their morals. An Act of 1838 established Park-hurst prison with emphasis

¹ Shaw, C.R/Mackay, S. Criminal Psychology, Chicago (Foundation Press) 1969 - p. 11

² David, M. Treatment for Children, London, (George Allen/Unwm) 1970. p.4

on the reformation of young offenders. In 1792, a school was set up for both girls and boys at St. George's field in South Wark.³ Mary Carpenter who led the crusade later published a book, called Reformatory School for the Children of the Perishing and Dangerous Classes. The book received support and the government appointed a committee to enquire into the treatment of Criminal and Destitute Juvenile which reported in 1853 leading to the Young Offenders Act which established reformatories. The Industrial Schools Act of 1857 empowered magistrates to commit to those schools vagrant children and young persons associated with criminal activity. These ideas spread to the United States.

1.2 American Experience

Rosenheim writes in the Justice for the Child⁴ the streams of reforms in the United States that culminated in creating the first wide juvenile courts. In Illinois on July 1, 1899. It was viewed that a child that broke the law was to be dealt with by state as a wise parent would deal with a way-ward child. The idea was that from time immemorial a recalcitrant child is punished by the parents or community to make the deriant conform to the dictates of society. Flogging or caning is one such sanction. The efforts by America were modelled on the British lines. The New York House of Refugee was established.

³ Rosenhem, K.M. Justice For the Child, New York,(Free Press) 1962 p. 11

⁴ O.cit. 1

The founders emphasised a correctional experience for young offenders that would stress discipline and useful labour at the same time protecting them from the horrors of prison life. Such Houses spread across the United States. In this light came the development of probation service. Masschusetts is credited with the first step and by 1890, probation service had become a mandatory part of court structure throughout the United States.

There was a general agreement in these states that the availability of probation afforded children the most important of the benefits that the court was intended to confer. Both probation and reformatory measures/commitments were however post-conviction.

1.3 The Development of Juvenile Justice in Zambia

The modern history of the Juvenile Justice System in Zambia can only be understood by examining the impact of the colonial rule from the 1890's to 1964.⁵ At independence the economy of the country was based on copper.⁶ Urban development followed industrial development. With the discovery of copper on the Copperbelt there was a drift to the town on the Copperbelt from rural areas. New measures were needed to control their behaviour because they were beyond the reach of their traditional leaders. The impact of western civilisation

⁵ Simaluwani E.S. Ph.D Thesis, London, (University of London) July 1994, p. 30

⁶ Op. cit. p.238

invariably had transformed life in Northern Rhodesia.⁷ The colonial authorities introduced the Penal Code, in 1930. African Juvenile Offenders sentenced to imprisonment were confined together with adult offenders because there were no adequate arrangements for them elsewhere as reported in the Department of social Welfare Annual Report, 1946. With a younger generation developing on the Copperbelt there was need for adequate arrangements to be made to suit the local circumstances. The legislation of the time had only a provision for white offenders to be transferred to south Africa.

In 1933, the Juvenile Offenders Ordinance was passed. It was modelled on the lines of 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. The Ordinance provided the fundamental ideas underlying a large number of the provisions contained in later legislation on the protection, care and prosecution of juveniles. By then welfare work was in progress.

In 1932, the government appointed a nursing officer to cater for such problem. He was based at Ndola. Thereafter, welfare work and other preventive measures were carried out in all growing towns, i.e Livingstone, Lusaka, Kabwe, and Luanshya.

The Ordinance did not set up a separate Juvenile Court and no special magistrate was appointed. All magistrates dealt with juvenile matters in addition to their other

⁷ Ibid. p.238

judicial functions. However, when a court was hearing a Juvenile case, it was required to sit in a different building or room from where it ordinarily holds criminal proceedings or on different days or at different times from those at which the ordinary sittings were held. Such a court was referred to as a Juvenile Court. The court was to exclude all persons from the court except advocates, parties to the case, their witness and members of the court. Juveniles were to be separated from adult offenders unless charged jointly with an adult with the same offence.

In 1953, amendments were made to the Juvenile Offenders Ordinance. It was replaced with the Juvenile ordinance which dealt comprehensively with all aspects, other than adoption, of the protection and welfare of juvenile and with juvenile delinquency. The Juvenile 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 juvenile. This Ordinance is the forerunner to the Juveniles Act, cap. 217, which is British in content. In 1957, the Chilenje Remand House for African offenders was opened in Lusaka. Others were built for Europeans in Kitwe, Luanshya and Kabwe.

It is considered legitimate by the present writer that a competent researcher in juvenile delinquency must take a multi-disciplinary dimension of the phenomenon under discussion. Critics of this approach are apt to maintain that the legal researcher is bound to lose his grounds of

observation if he shifts emphasis from this disciplinary point of view to that. The contention is that delinquency is a social phenomenon which does not merely exist in vacuum.

Lastly a problem has been encountered during the research as to who is a juvenile delinquent. After the introduction the issue of who is a juvenile delinquent is preceded by a preliminary question of what is meant by juvenile delinquency.

1.4 Who is a delinquent?

A Juvenile is a person who is not an adult, up to a certain age limit, usually provided for in a statute, Juveniles Act, cap. 217, section 2. A Juvenile is so-called and treated both at law and in his social dealings. He has both social and legal disabilities. A Juvenile is always the object of protection by the society and the law of that society. The topic on Juveniles has a large following among academicians, sociologists, lawyers/judges, criminologists etc. The reason for this keen interest may be for the fact that it is a topic that affects that section of the population of persons of tender age. A juvenile is both a legal and social infant. It is for this reason that he is allowed the shield of social institutions and the law to avail himself against the cruel realities of life.

This position is fully realized in Zambia and juveniles are accordingly protected under the law and in the relevant social institutions such as the family. This

only goes to show the central place of human offspring in an African society. Following from this is the fact that children were fully protected in traditional pre-colonial Zambia. With the coming of western culture, the traditional institutions of juvenile protection were supplanted.

Therefore, a juvenile delinquent is a child boy or girl who comes into conflict with the socially accepted social and legal norms. Only courts may adjudicate a juvenile a delinquent. Is all out-social youth behaviour delinquent? It is not supposed that this is the case. Anti-social behaviour may come in many forms. It could be a violation of a normal norm or the criminal code. The position is that a juvenile delinquent is one who has violated a criminal norm.

Thus, all over the world the authorities are concerned about the problem of juvenile delinquency. In almost every language juveniles have a name, usually a derogatory epithet by which the community calls them. In⁸ England there are known as "Teddy boys," "Nozem" in the Netherlands, the "raggore" in Sweden, "the blousons noirs" in France, the "Tsotsis" in South Africa, the "bodgies" in Australia, etc.

It has been recommended that:

Without attempting to formulate a standard definition of what should be considered juvenile delinquency in each country, it recommends:

⁸ Mudenda, M./c. Obligatory Essay, UNZA, 1976/77 p. 11-12

- (a) that the meaning of the term juvenile should be restricted as far as possible to violations of the penal or criminal law; and
- (b) that even for protection, specific offences which would penalize small irregularities or mal-adjusted behaviour of minors, but for which adults would not be created, should not be created

This is a wise suggestion that the words Juvenile delinquent should not be applied to children without due course and restraint. It is not right to consider every juvenile who breaks a rule or behaves offensively or immorally as a delinquent. Most of these offenders roaming the streets as "street kids" are in fact neglected and it is perhaps important to know the causes before one can term any child a delinquency just from outward appearance.

1.5 Scope of the Study

This paper discusses the problem of juvenile delinquency in Zambia and its treatment. It is an attempt to consider the extent and magnitude of the problem in our society. The paper proceeds on the assumption that the purpose of any meaningful law or legislation on juvenile justice system should be for the protection, reformation and rehabilitation of the offender. Proceeding on this basis, the following issues are suggested as leading guidelines:

- (i) the magnitude of the problem;
- (ii) the effectiveness of the Juveniles Act, cap. 217

(iii) whether juvenile offenders are punished rather than being treated for their reformation and rehabilitation; and

(iv) whether the public is aware of its responsibility in as far as this social problem is concerned.

The research evolves around the above issues. It has to be borne in mind always that juvenile crime has permeated our society. It is in our homes. It is from our homes that it spreads out to the neighbourhood and the nation at large. It must be eradicated by putting in place mechanisms so that in the end the victims are treated for the good of the present and future generations.

1.6 Methodology

In compiling this research paper, the writer has had information from the Zambia Police. They have provided statistical data on juvenile crimes. Information has also been obtained from Chililabombwe Subordinate Courts. This has been supplemented by personal interviews of other professionals i.e. social welfare officers in Lusaka and Chililabombwe Police officers etc. Reliance will also be placed on the United Kingdom and American experiences.

1.7 Organisation of Essay

Chapter One deals with the introduction of the Juvenile Justice System. The chapter deals with the development of the law on juveniles with a view to laying down the ground work for the subsequent chapters.

Chapter two discusses the major factors of juvenile delinquency. The paper will look at the various theories advanced.

Chapter three deals with two important institutions in the Juvenile Justice System. These are the police and the court i.e. Subordinate Court in our study. The two are providers of justice. The police are the first contact. It is from there, that an offender is taken to court for prosecution. Due to limited time, the research confines itself with the role of the juvenile court. Suffice to say that emphasis is on the part played by the Subordinate Court. There are various ways of dealing with delinquent. A topic will be devoted to the probation service in Zambia. Statistics form an indispensable part of research work.