

difficult under the circumstances for the Court to assess what would have been a reasonable number of blows for the accused to strike. He found that she acted in self-defence and acquitted her accordingly(28).

In 1981 the Supreme Court of Zambia was seised by similar findings as in the Jacqueline case when it considered the Rosalyn Thandiwe Zulu case in which the writer conducted the appeal. The Appellant Rosalyn Thandiwe Zulu was convicted, in the Court below, of the murder of her husband by firing six shots at him from a pistol. The facts of the case were that on the fateful morning, the Appellant had a quarrel with her husband who loaded his pistol with the words "I am a hard-hearted man, I will kill you". When he went into the bathroom he called her and then attempted to grab the pistol which he had put on the toilet cistern and on seeing the move, she went for the pistol first and fired the six fatal shots. The Supreme Court found that the immediate attempt by the deceased to seize the gun when the Appellant entered the bathroom was in itself an act of grave provocation. The Court had little doubt that that was a moment of unexpected anguish for the Appellant. The Court found it extremely difficult to gauge what would have been a reasonable retaliation by the Appellant and the difficulty was "enhanced by the very fact that she is a member of the physically weaker sex". The appeal was allowed, the conviction was quashed and the sentence was set aside(29).

In January, 1986, the Supreme Court sitting at Lusaka stated that a life sentence imposed on a Lusaka housewife, Esther Mwansa, 32 years old, for killing her step son was "shocking and beyond the limit of good reasoning". The Court observed that usually mothers were kind and fair when it came to discipline and it was with that in mind that their Lordships felt that the life sentence imposed on the Appellant was too severe(30). Yet, in the same Supreme Court and on the same day, a Marapodi Compound housewife, Dorothy Nakazwe, 33 years of age was sentenced to 9 years imprisonment for the manslaughter of her own child but was not treated with the same leniency. The Supreme Court saw no reason to disturb the 9 year prison sentence and agreed with the view of the Court below that the Appellant was wrong in venting her anger on an innocent child.

The Dorothy Nakazwe case appears to be an exception to the general trend of leniency towards female offenders. Esther Mwansa killed her step son in a mood of justified parental chastisement whereas Nakazwe smashed her own child to the ground while she quarrelled with her husband in an apparent move to teach him, her husband, a lesson. It is submitted that their Lordships must have considered Nakazwe's behaviour as one which was incompatible with the commonly held belief that mothers are or ought to be kind to their off-springs. It is further submitted that this attitude

of the Courts is one which prompted Jocelyne Scutt of the Australian Institute of Criminology to remark that women as inhabitants of the criminal or non-criminal world were granted the right to adopt one, "albeit schizophrenic role: that of wife/mother"(31).

The case of Esther Mwimbe which went before the Supreme Court in March, 1986, revealed yet a further aspect about women offenders. The Mwimbe case, like the Rosalyn Zulu case, lived up to the assertion by Rob Mawby that "women and crime make news"(32 ). Esther Mwimbe killed her husband by pouring hot cooking oil on him after a domestic quarrel. The trial judge found her guilty of murder and, therefore, sentenced her to death by hanging. But the learned trial judge went on to say that this was a case which deserved sympathy because the prisoner was a victim of her own troubled marriage. The trial judge was quoted as saying that he hoped that the Superior Court would find him wrong in his conclusion that he found as a fact that she had committed murder.

The Mwimbe case went before the Supreme Court on appeal against conviction. Their Lordships dismissed her appeal because, as the learned Deputy Chief Justice put it, their task was simply to apply the law as it was. However, the Court went on to say that the case was a tragic one and their Lordships expressed the hope that the Executive would take

into account the mitigatory remarks made by the trial judge.

Under Article 60 of the Constitution of Zambia the President of the Republic has powers to exercise the Prerogative of Mercy and he may grant to any person convicted of any offence a pardon, either free or subject to lawful conditions. These powers fall under the 'Executive Functions' of the President and no doubt the Supreme Court's reference to the 'Executive' to take into account the passionate sentiments expressed by the trial judge was a reference to the President's powers to exercise the prerogative of mercy. In most cases of domestic murders, however, the general trend of the Courts appears to be against hanging, whether it be the wife or husband who has committed the capital offence. The difficulty faced by Courts in these domestic murder cases appears to stem from the fact that there are nearly always some extenuating circumstances in what are looked at as crimes of passion.

In theory the principles of sentencing offenders in Zambia as in many countries make few distinctions between female and male offenders such as corporal punishment for which women are specifically excluded. Dameson and Scarpitti have summarised what Elizabeth Mould argued about male chivalry and paternalism to the effect that the leniency shown in favour of women offenders may be due to the traditional thinking that women are more emotional and less responsible than men and that they are less culpable for their criminal acts

and that they are less dangerous and easily deterred. They observed that in most cases women tend to be first offenders(33).

In practice, therefore, in Zambia as elsewhere, those who pass sentences on women convicted of various offences are faced with a variety of mitigating circumstances when meting out sentences. Take, for example, the case of Theresa Mayame who was sentenced to 24 months imprisonment for the manslaughter of a schoolgirl to whom she administered some chemical to procure an abortion. The sentence was back-dated to the day she was arrested and put in custody. This meant her immediate release from prison. The learned trial judge at Ndola is quoted as saying that he did not want her ten children and four dependants to suffer "because of her foolishness" since there was no one else to look after the children(34).

In another case a Ndola magistrate convicted Maggie Mundundu of twenty-two counts of theft by servant involving K3000 and sentenced her to three years imprisonment but the sentence was suspended for one year because the prisoner had just given birth and she looked weak and sickly. The magistrate also took into consideration the fact that she was a first offender who was, therefore, entitled to leniency(35). A few days earlier the same Court had suspended for one year a nine-month sentence of simple imprisonment in another theft by servant case involving an 18 year old housewife who was a house servant. She was found guilty of stealing clothes

foodstuffs worth K56 from her employer(36).

In October, 1985, Edes Mwanza, a 38 year old cleaner and a mother was convicted of theft by public servant at Kitwe. She was sentenced to six months imprisonment but the sentence was suspended for one year because she was nursing an 8 month old baby(37). In Lusaka a 37 year old housewife, Malita Mutale of Chaisa Compound was sentenced to six months imprisonment for being in possession of dagga (marijuana) but the sentence was suspended because, in mitigation, she said she was looking after three children(38).

Another Lusaka housewife, 21 year old Peggy Mwinga of Lima township had her 12 month prison sentence suspended because, in mitigation, like Malita Mutale, she had three children to look after who would suffer if she went to prison(39).

In certain types of offences, however, Courts appear to be quite harsh in their sentencing approach against women. Some Courts even go to the extent of admonishing the female culprits in tones of 'how can a woman do such a thing'. For example, in December, 1985, a woman Rosemary Daka Chulu stole a child in Kabwe and the trial magistrate was quoted describing the accused as a woman with the heart of a lion(40). The magistrate sentenced the accused to two years imprisonment which was, prima facie, fair since the offence carries a maximum of seven years imprisonment but she was a first offender and she said in mitigation that she was forced to commit

the offence by her nagging husband who wanted more children.

In Mufulira 32 year old Agnes Ketani who was interviewed during this study was sentenced to three years imprisonment for stealing a child. Cases of child stealing like cases of cruelty to children and prostitution tend to be treated with moralistic overtones from the Bench and feelings of 'she' must be abnormal or mental are usually implicitly expressed. Child stealing cases are further influenced by the attitude of African societies towards children and anyone who steals a child is bound to be treated harshly.

(d) Summary:

Interviews carried out during this study tend to show that there are a number of factors which militate against sending most women to prison. Indeed, as S.L. Shacklady argued, the social control of women does assume a variety of forms which may be external or internal and some may be implicit or explicit while other forms may simply be ideological or sociological(41). Some examples of these social restrictions or controls affecting sentencing principles are that in most cases women tend to be first offenders. There are also special circumstances which tend to make it difficult or even impossible to pass custodial sentences on female offenders such as pregnancy or nursing a young child as was in the cases of Edes Mwanza of Kitwe, Malita Mutale of Lusaka and Maggie Mundundu of Ndola. It is also true to say, as some authors have argued, that judges at all levels are usually socialised in such

a way that they think prison is not a place for women.

There is also a strong feeling that the 'traumatic' experience of merely appearing in Court or being kept in custody even for a very brief period tended to frighten most women against committing similar or further offences. A Miss Mbikusita who spent only one night in prison recently expressed such feelings at a gathering of the Prison Fellowship held at the Rehabilitation Centre in Ndola. Thus in general Courts tend to feel that the female prisoner should be given a second chance bearing in mind also the very low rate of recidivism among female offenders. But, as Nigel Walker observed about the English penal system, the widespread belief that women are treated leniently ought to be accepted with caution. In Zambia, it is certainly a field worth further research. The extent to which the prisons themselves cater for female prisoners in Zambia will be considered in the next chapter which deals with the study of 81 female prisoner.



Chapter 4

Notes and References

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- (23) See Section 27(3) of the Penal Code, Cap. 146 of the Laws of Zambia.
- (24) Liable to 1 year imprisonment on conviction.
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## CHAPTER 5

### WOMEN IN PRISON - A CASE STUDY OF 81 FEMALE PRISONERS

In this Chapter an analysis of the case study of 81 female prisoners interviewed at various prisons in Zambia will be made. The types of offences committed or alleged to have been committed will be considered and analysed and so will be the lengths of sentences for those who were serving prison sentences at the time when interviews were conducted. The age distribution of all the prisoners interviewed, their educational background, marital status, employment and other social factors will be equally analysed and a critical overview given where necessary.

#### (a) African and European Ideas of Penology:

In 'An African Survey' (1) Lord Hailey wrote that the difficulty in securing a quick acceptance of the European system of criminal law by Africans was due to the fact that there was incompatibility between European ideas of penology and the African traditional usage or approach. He observed that "the Bantu had no prisons" and that the African practice was to compensate the victim or the injured party "in such a way as to leave him no worse off than he was before". A murderer might be confined in a mud hut with the corpse

until his relatives offered adequate compensation to the bereaved family. Hailey concluded that European methods of imprisonment were alien to the African.

Indeed, as Geoffrey Care pointed out after nearly 40 years from Hailey's days, crime as defined by the Penal Code "owed little or nothing to local custom whose Courts proceeded on very different lines". But Care also observed that insofar as the Penal Code forbade certain types of behaviour "it may not have deviated too far from what custom also forbade." He argued that the real differences appeared to have been a matter of emphasis in the method of applying or enforcing the laws; their definition and interpretation(2).

Lord Hailey finally observed that European penal methods were being gradually applied to African prisons and that female prisoners were being separated from male prisoners but that female prisoners were often confined in very unsatisfactory accommodation which were usually semi-detached parts of the male prisons. He further observed that the concept of punishment was giving way to the idea of rehabilitating the offender and training the prisoners for useful employment(3).

In the same year that the Hailey Survey was first published (1938), a Mr. Flynn was reported to have visited Northern Rhodesia (now Zambia) and "found male and female offenders, male and female certified mental patients and juveniles in the same prisons with inadequate facilities for classification

and segregation"(4). There is still some lingering truth to-day about Lord Hailey's observations that female prisons were usually semi-detached parts of male prisons. At Lusaka Central Prison, for example, the female section is almost part of the male prison. The same situation prevails at Kansenshi Prison in Ndola and at Mufulira. At Kamfinsa the female section is situated a few meters from the male section but within the same enclosure made of barbed wire. At Mukobeko Maximum Security Prison the female and male sections are some distance apart but they are both situated within the Mukobeko area and within walking distance. Livingstone Prison is the same. Maybe this is done for administrative convenience but, as was observed during this study at Lusaka Central Prison where a couple was detained, social problems could arise from such a set-up or proximity(5).

The provisions of Section 60(1) of the Prisons Act, Chapter 134 of the Laws of Zambia state that "male and female prisoners shall be kept apart and confined in separate prisons or in separate parts of the same prison in such a manner as to prevent, as far as practicable, their seeing or communicating with each other". Sub-section 2 of 60 further states that "subject to the provisions of Subsection(1), convicted and unconvicted prisoners of each sex shall be divided into:-

- (a) Young prisoners;
- (b) adults;
- (c) first offenders;
- (d) prisoners with previous convictions;
- (e) prisoners suspected or certified as being of unsound

mind; and

(f) such other classes as the Commissioner may determine.

The Subsection goes on to say that each such class shall be kept apart from each other as long as the prison accommodation renders it practicable. Similar provisions were made under the Northern Rhodesia Government(6).

In Zambia, as in most countries, there are comparatively fewer women in prison than men at any given moment - see Tables 1 and 2 below divided into pre-independence eras. The post-independence era is divided into two periods 1965 to 1970 and 1975 to 1980 as an exercise in comparative studies to see whether there have been any significant changes in female criminality.

Table 1

Pre-Independence

CONVICTED AND IMPRISONED

<u>Year</u>	<u>Females</u>	<u>Males</u>
1955	61	5,804
1956	215	6,990
1957	159	6,543
1958	74	6,553

Source: African Pena, Systems - edited by Alan Milner (1969)

at page 240 in Chapter 9 on Crime and Criminals  
in Zambia by Willian Clifford.

**Table 2**

<u>Post-Independence</u>		
<u>CONVICTED AND IMPRISONED</u>		
<u>Year</u>	<u>Females</u>	<u>Males</u>
1965	896	13,099
1966	500	12,280
1967	373(a)	9,948
1968	255	10,454
1969	354(a)	12,376
1970	365(b)	12,012

N.B. (a) Of these, 72 paid their fines and were released.

(b) 162 of these paid their fines and were released.

<u>Year</u>	<u>Females</u>	<u>Males</u>
1975	475(c)	12,106
1976	456	12,053
1977	410(d)	12,257
1978	372(e)	12,141
1979	431	11,518
1980	374(f)	11,592

N.B.: (c) 175 were released after paying their fines.

(d) 128 were released after paying their fines.

(e) of these 120 were released after paying their fines.

(f) Includes 3 sentenced to death - see paragraph 42 on Prisoners Sentenced to Death in the Prisons Department Annual Report of 1980 at page 11. Of the 374 convicted during that year, 83 were released after paying their fines.

Source: Annual Reports of the Prisons Department - Ministry of Home Affairs - Republic of Zambia.



The daily average population of women prisoners for the years from 1965 to 1970 is shown as follows:-

1965	82
1966	95
1967	76
1968	96
1969	124
1970	110

N.B.: Daily average over the six-year period is 97. Figures for recent years are not easily available. In fact the 1980 Report does not include the daily average population. However, the daily average for 1977 and 1978 is shown as 199 and 280 respectively.

Source: Prisons Department Annual Reports.

The annual female prison population for the 15 years between 1966 and 1980 is shown in Appendix A and that between 1981 and 1985 is shown in Appendix B. Those who were in remand and those who were convicted are shown separately. In Appendix C a comparative analysis of male and female populations is made showing a steady 3% for women for the seven years analysed. Female prisoners sentenced between 3 and 12 months between 1967 and 1985 are shown in Appendix D.

Looking at these daily population statistics, it can be argued that the population of 81 female prisoners interviewed in this study provides a fair proportion of the problem under review. Interviews of these prisoners were carried out on a single day at each of the main prisons on the line of rail, namely, at Kasenshi in Ndola, Kamfinsa in Kitwe, Mufulira,

Mukobeko in Kabwe, Lusaka Central and Livingstone. Out of the 81 prisoners interviewed, 41 were actually serving prison sentences of varying types while 40 were on remand awaiting trial for various offences from murder to shoplifting or petty thefts.

(b) Methodology:

The method used in obtaining the relevant information or data was one of direct but informal interviews based on a prepared formal questionnaire which is shown as Appendix E. This covered the name of the prisoner, her age, marital status, home district or province of origin, the type of offence committed or alleged to have been committed; whether convicted or awaiting trial, the length of sentence where the prisoner was serving a prison sentence; whether first offender or not and any general observations such as education and family background.

This method was preferred to any other because firstly it was found to be time saving and secondly it avoided suspicion since many prisoners especially women prisoners are somewhat apprehensive of putting anything in writing. In my case, as it was discovered during the interviews, a good number of those interviewed were illiterate. All interviews were conducted in the open and in the presence of at least one female prison member of staff. This might have caused some prisoners to behave cautiously especially when it came to

the question of living conditions in prison. However, the study showed that after explaining the purpose of the exercise most prisoners became co-operative and had a free participation in the interview to which they were subjected.

The study also looked at some official statistics such as those found in the Zambia Police Annual Reports of 1978 and 1979 and the Zambia Prisons Department Annual Reports of 1965 to 1977. Some of these statistics were reproduced by John Hatchard of the University of Zambia(7). But as Mr. Justice Geoffrey Care, as he then was, pointed out, there are many features or factors which may and do lead to the distortion of crime figures such as lack of keeping proper records and especially those records concerning female offenders(8).

There is also the popular feeling that the judiciary is so full of procedural delays in dealing with offenders that by the time the cases are disposed of, the innocent will have suffered both economically and morally (especially women) by the mere fact that they had to wait for months or even years before their trial takes place. The representative sample will also assist in showing whether or not there are certain particular crimes which are commonly committed by women rather than men i.e. female oriented crimes such as child theft or abortion; whether educational standards have a bearing on the nature or type of crimes committed by women;

whether age or marital status have any bearing on the commission of any given crimes by women and so on. An explanation of the interviews which were conducted during the study will now be considered herebelow.

(c) Prisons Visited:

(i) Kansenshi Female Prison - Ndola

At Kansenshi Female Prison in Ndola four women prisoners were interviewed on 10th December, 1985. Of these four, one woman was serving a 2 year sentence for the manslaughter, by arson, of a child who was burned in a house to which she set fire in a state of "drunkenness" as she claimed. The remaining three women, including an 18 year old girl, were all on remand awaiting trial for murder (two) and theft. The 18 year old girl was jointly charged with her brother for the alleged murder of their grandfather in the Ndola Rural District. At the time of the interview this girl had been in remand for four months. She had a child who was being looked after by her mother. Only one out of the four women was a second offender having been previously sentenced to 2 years imprisonment for child theft. She, too, had been in remand for four months awaiting trial for the alleged theft of K200 from her boyfriend in Chifubu township of Ndola. The ages of the four prisoners varied from 18 years to 38 years and all of them were illiterate. Their occupation in prison consisted of knitting and making bags. Only one was married, the remaining three were divorcees but all had children. All the three remand cases had stayed in prison for five months awaiting trial.

(ii) Kamfinsa Female Prison - Kitwe

The interviews at Kamfinsa Female Prison near Kitwe were conducted on 13th December, 1985. Nineteen female prisoners were interviewed, ten of whom were serving prison sentences ranging from 6 months to 7 years. Nine were on remand awaiting trial. Out of the ten women actually serving prison sentences, five were being kept at His Excellency's Pleasure (9). Out of the five HEPS, four expressed grave concern at what they considered to be unnecessary imprisonment for an indefinite period and that "nobody" seemed to bother about their plight. It was difficult to extract anything from the fifth HEP as she appeared quite unco-operative and somewhat depressed.

The majority of crimes committed were those concerning murder or manslaughter being eleven in all followed by theft cases numbering five. Of the three miscellaneous ones, one was for soliciting(10); one for jumping bail and the other concerned a female prohibited immigrant (PI) who claimed to have lived in Kitwe since 1958. She could not understand why she was being PI'd especially as her husband with whom she came to Zambia appeared to have been left untouched by the relevant authorities. She had five children all of whom were born in Kitwe.

The interviews at Kamfinsa revealed that three female prisoners were below 20 years of age; five were between 21 and 30 years of age and the remaining six were 41 years

of age and above. Thus the age group 21 to 40 years of age accounted for just over half (52,6%) of the prisoners. Educationally, eleven (57.9% prisoners had no formal education; three had attained between Grades 1 and VII; five attained between Grades VII and XII while there was no prisoner that had attained an educational level beyond Grade XII (formerly Form V). Their marital status revealed that seven (36.8%) were married; seven (36.8%) divorced or widowed and five (26.3%) were unmarried.

There were nine female prisoners interviewed at Kamfinsa of whom six were in prison for periods of up to six months; two for periods of between seven and twelve months and one said she had been awaiting trial since April 1983 on a charge of infanticide, a remand period of two years and eight months at the time of interview in December, 1985.

(iii) Mufulira Female Prison

Four women prisoners were interviewed at Mufulira on the same day as those interviewed at Kamfinsa in Kitwe. The interviews were conducted in an open space and in the presence of prison authorities as well as other prisoners. Three out of the four prisoners were serving prison sentences with one on remand awaiting trial. Of the three serving prison sentences, one was imprisoned for three years for child theft; one was serving a twelve-month sentence for procuring an illegal abortion and the third was serving a six-month sentence for assaulting another woman. The fourth was a

17 year old girl who was on remand awaiting trial for theft by servant. She was working as a domestic servant at the time when the subject offence was committed. She was a juvenile offender but no social worker had visited her by the time of the interview which was ten days after she was arrested.

Three of the four women interviewed were first offenders but the one of the child theft conviction was a second offender but not for the same offence. She had previously been sentenced to nine months imprisonment for assault. She was unmarried at the time of committing the offence of child theft and therefore her motive was not quite clear. The prisoner on an abortion charge was serving a twelve month sentence. She was a divorcee with four children and came from a family of ten children. Education-wise, the 17 year old girl who was awaiting trial for theft by servant was illiterate while the remaining three prisoners had obtained Grades V, VI and VII respectively. All four prisoners had committed their offences within Mufulira district. Three of the four prisoners were not married while the fourth was a divorcee. The female prison at Mufulira appeared not to be fully utilised.

(iv) Mukobeko Female Prison - Kabwe

The interviews at Mukobeko were carried out on 17th December, 1985. Nineteen female prisoners serving prison sentences of varying lengths were interviewed while fourteen of the interviewees were on remand awaiting trial, making a total of thirty-three women prisoners interviewed. Of

the nineteen prisoners serving sentences, five were for murder of manslaughter cases while six were for assault, making the group of those convicted of cases involving violence eleven (i.e. 57.9%). The remaining group of eight comprised of theft or related cases which included child-theft and smuggling.

In the remand group of fourteen cases, twelve (85.7%) were awaiting trial for murder or manslaughter while the remaining two were awaiting trial for alleged theft cases. Thus taking all the thirty-three prisoners interviewed, twenty-three (nearly 70%) were involved in cases of violence while ten (or approximately 30%) were either involved or alleged to have been involved in theft or related cases. Most of the cases involving violence were in connection with domestic quarrels with husbands or "the other woman" or involving children of the family. Eight (57%) of those remanded were in custody for over twelve months including two who claimed to have been there for 24 months.

The predominant age group of those interviewed was in the 21 to 29 years range being twenty-one (63.6%) out of thirty-three prisoners. This group was followed by eight in the 30 to 40 years range making a total in the 21 to 40 age group of twenty-nine (87.9%) of the prison population interviewed. There were none below 20 years and only four above 40 years old. Educationally, eighteen of the thirty-three



interviewees (54.5%) were illiterate while nine (27.2%) had attended school and attained some formal education of up to Grade VII. Six (18.1%) of those interviewed had attained educational qualifications of between Grade VII and XII. None was above Grade XII. Thus approximately 55% of the prisoners interviewed were illiterate while 45% had received some formal education. But if Grades I and II are taken not to be really literate then the percentage of illiteracy could be as high as 65% of the prison population interviewed.

The interviewees' marital status were thirteen (39.4%) married, eleven (33.3%) unmarried and nine (27.3%) divorced or widowed. This pattern of marital status shows similarities with that of the nineteen interviewees at Kamfinsa Female Prison in Kitwe, where approximately 37% represented both married and unmarried representatives of the survey sample. By occupation twenty-three prisoners (69.7%) were either unemployed or preferred to be known as housewives. There was one Secretary and one domestic servant. Eight (24.2%) claimed to be marketeers in addition to being housewives. Again this occupational pattern shows some similarities to the Kamfinsa sample where fourteen (73.7%) were unemployed or housewives, with two claiming to be marketeers.

(v) Lusaka Central

The interviews of seven women serving prison sentences and twelve in remand took place on 18th December, 1985. All the interviews were conducted in the presence of at least one female Prison Officer and one or two other female prisoners.

Out of nineteen female prisoners interviewed at Lusaka Central Prison seven were for assault or alleged assault cases while three were for murder or manslaughter cases making a total of ten (52.6%) of offences involving violence of some sort. Four were for theft and five were Prohibited Immigrants (PIs) awaiting deportation to their countries of origin.

Two of the five PIs were Zairean women, two were South African and one was Zimbabwean. The Zimbabwean and South African women said they did not understand how they could be classified as prohibited immigrants since they entered Zambia as refugees. The Zimbabwean woman said she entered Zambia with twenty-one boys after "fleeing from the Mugabe Army which had killed my father in Bulawayo". The South African woman claimed that she had come to Zambia "many years ago". She was however convicted of theft by public servant; served her sentence and then PI'd. She was married with three children. One of the Zairean PIs said she was born in Zambia but when her sister came to visit her from Zaire they were both arrested and PI'd. The one who was born in Zambia is married with seven children.

The 21 to 40 years old age group totalled seventeen (89.5%) of those interviewed with only two below 21 years old (which included a 15 year old school-girl arrested for shoplifting) and none above the age of 41 years. Educationally, six were illiterate while ten claimed to have had some formal education ranging between Grades 1 and VII. Again, if Grades

I and II were considered as somewhat illiterate the percentage of illiterate prisoners would be nearer to the 50% mark of the representative sample. Only three of the nineteen women had attained Form III (Grade X) to Form V (Grade XII) education. None of those interviewed had a formal education beyond Grade XII.

Thirteen (68.4%) of those interviewed were married while three said they were either divorced or widowed with the remaining three being unmarried. Of those in remand (12 cases) only one was there more than six months. The 15 year old girl on a shoplifting charge was living and mixing freely with the other older female prisoners because there is no home for female juveniles awaiting trial.

Eleven out of nineteen interviewees (57.9%) were unemployed while three claimed to have been marketeers. There was one business woman detained for alleged mandrax trafficking; one secretary and one teacher both charged with murder; one hospital nurse - theft by public servant and PI'd, and the 15 year old girl mentioned above who was still attending school. All the nineteen women at Lusaka Central were first offenders.

(vi) Livingstone Prison

The last interviews were at Livingstone Female Prison on 3rd January, 1986 where only two women were interviewed. One woman was serving an 18 month sentence for causing

grievous bodily harm (assault) to her step-child whom she claimed to have accidentally burnt. The other woman was on remand awaiting trial for the alleged murder of her co-wife after a beer-drinking spree. Both women were unemployed housewives. The one serving an 18 month sentence claimed to have done Form IIIi (Grade X) while the one awaiting trial claimed to have reached Grade IV. Both were first offenders and aged 25 and 27 years respectively. both were married at the material time.

(d) Prison Conditions

At Kansenshi Prison the surroudnigns appeared fairly clean and the staff were cheerful. The prisoner serving sentence was in prison attire while the remaining three on remand awaiting trial were in their civilian clothes. One of the prisoners described the conditions as "fairly good and we learn knitting and making bags". This appears to confirm what Carol Smart argued in her Chapter on the treatment of female offenders that in most penal institutions for female offenders the traditional role of women is reflected and that inmates are often taught such things as sewing, cooking and other female-oriented occupations such as typing(11). Smart emphasized the lack of vocational trainng for female prisoners.

At Kamfinsa conditions looked similar to those at Kansenshi although there were more inmates but there was no over-crowding,

*a phenomenon which was common to all female prisons visited.*

At Mufulira the picture was the same and in fact it was reported that some female prisoners have to be transferred from Kitwe and other places to Mufulira "in order to keep the building utilised".

At Mukobeko in Kabwe conditions appeared a little stiff; the calling of prisoners was sharper in tone but this could be explained by the fact that Mukobeko is also a maximum security prison. The Female Prison at Lusaka Central is back-to-back with the male prison although they have separate entrances. The Livingstone Female Prison looked deserted and the buildings were somewhat dilapidated. On the other hand, the Livingstone Male Prison which is a few meters away seemed to have been over-crowded with 456 inmates on the day of the visit.

In all the female prisons there was no distinction between juvenile females and their senior counter-parts. The juveniles mixed freely and shared almost everything with their seniors. For example, at Kansenshi there was one juvenile; at Kamfinsa three; at Mufulira two and Lusaka two. There were none at Mukobeko or Livingstone during the period of interviews. Nor was there any distinction by way of separate premises between those on remand and those serving prison sentences. This question of classifying prisoners must be a constant cause of worry to the authorities of the Prisons Department.

Year after year and the Prisons Commissioner has reported on the fact that due to inadequate accommodation in most prisons, the Department has not been able to follow all the provisions of Section 60 of the Prisons Act which stipulate that on admission to a Prison, every prisoner, whether male or female, should be appropriately classified.

The information obtained from those female prisoners who were interviewed was mainly based on the Record of Interviews which is attached hereto as Appendix F. It is admitted that the Record is not comprehensive but its shortcomings were, to a large extent, rectified by personal or verbal discussion.

#### Some Conclusions from the Study:

Some of the interesting findings of the 81 female prisoners interviewed are that offences involving violence, i.e. murder, manslaughter or assault accounted for nearly 62% of the representative sample, followed by theft cases at 27% (nearly one-third of the sample). Most of the cases involving violence were domestically oriented such as pouring hot water on a husband or attacking another female because of jealousies over a husband or boy-friend or assaulting a step-child. This finding supports one of the findings of William Clifford when he found that assaults (violence) and thefts were the main crimes committed by women in his study(12).

The most vulnerable age-group is the 21 to 40 years range which accounted for nearly 78% of the sample but

this phenomenon also supports the demographic or population distribution of the country which shows that about 60% of its inhabitants are below 40 years of age(13). And education-wise about 50% of the inmates were illiterate and no university graduate was found among them which again supports one of Clifford's findings that most of those found guilty of assault (50%) were from unauthorised or squatter compounds where most illiterates were found. Thus the economic conditions of squalor and illiteracy tend to force some women into crime.

The marital statuses of the sample were nearly evenly distributed showing 44.4% married; 28.4% divorced or widowed and nearly one-third (27.2%) unmarried and mostly young females in this last category, indicating a possible significant rise in female juvenile delinquency. All the 81 prisoners interviewed 70% claimed to be either unemployed or housewives. The professionals such as teachers, secretaries or businesswoman only accounted for 7% of the sample. This study found no support for the views that emancipation or liberation movements have pushed the majority of women in Zambia into crime.

Of the 41 convicts, 6 (nearly 15% ) were being held at the President's pleasure (HEPs) while one was serving a life sentence, again, of an indeterminate length. Those serving sentences of below twelve months accounted for 46% (see Table 4 below) of the sample while those serving

serving sentence of one to three years accounted for nearly one-third of the prison population at 31.7%.

The home provinces or districts were almost evenly distributed among the top three Provinces with high populations namely Northern Province (22.2%); Central Province (18.5%) and Eastern Province (16%). Most of the offences were committed on the line of rail from Chililabombwe down to Livingstone with rural places like Chirundu, Siavonga, Serenje and Mumbwa occasionally coming into the picture.

Finally, it was found that the rate of recidivism among women prisoners is very low at 6.2%. Out of the 81 women interviewed only 5 were second offenders.

#### Summary:

It is admitted that the sample involving only 81 female prisoners was not large enough to justify tangible summaries or conclusions. However, as some authors have pointed out, it is indeed worthwhile obtaining whatever little there is on women. There is no doubt that the treatment of female offenders in Zambia has followed closely the English pattern. Indeed in one of the Annual Reports of the Prisons Department the Prisons Commissioner commented that his Department had continued to discharge its three tasks of keeping the prisoners in custody, caring for them and to "prepare them for a good



return to society"(14). Hatchard has pointed out that any *time spent in prison, especially by a woman with a family* can cause very serious psychological and even physical strain(15).

Chapter 5

Notes and References

- (1) Lord Hailey, An African Survey - A Study of Problems Arising in Africa South of the Sahara, Oxford University Press - London (1957) at pp. 625 - 626.
- (2) Geoffrey Care, 'Criminal Law in Transition - Offenders Before the Courts' - a paper delivered at a Seminar on Society and Law Breakers held at Mindolo ecumenical Centre Kitwe, 23rd - 24th May, 1975.
- (3) Lord Hailey, An African Survey at p. 626 in paragraph 1.
- (4) T.C. Flynn was then Secretary to the Southern Rhodesia Department of Justice and Director of Prisons. See 'African Penal Systems' edited by Alan Milner at page 242 published by Routledge & Kegan Paul (London) 1969.
- (5) The Winas' case. Mr. Sikota Wina and his wife Princess Nakatindi were said to be constantly in touch until the husband was moved to Mukobeko in Kabwe.
- (6) See Section 34 of the Prisons Ordinance Chapter 43 of the Laws of Northern Rhodesia - 1955 Edition as amended and administered by the Federal Government of Rhodesia and Nyasaland.
- (7) John Hatchard, 'Crime and Punishment in Zambia' in Law in Zambia edited by Muna Ndulo, East African Publishing House - Nairobi (1984).
- (8) Geoffrey Care, 'Criminal Law in Transition - Offenders Before the Courts' a Seminar Paper - see Note 2 above.
- (9) Known as HEPS - all of whom were convicted of murder at the material time. This means that but for being HEPS they would have been hanged for committing capital offences.
- (10) Popularly known as 'shishita' - meaning someone who is somewhat dull!
- (11) Carol Smart, Women, Crime and Criminology - A Feminist Critique, Routledge & Kegan Paul - London (1976) at p. 140.

- (12) William Clifford, 'Female Crime in Lusaka - Northern Rhodesia: A Preliminary Survey' - Reprinted from the Proceedings of the Central African Scientific and Medical Congress held at Lusaka in August, 1963.
- (13) William Clifford, 'Crime and Criminals in Zambia' in African Penal Systems edited by Alan Milner, Routledge & Kegan Paul - London (1969) at p. 240 paragraph 2.
- (14) Annual Report of the Prisons Department, Zambia (1980) at p. 1 paragraph 1.
- (15) John Hatchard, 'Crime and Punishment in Zambia' in Law in Zambia edited by Muma Ndulo, East African Publishing House - Nairobi (1984) at p. 174 paragraph 2.

## CHAPTER 6

### CONCLUSIONS AND SUGGESTIONS

This study, as has already been pointed out elsewhere in the preceding Chapters, is primarily intended to focus attention on the role of women in criminal activities in Zambia. As has been shown criminologists and other social scientists in Zambia have not paid much attention to this field. Perhaps this is due to the traditional attitude that since, numerically, the field of female criminality is so small, it is not worth venturing into. In short, it is often argued that there is no female problem in the criminal world to bother about; a belief in the relative insignificance of female criminality as Carol Smart argued(1).

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Caracas from 25th August to 5th September, 1980, considered a world-wide survey on crime based on information received from 65 states covering the period 1970 to 1975. The statistics of the survey showed an over-whelming proportion of adult male offenders with a rate of ten times that of females. But it was observed that female crime was also increasing far more rapidly than male crime. In developing countries the survey showed that the rate of increase for females was 30% higher than for males. While in developed countries the rate of increase

for female offenders went up by 50% more than that of males(2). Generally this trend appears to render support to those authors who have argued that the female share of crime is greatest in those countries where women are most emancipated.

In Zambia, however, statistics on female prison populations do not show that the female crime rate has risen by anywhere near the 30% mark mentioned in the United Nations surveys for developing countries. On the contrary, the ratio appears to remain at almost a constant figure of 3%. The position has not changed much since William Clifford wrote on crime and criminals in Northern Rhodesia (now Zambia) in the early 60s. The low rate of female criminality in Zambia has also been confirmed by John Hatchard in his Chapter on Crime and Punishment in Zambia where he says that as in most countries the number of females in prisons in Zambia is comparatively small. A possible explanation for this state of affairs is that since the offences committed by women appear relatively minor, many female offenders end up paying a fine instead of being sent to prison. For example, out of 475 females sentenced to imprisonment in 1975, 175 were released after paying their fines. Similarly in 1977 out of 410 females sentenced to imprisonment, 128 were released after paying their fines(3). And as we have seen in Chapter 4 a substantial number of female offenders receive suspended sentences for one reason or another.

There is no doubt that female crime is becoming increasingly a world-wide problem whose effect both at the national and

international levels cannot be ignored. There is need for developing countries to take female crime into account very seriously when considering development plans especially in view of the problems that are engendered by urbanisation, industrialisation and the effects of technology. Many developing countries do not given crime in general and female crime in particular the top priority in their development plans that it deserves. For example, there is need for a comparative study of female criminality with the neighbouring countries and eventually with the developed countries and the world at large using the experience of the United Nations International Congresses on the Prevention of Crime and the Treatment of Offenders. The United Nations literature on female crime is extensive and can be of much use to Zambia for future researchers because, as Clifford has pointed out, "economic and social planning which by-passes, ignores or treats casually the problem of crime is courting futility." ( 4)

It may be argued that the female criminal population in Zambia is so small that it does not justify extensive investigation but he world trend of the increasing number of women criminals is likely to catch up with Zambia.

There is need for more extensive studies in female criminality at the Subordinate Court level in Zambia. The Subordinate Courts have a very wide range of original jurisdiction and

and official statistics show that many women are dealt with at this level. Studies at this level can certainly throw some light on the extent and variety of crimes committed by women in Zambia. There is also need for a close study of the system of sentencing females in Zambia because there is no doubt that there are inconsistencies and disparities in sentences which bring the fairness of the system into question. For example, offences involving first offenders vary between 1 to 12 months despite the fact that the Supreme Court has laid down general guidelines that first offenders should not, generally, be given custodial sentences. John Hatchard has argued that this is a matter which requires urgent attention. This study confirms Hatchard's observations. Hatchard felt that the existing disparities between sentences imposed by Magistrates' Courts in similar cases must be urgently tackled if the system is to retain its respectability. In the United Kingdom, it has been emphasised that it is very important for the general principles which apply to the sentences of particular kinds of offences and offenders to be well known to the Courts in order to be consistent and to command public confidence(5).

Another area requiring attention is female juvenile offenders. The information and data on female juvenile offenders appears inadequate and yet statistics show that juvenile offenders generally are on the increase. Unfortunately these official

statistics only divide persons convicted into males, females and juveniles generally. Juvenile sections are not divided into boys and girls(6).

There appears to be a tendency in the country's criminal administration to consider a woman who commits murder or manslaughter as being somewhat 'mental'. This may explain why no woman sentenced to death has actually been executed in Zambia. The system of reviewing these cases, however, appears inadequate. All the HEPs at Kamfinsa expressed concern at being left guessing for years on end as to what will happen next. There is need for a review of the present system.

The study did not cover the Probation Service but the impression obtained throughout the interviews was that the Probation/Welfare Service is on the decline. This, perhaps, is to be expected under the current economic crisis the country is facing. Again, this is an area which requires some study to ascertain its effectiveness or otherwise.

Some female prisons are not fully occupied. Livingstone and Mufulira are good examples. Both male prisons at these places are over-crowded. Better use could be made of these female prisons by transferring female prisoners to other prisons or by making use of smaller buildings as transit prisons to create more room for male prisoners thereby easing over-crowding.



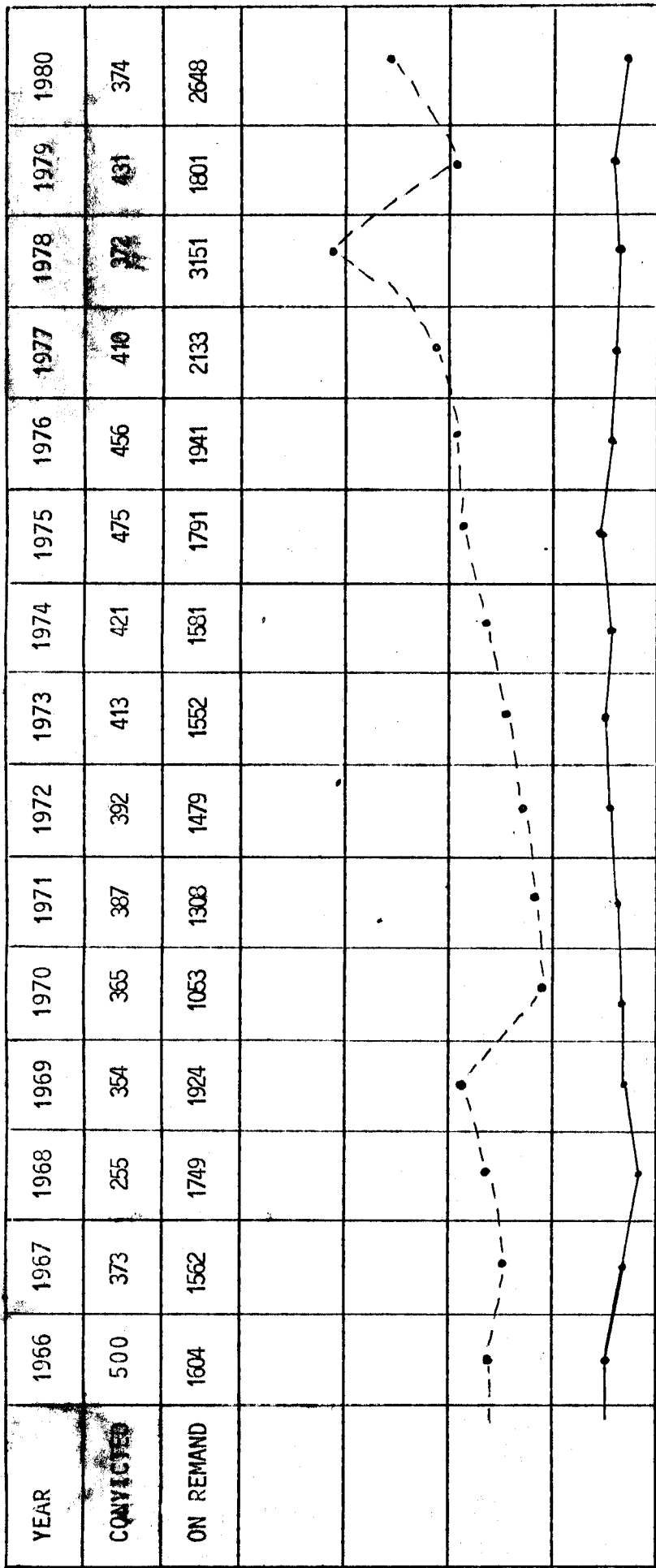
It was clear from the study that there are considerable delays in disposing of remand cases. Some 50% of the remand cases dealt with in this study had been waiting for between 7 and 15 months. Three cases had been waiting for nearly two years. Such procedural delays in the administration of justice as are currently being experienced should be removed or at least minimised. As President Kaunda pointed out during an address to the 1985 Annual Dinner of the Law Association of Zambia, delays are not only expensive but they congest the system and breed injustice. Here, too, there is need for future research on the impact of these delays on female offenders.

The field of female criminality in Zambia is virtually untapped and offers a great interesting challenge to those students and writers on criminology or sociology.

Chapter 6

Notes and References:

- (1) Carol Smart, Women, Crime and Criminology: A Feminist Critique, Routledge & Kegan Paul - London (1976) in Chapter 1.
- (2) United Nations Pamphlet on 'Crime Prevention and the Quality of Life' - a preparatory paper for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Caracas from 25th August to 5th September, 1980, at pages 2 and 3.
- (3) John Hatchard, 'Crime and Punishment in Zambia' in Law in Zambia edited by Muna Ndulo, East African Publishing House, Nairobi (1984) at p. 173.
- (4) William Clifford, Development and Crime, Barry Rose Publishers - London (1973) at p. 27 paragraph 1.
- (5) Criminal Justice: Plans for Legislation, Home Office Command No. 9658, Her Majesty's Stationery Office, London - March, 1986 p. 6 paragraph 6.
- (6) See, for example, Appendix F page 28 of the Zambia Police Annual Report of 1981 (Persons Dealt with by the Courts). See also page 10 part XIII under Juveniles in the Prison Department Annual Report of 1980.

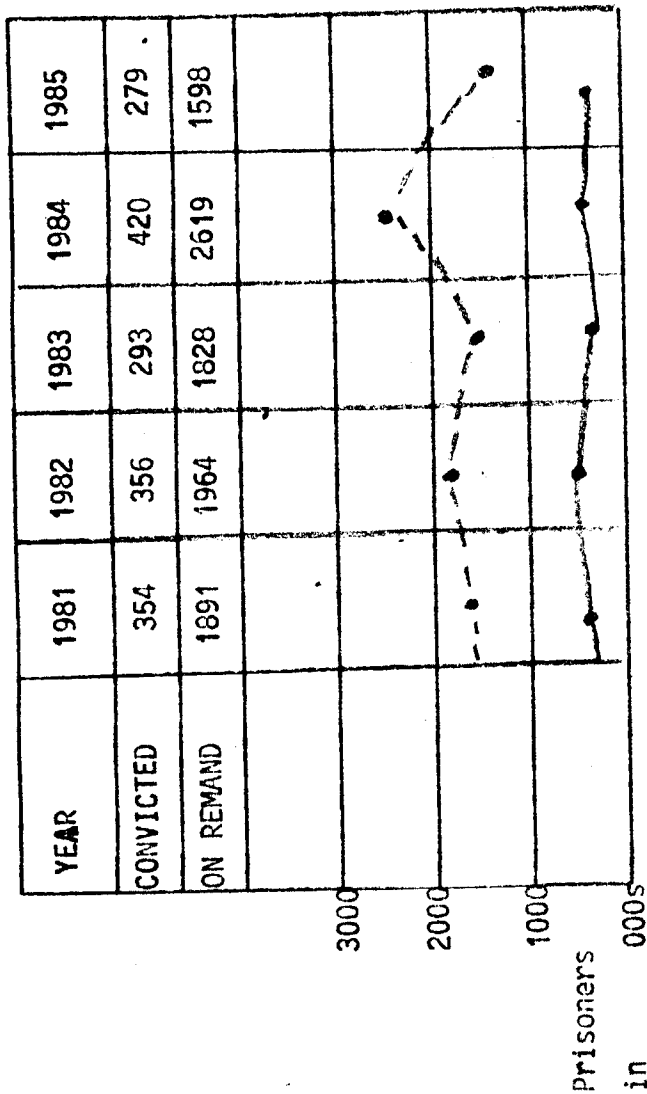


Source: As contained in the Prisons Department Annual Reports - Ministry of Home Affairs.

- (a) Those Convicted ———●———  
 (b) Those On Remand - - - ● - - -

N.B.: Remand cases appear to have increased significantly in 1978 and in 1980. No explanation is given in the Annual Reports for this increase. There is no significant rise in the rate of convictions during the 15-year period from 1966 to 1980.

Annual Female Prison Population in Zambia (1981 - 1985)



Source: Prisons Department Annual Report 1985 at page 10.

Y E A R							
	1967	1969	1970	1972	1973	1978	1980
Convicted & Imprisoned							
Males	9,948	12,376	12,012	11,883	12,660	12,141	11,592
Females	373 (3.7%)	354 (2.9%)	365 (3.0%)	392 (3.3%)	413 (3.3%)	372 (3.1%)	374 (3.2%)

Source: The Prison Department Annual Reports - Ministry of Home Affairs.

N.B: These statistics support the theory that generally women are far less criminal than men, a phenomenon which William Clifford\* described as both interesting and surprising. Zambian women appear to be no exception to this phenomenon.

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\* See Clifford's study of Female Crime in Lusaka (1958/59) fully titled elsewhere in this study.

Female Prisoners - Sentenced between 3 months and 12 months

Year	Total Female Prisoners	Sentenced to between 3 and 12 months	Percentage of total Prison Population
1985	279	162	58.1%
1980	374	199	53.2%
1978	372	165	44.4%
1973	413	145	35.1%
1970	365	78	21.4%
1969	354	69	19.5%
1967	373	53	14.2%

Source: Prisons Department Annual Reports.

N.B.: This Table supports the observation of Hatchard that whilst sentences over 12 months are rare, the 3 - 12 month range has been increasing since 1966 (from 14% in 1967 to 58% in 1985) - See 'Crime & Punishment in Zambia' - edited by Muna Ndulo at page 174 paragraph 2.

WOMEN AND CRIME IN ZAMBIARecord of Interviews

1. Date and place of interview: .....
2. Name: .....
3. Age: .....
4. Marital Status: .....
5. Home District: .....
6. Type of Offence: .....
7. Whether Convicted or)  
Awaiting Trial ): .....
8. Length of Sentence: .....
9. Family History )  
(whether parents alive) .....  
No. of children in ) .....  
family, etc ) .....
10. Whether first offender or not: .....
11. General observations: .....  
.....  
.....  
.....  
.....  
.....  
.....

Signed: \_\_\_\_\_  
J. B. SAKALA

Date: .....

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