

WOMEN AND CRIME IN ZAMBIA

**A DISSERTATION FOR THE
DEGREE OF MASTER OF LAWS
(LL.M) OF THE UNIVERSITY
OF ZAMBIA.**

BY

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APPROVAL

This dissertation of JULIUS BIKOLONI SAKALA is approved
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D E C L A R A T I O N

I, JULIUS BIKOLONI SAKALA a postgraduate in the School of Law of the University of Zambia hereby declare that this dissertation or any part thereof has not been submitted for a degree in this or any other University.

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ABSTRACT

This study of women and crime in Zambia is in fulfilment of the Master of Laws' degree of the University of Zambia. The study has been carried out entirely by research leading to the submission of this dissertation. It entailed extensive travel to Mufulira, Kitwe, Ndola, Kabwe, Lusaka and Livingstone female prisons to gather material which is found mainly in Chapter 5. I received no financial assistance from anyone and hence the shortcomings which appear in the study, particularly with regard to the number of women prisoners interviewed. Nevertheless a total of 81 female prisoners were personally interviewed by me at the various prisons mentioned above.

My interest in the topic of women and crime in Zambia was first seriously aroused when I had the opportunity of successfully appealing to the Supreme Court of Zambia on behalf of Rosalyn Thandiwe Zulu in 1981. She had been convicted of the murder of her husband and sentenced to death by the Court below. But when I first submitted my proposal to the appropriate authorities in the School of Law, I was tempted to look at the broader issues of crime and suggested that I do some research on 'The Sociology of Crime in Zambia'. This was partly due to my earlier academic training in Sociology from the University of London (1965).

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I have found the resemblance in the vocabulary of the disciplines of sociology and the language of law quite striking.

I was also intrigued by the fact that in Zambia, as perhaps elsewhere in Africa, old habits die hard and especially traditional attitudes towards women. It is clear from writings of various authors that what Lady Chudleigh wrote in her poem in 1703* that wife and servant were the same but that they were only different in name can be equally true of some men's thinking in Zambia to-day. The importance of research on female criminality cannot, therefore, be over-emphasized. There is a dearth of literature on the subject in Zambia. There is very little known about female criminality by many people especially those concerned with the administration of justice in the country such as legislators, the judges (using the term judge in its wider context), police, social workers, criminologists and other social scientists. It is hoped, therefore, that this study will be the beginning of further efforts to redress the imbalance of literature on female criminality in Zambia in particular and also in the neighbouring countries of East Central and Southern Africa.

*Anne Bottomley and others (editors), The Cohabitation Book - a Rights of Women's Guide to the Law, Pluto Press Limited - London (1984) 2nd edition at page 1 - Introduction.

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Lastly but certainly not the least, I want to thank my wife Betty for her support and encouragement and to my children Masauso, Lundu and Kondwe in that order of seniority for their unflinching encouragement in 'Daddy's' continued pursuit for higher studies. I do not think that I can find enough words to thank this small but loving family.

ABBREVIATIONS

CPC	=	Criminal Procedure Code
HEP	=	His Excellency's Pleasure
PI	=	Prohibited Immigrant or Preliminary Inquiry under the CPC
UNZA	=	University of Zambia
ZARD	=	Zambia Association for Research and Development

CHAPTER 1

INTRODUCTION

(a) The Study of Female Criminality:

The study of female criminality or delinquency, its causes and its effects or consequences on society has not received as much attention or prominence as that given to the study of male criminality or delinquency in many societies. In most developing countries and especially in Africa studies of female criminality are almost non-existent. Even in developed countries it is only in recent years that interest or concern in this field of study has been seriously shown. In 1968 D. Ward observed that knowledge of the character and causes of female criminality was at the same stage of development as was knowledge of male criminality some thirty years or so before(1). A decade later Carol Smart stated that both classical and contemporary criminological studies had ignored female criminality and that criminological theories or studies had rarely concerned themselves with the critical analysis of female offenders or delinquents(2).

Smart observed that there was an overwhelming lack of interest in female criminality displayed by established criminologists and deviancy theorists although she conceded that the majority of such studies were to be found in medical journals or in American publications. She argues that those studies as existed on female criminality failed to develop a critical approach towards the common-sense perceptions or understandings of female criminality.

Thus, she observes, many myths still persist in attempts to explain the nature and extent of female criminality. She cites theological beliefs and the biological or genetical differences between women and men as some of those myths which have persisted among orthodox criminologists or social theorists (3).

Hermann Mannheim, however, disagreed with those who accused criminologists of paying little attention to the subject of female criminality. He cited Lady Wootton in particular at that time as one who accused criminologists of being prejudiced against female criminality and of being "curiously blind to the obvious".

Mannheim argued that it was a distortion of the truth to maintain that the subject of female criminality or delinquency had been ignored. He pointed out that a number of female scholars among them English, American, Russian and Dutch had all made valuable contributions on the subject of female criminality supplemented by several male authors on the subject. He, however, admitted that there had been less research done on "the characteristics and possible explanations of female than on those of male crime".

But he defended this state of affairs by arguing that it was due to the comparative scarcity of case material and the difficulties of getting access to such material coupled with the scarcity of female researchers qualified enough to undertake such research. Nevertheless, he conceded to the fact that because female crime was dealt with predominantly by men in their various capacities of judges, policemen or prosecutors and legislators, a one-sided picture of male domination was bound to be created (4).

It cannot, however, be disputed that compared with the volume of scientific literature on male criminality, the study of female criminality has lagged far behind that of men in both developed and developing countries. This lack of interest by most scholars of criminology appears to have been caused mainly by the fact that in nearly every country in the world criminal statistics show a much smaller proportion of criminality or delinquency among women than that found among men. Howard Jones, for example, described the low rate of crime among women as compared with men as one of the unresolved mysteries of criminology. At the time of writing his book Jones showed from statistics then available that in England for every female dealt with for a serious offence, there were about eight males convicted(5). However, Jones goes on to make an attempt at explaining the mystery by arguing that "men in our society seem to get into trouble more often because they are more exposed to the stresses and temptations of social life outside the home"(6). One of the exceptions to the low rate of female criminality, as Jones observed was in the area of female-oriented crimes such as prostitution, brothel-keeping or abortion. He pointed out that some criminologists argued that prostitution was the female equivalent for crimes against property usually committed by men(7).

(b) A Non-Comparative Approach

This study is not meant to be a comparative analysis of crime among women and men in Zambia. That will be left to other researchers who may be interested in that type of scientific approach. Hermann Mannheim warned of the frequent mistake of

studying female criminality solely under comparative analysis. He argued that such an approach was likely to induce the researcher to look for explanations based mainly on sex without treating female criminality as a subject on its own(8).

It is, therefore, important to mention from the outset that since women offenders require a different type of treatment from their male counter-parts, it is necessary from time to time, to approach the topic of female criminality as a subject in its own right which is capable of an objective and scientific analysis as Mannheim points out. For example, no male convict would find himself being sent to prison with a baby and such factors as menstruation and pregnancies are only experienced by women.

A further reason for this study taking a non-comparative angle is that various national reports and studies have shown that as a good number of women are becoming doctors, lawyers and even Prime Ministers, an increasing number of them were finding their way into political terrorism, drug peddling, smuggling, aggravated robbery and assault. Reports submitted to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Caracas in 1980 showed that while the overwhelming proportion of adult offenders in the world were males, with a rate ten times that of females, nevertheless female crime was increasing at a faster rate than that of males. The same reports showed that in developing countries the rate of increase for female offenders was 30 percent higher than that of male offenders while in developed

countries the rate of increase for female offenders had risen to 50 percent more than that for their male counter-parts.

The Australian Institute of Criminology convened a seminar on "Women and Crime" in June, 1979. The purpose of the seminar was to study the incidence of female criminality through an exchange of views on women as participants and consumers within the Australian criminal system. The participants observed that interest in the study of crimes being committed by women had gathered momentum in 1970s and that the main reason for such interest was attributed to the re-emergence of various women's movements or organisations of the late 1960s. But the editors and contributors to the seminar did not agree with the popular concept that the liberation of women was turning more and more women into criminals(9). But four years before the Australian seminar the United Nations had already begun to show its concern over the question of female criminality. In 1975 the United Nations sponsored the International Women's Year Conference and at the same time female criminality was put on the Agenda of the Fifth Congress on Crime, Prevention and Treatment of Offenders held at Geneva because, as stated earlier, various national studies began to show that more and more women were turning to criminal activities. It was at Geneva where the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in 1955. This First Congress produced the Standard Minimum Rules (SMR) for the Treatment of Prisoners which have proved to be useful to many countries in the world.

Zambia and other third-world countries are no exception to this social syndrome of the increasing criminal activities of women. An increasing number of Zambian women have been arrested and convicted of such offences as drug peddling both within and outside Zambia(10). Similarly, there appears to be an increasing number of women in Zambia who are committing serious offences such as fraud, assault and murder or manslaughter(11). But despite this apparent increase in the criminal activities of the female population in Zambia very little scientific study appears to have been carried out by social scientists or criminologists on female criminality in Zambia. This could be due to the age-old apathy that although more and more serious criminal offences are being committed by women, the proportion of their criminal activities, when compared with their male counter-parts, has not reached an alarming stage to warrant the attention of policy-makers and controllers of the country's criminal justice system. In other words, female criminality has not yet become a social problem in Zambia. But this is the kind of one-sided comparative approach to female criminality which Mannheim criticised in his Chapter on 'Age and sex factors in crime'(12). If, however, female criminality in Zambia has not yet become a social problem, then it certainly is on its way to becoming one.

There is, no doubt, a dearth of scientific or academic literature on female criminality in Zambia. The result of this lack of objective and scientific material is that very little is known about female criminality, its prevention or the treatment of female offenders by many people especially

those concerned with the administration of justice in the country such as legislators, the judges, the police, social workers, court criminologists, lawyers and other social scientists in general. This in turn prevents or adversely affects the proper understanding of the dimensions of the problem of female criminality in the country.

(c) A Review of Some Literature:

(i) Early Research

An initial attempt was made in the early sixties by William Clifford who was then Director of Social Welfare in Zambia(13). Clifford found that there was a very low rate of crime among women in Lusaka compared to male criminals. He found that in 1958/59 there were only 62 women convicted during the two years compared with 3127 men. He observed that in Zambia, indeed as elsewhere in the world, women seemed to commit far less crime than men. This phenomenon might have been interesting but it was certainly not suprising because the same findings are found in many countries both in developed and developing ones. At the same time as Clifford was making his findings known about female crime in Northern Rhodesia (now Zambia) and particularly in Lusaka, Barbara Wootton wrote about the British society that at all ages females contributed far less to crime than did their male counter-parts and that in British society, taking all ages together the men's rate of conviction was more than seven times that of women(14). Nigel Walker writing on women offenders in the sixties found a similar

situation and wondered why female offenders were in such a minority(15).

Clifford had further observed that most women who were imprisoned had committed simple larcenies and that most of the fines imposed on women were for breaches of municipal or township ordinances, i.e. for breaches of minor township regulations. He found that a considerable number of women had been fined for brewing beer illegally and commented that the brewing of beer was a traditional female occupation in Zambia but that in towns it was associated with the adulteration of bottled beer and the running of shebeens (unlicensed beer houses) for drinking and prostitution. Of his study group of 47 women consisting of 43 Africans (blacks), 3 Europeans (whites) and 1 coloured (of mixed skin pigmentation), he found that no particular tribe among the Africans proved to be outstanding in any particular criminal activity; that thefts and assaults were the main crimes committed by women; that in more serious cases women were generally accompanying men and that most of those found guilty of assault (about 50%) were from shanty or squatter compounds. But much more importantly, Clifford discovered that there was a tremendous lack of scientific or objective material on female criminality in Zambia and urged further studies in this field. Unfortunately, to-date nothing much appears to have been done in the study of female criminality in Zambia. Clifford pointed out that even quite simple accumulations of evidence in Court cases or descriptions of particular crimes committed by women have value for future

research or investigations. It is, therefore, necessary to analyse some Zambian literature or studies on women and crime.

(ii) The University of Zambia School of Humanities and Social
Sciences

In 1975 the School of Humanities and Social Sciences at the University of Zambia started producing research essays written by the University students on various social issues or problems in Zambia. Thus Simataa Akapelwa then a senior undergraduate wrote a paper on 'Some Recent Trends in Zambian Prisons'. Akapelwa makes a fairly comprehensive analysis of the prison population between 1964 and 1972, showing a daily average prison population for those convicted and sentenced to imprisonment. Akapelwa found that the daily average prison population was 4,017 in 1964 but rose to 6,393 in 1972 and that by comparison in 1972 the number of admissions to prison was 46,970 which was 8,667 more than in 1964. He also showed the main offences for which prisoners were convicted such as house-breaking, burglary, theft, assault and robbery. He made some observations on young offenders and their training at Katombora Reformatory near Livingstone. But there was nothing mentioned about the female prison population in his study. His statistics were not broken down into male and female prisoners(16). Oswald Chakulimba wrote on suicide in Zambia and showed that out of 73 cases of suicide reported between 1970 and 1972 only 11 (8%) were women(17). This study showed a very small proportion of women taking part in self-destruction. Oswald Katakwe

wrote about juvenile delinquency in Zambia and showed that out of a sample of cases made available to him by the Social Welfare Department in Lusaka only 12% were female delinquents(18). But there was no special analysis of this female phenomenon. In the same publication another student P.A. Mutesi wrote on prostitution on the Copperbelt. He interviewed six out of twenty one women who were classified as 'regulars' in a bar(19). It is not known how many of the suspected prostitutes were ever arrested or convicted of the criminal offence of prostitution or soliciting under the penal code. Thus, the study did not attempt to analyse prostitution from a criminological point of view but from a social stand-point. Similarly, other studies at the University of Zambia (UNZA) such as the study of women in urban life by Karen Hansen(20) and on women's perception of their changing roles in modern Zambia by B. Keller(21) were researches in the social aspects of women's lives in present day Zambia.

(iii) The Zambia Association for Research and Development
(ZARD)

The Zambia Association for Research and Development has been collecting and collating bibliography of research on women. The Association is a non-Governmental organisation which is concerned with the furtherance of what the authors call action-oriented research on women's issues in an effort to encourage and document research that has been undertaken in Zambia as well as in other countries covered by the Southern African Development Co-ordination Conference (SADDC) on women.

The ZARD Annotated Bibliographies cover a wide range of subjects on women and their development in Zambia such as education, political, economic, social, legal and other related issues. These Annotated Bibliographies dwell extensively on the status of women in Zambia to-day. But part of Chapter 3 of the 1985 publication covers the legal status of women arguing that such status is determined by two separate legal systems - customary law and statutory law, "a part of the colonial heritage which has not yet been reformed"(22). The latest Bibliography covering the period from 1979 to 1985 states, among other things, that Zambian women are becoming increasingly aware of their own status and gender inequalities which tend to restructure their opportunities in the wider society(23). The authors also argue that popular opinion about women in Zambia is male-oriented. However, there is no article in the ZARD Bibliographies which deals with women and crime in Zambia. This, perhaps, is once again due to the fact that female criminality despite hitting headlines in local and even international media, is not yet considered a social problem in Zambia. In other words, the cause of this apparent neglect is due to the fact that compared to male criminals, the population of female criminals is almost insignificant. But it is argued once again that an objective and scientific approach should treat female crime in Zambia as a social problem and as a topic in its own right.

(iv) Other Organisations or Agencies:

The Mindolo Ecumenical Foundation in Kitwe has been one of the organisations in the fore-front of promoting the awareness among Zambian women which the publishers of the ZARD Bibliographies have emphatically commented upon. In November, 1970 the Foundation organised a "Consultation" on women's rights whose main objectives were to provide an impetus for a nation-wide campaign to educate women concerning their rights and to take initial steps towards legislative reform.

In their final recommendations the Mindolo Ecumenical delegates felt that while they appreciated that, *prima facie*, the Zambia Constitution does not discriminate against women, they were, nevertheless, aware of the weaknesses in the country's legal system. They, therefore, called for measures which would unite their talents and energies in order to work for the improvement of the position of women in the Zambian society. It is important to point out that in fact the Zambian Constitution does not outlaw discrimination based on custom. And as the ZARD Bibliographies have pointed out, customary law treats women as perpetual dependants. Regardless of her age a woman must obtain the consent of her relative to her marriage under customary law. The Mindolo Seminar further observed that the country was passing through a period of rapid social change which had brought about insecurity in family life and sexual ethics. The delegates went on to recommend, *inter alia*, that there should be a unified marriage

law based on a combination of both customary and statutory law where necessary(24). The 1970 Seminar did not discuss any aspects of female criminality nor crime in general.

In a report to the Zambian Government, Robert F. Landor then a United Nations Advisor on Social Services observed that although the rate of serious crime had increased in Zambia, no studies were made nor research mounted to try and determine the major causes of such crime. Neither was there any attempt to discover the most suitable methods of crime prevention and the treatment of offenders "other than enlarging the police force and prisons and... increasing the severity of punishment"(25).

In May, 1975, another seminar was held at Mindolo. That time the subject was "Society and the Law Breakers". Geoffrey Care(26) delivered a paper at the seminar on 'Criminal Law in Transition and Offenders before the Courts'. Care observed that crime in the sense in which it is expressed by the Penal Code owed little or nothing to local custom whose Courts operated on very different lines. Care urged his audience to work towards knowing what the real causes or aetiology of crime were if control measures were to be successful. He argued that it was not only the Government's responsibility to educate the public but that Churches and the mass media or the press had a similar obligation. He described the role of the press as one "without whose active and intelligent help little of what we are talking about has any chance of success"(27). But despite this focus on crime in Zambia, the seminar did not appear to have dealt with female criminality.

(v) The Zambian Press:

The press in Zambia suggests that more and more women are engaging in crime but that the Courts were somewhat 'soft' with female criminals. Fred Simposya in his article in the Times of Zambia(28) made a number of assertions which certainly require scientific appraisal. For example the author asserts that there is an increasing number of women in Zambia who commit serious or grave crimes such as aggravated robberies or theft by public servant or forgery and that no woman charged with a capital offence and convicted has ever hanged in Zambia's criminal history. Simposya argued that most Zambian women who engage in criminal activities are aware of the fact that they are less likely to be charged for crimes committed and that if they are charged they are aware that they are likely to be acquitted. And the author asserts, inter alia, that the emancipation of women has something to do with the increase in criminality on their part and that the economic pressures have forced some women to steal or to move with men of dubious character who influence them to commit crimes in order to make ends meet. Simposya's assertions provide stimuli for scientific research in one form or another such as in the field of the treatment of female offenders. William Clifford in his studies of crime in Northern Rhodesia commented that crime, to a very large extent, was a symptom of the process of industrialisation. There is no doubt that emancipation whether political, social or economic has a bearing on the criminal activities of most female offenders.

In another article in the Times of Zambia, Monique Rubens points out a number of reports on female criminality by prominent researchers. For instance, she writes that Minoru Shikita then Chief of the United Nations Crime Prevention and Criminal Justice Branch reported that white collar crime, drug abuse and drug trafficking and violence appeared to be crimes in which women were increasingly getting involved. Rubens also cites a report by Freda Adler, a professor of criminal Justice at Rutgers University in New Jersey, U.S.A. in which it is observed that once criminal access routes open up, women would show inclinations similar to those of men to violate the law and that with emancipation the female begins to share her stresses and strains of the industrialised social living with her male counter-part(29).

(d) Crime and Criminology:

In order to understand the problem of female criminality, it is important to have an understanding of what is meant by the terms 'crime' and 'criminology'. Most laymen believe that they know what crime means, but among criminologists and other social scientists there is no certainty at all. Different authors and different students of criminology use the term in different senses. The result of such different interpretations is that they come to different conclusion about it. R. Garofalo, a disciple of the bio-criminological school, for example, understood

natural crimes as acts which do violence to certain essential characteristics of human nature and social life(30). He saw crime as an immoral and injurious act which the public regarded as criminal. Hermann Mannheim applied sociological criteria in his idea of crime as "anti-social" behaviour. He was of the view that the study of criminology should not be confined to the study of crime in its legal or juridical sense only. He argued that criminology should deal also with the wider or broader concept of anti-social behaviour(31). But, as Howard Jones pointed out, on closer inspection or examination, "all these so-called objective criteria prove to be ethical value judgements in disguise", and in any case morals change and new social principles begin to emerge from time to time(32).

There are, therefore, many difficulties in trying to apply non-legal definitions of crime. For example, according to Edwin H. Sutherland's theory of "White-Collar" crime, there is much crime in America which escapes punishment. It includes such acts as the manipulation of property markets, tax avoidance as opposed to tax evasion which is a criminal offence in most countries and so on(33).

Thus other criminologists like Richard Cobden argue that there is nothing immoral in endeavouring to buy in the cheapest market and sell in the dearest one(34). On the other hand, criminologists like G.B. Vold argued that crime is the expression of a conflict between those who control the state, and hence formulate the law, and other interest groups in society(35). Thus they see the law-making process as an essential element

in the aetiology or causes of crime in that, according to the, crime in the real sense is created by criminal law. They argue that criminal law, even though it may fluctuate, is objectively determinable at any given time and place and can therefore be easily traced. In the early days both Plato and Aristotle regarded crime as a factor in economic and political changes of society and that the more society develops the more crimes are committed (36). Geoffrey Care in his paper to the Mindolo Seminar pointed out that there could be endless arguments about the definition of crime. He opted for a legal definition of crime which is an act or omission that is forbidden by the laws of the country. He recognised that such narrowing of the definition of crime was capable of criticism but argued that, at least, it narrowed the field of discussion to manageable proportions. J. W. Gillin argued that from a legal point of view any action by an individual which was in contravention of a law is crime. Davis and Barnes had earlier also expressed the view that crime is an offence against the community and which offence was always a violation of the law of the community. Such an act usually involved the intent to do wrong as well as the act itself - i.e. the notion of mens rea and the actus reus (37). Donald R. Cressey was of the view that if behaviour was not legally defined as crime, then it was not crime, no matter how abhorrent the behaviour was to individuals or the public at large (38).

In this study it was decided to follow the juridical line of argument and to settle for the legal definition of crime as those acts or omissions which the laws of the country have

forbidden. But this should not give the impression that the only crimes to be dealt with are those to be found in the Penal Code. Criminal offences in Zambia are found in many other statutes. For example, the Roads and Road Traffic Act where such an offence as causing death by dangerous driving is a criminal offence under the Act as well as a civil offence under common law. Viewed from a juridical stand-point a criminal is a person who has been proved guilty for a punishable offence.

Criminology itself is defined as the science which studies the social phenomena of crime, its causes (aetiology) and the measures (epidemiology) which society directs against those who commit crime. J.E. Hall Williams pointed out that criminology is essentially concerned with the scientific study of crime. This excludes from the scope of the subject certain kinds of popular journalism or criminal biography such as the accounts of famous murders(39).

In the early 60s authors like Edwin H. Sutherland and Donald R. Cressey argued that criminology was not yet a science because it lacked general propositions of universality which are characteristic of, say, the physical sciences. They further argued that the essence of science was to be found in its stable and homogeneous units but that crime was neither stable nor homogeneous in that it varied from one time or place to another(40). Other authors such as Professor Sprott have pointed out that for any study to be classified as 'scientific' it should have the following ingredients, namely (a) the verification of

hypotheses by controlled experiments; (b) abstraction of such characteristics as are measurable and the discovery of functional dependence between one measurement and another and (c) the establishment of broad unifying hypotheses or theories to explain and predict a teaming of phenomena(41). Therefore, if one cannot experiment, cannot measure, cannot establish broad unifying hypotheses and cannot predict then one cannot be said to be engaged in scientific study at all.

But then even in pure science, the changes in theory which have followed one another so swiftly from time to time have made it less certain that what science teaches to-day will be what science will teach tomorrow. Generally, scientific research aims at objectivity, even when dealing with value judgements as are often found in the study of crime and the establishment of hypotheses which can be tested.

The authors of 'Criminology - An Introduction' have pointed out that in studying criminological literature the reader is often struck by the fact that scientists are not always agreed and on the exact study/object of criminology as a science. However, the authors finally conclude that despite these divergencies, most of those concerned with criminology agree that it is the science which is concerned with the study of the question of crime as found in human society(42).

This study, therefore, proceeded on the basis that criminology is a science capable of analysing the various data and phenomena

objectively among the study group of the 81 women prisoners who were interviewed and to lay down certain guides hypotheses despite the limited human resources available. For, as Emile Durkheim pointed out, social facts must be capable of being treated as objective things (*comme des choses*)(43) - a kind of general appeal to all social scientists for objectivity.

(e) The Objective of the Study and Methodology:

The objective of this study is to highlight the fact that female crime is a problem within the Zambian society and one which should not be brushed aside as 'insignificant'. It is important to know its real extent and its causes and the evolution of the processes of the treatment or punishment of female offenders. For example, is it true that the number of women criminals has greatly increased? If so, what type of offences are most common among women in Zambia to-day? What role have women played in serious offences such as aggravated robbery, fraud, smuggling or murder? Are the Courts or the arresting or investigating officers lenient with female offenders? Have women's liberation movements or the economic development contributed to women's participation in criminal activities? Do women offenders in the final analysis reform better and/or quicker than their male counter-parts? Although the study group of this research is relatively small, involving only 81 female prisoners, it is hoped that some of the findings will be of interest to future researchers in this field.

The methodology of this study included first, a review of the existing literature on female criminality both in Zambia and in Africa generally and also elsewhere, in particular the

United Kingdom, the United States of America, Australia and the Soviet Union. It also included observations and interviews of the individual women in the study group, discussions with other women in society; discussions with judges and magistrates; police and prison wardens and journalists. These discussions were complemented by visits to the main female prisons at Ndola, Kitwe, Mufulira, Kabwe, Lusaka and Livingstone where the individual women in the group were actually interviewed on the basis of a questionnaire which is attached to this dissertation.

In this research, Chapter 1 is devoted to a general review of literature concerning female criminality first globally, then on the continent of Africa and finally in Zambia. The Chapter then deals with the rationale of the research showing the relevance or importance of the study and its contribution to the scientific understudying of the problem of female criminality. The objective of the study is dealt with in this Chapter followed by a brief explanation of the methodology applied in the study. The definitions of crime and criminology are also dealt with in this Chapter showing some divergence among criminologists as to the meaning of 'crime' and whether or not criminology can be said to be a science under which scientific hypotheses or theories can be postulated.

Chapter 2 looks at various theories of female criminality from the early days of the Bible through the Lombrosian biological theories which take the view that crime is mainly a product of a large number and a great variety of factors which may

not be easily organised into general propositions.

In Chapter 3 an attempt will be made towards giving a synopsis of the traditional role of women in the Zambian society and in Africa generally and to compare this with the earlier role of women in some of the industrialised or developed countries as well as some third world countries outside Africa. It is hoped that such an approach will shed some light on the general understanding of some of the causes of female criminality and may thus contribute to its treatment and/or control. Chapter 4 considers some criminal laws which are enacted and implemented in respect of female criminals or offenders with particular reference to the Zambian criminal laws, procedures and practices. Chapter 5 is what might be considered as the 'core' Chapter in the sense that it is there that facts and figures of the entire study group are analysed namely, the types of crimes committed by the 81 women prisoners, their individual characteristics such as education, marital status and so forth. Chapter 6 is the concluding Chapter in which relevant summaries and conclusions are made from the study. The Chapter also makes some modest recommendations, again, bearing in mind the small size of the study group involved in the study.

Chapter 1

Notes and References:

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- (5) Howard Jones, Crime in a Changing Society (Penguin Books Ltd - Middlesex, England (1965) at p. 21 paragraph 2).
- (6) Howard Jones, Crime in a Changing Society at p. 21 paragraph 3.
- (7) Howard Jones, Crime and the Penal System (University Tutorial Press Ltd - London - 2nd Edition (1962) at p. 129 paragraph 4.
- (8) Hermann Mannheim, Comparative Criminology Vol. 2 at p. 690 paragraph 1(a).
- (9) S. K. Mukherjee and Jocelynn A. Scutt (eds.), Women and Crime (George Allen & Unwin Ltd - Sydney, Australia (1981) - Introduction.)
- (10) Note, for example, Mrs. Chakulya the wife of a member of the Central Committee of the ruling United National Independence Party (UNIP) at the material time who was convicted and imprisoned in England in 1985. Princess Nakatindi (Mrs. Sikota Wina - a former member of the Central Committee of UNIP) who was detained in custody for over a year together with her husband on accusations of madrax trafficking.
- (11) Note, for example that of the 81 female prisoners interviewed under this research 62% committed or were alleged to have committed murder, manslaughter or assault and note the recent murders of their husbands by Rosalyn Zulu and Esther Mwimbe; the former being acquitted of murder by the Supreme Court while the latter's conviction was affirmed by the same Court.

- (12) Hermann Mannheim, Comparative Criminology - Vol. 2 at p. 690 paragraph 1(a).
- (13) William Clifford 'Crime in Northern Rhodesia: Rhodes - Livingstone Communication No. 16 of 1960' and 'Female Crime in Lusaka - A Preliminary Survey' - Reprinted from Proceedings of the Central African Scientific and Medical Congress held at Lusaka in August, 1963.
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- (17) Oswald Chakulimba, 'Suicide in Zambia' - Social Problems in Zambia (1976) at p. 25.
- (18) Oswald Katakwe, 'Juvenile Delinquency in Zambia' - Social Problems in Zambia (1976) Table III at p. 69.
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- (29) The Times of Zambia, 'Terror Women Multiply' Wednesday, 19th June, 1985 at p. 4.
- (30) See Hermann Mannheim, Comparative Criminology (1965) Vol. 1 at p. 220.
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- (34) Howard Jones, Crime and the Penal System at p. 6 paragraph 3.
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- (36) P. J. Van der Walt, G. Cronje and B. F. Smit. Criminology: An Introduction - Haum Educational Publishers - Pretoria (1982) at p. 48.
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CHAPTER 2

THEORIES ON FEMALE CRIMINALITY

(a) Early Theories:

In the early days of the development of the human society individuals who committed crimes or behaved in a manner contrary to accepted norms of their community were looked upon as being possessed by the devil or simply as devils themselves(1). In indigenous African society criminal law; the offences, procedures and sanctions against the offenders were evolved or developed, albeit unwritten, in such a way as to take into account local and traditional ideas of penology(2). Thus the African practice was usually to compensate the injured party. There were no prisons although a murderer or a madman could be confined or locked-up in a hut until relatives produced adequate compensation(3). Writing on the Africans' attitude towards capital punishment in South Africa, G.L. Ndabandaba commented that to understand the attitude of the Africans towards capital punishment, it was necessary to understand their attitudes towards crime and punishment generally. He cites some of his interviewees who expressed their views that "in the olden days, the rule was clear - you killed, and you were also killed."(4).

When societies began to be sophisticated a variety of explanations as to why people resorted to behave in a manner which was regarded criminal, anti-social or anomic were being advanced by many social scientists. A number of theories based on morals, biological factors, psychology, economic and even medical or psychiatric explanations were advanced by philosophers

and various authors or students of criminology or sociology.

(b) Philosophers and Crime:

A good number of early philosophers showed great concern about crime in society and sought to explore and explain its causes. Plato who was born in 427 BC and died in 347 BC wrote *The Republic*, a book in which he propounded the theory that riches or wealth was the source of many crimes and that the more people became wealthy the more they ignored their societal norms or virtues. In another book, *The Laws*, he argued that a society which was neither rich nor poor was likely to have less immorality and hence less crime because its citizens were less avaricious. On punishment Plato was of the view that criminals were not punished because of the original offence which they committed but in order to deter them from committing another offence(5). Aristotle who was born in 384 and lived up to 322 BC argued, in his book '*Politics*', that crime was a product of poverty and that great crimes were committed in order to add to more riches and not as a matter of necessity(6). In the middle ages one of the philosophers, Thomas Aquinas, argued that when rich people lost their wealth, they resorted to theft. Aquinas was later joined by the English philosophers Thomas More and Thomas Hobbes in the rich-poor criminological dialogue. More in his '*Utopia*' argued that the reason for the increase in the incidence of crime in the English society of his time was because many people could not make ends meet

and that if people were employed, crimes of an economic nature would disappear. He argued that children of poor families were forced into criminal acts. Hobbes in his writings, postulated among other things, that men are moved by appetites and aversions. Among his famous books are 'The Elements of Law, Natural and Politic' (1640) and the 'Leviathan' (1651) when life in England was described as nasty, brutish and short(7). In France, Beccaria (1738 - 1799) argued that few people in the society lived in luxury while the majority lived in poverty and that this greatly contributed to the increase in the numbers of criminals.

The result of these early philosophical discourses on the social causes of crime highlighted the need to improve the social conditions in the society. This approach also promoted an awareness for preventing crime as opposed to mere punishment for the crimes committed. The general feeling was that there was a definite link between poverty and crime. In effect, traditional theories of the causes of crime in general were mainly based on individual pathology in an economically imbalanced society.

(c) The New Criminology:

In the 1960s the approach on individualism in the traditional theories of the causes of crime began to be challenged with the advent of a new criminology which started analysing causes of crime from a material view-point. The focus was being turned away from the individual offender. This new approach began to have some influence also on theories of female criminality. Women's domestic roles were changing as seen by their increased

participation in economic and political spheres. Such developments must, of necessity, have considerable effects on any society's criminal system of justice(8).

It has been argued, however, that while there has been a marked evolution or development in theories concerning male criminality, there appeared to have been very little development which has taken place in the study of female criminality(9). A number of social and criminological studies lend support to this argument. It is acknowledged that the present knowledge of the causes of female criminality is very scanty and very much in its infancy(10). Most modern studies still echo the observations of D.Ward who, almost twenty years ago, stated that at that time knowledge of the character and causes of female criminality was at the same stage of development as was the knowledge of male criminality in the late 1930s(11).

In 1969 Barbara Wootton pointed out that the relative rarity of women offenders had been tacitly ignored by students of criminology apart from the work of a few students who had interested themselves in offences committed by women. She argued that a number of sociologists and criminologists did not think that the study of female criminality was worthwhile because the number of cases was so small that no valid or useful inferences could be made from such studies. In England and Wales she found that women like men tend towards criminality in their early years though the female population appears

in Courts a little later. She also found that there was a predominance of women shoplifters and that there was an increase in female prostitution which was attributed to an influx of male immigrants from overseas(12).

Ann Oakley argued that the scarcity of studies of female crime ran right through most studies in sociology from methods of empirical research up to the construction of models and general theories(13). Later in 1980s Dorie Klein and June Kress observed the same trend. Klein and Kress emphasized that as far as the subject of female criminality was concerned, its scanty literature has been written mostly by men "or by women without feminist consciousness". They argue that female criminality is seen by some writers as the result of inborn biological and psychological characteristics of women based on their reproductive roles in society. They also point out that women's position in the labour force has changed and so has the women's role in the family similarly changed. That as a result of these changes, new issues concerning women's participation in crime generally have arisen. They observe that as a result of these changes "a flurry of speculation among criminologists" has also taken place and that much of the academic material has not taken serious consideration of the economic and social position of women in the wake of these developments(14).

Dorie Klein in her review of literature on the etiology of female crime has pointed out that writers on female criminality have ignored the problems of the third world women and have

concentrated on the standards of the affluent developed countries in pursuing their studies in this field. She argues that these "overlooked women... in fact constitute a good percentage of women caught up in the criminal justice system." She observes that these third world women have "real economic needs" which invariably force them into criminal activities "as viable economic alternative"(15). In 1985 Andrea Durbach made a similar observation in his studies of women in South Africa when he wrote that few studies of female criminality had been undertaken in that country and that most research which was conducted in the field of female criminality was traditional and stereotyped(16).

In his Chapter on 'Women Offenders' Nigel Walker admitted that in his previous chapters he had deliberately ignored women offenders "partly because they are in the minority..."(17). Eileen B. Leonard described it as a curious oversight the fact that theoretical criminology has been unable to adequately explain female patterns of crime. Leonard pointed out that despite the obsession of the public about crime in general, female criminality has been virtually ignored and that the topic of women and crime needs "an enormous amount of empirical and theoretical work"(18)(i).

The position, however, is now being redressed and there is now a proliferation of literature on female criminality or delinquency especially in the United States of America, the United Kingdom of Great Britain and European countries(18)(ii).

But in most developing countries the position is the same as it was in these countries some thirty to forty years ago. Specific theories of female criminality will not be discussed.

(d) Biological Theories:

In the early studies of female criminality, biological explanations had a great impact on tracing the causes of criminal behaviour among women. It has, for example, been argued that some female offenders commit their crimes during periods of menstruations or during the onset of the menopause when their bodily metabolisms are in a state of imbalance. Dorie Klein points out that "a biological factor that continues to be linked to female criminality is the menstrual cycle." She goes on to cite the fact that in the late 19th century Lombroso and Ferrero found that 71 out of 80 women were menstruating at the time they were arrested(19).

Commenting on 'The Role of Women - genes and biology' the sociologists Haralambos and Heald have pointed out that it is clear that women are biologically different from men although there is some disagreement "as to the exact nature and consequences of this difference"(20). Some social scientists have argued and maintained the stand that it is sufficient to explain the whole basic sexual division of labour and its consequences in all societies from the primitive to the more sophisticated societies on the basis of biological typology(21).

In the year 1876, just over a century ago, Cesare Lombroso, famous Italian criminologist published a book

entitled 'L'uomo Delinquente' (The Criminal Man) in which he argued that criminality was 'in-born'. He claimed that there were certain physical characteristics which could distinguish the "criminal type" from the normal person. He based his theory on the findings of the physical measurements of large numbers of criminals. He claimed that the criminal type could be recognised by the possession of at least five stigmata or characteristic features such as a small cranium (skull) of an ape-like type; receding forehead; projecting ears; little or no beard and thin upper lip - a kind of atavism, a throw-back to man's primitive and, therefore, a moral qualities(22).

In 1895 Lombroso published 'The Female Offender' in which he tried to show that the biological factors which applied to male criminals also applied to female criminals. When he wrote 'The Female Offender', some ten years after 'L'uomo Delinquente' he was still of the view that biological factors accounted for male criminality. But he applied the same factors to account for the low rate of female criminality. He argued that there was a close connection between physical features which were mentioned in the preceding paragraph and that female criminals, like their male counter-parts, were physical degenerates although they (the females) were not as repulsive as male criminals.

It has, however, been pointed out by various criminologists that Lombroso was not the first or last person to try and explain female criminality in the physiological or biological context. For example, Luke Owen Pike in the History of Crime in England (1876) attributed the low rate of crime among to their biological constitution. Pike argued that women did not

commit much crime because they were physically and hence biologically weak. In 1914 Hargrave Adam in 'Women and Crime' wrote of "women's nature" in addition to the "social circumstances" in attempting to explain female criminality.

In 1950 Otto Pollak wrote on the 'Criminality of Women', a piece of work which was then described as being of considerable significance to the knowledge of female criminality and argued that women were the most able criminals both biologically and socially. Pollak was of the view that women were well equipped for telling lies and general trickery. He maintained that they had the ability to conceal their social emotions just as they have the ability to conceal their sexual, i.e., physiological, emotions during sexual intercourse and that women often instigated most crimes committed by men. He discusses the biological aspects in women vis-a-vis social factors in their contribution to crime at large. But when it came to the treatment of female offenders Pollak argued that men hated accusing women and that in some cases police officers dislike arresting women and that both judges and juries (where applicable) dislike finding women guilty if they can avoid doing so(23). Pollak used these criteria to explain the low rate of female criminal statistics. But later researches or literature on the subject of the causes of female criminality do not support Pollak's view-points which are now somewhat out-dated. Carol Smart has attacked Pollak for making anti-feminist presuppositions and "unsubstantiated statements about the origins of female criminality"(24).

In 1968 J. Cowle, V. Cowle and E. Slater wrote their 'Delinquency in Girls' published by Heinemann and made an

analysis of female delinquency nearer to the Lombrosian typology but with a slight deviation towards sex and genes as a means of explaining female criminality. They argued that while criminality in boys might be caused by social factors, the criminality of girls was mainly attributable to biological factors - a kind of chromosome or metabolic imbalance which makes girls act like boys(25). Karen Rosenblum, writing on prostitution, concludes that "prostitution is a uniquely female form of deviance because of the attributes built into the female sex role.." (26). Most writers and even legislators on prostitution seem to take the view that prostitution is simply a con-comitant of female biological factors which cannot be found in man. But there is now in the Western countries the factor of male prostitution. And as late as 1979 a South African criminologist made emphatic Lombrosian observations by arguing that the basic differences between men and women which can explain the life-styles and types of behaviour deviances such as crime "are both to be found in the biological personality". That the fundamental biological difference between men and women "provides the blue-print for different kinds of personality development"(27). Andrea Durbach comments that with the exception of Bev Tydeman's work on female criminality in South Africa, the little and often speculative literature on South African female criminals is still bound by biological and psychological explanations(28).

Durbach criticises what he calls the traditional biological approach for the explanation of female criminality in South Africa. He argues that these traditional (i.e. biological) theories of female criminality were based primarily on innate sexual characteristics of women thus ignoring social or economic

motivations and explanations which would help in the understanding of why women turn to criminal activities. He further argues that according to these theories sexuality constitutes the key to the understanding of the deviance of women . Thus female delinquency has been viewed by such theorists as unladylike and conventionally inappropriate behaviour, a kind of perversion of the natural feminine roles which "stress passivity and conformity". The female offender is considered by such biological theorists to have not only violated legal norms but to have also offended against her own sex role and 'the traditional stereo-type conceptions of femininity'.

In 1980, commenting on 'The Etiology of Female Crime' by Dorie Klein the editors observed that one biological factor which has continued to be linked to female criminality is the menstrual cycle(29). In the late 19th century, Lombroso and his son-in-law Ferrero found that 71 out of 80 women were in the period of menstruation when they were arrested for resistance against public officials. Similarly, a study conducted over three quarters of a century later at the North Carolina Correctional Centre for Women found that the frequency of aggressive acts by inmates increased during the pre-menstrual phases of the period(30). However, some authors have questioned this link or relationship between the pre-menstrual phase and female criminality pointing out that if a woman were quickly arrested and jailed after committing a crime, such a traumatic experience might easily be mistaken for a pre-menstrual phase which led to the commission of crime itself instead of the other way round(31). The pre-

menstrual-crime link in women offenders is, however, an interesting phenomenon which needs further study.

In later editions of his work Lombroso modified his views and admitted that environmental factors may be important in finding the causes of crime. In his book 'Crime: its Causes and Remedies' he admitted that every crime has its origin in a multiplicity of causes(32). But there is no doubt that it is with his earlier and more austere pronouncements that his name and those of his students and followers are most associated. And, as has been observed earlier, these biological theories of female criminality are still lingering in some circles. But it is important to point out that these theories based on the biological factors of female criminality have, for all practical purposes, been discredited by modern researchers. Andrea Durbach has described the biological approach to female criminality as stereo-typed and unable to explain why women turn to crime or why others with similar factors or traits do not turn to crime.

Dorie Klein has called for new definitions of female criminality and for a break away from the traditional approach because the traditional approach has "produced work that is sexist, racist and classist; assumptions that have served to maintain a repressive ideology with its extensive apparatus of control"(33). Carol Smart has described this traditional approach as an analysis which has "given folklore a pseudo-scientific status"(34). Pat Carlen was more emphatic when she argued that when "presenting

these chronicles (of criminal women) we hope that they will not only destroy the mythology which inseminates contemporary stereo-types of criminal women" and that by doing so there would be a greater understanding of the "complex and diverse" social factors which female criminals face(35).

(e) The Sociological or Cultural Theories of Female Criminality:

In 'Crime and the Penal System' in England Howard Jones points out that the most typical of the sociological theories about crime is that criminal behaviour, like other forms of social behaviour, is learned from "one's social milieu"(36). Jones gives the "differential association theory" of Edwin H. Sutherland as a celebrated example of this type of approach to the aetiology of crime. That is to say that criminal behaviour is learned, or not learned, according to the interaction with other people "in the process of communication" through one's socialisation(37).

Emile Durkheim attributed crime to a state of anomie or normlessness or a lack of social standards and social controls in the community. As a result of this state of affairs and because people do not know what is to be done, they do not know what to do. In particular Durkheim applied this concept of anomie to the analysis of suicide. Thus in an anomic society, the individual is lost, not knowing what to expect and not knowing what is expected of him. Disoriented and feeling extremely insecure, he decides to destroy himself.

In their book 'Criminology - An Introduction' the authors have pointed out that in the 16th, 17th and 18th centuries,

many views on the social causes of crime were postulated. They have argued that even much earlier than this, Plato (400 BC) in his book 'The Republic' attributed crime to man's wealth - gold being the source of many crimes those days; Aristotle (about the same period) in his 'Politics' attributed adverse social conditions as the source of "rebellion and crime" and much later Thoman Aquinas (13th Century AD) also discovered a correlation between riches and poverty in the causation of crime. All in all this school of thought maintained that the poor social conditions of society were strongly conducive to crime. These were views about crime in its social or cultural context. As for women, R. Owen (1916) observed that when married women started working, their lives began to be disrupted and crime became a logical concomitant(38).

In the late thirties there were studies on female criminality in America as well as in European countries and among the most prominent ones were those of Kingsley Davis in 1937 in America and Leon Radzinowicz in Poland. Kingsley Davis wrote on 'The Sociology of Prostitution' in which he went to lengths attempting to distinguish prostitutes from non-deviant women within the social order(39). It is argued that Davis saw prostitution as, to a large extent, a function of the female sex role and appeared to have alluded to the social status of women as an impetus for them to involve themselves in prostitution as a means of obtaining advantage over males in the ladder of dominance(40). But this overlooks the fact that for every female prostitute there is a male participant and the fact that numerically the

population of female prostitutes is always ~~much~~ smaller in any female community.

Leon Radzinowicz wrote on Polish statistics which showed that the crime ratio between the sexes varied considerably between rural and urban areas and that the female proportion like its male counter-part is generally lower in rural than in urban areas. He argued that married women who, invariably have their economic needs well looked after, have a much lower ratio of crime against them than unmarried women(41). Perhaps this is an indication of the breakdown of the traditional social order which is found in urban communities which William Clifford talked about in his Northern Rhodesia studies in the early 60s. But this is true of men also. There is less crime among men in rural areas because there is more social control and the community is such that everybody knows who is who and thus there is less opportunity to commit crimes.

In 1941 E. Hacker wrote 'Kriminalstatistische' and 'Kriminalnetologische Berichte' where it was observed that the female share of crime was greatest in those countries where women were most emancipated but that it reached "vanishing point in those countries where their social experience is vigorously circumscribed". Howard Jones in England echoed Hacker's findings by observing that "men in our society seem to get into trouble more often because they are more exposed to the stresses and temptations of social life outside the home" and that the more secluded

women are by customs of their country, the smaller is their share of the country's crime(42).

Dr. Nigel Walker then Reader in Criminology at Oxford University also made some contribution to these socio-cultural theories of female criminality when he observed and commented on why female offenders were in a minority. One of the factors which combined to produce this state of affairs was, he observed, due to the fact that women tend to be "conformist" in their outlook and moral attitude to life(43). Dr. Walker also touched on the physiological or biological aspects of female offenders when he observed that one other factor why women are in a minority was because of the differences between the sexes in strength and skill. He observed that men in general possess more strength and dexterity than women; so that offences which involve climbing or breaking into buildings are more easily committed by men than women. He also observed that because female offenders are in a minority, there is a tendency for society to infer that they are mentally abnormal especially where violence or promiscuity is involved.

The American sociologists Krech, Crutchfield and Ballachey described the social situation where girls are expected to conform much more than boys as "the sheltered female" to explain the different treatment received by boys and girls in the American society(44). This theme was also echoed by Mirra Komarovsky when writing on 'Functional Analysis of Sex Roles' by arguing that girls are less delinquent than boys partly because girls receive a kind of apprenticeship (i.e. socialisation)

from their mothers for the careers into which they are to enter, while boys remain isolated from the occupational activities of their fathers thereby creating some form of frustration leading to delinquent behaviour(45).

In the African context, the then Chief Justice of Lesotho argued in a paper on Crime and Punishment that the increase in the incidence of crime seemed always to be related to fairly specific and identifiable "social problems" and situations. He observed that if there were any similarities in the type or incidence of crime, which was often the case, then the similarities invariably stemmed from the type of "social structure" or weaknesses of the structure in which crimes are committed(46). And Professor Norval Morris of the University of Chicago (USA) said at the same conference at which the Chief Justice delivered his address that "we are all culture bound, more or less"(47).

In 1976 Carol Smart in England expanded upon these theories and quoted a few theorists among them Heidensohn and Hoffman-Bustamante who promoted this social-cultural approach by admitting that girls are generally more closely supervised than boys and that girls are taught to be passive and domesticated while boys are allowed greater freedom and are even encouraged to be "aggressive, ambitious and out-going"(48). Compare this with the Zambian sayings 'Ebwaume' (Bemba) and 'Ndiye umuna' (nyanja) both of which mean - that's being a man!

In 'Power, Crime and Mystification' Steven Box concluded that it would appear reasonable to accept the fact that the differences in the rate of crime vis-a-vis sex can be explained by the fact that in comparison "with their male age peers" girls are somewhat "less powerful" and that this crucial social difference persists even into adulthood. Box wrote that because of this position of virtual "social powerlessness" women do not find themselves participating in the execution of major crimes(49). But this appears to be contrary to the United Nations Reports on crimes committed by women throughout the world as exemplified by West Germany's woman terrorist Ulrike Meinhof and the American heiress - bank robber Patty Hearst. Women do not seem to be as "powerless" as Steven Box makes it appear.

(f) The Economic or Development Theories:

The economic or development theories of the etiology of crime generally go as far back as the pre-historic era. Since then many social scientists or social observers have emphasized the correlation between economic conditions and the causes of crime. It has already been pointed out in the preceding paragraphs that, for example, Plato (427-347 BC) attributed the source of crime to men's desire for gold. And Aristotle argued that poverty was the cause of crime and even rebellion(50).

In modern times Karl Marx vigorously maintained that the roots of crime were to be found in the material or economic conditions of a society and in particular linked these economic conditions with an economic system known as capitalism, especially

its means of production. But it is argued that Marx's theory does not seem to have been developed in relation to women offenders, a group which is often economically powerless and usually oppressed in capitalist societies(51). And as Mr. Justice J.H. Steyn points out, it is not simply a question of material poverty-after all there are many poor people who are law-abiding citizens-but the social squalor which is often associated with poverty which leads to criminal activities and in women, to drunkenness and promiscuity(52).

In his 'Development and Crime' William Clifford argues that although it is not usual to associate crime with development, nevertheless the two are quite common bed-fellows and that there is very often a link between crime and development. He observed that as many developing countries move along the highways of economic development, most of them are finding their paths obstructed by "growing social disruption and crime"(53). In as far as Zambia is concerned this economic development is associated with urbanisation and in the urban areas "the web of kinship is torn apart and the individual must depend on her own resources to carry out life's tasks"(54). Note, for example, the high incidence of assault cases by women on their fellow women usually over men because men provide the much needed economic support(55). But the problem with development and crime links in this part of the world is that such 'development' is always tied to urbanisation. This in turn implies a change in the social and cultural outlook

of the emancipated.

There are, however, some countries which appear to have been undergoing urbanisation without a commensurate rise in the rate of crime. In his paper presented to a seminar on the role of a Lawyer in the criminal justice system, Chishala Chitoshi now a Doctor of Philosophy has pointed out that "evidence from many quarters make it clearly apparent that Japan, an Island nation of enormous density and population, has achieved modernisation without much of the social disorganisation and other undesirable consequences associated with urban, industrial secular societies."(56).

(g) The Multiple Factor Theory:

In a paper entitled 'Crime in Zambia: Problems and Perspectives' Professor Muna Ndulo argues that although causes of crime can be multiple, i.e., they may be economic, social, political and sometimes mental, nevertheless there is "no denying the fact that economic conditions are the major causes of crime"(57). But to what extent these economic causes have influenced or are influencing the pattern and degree of criminality among Zambian women is yet to be found by systematic or scientific studies because poverty alone cannot account for all the criminal activities. This type of situation has led to what is now being termed the multiple or hybrid theories of the causes of crime, even among female criminals which Pat Carlen described as "complex and diverse"(58). As Bottomore pointed out when he examined Barbara Wootton's sociological research in Britain, it is difficult to regard any one of these variables - economic,

social, cultural or biological as the main cause of crime or delinquency. Bottomore wrote that it was generally accepted that all that can be established through these various factors "is the fact of correlation" and that "none of these factors can be regarded as causes" per se(59).

Hood and Sparks have also pointed out that "criminologists have almost always agreed that there is no such thing as the cause of crime". They have cited Professor Sheldon Glueck as one of the most ardent advocates of the multiple factor theory of crime causation(60). Glueck argued that delinquents can be distinguished from non-delinquents by a wide variety of biological, psychological and sociological factors which factors combine in a number of different ways in different people to produce delinquency or criminality.

(h) Summary:

The multiple factor theory takes the view that crime is a product of a large number and a great variety of factors which cannot easily be organised into general propositions. All human behaviour, including criminal behaviour, is brought about by a multiplicity of causative factors. The authors of 'Criminology - An Introduction' agree that this multi-causal approach is receiving increasing attention in current criminological practice(61). And in 'Crime and its Control' a reprint from Acta Juridica 1971 pp. 167-204 this theme is supported to the effect that the author agrees that most social scientists to-day feel that crime is a consequence of a number of factors - environmental, economic, social, political and individual - which interact to produce

criminal behaviour in the society as well as incidences of high crime rates in some societies.

Indeed Professor Muna Ndulo has acknowledged the fact that causes of crime can be multiple although he goes on to say that in his particular study or observations, economic conditions or rather poor economic conditions are the major causes of crime. But as Eileen B. Leonard pointed out, the literature on women and crime leaves much to be desired because "no one has systematically examined current theories of crime in the light of women"(62). This assertion is equally true of Zambia.

Chapter 2

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CHAPTER 3

AN OVER VIEW OF THE TRADITIONAL ROLE OF WOMEN IN SOCIETY

It has been observed in the preceding Chapter how various researchers have attempted to explain female criminality through various sociological or criminological theories. This Chapter is going to examine the role of women in society and how or to what extent that role influences their participation or non-participation in criminal activities. While a limited comparative overview of the traditional role of women will be given in this Chapter, the emphasis will be on the Zambian society in particular and Africa in general. A few examples of developed and developing countries outside Africa will first be considered and examined.

a) Outside Africa:

In England despite what the Magna Carta (1215) said about legal equality, it took some seven centuries to pass the Sex Disqualification (Removal) Act in 1919 which provided, inter alia, that a woman shall be enrolled as a Solicitor after serving under articles for three years if she had a University degree as would have entitled her had she been a man. The Law Society had earlier on, in March 1919, at a Special General Meeting resolved on women that " . . . in the present economic and political position of women, it is in the opinion of this meeting expedient that existing obstacles to their entry into the legal profession should be removed . . . " But as Anna Milford has pointed out, it took another half century before

a woman lawyer was elected to the Council in 1977 and that was Catherine E. Evans. Referring to the 1843 Solicitors Act, Milford argues that where the Act referred to 'persons' "it clearly meant men, only those unversed in the Law could imagine it included females". In 1968 it was announced that University College, a new graduate college at Cambridge University would be free to admit students of either sex. And it was not until 1984 that England saw a female Prime Minister and a female Lord Mayor of London. In America, Milford points out that although the 1910 Census showed that 1,343 women lawyers were registered, nevertheless "the states of New Hampshire, North Carolina and Idaho were still holding out" (1). And on 12th December, 1984 it was reported in the Times of London at page 7 that at Harvard College in America the Campus Clubs had decided to break their ties with the University rather than agree to admit women to their clubs.

Writing on women, Michael Haralambos and Robin Heald opened up one of their Chapters by saying that the original sin in the Garden of Eden was committed by a woman. She ate the forbidden fruit and then tempted Adam to do the same and have been paying for their sins ever since.

The authors point out that the most basic division of labour is founded on sex or gender. Thus woman bear children, they generally do "the cooking, mending, sewing and washing". They also point out, however, that the advent of the 'Women's Lib' has brought in hot debates on the role of women in society

vis-a-vis the division of labour between biological and social theorists (2).

French writer, Simone de Beauviour, observed that this humanity is male oriented and man defines woman in relation to himself; that woman is not regarded as an autonomous being and that she is merely incidental to him as 'he' is the absolute and 'she' is simply the other (3).

In Australia, Jocelynn A. Scutt, a research criminologist at the Australian Institute of Criminology has argued that any form of assessment of where women stand in as far as criminal law is concerned must take into account the fact that the law in Australia has been built up over many years by legislators and judges who have been predominantly male. Hence, according to Scutt "the law has been drawn up with reference to the way in which men define women" as dependent wives or irresponsible whores who have led men into committing offences (4).

In Japan, a similar picture emerges about the role of women in their traditional setting. Professor Chie Nakane commented that it was well-known that Japanese women were nearly always ranked as inferiors but that the American scene was the exact opposite of the Japanese in that in American society "sex-consciousness predominates over status-consciousness" (5). Nakane points out that "in traditional morals the ideal man should not be involved in an affair with a woman" (6). Dr. Chishala Chitoshi has observed that despite the intrusion

of Western ways, there is little alienation in Japan's homogeneous population with few barriers to achievement and great social cohesion (7). But it was only in 1985 that Japan's Parliament passed a law designed to put more women in top jobs and to treat them equally in recruitment, wages and promotion (8).

Similarly, writing on the Chinese family system, Lin Yutang stated that in the traditional set-up "woman is woman" but added that the more one knew Chinese life, the more one realised that the so-called subjection of women was somehow not borne out because "in the home the woman rules" (9). Lin Yutang pointed out that the Chinese Empress Dowager ruled the Nation regardless of whether the Emperor was living or not and that the home was the throne from which she could make state appointments. But it has recently been observed that Chinese women still face discrimination at work and in social life despite great strides towards sex equality since the Communists came to power in 1949. The Peking Review was quoted as saying that lingering feudal ideas were holding back the emancipation of women and that Chinese women were worse off in rural areas where 70 percent of them were illiterate (10).

In the Soviet Union it has been recorded that in pre-revolutionary Russia women had no electoral rights whatsoever. That there was no doubt that the head of the family was the husband. Thus, deprived of any rights and oppressed in the family as well as in society at large, women had no access

to participate in political or cultural life (11). And a decade later and despite concentrated efforts by the State towards sex equality, Professor Gail Warshofsky Lapidus of the University of California at Berkeley commented that many of the Russian women expressed an extra-ordinary degree of closeness to their parents whom they consider to have a central influence on their values and tastes. That these women still remained highly dependent on their families of origin both "psychologically and materially well into adulthood" (12).

There were further observations on Russian women by Jack Redden, an UPI Soviet Correspondent when he wrote about life in Russia and noted the role of women in the life of a Moscow family. Redden gives the impression that mothers in Russia still have a strong hold on their daughters and even over all the children when she sees to it that the children go to school or do their home-work. The mother of the family Redden visited remarked that she did not want her daughters to marry young (13).

In 1984 Israeli women declared that they had to "change the stereo type impages in which the husband comes home from work, sits in his armchaire and reads the newspaper, while the wife has to do everything for the house and the children. It was reported that 40 percent of Israeli women, about 500,000, work outside the home and yet they usually earn less than men doing the same jobs and hold only one per cent of top executive positions (14).

b) In Africa

i) Traditional Society

In Botswana, Professor I. Schapera had made some obser-

vations on what the traditional concepts about women were among the Tswanas both in the social and legal context. Schapera observed that there were social distinctions based not only on age but also on sex and that among the Tswanas women were on the whole regarded as socially inferior and that in Tswana law they were always treated as minors. Schapera observed that before marriage a woman had to submit to the authority of her father or guardian regardless of her age, while after marriage she went under the control and authority of her husband and, upon the husband's death, she went under the authority of some other male member of her deceased husband's family.

Schapera went on to observe that women took no public part in the government of the tribe and that even in family life preference was always given to males. A woman bearing daughters only was held to have failed in her most important duty to her husband - that of bearing him sons (15).

In 1985 in Swaziland a senior official and a member of the ruling Supreme Council of State, Mr. A. K. Hlope was quoted as saying that Swazi women must forget any ideas of equality with men. He is said to have compared men to "bulls"

and women to "cows" and that as male cattle were stronger than cows the same was true that men are stronger than women. It is understood that in fact he was addressing a women's gathering to mark the United Nations Decade for Women (16). This is the kind of "paternalistic and chauvinistic" attitude towards women which Carol Smart strongly disapproves.

Writing on women in Africa, Awa Thiam talked emphatically about African women. She pointed out that the African woman "had no real power, only a "pseudo-power". That the African woman can act as long as she does not cause any embarrassment to her husband (if she is married) and that the black man does not only control his own life but that of his wife as well (17).

It can be seen from this brief review of some of the African societies or communities that the traditional role of woman is one of subjugation. What Schapera wrote about the Tswana people that although their conduct varied in detail nevertheless "certain recognised or standardised patterns of behaviour are incumbent upon them according to age, sex, economic position and rank" is basically true of most African societies. Most traditional laws or customs including criminal laws treated women differently from men.

ii) Modern Society:

In her article on women in African societies Achola Pala Okeyo, a leading authority on the changing role of women in Africa has argued that the last four decades have seen a growing international, regional and national debate on women in African societies. She has observed that this trend which has become much more pronounced and intensified during the last 10 years or so can be explained, at least in part, by a number of separate but somewhat closely related developments in Africa itself, Europe and the United States of America.

Okeyo goes on to analyse how in the 1930s and 1940s various colonial governments in Africa began to pay increasing attention to women because they started to constitute a possible force of resistance in the colonies under the white rule. She also points out how the establishment of the United Nations Economic Commission to Africa (UNECA) in the early 60s started contributing to this focus on women's questions by sponsoring a series of seminars and conferences on women's affairs. She argues that today people must re-examine and re-think about the root causes of those difficult or intractable problems of overcoming previous perceptions and work out visions of the

future development of the African continent because so many of those difficult issues, especially the ones affecting equity, will have to be faced and dealt with. She pleades that in this context those involved must continue to search for a more realistic understanding of the role of women in endeavouring to find solutions to some of the problems of African development.

Okeyo has pointed out that existing research has time and again confirmed the important role of African women in the region's agrarian societies. She argues that regardless of whether descent is traced through the father's (patrilineal) or the mother's (matrilineal) line, the house remains an important substantive and somewhat symbolic definition of a woman's role in African society. She particularly refers to the important roles played by women in Ghana, Nigeria, Liberia, Senegal and Sierra Leone where they have successfully made their mark on commerce and wield considerable power in this sphere.

It is further pointed out by Okeyo that in Nigeria, for example, half of the women in Yorubaland are engaged in comeerce and that in Ghana women account for 80 percent of village and town trading. She observes that these women have become so influential that male dominance does not really

pose a threat to their self esteem or autonomy and that at times these women traders do provide all the cash that their families need even when their husbands or sons are unemployed. Okeyo asserts, therefore, that female autonomy is an important phenomenon in African societies (18).

Writing on the fact that more and more women were becoming criminals. Monique Rubens pointed out that even developing countries are having their share of this trend and gives as an example Nigeria, where, she says, women are increasingly involved in such crimes as drug peddling, smuggling, corruption and illegal foreign exchange transactions.

In South Africa, however, Andrea Durbach has observed that no major breakthrough have occurred to assist the emancipation of women. Durbach agrees that the degree to which women in any society are emancipated is often a reliable reflection of and a guide to the general progress of that society. He, however, points out that the the majority of women under apartheid in South Africa are trapped by racist structures and sexual divisions which facilitate the division of labour in a capitalist economy. He argues that the failure of criminologists to analyse these conditions critically may explain why there is a lack of any sound studies of female criminality in South Africa.

Dubarch emphasizes that the subordination and repression of women is so embedded in the social structure of South Africa that it cannot be remedied by moral efforts alone to "reform" individuals who attempt to resist such a social structure. He further states that if South African theorists of criminality, and in particular criminologists interested in the study of women and crime are to transform existing social practices and move towards a basic theoretical formulation of social justice, then they have to challenge ideological assumptions and expose what is widely and generally regarded as natural and thus inevitable (19).

To Durbach's stance must be added the experiences and feelings of Ellen Kuzwayo as shown in her book 'Call Me Woman'. In Chapter 2 of her book Kuzwayo observed that it was not very easy to live and bring up children in a community deprived of its traditional moral codes and values, a community lost between its old heritage and that of its colonisers.

Kuzwayo points out how she lived in her father's house in Pimville, Johannesburg only about two to three houses away from where several "Skokian Queens" carried out a lucrative beer-brewing business in their houses and were

generally regarded as immoral and undesirable members of the community. But she says it was amazing to see the other side of the lives of these "Queens" once they were seen and known as individuals and as ordinary people within the community. It must be pointed out, however, that many things which black women are forced to do in South Africa are a result of severe restrictions under apartheid. Nadine Gordimer has commented in the Preface to Kuzwayo's book about the kind of society which forces a woman of Kuzwayo's strict integrity to say that her mind had changed to the point that now when she reads about theft of thousands of rands by blacks, she wished the culprits were never caught (20).

c) In Zambia

In Zambia, as elsewhere in the African society, the social economic and even the political roles which women are expected to perform are usually defined by tradition. Until the advent of industrialisation, there was the old adage that a woman's place is in the kitchen. But even today there is a good number of people, among them some well educated men in influential positions, who still think of the women's position in the Zambian society in terms of the kitchen. There is no doubt that such perceptions have great influence in the criminal justice system for or against women offenders, their sentencing and finally their treatment as criminal offenders.

Writing on Humanism, Kenneth Kaunda, President of the Republic of Zambia, observed that Zambia's traditional society was one of mutual aid and that it did not encourage individualism. He went on to state that if a villager wanted to build a hut for himself all the men in the village assist in fetching the poles, the grass for tatching and then erect the hut. He then observed that "women might be responsible for making the mud-plaster for the walls and two or three of them would undoubtedly brew some beer so that all the workers would be refreshed . . . " (21)

One can see here an activity in the Zambian society where the woman's role is socially defined as brewing "some beer" in order to refresh the workers.

The Zambian philosophy of Humanism can very briefly be defined simply as a philosophy based on a man-centred society. The Concise Oxford Dictionary of Current English defines Humanism as a devotion to human interests; a system concerned with human and not divine interests. A humanist is, according to this definition, a student of human nature or human affairs. In this sense humanism is similar to sociology or human sciences. Zambian Humanism is, however, different from this secular meaning in that although it is a philosophical theory on the meaning of human existence, it is actually based on Christianity. Kaunda assured Colin Morris and said: "I want to assure you of the Christian basis of my humanism . . . Since I was a small child I have been conscious of God's guidance" (22).

William Clifford made some interesting observations to the effect that the position of women in tribal society is, generally speaking, one of protection either by her family or by her husband. He, however, pointed out such protected status of women in tribal society does not necessarily mean subservience. He argued that such social status could, in fact, be accompanied by social prestige such as is found in a matrilineal set up. In a matrilineal set up in Zambia inheritance follows the female lineage and not the male one as, for example, among the Bembas of the Northern Province or the Chewas and Nsengas of the Eastern Province (23). Clifford has also observed that in urban areas there were inter-tribal marriages which fused social norms from different tribes. These inter-tribal marriages, or in some cases, more social contacts, in turn caused social insecurity and encouraged promiscuity and drunkenness among women especially young women (23a). In rural areas on the other hand where the family is usually closely knit together, drunkenness and promiscuity are very rare because everybody knows one another.

In contrast, the Zambia Association for Research and Development (ZARD) takes a different and even a very dim view of the status of women in the traditional set up. The ZARD argues that popular opinion about women in Zambia is male-oriented like in almost everything else and that particularly in Government and other official circles the common view is that women have equal opportunities to men and that, therefore, a "woman problem" does not exist when in fact the opposite is true (24).

The authors of this interesting and educative Bibliography of Research on Zambian Women take the further view that customary law in Zambia treats women as perpetual dependants as, for example, when a woman's relatives must give consent to her marriage regardless of her age. It is pointed out that if there happens to be a domestic dispute or quarrel, her relatives can and that they often do insist that she must remain with her husband even against her will, again regardless of her age. The authors argue that the Zambian society honours the institution of marriage so much that virtually all young women aspire to get married in order to play their role of wife and mother. The authors see the result of this type of socialisation as a contributing factor in female submissiveness within the context of marriage. Thus many women, it is argued, are bound to accept and uphold the patriarchal values imposed on them in their homes. The ZARD Researchers conclude, inter alia, that the role of a Zambian woman in the family, despite visible changes that have taken place to enhance her position, is still largely very traditional (25).

In the same ZARD publication a number of authors have written and high-lighted the inferior role or the inferior status of women in the Zambian society despite general economic and political development from the colonial to post-independence days. Writing about Kaonde women in the Mukunanshi area in the North-Western Province of Zambia, Kate Crehan observed that women confined themselves to activities which were ideologically acceptable to Kaonde people as "women's tasks". She observed

that they did not have the opportunity to learn male skills because of their onerous household and agricultural duties and that failure to provide a husband with food would result in divorce. Crehan further observed that female household heads provided for themselves and that female independence is against Kaonde tradition.

Crehan adds that in general, the penetration of a money economy in Mukunanshi had benefitted men much more than women and that the latter had remained tied to traditional strictures and obligations. Thus pre-occupied with producing food and bound and tied by traditional ideologies of gender roles, the women were unable to enter independently into substantial cash-generating activities or occupations and that instead they were becoming increasingly dependent on their husbands or male relatives (25).

Gisela Geisler made similar observations in the study of the Makunka community near Livingstone in the Southern Province of Zambia in 1983. Geisler observed and commented that changes which were brought about in Makunka by the penetration of capitalism did not affect the subordination of women because women still had to make their requests for land through their male guardians or husbands. Geisler further observed that wives of immigrant workers did not manage their own granaries but were simply incorporated into the households of their in-laws and that single women, whether divorced or widowed, were often in a better economic position than married women because they were granted land to help them raise and look after children. But

ultimately all land rights were vested exclusively in the hands of men in a society where inheritance or succession practices were patrilineal i.e. followed the male stock such as among the Ngonis of the Eastern Province of Zambia. Geisler concluded by noting that what was more significant in the Makunka community was the fact that male superiority over women prevailed in a situation where the new economic conditions and practices favoured man (27). It must, however, be pointed out that even in a matrilineal society, the woman's position is still somewhat subsevient to the extent that nearly always the male 'uncle' has the final say on behalf of his sister, even if she is a chieftainess.

In a study of ritual and social relations among the Chewa of Zambia and Malawi in 1976, Ann Minnick-Drake took the view that for the Chewa the ambiguity in the gender roles resulted from the centrality of women in the matrilineage despite their formal subordination and the conflicting obligations of men to matrilineages of their sisters and woves (28).

Vukani Nyirenda appears to support Clifford's observation to the effect that although women enjoyed a protected role in tribal society, such a protected role did not necessarily mean subservience. Nyirenda commented that rural Zambian women occupy a secure and powerful position in society contrary to what has been portrayed by some western observers who fail to identify and understand their position, resulting in somewhat inaccurate perceptions of the whole situation and that in fact the tatal Zambian woman was the cornerstone of the traditional society. Nyirenda, however, observed that the urban woman was in a different situation in that

the web of kinship was torn apart and the individual woman had to depend on her own resources to carry out the task of life (29). This dependency on oneself has had adverse effects socially and economically on some, if not most, of the women in the urban areas. Here again Nyirenda appears to support Clifford's observations that in urban areas there was confusion of marriages with less security and more promiscuity and drunkenness.

There is no doubt that the "web of kinship" which has been "torn apart" due to urbanization and its concomitant effects of inter-tribal mingling has had some adverse effect not only on men but women too. It will be noticed in Chapter 5 that the majority of women offenders are town dwellers and the majority of the offences were committed on the line of rail. Indeed Ilse Schuster (1983) touched on the subject of female aggression in Zambia to the effect that intra-female aggression occurs both at the individual and class levels; both within the households and in public due to jealousies resulting from competition over the scarce resources of socially desirable men and their economic support (30).

It will also be seen in Chapter 5 how Schuster's findings tie-up with the predominance of assault cases in this study especially in urban areas where the traditional role of women has changed considerably and the kinship bonds have been torn asunder. In her article on the 'Peri-Urban Woman' Priscilla Musanya then Executive Secretary of the Zambia Council of Social Development wrote and observed, inter alia, that the

inherent biases in the country's educational training and manpower development programmes coupled with the culturally indoctrinated conception that the woman's world should not extend beyond the bounds of her household, limits chances of the peri-urban woman's involvement in the formal sector (31). She observed that this exclusion from involvement in the formal sector leads these women to engage in illicit beer brewing and even promiscuity which William Clifford wrote about in the early 60s, a situation which is still prevalent in shanty compounds and even in the so-called 'ma yard' in town centres. The 'ma yard' are the low density or high cost suburbs which were exclusively occupied by white people in the pre-independence days.

In general it would appear that this culturally subordinate role of women in the traditional set up had and still has some effect on the attitude towards female offenders in Zambia. Writing on women and the administration of justice, Marcia Wright examiner and analysed the changes in attitude to women that took place among the colonial administrators and magistrates in the small town of Abercorn, now Mbala, in the Northern Province of Zambia. Wright observed that during the early days of their colonial administration, magistrates in Abercorn did not attempt to lay down rules or regulations for the control of women. The attitudes among magistrates was one of turning a blind eye to the activities of women including the hitherto unacceptable behaviour of some chiefs' wives running away with other men. But as times changed the feeling among the European administrators, including magistrates, was that the law enforcement agents were too lenient

towards women (32).

d) The Courts and Female Offenders in Zambia:

In 1984 Fred Simposya in an article in the Times of Zambia (33) entitled 'Courts Soft on Women : Why?' makes a number of general assertions which require scientific analysis and which might be worthwhile for future social scientists or criminologists to pursue more scientifically than he does. For example, are modern Zambian Courts really "soft" or lenient with female offenders? Simposya also asserts that women's emancipation has something to do with the increase of criminality on their part. In this postulation he seems to be supported by William Clifford who, in an article on 'Development and Crime' talks of the link between crime and development in general (34).

One of the objectives of this study is to attempt to establish whether, in fact, the laws of Zambia and the administration of justice are still "too lenient towards women" as Simposya argued and as revealed by Marcia Write in the historical study of Abercorn colonial administrators. The Zambian daily newspapers abound with captions such as 'Thieving Cleaner Excused' (35) 'Court Slashes 'harsh' Sentence' (36); 'Have Mercy on Mwimbe' (37); 'Woman Has Suspended Sentence' (38); and 'Mitigation Saves Woman' (39). The general picture given in respect of women offenders by these newspaper reports is that Courts appear to be lenient with female offenders but there must be many men who receive suspended sentences in Courts but whose cases are not sensationalised. A more detailed analysis will be made in Chapter 5 with the actual findings of this study in respect of the 81 women offenders.

e) Summary

This preview of the role of women in traditional and modern set ups has attempted to elucidate the global role of women covering a wide wocial spectrum because diverse sexual or even social ideologies have inevitably permeated the enforcement of law from time immemorial. The way society sees and interprets the role of its womenfolk has great influence in the formualtion of its legal principles and regulations within the society's system of criminal justice.

The status of women in any society is a reflection of their role in the day to day activities in society. In Zambia as in most African countries women are conditioned or socialised to reflect their role of wife and mother right from their childhood while men or boys are conditioned to reflect their dominant or senior role of husband and father. Any truance on the part of a girl is always treated as unlady-like while similar truancy on the part of a boy might even qualify for the remarks of condonation such as 'uli mwaume' - 'you are a man' and thus left alone.

Chapter 3

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- (37) The Times of Zambia, 14th March, 1986, on the front page - quoting the Supreme Court as confirming Esther Mwimbe's death sentence for the murder of her husband but appealing to President Kaunda to exercise his prerogative of mercy because "this was a tragic case".
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CHAPTER 4

CRIMINAL LAW AND WOMEN OFFENDERS

A number of researchers or authors in sociology or criminality have written and commented on the question of how women offenders or criminals are treated by various criminal justice systems. In the last Chapter an attempt was made to consider and evaluate the role of women and their status in the traditional and modern set-up both in Africa and in some of the developed or developing countries. In this Chapter an attempt will be made to evaluate and analyse some of the Zambian criminal laws, procedures and practices in as far as they affect female offenders. The principles of sentencing female offenders will also be briefly analysed. But it is important first to consider some of the general views about women offenders as presented in the writings and experiences of some authors or researchers.

(a) Male-Oriented Judicial Systems:

In a Chapter on 'Sexism in Criminal Law' Jocelyne Scutt argues quite strongly that most criminal laws are drafted in such a way that they tend to perpetuate the dependency of women on men(1). She points out that the framing of Australian criminal laws has been done in such a way that there are some laws which are designed to "protect" women from "deviant" behaviour or acts while others are designed to penalise or punish women for deviant behaviour. She argues that in fact some laws are sometimes framed to personalise

certain out-lawed acts and tend to portray a psychological imbalance on the part of the female offender and thereby excusing or mitigating the offence. She concludes that Australian laws are thus unsatisfactory to women. Scutt gives as examples the law which provides that where a wife committed a crime other than treason or murder in the presence of her husband she was presumed to have committed it under coercion from her husband. She also cites the laws of prostitution which, she argues, are framed to deal only with women prostitutes without taking into consideration the fact that men could also "trade their bodies"(2).

Simone de Beauviour who has already been quoted wrote that the world is male-oriented and that man defined woman not in her own context but in a context relative to himself and that woman was not regarded as an independent or autonomous being(3). The authors of 'Women, Crime and Justice' have pointed out that "sex-based differences are often written into the criminal law itself"(4). They argue that these differences appear in forms of double standard of defining delinquent behaviour and in sentencing disparities. They argue further that even where enacted statutes are gender neutral, the enforcement of such statutes may be discriminatory on grounds of sex and they go on to say that it is commonly believed that the criminal justice system reacts less severely to women offenders than it does against men. The authors observe that this difference in treatment which usually favours

female offenders is often attributed to male chilvary and paternalism(5).

Carol Smart argues that in general female offenders are always fewer than male offenders in any given society but that some of the offences included in official statistics "actually exclude the members of one sex by legal definition, thereby creating some wholly 'female' or 'male' offences"(6). She gives examples of say, The Street Offenders Act (1959) of England as discriminating against women prostitutes while exonerating men who use prostitutes or go about soliciting women and that the law of rape is seen as protection for female victims. Katherine O'Donovan writing on 'Transsexual Troubles: The Discrepancy Between Legal and Social Categories' has argued that English law "proceeds on untested assumptions about biological determinism. In other workds, English laws are sex and gender oriented. She argues that biological and social classifications of women and men as belongong to different categories or different sexual classes also lead to legal definitions of gender categories(7).

Eileen B. Leonard writing on 'Legal Inequality' argues that "to a large extent, criminal law measures the inequality of men and women in our society". Leonard cites prostitution as an example of anti-social behaviour more acceptable in women than men and that when meting out punishment "the double standard and discrimination operate along... sexist lines" and that only the conduct of the woman is illegal although it is theoretically possible to punish the male customer

but that this rarely occurs. Leonard cites Leo Kanowitz who, in 'Women and the Law' argued that legal discrimination is not a thing of the past and that sex-based inequalities continue to be a fact of life. Leonard attributes this state of affairs partly to the fact that there is a tremendous predominance of men in legislative and judicial capacities(8). Hermann Mannheim also pointed out that "legislators, being male, may unwittingly have moulded the whole system of criminal law in such a way as to turn a blind eye to some of those anti-social actions most frequently committed by women , such as prostitution - which, unless accompanied by certain other activities, is not an offence in most countries - or lesbianism, lying or quarrelling"(9).

Pat Carlen described some of the unfortunate experiences of women prisoners as "judicial misogyny" which somehow continues "to have a tenacious hold upon the minds of judges, magistrates and the administrators of women's prisons" from the days of Lombroso to-date. She argues that those women who became embroiled with the criminal justice and penal systems "are still subject to the misogynous mythology which insemminates stereotypes of female law-breakers and women prisoners"(10). And Carol Smart and Julia Brophy argue emphatically that although statutes might not differentiate or discriminate between men and women nevertheless "legal practice certainly does"(11). Writing on how the criminal justice system controls women and how the legal system "mirrors and upholds the sexist ideology", Dorie Klein and June Kress point out how the law has afforded "certain dubious privileges to women in return

for curtailment of their rights..." (12). Andrea Durbach brings the argument nearer to the local scene in South Africa when he argues that many apparent offences committed by women are somewhat linked to their sexually defined role. Durbach argues that whatever the nature of the offence may be, that a woman has committed and whatever the judicial process may be, most women reach the Courts having their offences already defined and assessed in terms of their sex and gender(13).

(b) Opposite Views:

The authors or researchers cited above and many more others have high-lighted the plight of female offenders or prisoners in the eyes of the largely male-oriented judicial systems of the world. However, others have taken a different overview of female offenders to the extent that they argue that such offenders are seen as being 'favoured' or treated leniently by Courts or the law enforcement agencies.

Otto Pollak, for example, has argued in 'The Criminality of Women'(1950) that police officers dislike arresting women and that judges, prosecutors and juries do not like finding women guilty because of the paternalistic and chivalrous attitude towards women. Pollak argues that men in general hate to accuse women and that the crime rate among women is, probably, equal to that of men except that much of the female crime goes undetected - that it has a "masked character". He gives thefts by prostitutes from their clients and domestic thefts by female employees as some of the crimes which go undetected when committed by women(14).

Howard Jones observed that some writers had suggested that the reason why criminal statistics the world over show a much smaller amount of criminality among women than among men was because of the greater leniency with which women are treated(15). Grunhut argued that women were less likely to be charged and that when charged they were most likely to be acquitted(16). One of Barbara Wootton's findings in her studies on women criminality was that there was a higher rate of convictions among men than women but that "a more detailed analysis would show that the difference between the rates of conviction of the two sexes is very unequally spread as between different types of offences"(17).

Nigel Walker had more observations to make about women criminals. He observed that in most cases women offenders were not reported to police especially when a man is involved and that even if a woman offender were identified and reported to the police, she was likely to be let off with a caution than a male offender especially if she were a young woman. Walker argued that even those women who were most unfortunate to be prosecuted had a good chance of being acquitted. He noted that in 1961 juries in Britain acquitted 13% of accused women as against 8% of accused men but that magistrates were less lenient than juries. In the same year magistrates acquitted 5% of men and 4.5% of women(18). However, the history of juries is one which nearly shows leniency in general as opposed to magistrates or single judges.

There is no doubt that there are certain social attitudes to contend with which are either in favour of or against women offenders the world over. Some of these attitudes will be considered when analysing some of the procedures and practices which the justice system applies in Zambia when dealing with female offenders. But it is important to point out that even in Britain to-day these attitudes are still prevalent. For example, there was, in 1984, a country-wide cry against the judiciary when Mr. Justice Cantley sentenced Miss Sarah Tisdall to six months' imprisonment for sending secret government documents to the Guardian newspaper. The sentence was widely and swiftly condemned as "savage, unjust and disproportionate". The Observer newspaper described the State as being a bully. The Director of the Howard League (UK) David Jenkins, wrote that the British criminal system was a "brutal and clumsy system of justice". The Times editorial was equally emphatic in condemning the sentence pointing out that "for a girl of Miss Tisdall's sort" a lesser custodial sentence would have sufficed. And that even a few nights in prison would "for most girls of her kind" have been sufficiently horrifying to act as a deterrent against repeating or acting in a similar manner(19). It is doubtful whether similar sentiments would have been expressed had a man been sentenced to the same term of imprisonment for the same or similar offence. This, perhaps, is what Carol Smart has termed the "traditional paternalistic and chauvinistic attitude towards women offenders." It ought also to be pointed out that

since Miss Tisdall sent the documents to the press, the press felt attacked or, at least, felt obliged to defend someone who had helped them.

(c) Some Zambian Criminal Laws:

In Zambia, as elsewhere, there are a number of criminal laws, procedures and practices which clearly make differentiation between the sexes. Some of these laws or procedures may appear to favour women offenders while others may appear severe as against such female offenders.

In the preamble to the Constitution of Zambia equality of treatment of Zambian citizens be they male or female is emphasized and enshrined in the statutes of Zambia in general. The Constitution recognises that individual rights of citizens which include freedom, justice, liberty and equality are founded "on the realisation of the rights and duties of all men" - including women(20). And Section 4(2) of The Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia says that any words and expressions in a written law importing the masculine gender include females.

So, equality of treatment even between the sexes is a fundamental principle in the Zambian society as enshrined in the Constitution. But has this equality on paper been transformed into practice? There is no doubt that there are many non-criminal areas in the Zambian society to-day where the female sex can claim inequalities. Here, however, the main concern is with the criminal area.

John Hatchard in 'Crime and Punishment in Zambia' pointed out that in customary law there was no clear distinction between criminal and civil law even though there was a division between private and public juries. For example, if a community was threatened by a case involving witchcraft, the normal punishment was either death or exile. But the coming of English criminal law brought about a totally different concept of law in relation to the dealing with offenders, a concept which has remained the basis of the Zambian criminal law(21). English criminal law brought in a kind of "legal dualism" which Lord Hailey talked about in his studies of Africa(22). Lord Hailey pointed out that there prevailed a system of legal dualism and that it was not easy to foresee clearly the course which the two elements of law, one European and another African, was ultimately to take. But this legal dualism appeared to have brought in, at least, prima facie, some kind of equal treatment of all offenders regardless of sex.

In some statutes and in practice, however, certain distinctions still exist between male and female offenders in Zambia. Some of these statutes will be considered herebelow.

(i) The Penal Code

Section 19 of the Penal Code Cap. 146 of the Laws of Zambia provides that a married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband but on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence of and

under the coercion of her husband. There is no reciprocal defence open to a husband under this section and yet, in some cases, women do play coercive roles in the commission of offences by their husbands.

Section 25 Subsection 4 of the Penal Code provides that where a woman convicted of an offence punishable with death is found in accordance with the provisions of Section 306 of the Criminal Procedure Code to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of a sentence of death. There is no provision that she could be hanged after giving birth and there is certainly no provision for commutation of the death sentence to life imprisonment for a man whose wife is expecting a new baby. Statistics show that no woman in Zambia has ever been hanged. But this could be because the circumstances under which women commit murders are usually extenuating ones.

Section 27 Subsection 5 Subsection (b) states categorically that no female shall be caned. An imperative word 'shall' is used leaving no room for the Court to use its discretion even where it might be expedient in the interests of the community to order some form of caning as is the case with male offenders(23).

Section 132 makes it clear that rape can only be committed against females.

Section 137(3) of the Penal Code makes it an offence to insult or annoy females but not for insulting or annoying males(24).

Section 158 of the Penal Code provides that any male person who, whether in public or private, commits any act of gross indecency with another male person or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony(25). But similar acts between females known as lesbianism are not similarly punishable. Smart admits that there is a strong element of discrimination in a law which penalises male homosexuality "while ignoring female homosexuality completely"(26).

(ii) The Criminal Procedure Code (CPC)

Section 24 of the Criminal Procedure Code, Chapter 160 of the Laws of Zambia provides that whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency. But there are no similar provisions in respect of the mode of searching men so that, technically, a woman police officer or constable could search man. It has, however, to be admitted that without such safeguards, the possibility of abusing such occasions could be quite high.

And typical of the law's attitude is its approach in the field of bail. Section 123 of the Criminal Procedure Code provides that any person, other than a person accused of murder, treason or aggravated robbery where the penalty

is likely to be death, may be admitted to bail at any stage of the proceedings upon providing a surety or sureties sufficient to secure his appearance. In theory any adult person of good standing in society may stand or sign as surety regardless of sex but in practice most Courts especially subordinate Courts are reluctant to recognise female sureties no matter what their standing in society might be.

The provisions of Section 306 of the CPC lay down the procedure to be followed by the Court where a woman convicted of a capital offence alleges that she is pregnant. Section 306(3) ties up with the provisions of Section 25(4) of the Penal Code in that a sentence of life imprisonment can be substituted for a death sentence.

(iii) The Prisons Act, Cap. 134

Section 101 of the Prisons Act provides that no sentence of corporal punishment for a prison offence shall be imposed on a prisoner who is a woman, or under sentence of death or a male over the apparent age of 45 years. It can therefore be seen that while the privilege of not being caned is enjoyed by only those male prisoners over the apparent age of 45 years, the same is enjoyed by women of all ages.

Perhaps the difference in treatment can be explained by the age old biological approach that females belong to weaker sex.

(iv) The Attitude of the Courts

It would be unwise to make generalisations about the

attitude of Courts towards women criminals in Zambia but *a critical overview of some important cases might be of* some assistance in providing a starting point for future research. In Britain Nigel Walker observed that although on paper the British penal system makes few distinctions when sentencing men or women there is, nevertheless, a widespread belief that women receive lighter sentences than men. He, however, warned that such beliefs ought to be accepted with some reservations. The same can be said of some of these beliefs in Zambia(27). A review of a few of the decided cases in Zambia will now be considere.

In 1974 the High Court acquitted Jaqueline Irene Lewis of the murder of her husband Robert Phili Lewis on 1st November at Lusaka. The accused was aged 27 years at the material time and had two young children, a boy aged 6 years and a girl aged 4 years. Her defence was one of self defence and/or provocation. Evidence seemed to point to the fact that she struck her husband at least six blows with an extremely heavy instrument from which he died of "transverse brain lacerations over the left side of the head".

The learned trial judge observed that there was the case of a woman lying prone, trapped in her bed, facing a heavy man albeit her husband, weighing almost 14 stone, a man of moddy and aggressive habits. That the accused was a member of the physically weaker sex and he, the learned trial judge, agreed with the defence Counsel that it was