

African Adaptation to the Colonial Law Enforcement
System in the Livingstone and Kalomo Districts
of Northern Rhodesia 1890-1939.

By

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A thesis submitted in partial fulfilment of the requirements
for the degree of Master of Arts in History, School of
Education, University of Zambia, 1984.

Dedication.

I dedicate this thesis to my mother, Elineli Jere whose diligence, dedication to work and foresight will always be an inspiration to me.

Declaration

of Vincent Marko Tembe is approved as fulfilling part of the requirements for the award of the degree of

I declare, in accordance with the regulations governing the award of the degree of Master of Arts in the University of Zambia, that this thesis has not previously been submitted for a degree in this or in any other University.

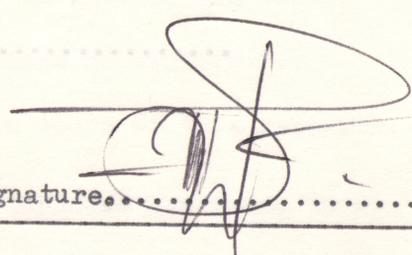
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Abstract:

This is a study of the social history of the Kalomo and Livingstone Districts of Northern Rhodesia. It covers the period 1890-1939. The study focusses attention on the theme of African adaptation to the colonial law enforcement system.

Chapter 1 describes the area of this study and the people who inhabit it. There is also a brief outline of the geographical and ecological features of the area.

In Chapter 2 we examine Toka-Leya means of social control and their social and political institutions as they appeared in pre-colonial times. In doing this we have paid attention to the six main chiefs of this area: Chiefs Musokotwane, Siakasipa, Mukuni, Sekute and Momba. This Chapter gives a background to the understanding of people's attitudes to the imposed system of social control which we shall consider in subsequent chapters.

In Chapters 3 and 5 we describe the setting up of Company administration and Crown rule, in 1890 and 1924 respectively.

Chapters 4 and 6 deal with African adaptation in the 1890-1924 and 1924-1939 periods respectively. In both chapters we examine the question of adaptation by focussing our attention on the Chiefs and headmen and their roles in the periods of Company administration and Crown rule. We further discuss adaptation in relation to witchcraft offences, theft and marriage disputes.

The conclusion in Chapter 7 is that the colonial law enforcement system did not offer the Africans a favourable atmosphere for adaptation because of its coercive nature. Lack of education among the Africans and an insufficient interaction between the local system of social control and the imposed one also rendered adaptation difficult.

Instead, there was much continuity in the way people viewed crime and punishment. Nevertheless, the Toka-Leya sought to deal with the situation through evasion, the use of witchcraft to try and circumvent law enforcement mechanisms and the manipulation of the imposed system of social control. Hence, by 1939 there is little evidence to show that the colonial system had established itself in competition with the indigenous one except as a system of coercion.

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Sources and procedure of the research.

The research for this study was spread over a period of two years and two months. This was between June 1977 and August 1979.

It was divided into the following parts:

A. Library research.

This was done mainly during the first three months in the University of Zambia Library. The National Archives of Zambia and the National Institute of Public Administration were also used to consult the main published books and monographs. A selected bibliography of some of these sources can be found in the bibliography section of this thesis.

B. Archival research.*

This was undertaken between September, 1977 and June, 1978. It was done in the National Archives of Zambia in Lusaka and in the Livingstone Museum Library Archives. The main documents consulted are listed in the bibliographical section. They include court case records, court case registers, official reports and notebooks. Archival research was the largest part of the study.

C. Oral research.

This research was conducted through interviews with people deemed to be conversant with the oral traditions and customs of their people in the Livingstone and Kalomo Districts between July and August, 1978. I have listed the names of

*Unless otherwise stated, all archival documents in footnotes refer to the National Archives, Lusaka.

interviewees and their areas of residence or origin in Section (g) of the bibliography.

The interviews were spread over the areas occupied by Chiefs Mukuni, Sekute, Musoketwane and Katapazi. Most of the information regarding Chief Momba's area and that of Siakasipa was obtained from archival sources. The journey to Chief Momba's area ended at Mulebezi Saw Mills in the far north-west of the Livingstone District because of limited research funds.

D. Procedure of the oral research.

I used planned questions to obtain information about offences like theft, witchcraft or marriage disputes, and social control in general before 1890, in Teka-Leya society. In order to establish changes in the way people viewed the above practices, I used various techniques, all of which proved useful.

For instance, I could ask several questions based on the informants' replies to my pre-planned questions. I would also ask questions based on their autobiographical experiences. My task in this exercise was to ward against eliciting irrelevant information. I did this by repeating my questions if my informants appeared not to understand my questions.

I tried to overcome the problem of chronology by reminding the informants about certain major events which had taken place in their times. For example, I would remind them of things like the construction of the Victoria Falls Bridge and the introduction of the railway in Northern Rhodesia between 1899 and 1905, the introduction of the hut tax in the western and

southern parts of Northern Rhodesia in 1903 and the freeing of slaves by King Lubosi Lewanika in 1906. Most elderly Teka-Leya, Tenga and Lezi informants could recall these events vividly. Other events easily recalled were the shifting of the capital of Northern Rhodesia from Kalomo to Livingstone in 1907 and a further change from Livingstone to Lusaka in 1935.

Now and again I reminded informants about the 1914-1918 First World War, popularly known as Kaiser's War and the influenza epidemic which broke out in the 1918-1919 period in Northern Rhodesia. These events were also helpful in determining chronology. The 1935 and 1939 Copperbelt and Railway Workers' Strikes also served as events for purposes of chronology and extracting useful information.

The Second World War which broke out in 1939 was the most useful event for marking out time sequence. What became known as the Mwana Lesa (Son of God) Movement of the early 1920s and Muchape (Witchcraft cleansing) Movement of the 1930s were also useful reminders of events and chronology.

In the course of this research, I used to take down brief notes during interviews and discussions with the informants. Although the appendix shows the name of one informant interviewed at a given place, in fact, several other people used to take part in the discussions that followed an interview. Although this was the case, I relied mostly upon the information given by the main informants. Such persons were either headmen, former messengers, former policemen, kapasus (country policemen) or were advanced in age, and had the reputation of possessing a sound knowledge of their societies.

I also derived tremendous help from people who could interpret from Toka-Leya, Lozi and Tonga to English as my knowledge of the local languages is limited. Such persons included former court messengers, chiefs' messengers, retired policemen, school teachers, officials of the local parent-teachers' associations and some heads of institutions as was the case at Malota Home for the aged in Livingstone **Tova**. Where people understood Cibemba and Cinyanja languages, I could easily communicate in these languages.

The material found in the Livingstone Museum National Archives on the 1890-1924 period, which covered missionary activities in the region could not be consulted because I could not read the French language. In spite of this I am satisfied that the material I consulted was sufficient for this research.

E. Other works related to this study.

This was not the first study in this region. Professor Colson conducted extensive anthropological work among the Gwembe and Plateau Tonga, people similar to the Toka-Leya in social organization. The late Dr. Mubitana also conducted anthropological research among the Toka-Leya. Two other scholars, Dr. Muntamba and Stan Shewmaker also conducted research on political and Christian Missionary history among the Toka-Leya respectively. I therefore derived much information regarding the Toka-Leya from the researches I have mentioned.

The other person whose work on the Northern Rhodesia Police Force I found enlightening though not directly relevant to my work was Nick Small. This was *An Outline History of the Northern Rhodesia Police Force 1890-1964*.

Professor Marcia Wright wrote a seminar paper (1975-1976) based on her research in the Abercorn (Mbala) region of Northern Rhodesia (1897-1902). Her research differs slightly from mine because whereas I focussed my own research on the impact of the colonial law enforcement system, she attempted a general social history. All the same I found her paper useful.

Abbreviations used in the text:

A/PC.	- Acting Provincial Commissioner.
ACC.	- Accession.
BNP.	- Barotse Native Police.
BSA.	- British South Africa.
CID.	- Criminal Investigation Department.
DC.	- District Commissioner.
HC.	- High Commissioner for South Africa.
HMSO.	- His/Her Majesty's Service Overseas.
LMA.	- Livingstone Museum Archives.
MS.	- Manuscript.
NADA.	- Native Affairs Department Annual.
NAZ.	- National Archives.
NC.	- Native Commissioner.
NRG.	- Northern Rhodesia Government.
NWR.	- North-Western Rhodesia.
NER.	- North-Eastern Rhodesia.
NR.	- Northern Rhodesia.
PC.	- Provincial Commissioner.
RNLB.	- Rhodesia Native Labour Bureau.
R.v. "Churuza"	- Res/Regina versus "Churuza".
SNA.	- Secretary for Native Affairs.
UNZA.	- University of Zambia.

Maps and tables in the text.

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Chapter 1.

Introduction:

(a) The area and its physical environment.

This study covers the central and southern parts of the Southern Province of Zambia. The Zambezi River which forms an international boundary between Zambia and Zimbabwe is the main drainage system. Its main tributaries in this region are the Kalomo River, forming the eastern border of the area, the Ngwezi River in the middle near Mambova and the Machili River which forms the western and north-western borders. The whole area between Mambova and Mulobezi in the north, and from there up to Kabozu Administrative District is included in this study. The north and north-eastern borders extend from Kabozu to Zimba on the Livingstone-Kalomo railway line. From Zimba the limits of the area extend down to the mouth of the Kalomo River on the floor of the Zambezi River.

A number of streams criss-cross the area. Most of these streams are tributaries of the four main rivers which are found in the region. Although from the map the region appears to be well-watered, a majority of the streams dry up in the dry season, except perennial ones such as the Sinde and Maramba Rivers in the South and the Matezi and Nadukula Rivers in the east. The region has some dambos [swampy depressions] which are useful sources of water.¹

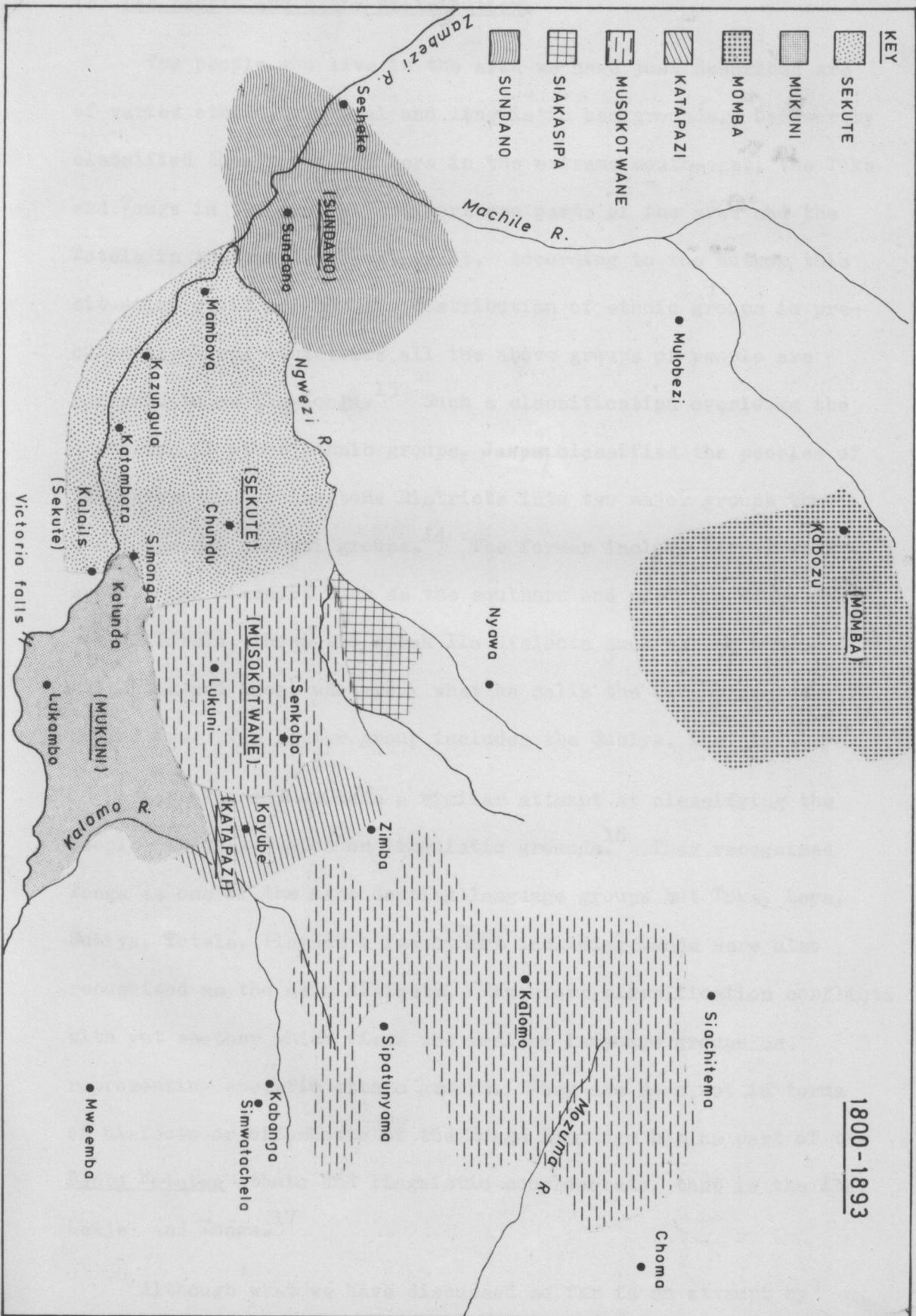
The region is generally flat except for the escarpment areas and gorges as one descends towards the Zambezi River, particularly in the middle and eastern parts of the area.² The Batoka Plateau which extends into the Livingstone and Kalomo Districts is the highest land. In the south the Plateau is cut by the Zambezi River. The latter is about 365 metres above sea - level.³

The main type of vegetation is deciduous savanna woodland, but within this category there are found three sub types: the miombo woodlands (brachystegia plurijuga, jubelnadia and isoberlinia species)⁴ which grow extensively in areas of Kalahari sand in the west and on the Karoo soils in the eastern areas. The mopane woodlands (colophospermum mopane) are found in the central and southern areas.⁵ The Mutemwa forest (dominated by the baikiaea plurijuga) extends from the Ngwezi River in the north to Kazungula, Mambova and Sesheke areas in the south and south-west of the region.⁶ There are also areas of grassland particularly around watersheds and swampy places.⁷

Apart from the lateritic soils, the low average rainfall is one of the adverse climatic factors affecting the lives of people in that certain agricultural products which may flourish elsewhere such as maize and groundnuts do not grow well here. Animal husbandry such as the keeping of cattle is also limited by this factor.

The average rainfall ranges from about 71 centimetres per year in the Zambezi valley areas to about 102 centimetres per year in the northern parts of the Southern Province.⁸ It falls mostly between the months of November and March or April.⁹ There are three main rain - bearing winds in this part of Zambia, as is also the case in most parts of the country. They are the Congo (Zaire) air, the north-eastern monsoon and the south-eastern trades.¹⁰ It has been said that the marked seasonal occurrence of rainfall is one of the factors which contribute to the winter shortage of surface water and that this in turn restricts permanent settlement in certain areas.¹¹ As if to emphasize the reality of the water problem Kay observed that 'a great deal of ritual and magic is practised to counter shortcomings of natural conditions'.¹²

PEOPLES AND CHIEFS IN SOUTHERN-CENTRAL ZAMBIA IN THE 19TH CENTURY.



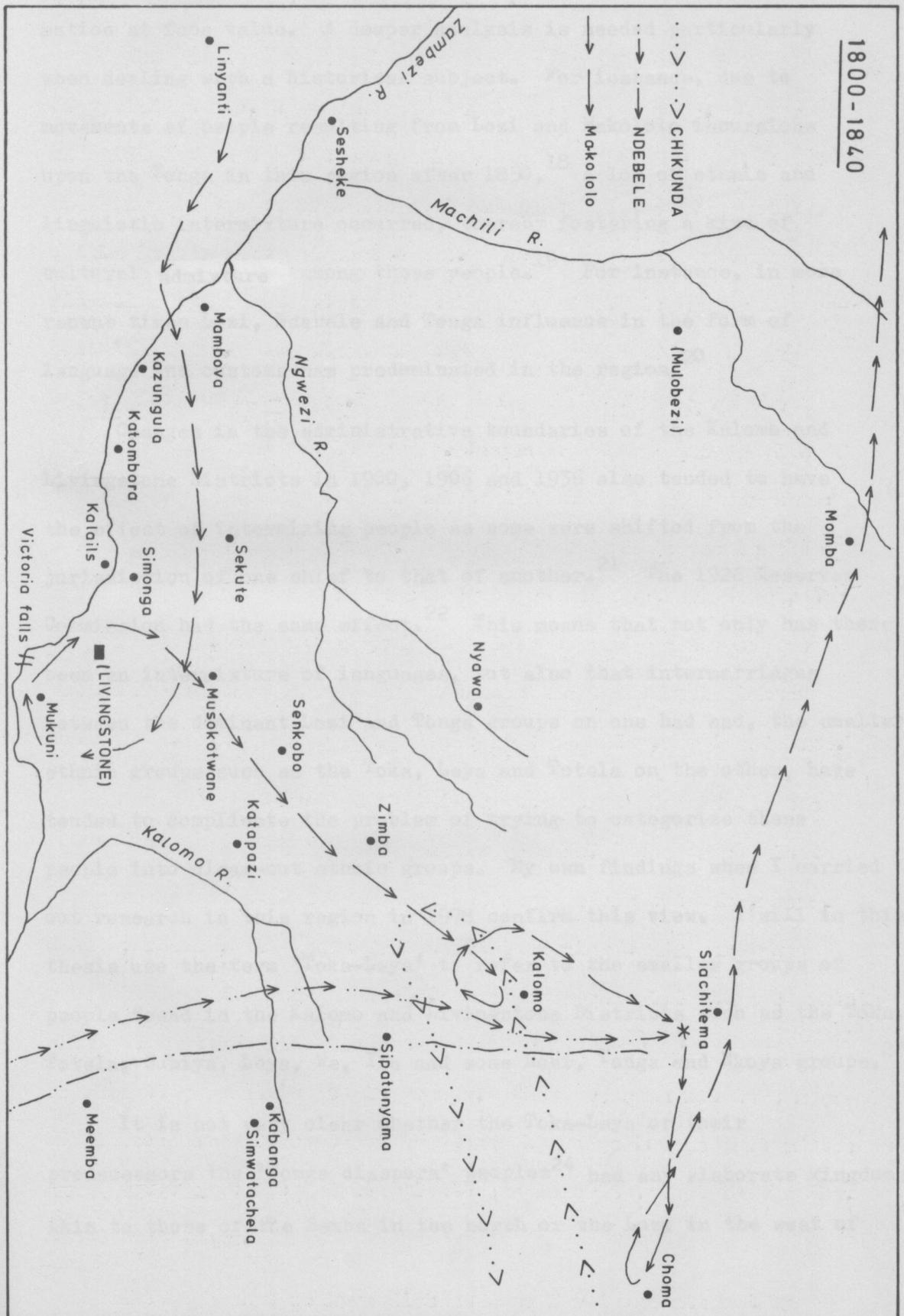
(b) The people and their distribution.

The people who live in the area we have just described are of varied ethnic, cultural and linguistic backgrounds. Langworthy classified them thus: the Leya in the extreme south-east, the Toka and Tonga in the central and northern parts of the area and the Totela in the west and north-west. According to the author this situation could reflect the distribution of ethnic groups in pre-colonial times. Sometimes all the above groups of people are referred to as Ila-Tonga.¹³ Such a classification overlooks the existence of other ethnic groups. Jasper classified the peoples of the Kalomo and Livingstone Districts into two major groups thus: the Tonga and Zambezi groups.¹⁴ The former include people who speak Tonga dialects such as the southern and northern Tonga, the We and Totela, those who speak Ila dialects such as the Lundwe and Mbala and those who speak what he calls the Mukuni dialect called Twa. The latter group includes the Subiya, Lozi and Leya.¹⁵

Kashoki and Mann made a similar attempt at classifying the peoples of this region on linguistic grounds.¹⁶ They recognized Tonga as one of the nine Zambian language groups but Toka, Leya, Subiya, Totela, Ila and a few others including Lenje were also recognized as the main dialects. The above classification conflicts with yet another which views the smaller language groups as representing specific ethnic groups. They are seen not in terms of dialects or off-shoots of the Tonga language but as part of the Bantu Botatwe ethnic and linguistic conglomerate, that is the Ila, Lenje and Tonga.¹⁷

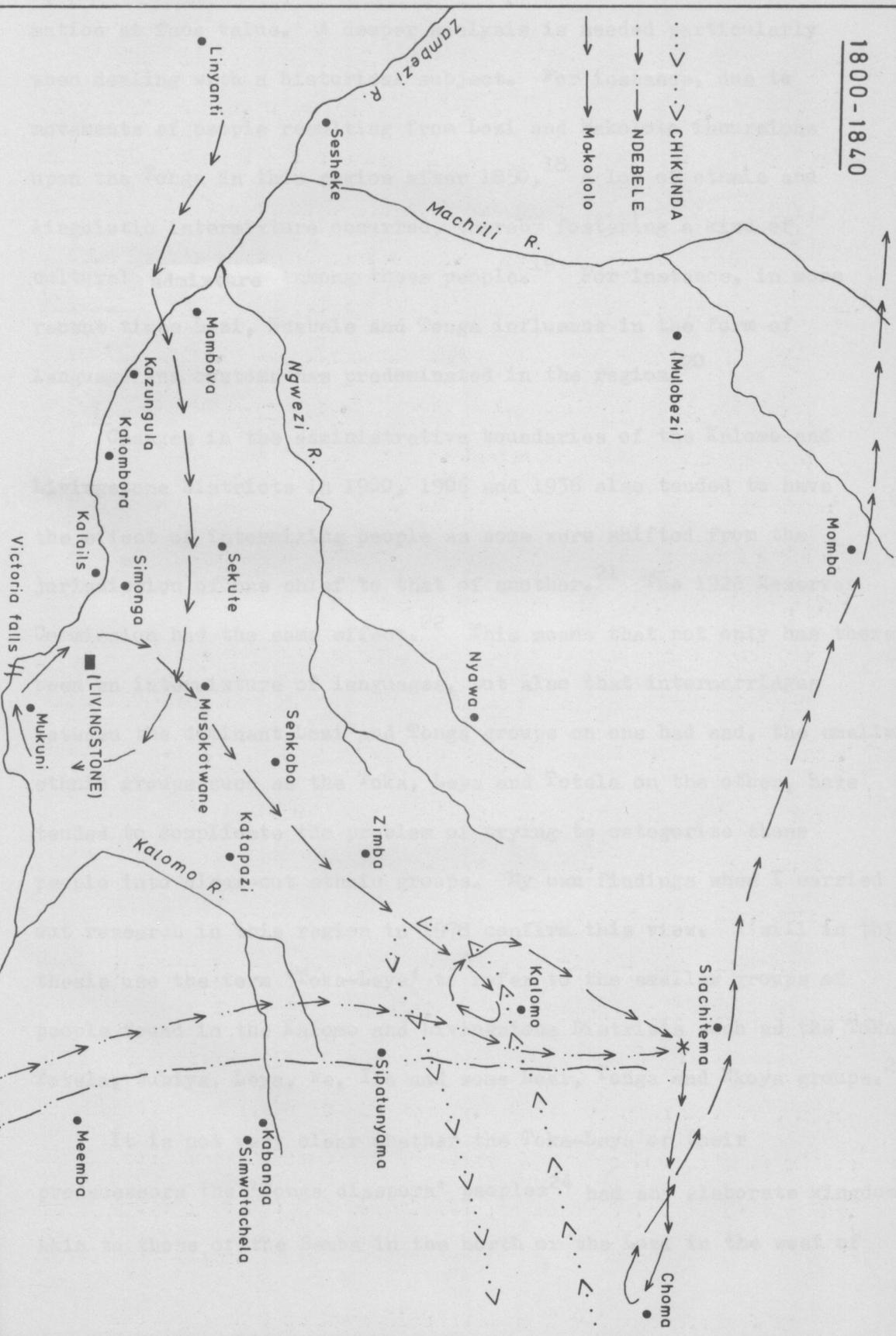
Although what we have discussed so far is an attempt by various authors to link ethnic and language groups to particular

MAKOLOLO, CHIKUNDA & NDEBELE MOVEMENTS IN THE EARLY 19th CENTURY.



1800-1840

- >--- CHIKUNDA
- NDEBELE
- Mako lolo

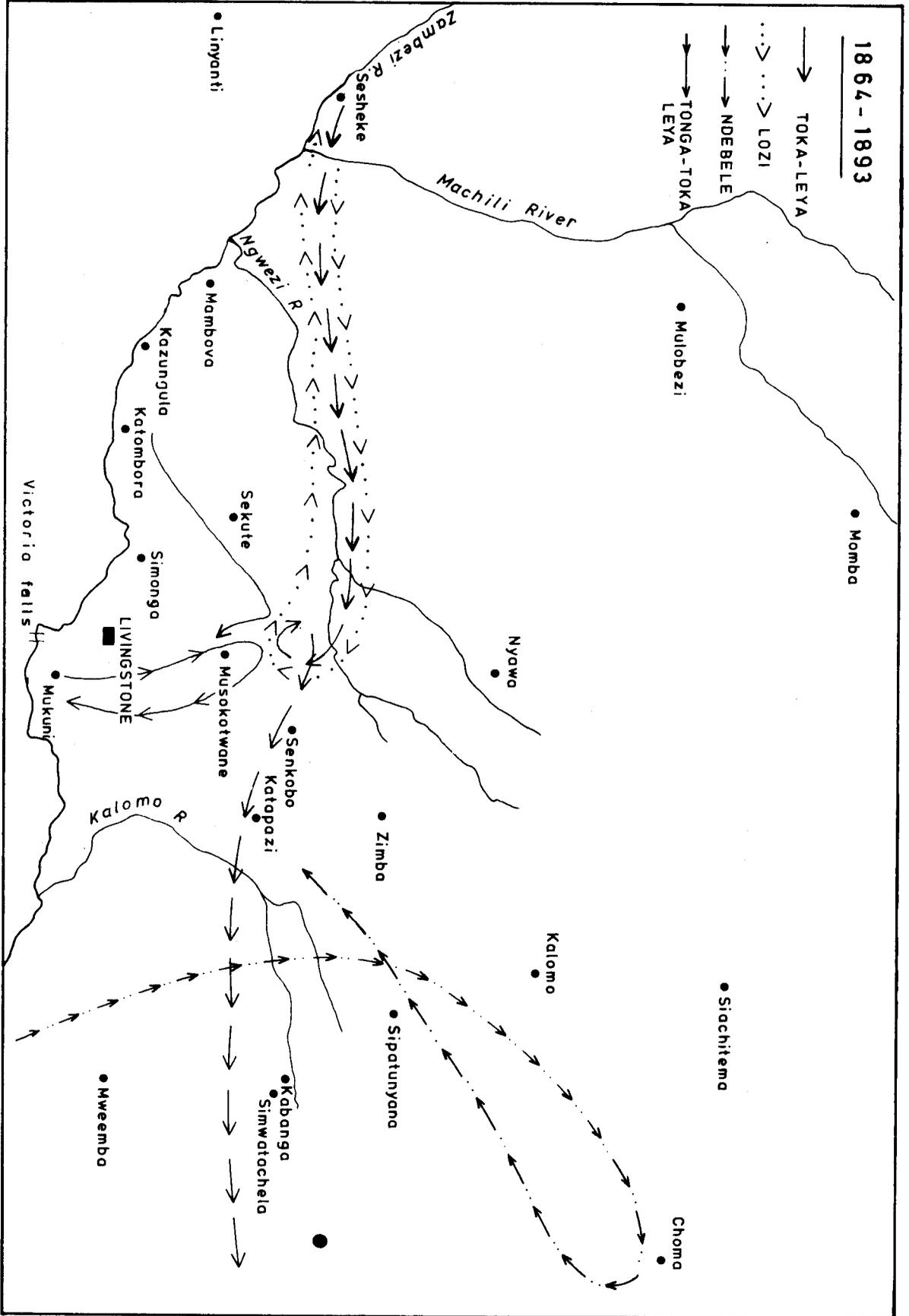


geographical locations, there is a danger in taking such information at face value. A deeper analysis is needed particularly when dealing with a historical subject. For instance, due to movements of people resulting from Lozi and Makololo incursions upon the Tonga in this region after 1850,¹⁸ a lot of ethnic and linguistic intermixture occurred, thereby fostering a kind of cultural admixture among these people.¹⁹ For instance, in more recent times Lozi, Ndebele and Tonga influence in the form of language and customs has predominated in the region.²⁰

Changes in the administrative boundaries of the Kalomo and Livingstone Districts in 1900, 1906 and 1936 also tended to have the effect of intermixing people as some were shifted from the jurisdiction of one chief to that of another.²¹ The 1926 Reserves Commission had the same effect.²² This means that not only has there been an intermixture of languages, but also that intermarriages between the dominant Lozi and Tonga groups on one hand and, the smaller ethnic groups such as the Toka, Leya and Totela on the other, have tended to complicate the problem of trying to categorize these people into clear-cut ethnic groups. My own findings when I carried out research in this region in 1978 confirm this view. I will in this thesis use the term 'Toka-Leya' to refer to the smaller groups of people found in the Kalomo and Livingstone Districts such as the Toka, Totela, Subiya, Leya, We, Ila and some Lozi, Tonga and Nkoya groups.²³

It is not very clear whether the Toka-Leya or their predecessors the 'Tonga diaspora' peoples²⁴ had any elaborate kingdoms akin to those of the Bemba in the north or the Lozi in the west of

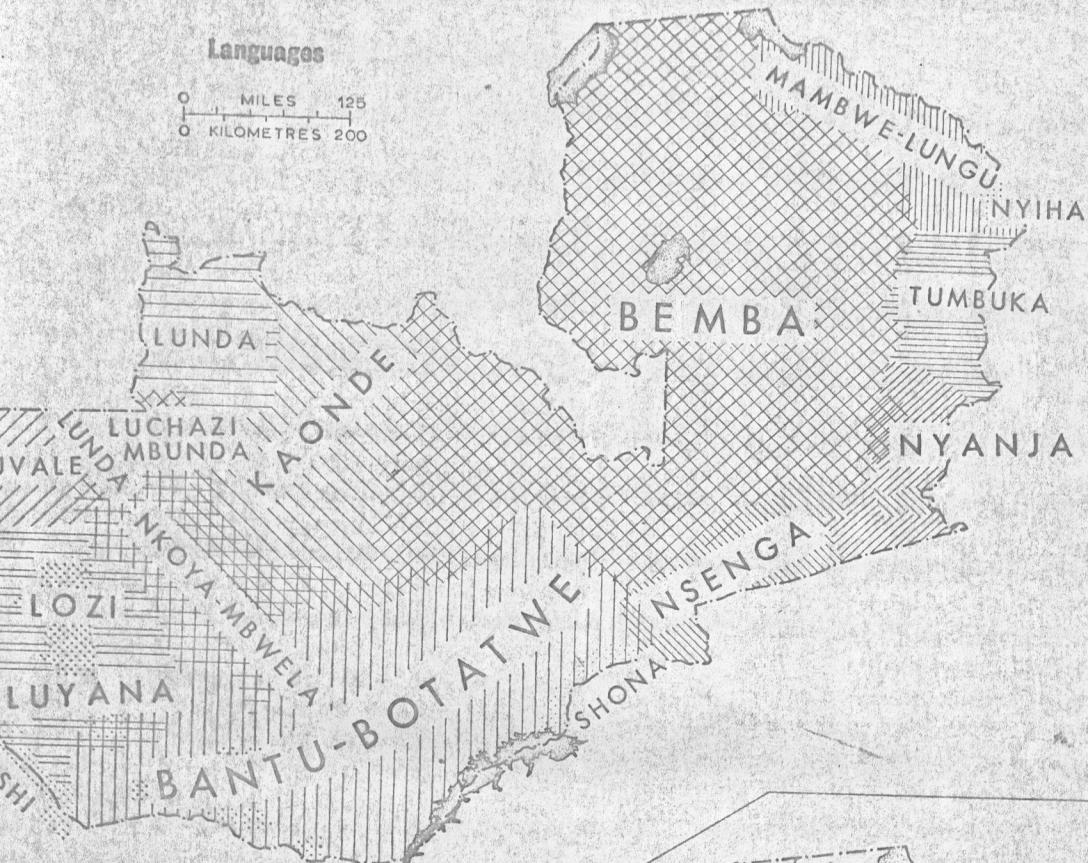
MAIN ROUTE OF LOZI, TOKA-LEYA & NDEBELE MILITARY ACTIVITIES OF THE 19TH CENTURY



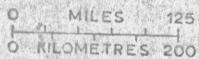
Northern Rhodesia prior to the middle of the 19th century because the six Toka-Leya chiefdoms in this area appear to have been founded either by the end of the 18th century or at the beginning of the 19th century.²⁵ Historically, the Toka-Leya fall under six main chiefs who are: Mukuni, Sekute, Momba, Musokotwane, Katapazi and Siakasipa. The two last mentioned were demoted to sub-chiefs by the colonial authorities in the 1930s.²⁶ A number of small chiefs who claimed sovereign status prior to the imposition of colonial rule became subordinate to one or the other of the six main chiefs we have already mentioned. For instance, Linda, who ruled where the town of Livingstone is situated fell under Chief Mukuni, Mujala in the North-east of Livingstone Town fell under Musokotwane and Katombora in the south-west fell under Sekute.

We must note that by 1890, the six chiefs whom we have mentioned above were well-settled in their respective areas as shown on the map: Mukuni in the south-east at Lukambo, Sekute in the south-west at Chundu, Katapazi in the north-east at Kayube, Musokotwane in the north at Lukuni and Siakasipa in the north of Musokotwane's chiefdom but based at Senkobo. Chief Momba was based at Kabozu in the extreme north-west. All of them had more or less well-defined chiefdoms. Furthermore, Ndebele raids were still fresh in the people's minds since it was only in 1892 that the last Ndebele impis (military forces) plundered the region. Lubosi Lewanika, King of the Lozi, still regarded the Toka-Leya as his subject peoples, at least until 1906.²⁷

Languages



Tribes



(c) Social-political organization at the territorial level.

(i) The village or hamlet.

This was the smallest political unit.²⁸ In the mid 19th century, Livingstone felt that before 1800 most Toka-Leya villages were large towns.²⁹ However, by the middle of the 19th century descriptions of villages of this period suggest that these were much smaller in the 19th century than they had been before. For example in 1885, Holub, a Czech explorer, estimated the population of Chief Musokotwane's village to have been about 45 to 60 individuals.³⁰ After 1936 the administration imposed a rule that ten male persons could form a village for purposes of tax collection.³¹

Each village usually consisted of matrilineal kinsmen from different kinship groups who fell under the leadership of a senior male member of a given kinship group.³² The name of such a matrilineal leader automatically became that of the village. After 1900 the village head assumed the title of sibbuku (headman). Throughout the 19th century the position of sibbuku was hereditary. A change came after 1900 with the creation by the administration of its own sibbuku.³³

In pre-colonial times the sibbuku had an obligation to mediate between members of his own village and the highest authority in the land such as that of the sikatongo (neighbourhood leader) or mwami (the chief), on important matters that affected his community. He also had a duty to settle disputes, distribute land, offer sacrifices and to pour a libation to ancestral spirits on behalf of his village.³⁴ The last duty was very much associated with the praying for rain and ensuring the fertility of the land with

consequent abundant harvests. Sibbuku were also called upon to make decisions related to marriages, the calling of diviners to detect the causes of illness or death in the village, widow or property inheritance, death and funeral arrangements.³⁵ In the 19th century sibbuku like their superiors the mwami (chiefs) very often received goods like guns, clothes, beads and machets from European travellers and traders in exchange for the help which they rendered to the latter, for example, by being hosts or directing them to their destinations, in addition to providing them with porters.³⁶

(ii) The neighbourhood.

This was the next territorial unit of importance after the village. Studies conducted among the Gwembe Tonga, a people similar to the Toka-Leya in social organization, indicate that a neighbourhood consisted of about three to seven villages in pre-colonial times.³⁷ Like a village, a neighbourhood was composed of kinsmen as well as aliens. The main difference from a village was the fact that neighbourhood members very often shared a common rain shrine and a religious-political leader known as the sikatongo.³⁸

The office of the sikatongo came into being through divine selection of the man who then founded his neighbourhood 'by opening up new land'.³⁹ When he died his shade could be inherited by anybody within that neighbourhood on the advice of basangu (rain and land spirits). Such a person then became the new sikatongo.⁴⁰ There were instances when political functions of the sikatongo overlapped with religious ones. But where the sikatongo combined religious with political functions, he led rain-making, harvesting and major funeral ceremonies, settled disputes within the neighbourhood and offered sacrifices of a black chicken or

a goat to ancestral spirits to forestall famine, disease or drought. He also ensured that offenders against the office of the sikatongo, which included the rain-making cult, underwent the necessary rituals to avert communal punishment by the supernatural world.⁴¹

With the growth of chiefdoms in the late 18th century and throughout the 19th century the office of the sikatongo lost its political role to that of the chief. For example, after 1800 Chief Mukuni absorbed into his kingdom a number of these smaller 'chiefs' such as Linda who was situated in the area where the present town of Livingstone is.⁴² Mwiinga and Kalembe under Chief Musokotwane were by 1890 mere headmen. By 1900 the colonial administration only recognized the political functions of these people and ignored their religious roles.

(iii) The chiefdom:

This was the largest territorial unit. It embraced a number of villages and neighbourhoods of a given ethnic group. The mwami (chief) became the highest authority in the political, economic, judicial and ritual hierarchy throughout the 19th century. The community distinguished the mwami from the ordinary citizens because he practised large-scale polygamy, had the power of life and death over criminals and exercised military leadership. He also had the authority to ask religious leaders and all other subordinate officials to perform tasks which benefitted the whole community.

For purposes of welding his chiefdom together, a chief exerted his influence through relatives who were either headmen, neighbourhood leaders, or prophets and diviners. For example, after 1865 the prophetess Bedyango in Chief Mukuni's Kingdom was usually his sister.⁴³ Since the Toka-Leya were not centralized to the extent

of having clear-cut political or economic institutions, a number of elders could be summoned whenever expediency demanded, to witness an important event such as the trial of an alleged murderer, a witch or a wizard.⁴⁴ In many cases these people advised the chief or merely carried out his orders. All major decisions such as those in connection with waging war were taken by the chief. Towards the close of the 19th century most Toka-Leya chiefs had adopted the Lozi practice of having a special overseer of the chiefdom called the Ngambela and an official of sanctuary known as the Natamoyo from whom criminals could seek pardon.⁴⁵ Another institution which developed particularly in Chief Mukuni's Chiefdom was the keeping or deployment of young warriors.⁴⁶

In economic matters a chief had the role of distributing land to both his subjects and aliens who came to settle in his chiefdom.⁴⁷ However, in the 19th century, Chiefs Sekute and Momba in the south-west and north-west of the Livingstone District respectively did not exercise much control over the exploitation of natural resources in their areas owing to having been under Lozi political tutelage. For example, during the second half of the 19th century Lozi kings could give hunting and slave-raiding rights to European and Mambari traders respectively.⁴⁸ Furthermore, most fishing areas on the Zambezi River which were adjacent to the Lozi Kingdom were being controlled by the Lozi.⁴⁹ The authority of Toka-Leya chiefs also tended to be reduced because the Lozi continued to demand tribute in the form of slaves, sheep, goats, animal skins, ivory and agricultural products.⁵⁰ This system of tribute paying continued in a crude form after 1890.

The political influence of Toka-Leya chiefs over their people was maintained throughout the 19th century, and to a lesser degree

in the 20th century. Slaves who were captured from other ethnic groups in the course of wars usually became servants of chiefs. After 1880 Chiefs Sekute, Musokotwane and Siakasipa became quite influential among their people by receiving European travellers in their chiefdoms, who in turn supplied the chiefs with rare consumer goods such as cloth, blankets, machets, guns and glass beads. After 1903 when the hut tax was introduced the paying of tribute began to dwindle, until by 1919 people had almost completely stopped paying tribute to the Lozi or their own chiefs.⁵¹

(d) Social-political organization at the non-territorial level.

(i) The clan.

This was the commonest institution upon which social control impinged. Mubitana has described it as 'the widest unit of society' because it transcended all other institutions within a given society.⁵² Membership of a clan was derived through matrilineal descent.⁵³ Clan members usually shared a common totem which was a name symbol signifying an animal or any natural object such as a hill or an ant-hill.⁵⁴ Although clan members often claimed a common territorial occupancy and a historical origin, people who shared a common totem were found dispersed over a wide area both within a chiefdom and outside it.

Clansmen practised exogamy when marrying. It appears the reason for this was that clansmen regarded one another as 'sister' or 'brother'. Its members never had occasion to assemble as a group for any purpose such as ritual, nor did they own any property in common.⁵⁵ Hence, a clan could also be viewed as an institution of brotherhood based on totemic identity and a common history of a given society. To the extent that clansmen very often lived in a common

geographical area, we can say that a clan was one of the bases upon which the development of chiefdoms depended.

(ii) The kinship group or mukowa.

Like the clan, the matrilineal kinship group or mukowa was another non-territorially based political unit.⁵⁶ It differed from a clan in that its members often traced descent from a common matrilineal source.⁵⁷ Membership to this group was also derived from birth within the group, while marriage of its members was the main system of recruiting its members. Although members of this group were also dispersed over a wide area of land and lived in different villages, neighbourhoods or chiefdoms, they always assembled and acted corporately under the leadership of an uncle or any senior member of the group. This was normally done whenever they dealt with matters about inheritance to property or wives, marriages, succession to titles or roles, the settlement of disputes and the carrying out of vengeance.⁵⁸ With the growth of chiefdoms in the 18th and 19th centuries, chiefs began to play a major role in such matters, for instance, that of crime prevention. By the 1890s some Toka-Leya chiefs were also practising the patrilineal descent system and inheritance of property due to the Makololo and Ndebele influences of the 19th century.⁵⁹

(iii) Religion.

Religion too was another aspect of Toka-Leya social organization which had an all pervasive influence over all territorial units in society. Besides all small and localized religious institutions, the Toka-Leya also recognized the existence of a Supreme

Being whom they referred to variously as Chilenga (Creator),⁶⁰ Syaatwakwe (One who jealously guards over his possessions) or Mayoba (One who induces torrential rains to fall).⁶¹ The emphasis upon the existence of a Supreme Being among the Toka-Leya became more pronounced than ever before in the 19th century owing to Lozi influence.⁶² One way of discerning Lozi religious influence among the Toka-Leya is through the use of the word mayoba. It is a Lozi word for rain. By the middle of the 19th century, the Toka-Leya had also adopted the Lozi reference to the female as well as the male nature of the Supreme Being.⁶³

It is likely that Lozi religious belief had such an influence over the Toka-Leya because the Lozi appear to have been more conscious of religion than their subject people. For example, most Lozi recognized the omnipotence of Nyambe (God) and his cruelty by giving their children names that connoted bad things such as Katongwani (the little hyena) and Namasiku (things of darkness or night) so that Nyambe should not harm them.⁶⁴ This practice was absent among the Toka-Leya. Nyambe was the object of worship at any time among the Lozi,⁶⁵ but, the Toka-Leya tended to pray to him during periods of great difficulties such as drought or pestilence.⁶⁶ Although among the Toka-Leya graves of dead leaders acted as centres of worship those simple graves were worshipped only at certain times of the year, for instance at the beginning of the harvesting period. Those of the Lozi, apart from being centres of prayers for the whole community, were also used as places of refuge by convicted criminals.⁶⁷

At the local village or neighbourhood levels religious practices centred around certain personages who were imbued with the gift of religious leadership. These people usually controlled rain

shrines and acted as mediators between the living people and the supernatural world. The supernatural world was divided into two: the mizimu (ancestral spirits of headmen, chiefs and religious leaders) and the Supreme Being. Ancestral spirits were very often looked upon as intermediaries between the Supreme Being and living members of society. They were approached by living religious people. An example of such religious leaders was a person who bore the title of Mujala among the Musokotwane Toka-Leya. Prior to the establishment of the Musokotwane chieftaincy in the early 1800s around the Sinde River, Mujala had played religious and political roles.⁶⁸ When Musokotwane eventually made himself chief over the Toka-Leya in this region, Mujala continued to play religious as well as political roles. Towards the end of the 19th century Mujala's political powers tended to diminish, but his religious position continued to strengthen the Musokotwane Chieftaincy in terms of political and economic matters.⁶⁹ By 1900 when the colonial authorities removed Musokotwane from near Livingstone Town to Lukuni, near Mujala's neighbourhood, his political influence completely diminished.

About 1885, among the Toka-Leya of Chief Sekute there was also an important person who bore the title of Ina-Sing' andu who was renowned for having the ability to control the movements and appetites of crocodiles in the Zambezi River around Kazungula.⁷⁰ Again, among the Mukuni Toka-Leya there was a woman who bore the title of Bedvango throughout the 19th century.⁷¹ Like Mujala among the Musokotwane Toka-Leya these two persons played roles connected with religious ideology which strengthened the Chieftaincies of Sekute and Mukuni.⁷²

The person of the chief also very often became the centre of communal worship. For example, about 1856, Livingstone wrote that Chief Sekute 'had a pot of medicine buried on Kalai Island on the Zambezi River, which when opened, would cause an epidemic in the land'.⁷³ Two years later, in 1858, he also wrote that Chiefs Mukuni and Sekute 'had appropriated Kazeruka and Boaruka Islands', also on the Zambezi River near the Victoria Falls, for worship.⁷⁴ Colson also tells us of a religious arrangement similar to the two we have quoted above. This existed among the Gwembe Tonga of Chief Mweemba in pre-colonial times.⁷⁵ The Gwembe Tonga were similar to the Toka-Leya in their social-political organization. Mweemba's shrines were centres of communal worship.

By 1885, we hear more of the religious nature of the Toka-Leya of Chief Siakasipa's Chiefdom near where Kalomo is situated to-day. Chiefs and other important people in the area had gathered for prayers at the grave-yard of one of their former leaders one day. Holub describes the position in the following words:

The chiefs and sub-chiefs of the tribe have gathered to pray to him and talk to him all day long; they tell the great deceased man all their grievances and in this way they show him their high esteem and great respect. For five days beer is poured on his grave.⁷⁶

The above examples show us that chiefs' shrines or the graves of important leaders of the past very often became centres of worship. The chief's role was to bring together people within a given chiefdom or community to these centres for the purpose of offering prayers. It is likely that some chiefs had direct communication with the mizimu (ancestral spirits) of dead chiefs or some other important leaders so that the latter would communicate with the Supreme Being regarding

matters of 'national' importance.⁷⁷ However, as a general rule, chiefs would approach specialized religious leaders in a given chiefdom or community to perform functions such as praying for rain or ridding the land of an epidemic.⁷⁸

Among the Toka-Leya, the prophets, diviners and medicine-men were a special group of experts who acquired the knowledge of their vocations through divine appointment of spirits such as basangu (family spirits) and a long period of apprenticeship under a renowned expert.⁷⁹ Though the above personages were politically subordinated to the chief, they wielded tremendous influence in society because of their abilities to pray for rain, prevent or heal illnesses and to foretell the future. They worked both at the local and 'national' levels.

The common people also prayed to their ancestral spirits or the Supreme Being in various ways. For the above purpose, there existed neighbourhood, village and family shrines in many parts of a given chiefdom. Under normal circumstances, the heads of the above three institutions communicated with the mizimu (ancestral spirits) of their predecessors or, asked those mizimu to communicate with the Supreme Being on their behalf.⁸¹

(e) Conclusion:

In this chapter we have outlined the area of this study and its physical and climatic features. Although the climatic and physical features were not entirely favourable so as to sustain large populations, there were other favourable factors which made human settlement possible in certain parts of the area. For example, the availability of perennial rivers, where game abounded and a generally flat land suitable for agricultural practice and animal

rearing made human settlement possible.

We have also shown that the people who lived in this region were of varied ethnic backgrounds. Over the years they developed a kind of cultural admixture and subsequently came to be known as the Toka-Leya.

Toka-Leya social-political organization worked at the territorial and non-territorial levels. At the territorial level the village and neighbourhood formed the bases of the chiefdom. At the non-territorial level, the clan, matrilineal kinship group (mukowa) and religion also served to weld the people into one community in a given decentralized chiefdom.

In the final analysis we should also note that religious and political functions overlapped among Toka-Leya chiefs. Not even economic or military matters were divorced from religious practice.

Footnotes.

1. D. R. Archer, 'Drainage'; 'Water Supply', in D.H. Davies (Ed.), Zambia in Maps, (London: University of London Press, 1967), 16, 96;
G. Kay, A Social Geography of Zambia, (London: University of London Press, 1967), 18-19.
A. Roberts, A History of Zambia, (London: Heinemann, 1976:7;
R. Hall, Zambia, (London: Pall Mall 1965), 2.
2. Kay, A Social Geography, 18-19; B. Fagan, 'The Iron Age Sequence in the Southern Province of Zambia', (J.D. Fagan and R.A. Oliver, (Eds.), Papers in African Pre-history (London: Cambridge University Press, 1970), 201. Also see Map of the Livingstone District and adjacent areas, Sheet No. SE-35-6, First edition, UNZA.
3. Fagan, 'The Iron Age Sequence', 201.
4. Kay, A Social Geography, 22; Roberts, A History of Zambia, 7-9.
5. Report of the Commission Appointed to Enquire into the Financial and Economic Position of Northern Rhodesia (Zambia) (London, HMSO., No.145, 1938), 16 and 241; Kay, A Social Geography, 22.
6. J.A. Hellen, Rural Economic Development in Zambia, 1890-1964 (Munche; Weltforum Verlag, 1968), 47; R. Mackel, 'Vegetation and the Forest Estate' Davies, (Ed.), Zambia in Maps, 24-25; Fagan, 'The Iron Age Sequence', 201.
7. Mackel, 'Vegetation and the Forest Estate' Davies (ed.), Zambia in Maps; 24; Fagan, 'The Iron Age Sequence', 201.
8. Archer, 'Rainfall', Davies (Ed.), Zambia in Maps, 20-21.
Note too that Kay, A Social Geography, 21, says that apart from being extreme low in the southern areas, the rains are also unreliable.
9. Roberts, A History of Zambia; 6-7.
10. Roberts, A History of Zambia; 6-7.
11. G.A. Allan, The African Husbandman, (London: Oliver and Boyd, 1965), 22-24; Also see Kay, A Social Geography, 22.
The other factors that render the land uncultivable apart from that of acute shortage of water are rapid percolation of water, for example on the Kalahari sands in the west, mystical reasons and the prevalence of some diseases such as "river blindness".
12. G. Kay, A Social Geography, 21; H.W. Langworthy, 'Languages and Tribes', in Davies (Ed.), Zambia in Maps, 34-35.

13. D.J. Clark, (Ed), The Vistoria Falls: A Handbook to the Vistoria Falls, The Batoka Gorge and Part of the Upper Zambezi River, (Lusaka: Government Printer, 1952), 68.
14. M.A. Jaspan, West Central Africa Part IV: The Ila-Tonga People of North-Western Rhodesia (Zambia), (London: The International African Institute, 1953), 19.
15. Jaspan, West Central Africa Part IV, 19. There is a further distinction of the languages of the peoples of this region by this author into (a) Plateau Tonga, spoken between the Zambezi and Lower Kafue Rivers (b) Valley or We Tonga, spoken in the Gwembe Valley and (c) Lundwe, which he says is spoken by the Leya near the Victoria Falls.
16. Roberts, A History of Zambia, 68-72.
17. J. Torrend, An English-Vernacular Dictionary of Bantu-Botatwe Dialects of Northern Rhodesia (Zambia), (Marianhill, Natal, 1931), v, Introduction. The words 'Bantu Botatwe' is an expression which occurs among the Ila, Tonga, Lenje and other language groups in southern and central Zambia. It means "three people". It should not be confused with a referential meaning which people tend to assign to the Ila, Tonga and Lenje only because these three names do not refer to any particular ethnic groups except in so far as they refer to peoples who belong to various small ethnic groups who speak similar languages which fall under Ila, Tonga and Lenje connotations.
18. M. Muntamba, The Evolution of Political Systems in South-Central Zambia 1890-1953. (Lusaka: UNZA, 1973. M.A. Thesis), 18-19.
19. . NAT/A/3/1, Box 93B, Memo on the Native Tribes of Northern Rhodesia (Zambia), (Lusaka: Government Printer 1934);
20. Interview: P. Sakwanda, 5th August, 1978.
21. M. Muntamba, 'Chiefs and Boundaries in Kalomo Rural District,' (MS), in author's possession, 6. Also see KSC4/1, Livingstone District Notebook, 1901-1963, 148-152, (The Government Gazettes showing the above changes were not available in the National Archives and UNZA library, Lusaka.).
22. Report of the Commission Appointed to Equire into the Financial and Economic Position of Northern Rhodesia. (London: H.M.S.O., Col. No.145, 1938), 364, shows the following Native Reserves:

<u>Reserve no:</u>		<u>Name of the reserve:</u>
XIV	-	Nkoya reserve.
XV	-	Toka reserve.
XVI	-	Leya reserve.

The name of each reserve was adopted from that of the dominant group of people, but it embraced people from various ethnic groups.

23. In the 19th century the Lozi designated the Tonga "Toka" and the Lenje "Leya" because they could not pronounce the two words properly.
24. Roberts, A History of Zambia, 52.
25. See Muntamba, "Chiefs and Boundaries", (MS), n.d. in author's possession; KDB6/4/3/4, Livingstone District Tour Report No. 3, 1938.
26. KDB6/4/3/4, Livingstone District Tour Report No. 3 1940, (Annexure I).
27. G/19/5, Memorandum on Slavery in Barotseland, 16th June, 1906, 1-6.
28. S. Shewmaker, Tonga Christianity, (California: William Carey Library, 1970), 14.
29. D. Livingstone, Missionary Travels and Researches in South Africa, (London: John Murray, 1857), 534.
30. E. Holub, Travels North of the Zambezi 1885-86 (Manchester University Press, 1975), 36.
31. KDB6/4/3/4, Livingstone District Tour Report, No. 1 1938.
32. E. Colson, 'Social Control and Vengeance in Plateau Tonga Society', Africa, XXIII, 1, (London: 1953), 200.
33. E. Colson (Ed.), Seven Tribes of Central Africa. (Manchester University Press, 1951), 115.
34. M. Gluckman (Ed.), Order and Revellion in Tribal Africa (London: Cohen and West, 1963), 148-149.
35. BS2/283, I, Livingstone High Court Criminal Case Records, (R.v. Malosa and Nine Others), 1911.
36. F.C. Selous, Travel and Adventure in South-East Africa (London, Rowland Ward and Co., Ltd. 1893), 204-207.
37. E. Colson, The Social Organization, of the Gwembe Tonga, (Manchester University Press, 1967), 57.
38. Shewmaker, Tonga Christianity, 15.
39. Mubitana, Christian Missions and the Toka-Leya of Zambia (Ph.D. Thesis, University of Edinburgh, 1977), 32.

40. Colson, The Social Organization, 61-62.
41. Colson, (Ed.), Seven Tribes, 135.
42. Muntemba, 'Chiefs and Boundaries,' 2.
43. M. Muntemba, 'Political and Ritual Sovereignty among the Mukuni Toka-Leya' (M/S), n.d. in author's possession. 4.
44. Interview: M. Mundindili, 22nd July, 1978.
45. Muntemba, "Political and Ritual Sovereignty," 94.
46. Muntemba, The Evolution of Political Systems, 46-50.
47. Colson, (Ed.), Seven Tribes, 119-120.
48. Roberts. A History of Zambia, 134.
49. Turner, West-Central Africa Part III, 13-15.
50. F. Holub, Seven Years in South Africa. (London: Sampson Low, Marston Searle and Rivington 1881), 147.
51. UA/1/1, Livingstone Magistrate's Court Criminal Case Records, (R.V. Sikwayi and Silume, Case No.22.), 1919.
52. K. Mubitana, Christian Missions, 42-43 E. Colson, The Social Organization, 60-61.
53. Mubitana, Christian Missions, 43-44.
54. M. Gluckman, Custom and Conflict in Africa (Oxford: Basil and Blackwell, 1966), 21.
55. Shewmaker, Tonga Christianity, 13-14.
56. Shewmaker, Tonga Christianity, 14.
57. Shewmaker, Tonga Christianity, 14.
58. Mubitana, Christian Missions, 48.
59. Interview: D. Mwindilira. 15th July, 1978.
60. Jaspán, West-Central Africa Part IV, 61.
61. Interview; D. Mwindilira, 15th July, 1978; Mubitana, Christian Missions, 48.
62. Interview: D. Mwindilira, 15th July, 1978.
63. Interview: D. Mwindilira, 15th July, 1978.

64. D.W. Stirke Barotseland: Eight Years Among the Barotse (London: John Bale, Sons and Danielsson, 1922), 117.
65. Stirke, Barotseland, 117.
66. Mubitana, Christian Missions, 65.
67. F. Coillard, On the Threshold of Central Africa: A Record of Twenty Years Pioneering Among the Barotse of the Upper Zambezi (London, Frank and Cass), 224.
68. Interview: P. Mwileli, 18th July, 1978.
69. KDB6/4/3/4, Livingstone District Tour Report, 1937.
70. Holub's Travels, 19.
71. Muntamba, The Evolution of Political Systems, 41.
72. For a fuller treatment of Toka-Leya Religion, see Mubitana Christian Missions, 53-65.
73. Livingstone, Missionary Travels, 518.
74. D. and C. Livingstone, A Narrative of an Expedition to The Zambezi and its Tributories and of the Discovery of Lakes Nyasa and Chirwa. 1858-1864, (London: John Murray, 1868), 258.
75. E. Colson, The Social Organization, 187-188.
76. Holub's Travels, 50.
77. Holub's Travels, 50; Also see T.O. Ranger and Isaria Kimambo, The Historical Study of African Religion, (London: Heinemann, 1972), 95. The authors tell us here that 'In one form Nyambe (God) appears predominant and all prayers and requests are addressed to him directly.
78. Mubitana, Christian Missions, 54; Ranger and Kimambo, The Historical Study of African Religion, 96.
80. Interview: J. Kabamba, 19th July, 1978: Also See E. Colson, The Plateau Tonga: Social and Religious Studies, (Manchester: Manchester University Press, 1951), 87-89.
81. Colson, The Plateau Tonga, 87-89.

Chapter 2.

Pre-colonial Social Control among the Toka-Leya.

Introduction.

In this chapter we shall examine pre-colonial social control with reference to the crimes of manslaughter and murder, witchcraft offences, theft, and offences related to the institution of marriage.

This chapter will form the basis of our study of adaptation because our understanding of the way social control worked in pre-colonial Toka-Leya society will help us appreciate the way Africans adapted to an imposed and alien system of social control after 1900.

(a) Manslaughter.

Homicide or intentional killing of a human being took different forms in pre-colonial Toka-Leya society. Livingstone tells us that in the 1850s he observed skulls of human beings hanging by the village of a chief called Moyara.¹ These skulls were said to be those of Ndebele warriors who had strayed into Moyara's territory. About 1886, Holub, whom we have already quoted elsewhere, also observed human skulls that hung on a tree near an Ila headman's village.² Like those at Moyara's village, these skulls were also said to have been of strangers, or foreigners such as the Lozi, Ndebele and Mankoya.³

It is likely that foreigners were killed without the chiefs' punishing the culprits in 19th century Toka-Leya society. They had their heads cut off so that they could be mounted for ritualistic purposes or merely as trophies. The other reason for killing foreigners was that people wanted to obtain things like

guns and gunpowder or clothing from them. For instance, about 1886 a traveller was killed in the north-west of the Kalomo District and the people divided his clothes and other belongings amongst themselves.⁴

After such deaths chiefs and headmen in the vicinity ensured that the land was cleansed of the dead person's spirit by slaughtering and sacrificing a goat, an ox, a sheep or a black chicken, followed by the offering of the necessary prayers. The rituals were performed in order to avert supernatural punishment upon the whole community for spilling the blood of a human being. The above type of killing should be distinguished from that in wars. The latter did not necessarily require the performance of any rituals.

With regard to death caused by accident, for example, while hunting, fishing or after a brawl at a beer party, the position used to be different. The kinship group whose member had been killed felt offended not because of the killing in itself, but because that kinship group had lost one of its members who could have contributed towards its well - being and growth in terms of bearing children or performing communal obligations.⁵ Usually the question was whether those directly involved in such an accident belonged to the same or related lineages or to two completely unrelated lineages. In the former case the erring persons paid the offended man or woman a stipulated number of goats, sheep, cattle, hoes or spears.⁶ They also supplied a black mourning ox or goat which was slaughtered and consumed at the funeral.⁷ In the latter case the erring persons also paid the offended group a heavy compensation either in terms of animals or hoes and spears.

Sometimes they gave the other group one female person to become the wife of one of their members.⁸

(b) Murder offences.

The death penalty could be imposed by chiefs upon some offenders. For example, in the 19th century Toka-Leya chiefs could order that their promiscuous wives be killed.⁹ It was also lawful for such chiefs to order the elimination of their wives' paramours or persons suspected of enticing any one of their wives.¹⁰

By the 1880s, in the south-west of the Kalomo District, it was not a crime for a chief or a master to kill a slave. With regard to the killing of a slave, we must observe that the question of redress only arose if such a slave was killed by someone who did not 'own him or her.' In this way he had deprived the 'owner' of an important source of labour. The master of the deceased slave demanded compensation in terms of goats, cattle or another slave. Where chiefs and headmen killed persons accidentally, they too paid compensation to the families of the deceased.

It was a serious offence for any person to kill a chief in pre-colonial Toka-Leya society. This also applied to the killing of any member of the chief's kinship group or lineage. This is said to be why such an offence was rare.¹² In the 19th century this crime usually occurred among persons who were competing for the leadership of a community and came from differing royal lineages within the ruling group of people. A competitor usually killed his rival through physical violence or the use of witchcraft. The killer was speared to death if he attempted to

escape, with no consequences falling upon those who speared him to death.¹³

In the pre-colonial period if a member of one kinship group killed a person, the deceased's group demanded death for the killer, or a member of the erring group. Alternatively, they demanded a small girl to be substituted for 'their deceased person.'¹⁴ The above rules usually applied where the erring group was poor, the killing had been deliberate or there had existed a longstanding enmity between the groups involved. Sometimes dissatisfaction with the compensation offered led the offended group to resort to self-help or the use of retaliatory witchcraft against the offending group.¹⁵

Where a husband killed his wife, the relatives of the woman led by her uncles demanded a girl 'so that she would bear more people for the kinship group'.¹⁶ Alternatively they demanded heavy compensation in terms of goats or hoes.¹⁷ However, if a woman killed her husband, the woman was spared but the aggrieved group demanded a heavy fine in terms of livestock. If a man killed his own son or daughter, in view of the matrilineal succession practice, his wife's uncles usually demanded heavy compensation, also in terms of livestock or any other property of value.¹⁸ Should the killing involve the use of witchcraft, they demanded that the culprit be killed too. According to Colson, the slaying of a kinsman neither involved the payment of compensation nor the application of vengeance as 'this would lead to the disintegration of the group.'¹⁹

(c) The settlement of crimes of murder.

The settlement of serious crimes of killing involved the

intervention of ulanvika (chiefs), sikatongo (neighbourhood leaders) and sibbuku (headmen), elders and diviners. In pre-colonial times a person who killed someone notified his own kinship group about it. The kinship group of the offender hid the accused person 'lest he be speared to death'. After hiding him, his kinship group would approach the family of the deceased person with the offer to pay them compensation.²⁰ The aggrieved group either accepted the offer, suggested an additional payment or asked for a completely different form of fine. In the second half of the 19th century, fines took the form of blankets, cloth, hoes, spears and guns.²¹ Alternatively, they suggested that a person from the offender's kinship group be given to that of the victim.²² Usually the group of the victim accepted the first form of fine if the two groups had been on good terms.

Throughout the 19th century the offender's group usually supplied to the aggrieved family a black mourning ox, sheep or goat.²³ Both the compensation and the mourning beast were supplied in the presence of headmen and lineage or kinship group leaders. The beast, which was usually referred to as matako amanene (the buttocks of the elders) was slaughtered after the trial of the case was over.²⁴ The meat was consumed by all the elders who had arbitrated in the case, 'to lay down to rest the spirit of the deceased person.' The sikatongo propitiated ancestral spirits of important leaders who died long ago. He also poured a beer libation.²⁵ The matter was closed after brewing and consuming mourning beer.²⁶

Persistent and deliberate offenders faced the danger of being denied support by their own kinship groups, expelled from the group or handed over to the kinship group of the victim to be enslaved or

spared to death.²⁷ In the second half of the 19th century they could also be sold to slave traders such as Mambari, in exchange for rare goods like cloth and guns. Alternatively, they were sent to Bulozhi as human tribute.²⁸ Sometimes such cases were settled through inter-kinship feuds which were the cause of mass migrations and loss of lives. But eventually, the elders would step in 'to restore the pre-existing equilibrium as there was no neutral body to which the offended could appeal.'²⁹

The chief as the highest authority in the land very often interceded where death involved a headman, a member of the chiefly family or if witchcraft had been used to cause the death.³⁰ He listened to the deliberations of the victim's group, headmen, neighbourhood leaders and the chief's own advisors who were usually diviners. A death sentence was never pronounced by a chief but by a diviner.³¹ A chief simply approved, varied or disapproved such a sentence.

(d) Crimes connected with witchcraft practice.

Witchcraft practice involved the use of supposedly supernatural powers to cause all forms of evil.³² Either vegetable matter such as leaves or roots of particular shrubs or their concoctions were mixed with chihimba, usually flesh or any special material extracted from an animal's liver or a dead person's private parts.³⁴ Aided by an evil spirit, a person used the above 'medicine' to bewitch others. A person normally bewitched his enemies at night either consciously or unconsciously.

The three practices: witchcraft, divination and sorcery were inter-related in some ways. For instance, the use of supernatural powers was always involved in all of them. The main distinguishing

feature of witchcraft was that a witch or a wizard either turned into a mysterious animal, went in person to bewitch an enemy or sent an evil spirit.³⁵

The ng'aka (diviner) was related to a mulozi (a witch or a wizard) in that the latter consulted the former for the purpose of acquiring a powerful chihimba and other subsidiary 'medicines' for the pursuit of their evil interests.³⁶ On the other hand, anybody who wanted to know the causes of certain illnesses, mysterious deaths or any forms of misfortunes consulted a ng'aka (diviner).³⁷ He prescribed and provided the necessary medicines in such circumstances. The ng'aka was essentially a doctor, a prophet as well as a religious man. He was thus, regarded as a helper rather than an enemy of the people. A sorcerer was usually someone who practised ritual acts in order to cause harm to others, and not necessarily death.³⁸ Sorcery is said to have been a menace only to a sorcerer's enemies and could be attempted by anyone, whether possessed by an evil spirit or not.³⁹

Resort to witchcraft accusations was common if people could not explain the causes of certain deaths.⁴⁰ For example, about 1880 when one of Selous' porters died suddenly of acute dysentery between the Kalomo and Zongwe Rivers around Chief Mweemba's area, his compatriots attributed the death to the work of a witch at the dead person's home.⁴¹ David Livingstone made several observations in this region about the seriousness with which people regarded the practice of witchcraft as a theory of causation.⁴²

If a person's children died in infancy, or if he had an unusually low number of children, was barren or impotent, people

often attributed these problems to the use of witchcraft. Similarly, unusual success by one family at reaping abundant harvests as a result of favourable soil conditions or hard work, and the ability to hunt and rear domesticated animals were very often attributed to the use of witchcraft.⁴³

Witchcraft practice was often associated with the older generation, and, with old women in particular.⁴⁴ In view of the fact that children did not have a wide experience about life, they were never accused of being witches or wizards, at least up to the stage of puberty.

It was usual for members of the same and related lineages or kinship groups to practise witchcraft against each other. This view was expressed by Marwick when he wrote about the role of the practice of witchcraft among the Chewa of Eastern Northern Rhodesia in resolving social conflict.⁴⁵ For example, an uncle accused his nephew of bewitching him so that the nephew could become head of a kinship group and thereafter inherit his uncle's property and wives. Rivals to a chieftainship very often accused one another of witchcraft practice. These disputes were usually resolved by calling a diviner to detect the culprit. This normally resulted in the splitting up of a kinship group or the use of retaliatory witchcraft against members of a rival kinship group by those who felt that one of their members had been bewitched.

Ciphoso (throwing witchcraft) was a variant of witchcraft which prevailed mostly among men during the 19th century.⁴⁶ It involved the utterance of certain words by a witch or wizard, such as 'You will see,' 'I will treat you', or 'The sun will not set'.⁴⁷ Sometimes where this type of witchcraft was involved the victim

claimed to have seen an apparition of a close relative who might have died long ago. Shortly thereafter the victim fell ill or died if expert diviners did not intervene on time to prevent illness or death by bathing the affected person in medicated water. Ciphoso (throwing witchcraft) became widespread among the Toka-Leya in the second half of the 19th century although it already existed to a lesser degree before this time. It is said the increase in this type of witchcraft was a result of the fact that the Lozi and Luvale who were reputed to have a great knowledge of this type of witchcraft increasingly came to settle among the Toka-Leya.⁴⁸

Another variant of witchcraft which also penetrated Toka-Leya society in the late 19th century was kusuwikizha (sending witchcraft).⁴⁹ This involved the killing of one's enemy through animals like lions, certain supernatural forces which were supposed to enter such animals or any natural phenomena. For instance, an animal could be sent to devour an enemy, lightning to strike a whole or part of a family and a snake to bite to death one's enemy. Usually those who were affected in the above ways died instantly. Like ciphoso, it is said that by the end of the 19th century this type of witchcraft had increased in Buleya through the Lozi, Luvale and some migrant workers who were returning from either Zaire, East Africa or Southern Africa.⁵⁰

Through the use of witchcraft the Toka-Leya sent tusaku (rat-like creatures) to go and steal grain or any other crops from an enemy's granary or field respectively.⁵¹ Colson tells us that among the Plateau Tonga, a people similar to the Toka-Leya in social organization, it was not permitted for anyone to look into his neighbour's granary. This was so because the person who peeped into

his neighbour's granary would be suspected of employing tusaku to steal the other person's food.⁵² However, a person authorized either his wife or children to have access to his granary. In such situations there was an element of suspicion on the part of the owner of ^{the} granary or field that people might practise witchcraft to enrich themselves at the expense of others.⁵³

Throughout the pre-colonial times people resorted to the use of chifunda (preventive medicine). We have named it thus in order to distinguish it from that used purely for harmful purposes and mostly practised by witches and wizards. Chifunda (preventive medicine) was practised by anybody who could obtain it from a ng'aka or had its knowledge. It played an important role in ensuring social control because it was used for the protection of food crops and property from thieves. It was also used for ensuring personal success and social esteem in many walks of life such as in leadership and in hunting. Although basically no harm was intended, it could not be ruled out because sometimes victims had their limbs incapacitated, deformed or they died.⁵⁴

Where chifunda was used for protective purposes, for example, in one's fields, it was used sparingly because of the fear that children or other relations of the owner might be harmed should they become hungry and then decide to obtain food from the field.⁵⁵ Chifunda was also used to protect one's fish weirs, animal traps, animals already trapped and granaries. Granaries in particular, had to be protected from witches and wizards in view of the fact that the latter persons could send tusaku to steal grain.

In many ways man's physical and technological limitations made it difficult for him to lead a peaceful and prosperous life through

producing abundant food, the acquisition of property, protection from animals or fellow human beings and success in love and marriage. We learn that in the 19th century people sought answers to the above problems in the wearing of charms and talismans.⁵⁶ People also ~~cut~~ incisions on their bodies into which they rubbed animal or herbal powder. This would ensure protection from diseases or evil spirits, perseverance and courage. Towards the end of the 19th century a number of chiefs and headmen wore the impane (a kind of sea-shell) for similar reasons.

(e) The settlement of crimes connected with witchcraft practice.

Throughout the 19th century people viewed offences connected with witchcraft very seriously. This was so because witchcraft practice was associated with killing. Hence such offences threatened the social fabric such as the family, lineage, kinship group, the entire village or chiefdom. Where cases of witchcraft practice came up, these were settled by neighbourhood leaders, headmen and chiefs. Usually the kinship group of the victim took the responsibility of reporting the case to any one of the above officials. While doing that, they also suggested what course of action they wanted to take.

Once the case was reported to a headman or chief, a diviner was then called to smell the witch in the presence of members of the chief's council of elders and the two contending kinship groups. In Chief Musokotwane's area Mujala could perform this task, whereas in Chief Mukuni's area this work fell upon the priestess Bedyango.⁵⁷

In the course of the trial, if the accused persisted to deny

the charge levelled against him, the oldest way of proving his innocence or guilt was to administer mwati (sassy bark poison) directly to the person. In more recent years the practice was to administer it to a cock which stood proxy to the accused person. If the cock died, or the accused did not vomit the poison but instead he fell ill or died, he was guilty of committing the offence. Should the accused be found guilty thus, the elders burnt him or her on a kasanza (pyre of firewood) whose wood the relatives of the the accused had helped to collect.

The sentence was usually carried out ceremoniously and in the open. This was so in order to let everyone in the community realize how grave the consequences of being found guilty of witchcraft practice were.⁵⁸ Towards the end of the 19th century, a variety of punishments were being adopted for such offences. Sometimes suspected witches were thrown into rivers or stoned to death.⁵⁹ No doubt this reflected the 19th century intermixture of various ethnic groups in this region such as the Mbunda, Luvale and Lozi.⁶⁰ However, outlawry and ostracism as modes of punishing witchcraft offences continued to prevail in this period.⁶¹

(f) Theft offences.

Several people whom I interviewed claimed that theft was rare in pre-colonial times. This was explained in two ways. First, the property which people owned was of a limited variety so that what mattered was the quantity of things that people owned in relation to their neighbours. It would seem that class differentiation based on economic factors was low, if we take into account the fact that this could have been a contributory factor to theft. The second reason lay in the way members of a given lineage

'owned' property in common. Even in a community settled by relatives and non relatives, people had a more or less personal knowledge of one another. For instance, there were among the people, well-defined obligations in terms of kinship considerations of guardianship, lineage membership, marriage ties and a common residence, especially at the village level.⁶² It was not easy under the above circumstances for theft to go unnoticed.

There was an acceptable form of theft among certain categories of kinsmen such as between an uncle and his nephew, the parents of both spouses to a marriage and between members of the same lineage. For example, in pre-colonial times a nephew could 'steal' his uncle's goat, buda (singular: bark cloth) or tobacco and use it for a specific purpose.⁶³ The 'lifting' of an ox which Livingstone wrote about around the Victoria Falls in the 1850s could be placed under the above category of theft.⁶⁴ This practice depended upon a fore knowledge of the obligations and expectations that accrued to either of the persons involved in each category of social relationships.

Theft from European or Arab travellers and from other lineages or kinship groups was viewed lightly or even condoned altogether, particularly because of the material gain which was involved in the former case. Nevertheless, thefts from other lineages or kinship groups, were rare because the kinship groups of the thieves would not support them if there was a possibility that the persons whose property was stolen would know about it, as this would create inter-village or inter-ethnic feuds. One reason why people could not readily steal from European or Arab travellers and members of other lineages or kinship groups was the fear of chifunda (protective medicine).⁶⁵

For example, Livingstone wrote that by the middle of the 19th century people were very afraid of this type of witchcraft.⁶⁶ This was true also by the late 1880s when Holub wrote about the Toka-Leya of this region.⁶⁷ However, there were isolated cases when travellers' and other people's goods were stolen in the late 19th century. Sometimes this was encouraged by some chiefs and headmen who had by then begun to appreciate foreign cloth and other forms of consumer goods.⁶⁸

Serious theft in pre-colonial times used to involve unrelated neighbours in the same village, neighbourhood or chiefdom. The commonest type of theft was that of foodstuffs. Other things which also used to be stolen were mabuda (plural for bark cloth), skins, animal and fish traps, livestock and weapons like spears, axes, bows and arrows or hoes.⁶⁹ It will be observed that these things were among the most important ones before 1850, the period when European traders penetrated the region. However, by the second half of the 19th century, side by side with the above things, important articles like cloth, guns and gunpowder, beads and bangles began to feature prominently among the things which were being stolen.⁷⁰

A type of thief common in pre-colonial Toka-Leya society was one 'purported to have been entered by an evil spirit.'⁷¹ This was the reference people gave to a habitual thief. Initially there might have been an element of detachment between this type of a person and his kinship group, either because of his previous theft activities or the denial to him of some communal benefits by his kinship group. This eventually forced him to live a life of a vagabond while at the same time he resorted to committing petty theft offences.

(g) The Settlement of theft offences.

Theft offences were less serious than witchcraft offences in that whereas convicted witches or wizards were normally punished by death, thieves, though severely punished, were rarely executed. If a person was suspected of having stolen or was caught stealing something, able-bodied persons in the community bound his arms and legs and delivered him before a headman or chief. It is probable that no suspect was tied thus until people were satisfied that he had committed the offence.⁷² Usually under the above circumstances the elders beat the thief thoroughly before they bound him.

At the chief's court, all important persons such as headmen, kinship group leaders, members of the affected kinship groups and eye witnesses gathered to take part in the deliberations. In the course of the trial, some people gave accounts of the man's past and present character to implicate or exonerate him. Swearing was also part of procedure when giving evidence.⁷³ By the late 19th century, a person who did not want to admit his guilt and resorted to lying and being stubborn, had his head tied in between a fresh two-pronged stick of medium size, while his arms and legs were also tied up with bark fibre.⁷⁴ He was left thus until he admitted his guilt. Sometimes this action constituted a punishment in itself. However, the aim of this punishment was to deter others from committing the same offence; the accused person himself would undergo intense pain and humiliation.⁷⁵ In order to restore the pre-existing 'social equilibrium' the offender's kinship group paid double the quantity of stolen goods to the kinship group of the victim.⁷⁶

In the past, persons who stole from non relatives, people holding high office such as the chief's advisors, headmen, diviners,

neighbourhood leaders or chiefs, were severely punished. Similarly, habitual thieves were also severely punished. Some persistent thieves were either outlawed or killed by their own kinship groups. Those who stole from chiefs were either speared to death on the orders of their own chiefs or enslaved by the same authorities. By the late 19th century some chiefs had adopted, probably from the Lozi or the Makololo, the punishment of throwing thieves into pools of water.⁷⁷ In other cases of theft the offender's kinship group either offered one of their persons or the thief himself to be enslaved by the aggrieved group.⁷⁸

The theory behind these stern punishments was that theft of property amounted to witchcraft in that the pre-requisite to witchcraft practice, such as envy, jealousy and hate were present in the mind of a thief.⁷⁹ Colson tells us that:

.....theft in African societies was bad because it touched upon the personality of the owner of the property stolen which was disregarded in the thieving act and amounted to the killing of the other person.⁸⁰

(h) Marriage and offences related to marriage.

The institution of marriage was one of the most important categories of social relationships that served to bind Toka-Leya society together. There were three recognized forms of marriage. These were: marriage of adults with their parents' consent, child betrothal and elopement.⁸¹ Except for marriage by elopement, the matrilineal kinship groups on both sides of bazyali (wife-givers) and bakwati (wife-receivers) played an active role in the process of arranging for a marriage.⁸² These matrilineal kinship groups were also very much responsible for boyhood and girlhood education in preparation for married life.

In pre-colonial times an uncle usually found his nephew a girl to marry from 'a good family' in terms of that family's good reputation of character and industry.⁸³ When the uncle's kinship group was satisfied that the girl and her family met the above requirements, either the uncle or his representative approached the girl's family or lineage to ask for a marriage. These negotiations went on for a period until the two groups finally reached an agreement.

There were two types of payment which bakwati made to bazyali throughout the pre-colonial era. The first was kubindika or chinawinga (notification of intent to marry), normally in the form of beads.⁸⁴ The above payment or gift also signified that the girl was engaged to someone and thus it acted as a barrier to would-be suitors. The second important payment was lobola (bridewealth). It legitimized a marriage.⁸⁵ The oldest form of this type of payment used to be mabuda (plural for bark cloth), hoes, spears, goats and sheep.⁸⁶ However, the most consistent articles had always been goats and hoes, while cattle, cloth and blankets became common towards the end of the 19th century. About ten female goats and one male one constituted an ideal lobola.⁸⁷ The number of hoes ranged from about three to seven, if the girl's kinship group asked for hoes instead of goats.⁸⁸

If a girl came from a royal family, a hard-working family, or was a virgin on getting married, her guardian demanded more hoes or goats than when the reverse was the case. Very often part of the lobola was deferred or paid in instalments. Sometimes the payment only became complete after a couple had lived together and also had several children.⁸⁹

The beneficiaries of lobola used to be the girl's maternal uncle and members of his kinship group. Towards the end of the 19th century this began to change in favour of a girl's parents and some of their relatives. For instance, a brother or cousin could use a girl's lobola for his own marriage payment.⁹⁰ Other close relatives were also entitled 'to eat' part of the lobola in order to be in a position to help the uncle or parents to repay it should a divorce resulting from a woman's error occur in future.⁹¹

It is also relevant here to show the position of certain categories of men and women with regard to marriage and other offences. Any girl or woman was under the perpetual tutelage of her maternal uncle, father or any male guardian within a given kinship group, depending on whether she was married, a widow, unmarried or a party to a polygamous marriage.⁹² An unmarried young man was under temporary tutelage of either of the persons we have mentioned in connection with women until he founded his own home through marriage or advanced age.⁹³ No woman ever acted independently of her guardian. For example, women could not initiate divorce proceedings as their male guardians were expected to do this on their behalf.⁹⁴

In order to ensure that a woman did not suffer economic hardship when her husband died, the Toka-Leya practised kulya hina (widow inheritance).⁹⁵ In olden days an uncle usually chose a man from the kinship group of bakwati to inherit a widow together with all important property and children which the deceased might have left.⁹⁶ Such a man was usually a nephew, a brother or an uncle of the deceased person. The man who inherited the widow changed his status by adopting the title 'father' in the eyes of the deceased's children; this also applied to all titles which his predecessor had enjoyed.⁹⁷

By the beginning of the 20th century there were cases in which widows could object to being inherited by any one of the deceased's relatives. In such matters the procedure was for the deceased's uncle to ensure that she was ritually cleansed of her dead husband's spirit so that she could be free to marry any man of her own choice.⁹⁸ However, had widow inheritance taken place, the old marriage bond, together with all its attendant rights and obligations would continue.⁹⁹

If a wife died, bazyali had an obligation to give the man another wife, who was normally a relation of the deceased woman. The two institutions of widow and widower inheritance tended to die out by the beginning of the 20th century partly because of Christian missionary disapproval and partly because of the inevitable breakdown of indigenous social formations owing to the intrusion of a money economy.

The Toka-Leya also observed certain procedures with regard to a man's impotence, a woman's sterility or other family problems like a man's ill-treatment of his wife and contacting a venereal disease or leprosy by either of the parties to a marriage. If a man was impotent, the elders of his kinship group looked for the necessary medicines to make him potent.¹⁰⁰ Should all available means to remedy the situation fail, bazyali withdrew their daughter and returned the lobola.¹⁰¹ Where a woman did not bear children, bazyali gave the man another woman, but no divorce occurred. The man only became a polygamist. If any party to a marriage contacted a venereal disease or leprosy these were valid grounds for a divorce. As a general practice in the case of a woman, the guardian normally initiated such divorce proceedings on her behalf. Similarly the ill-treatment of a woman by her husband was also a strong

ground for divorce, particularly if it had been persistent. It is likely that some of these grounds for divorce began to fall in abeyance by 1900. The tendency was encouraged by the break-down of indigenous social organization and the spread of knowledge regarding causes of some diseases.

(i) The settlement of offences related to marriage.

Before the establishment of the British South Africa Company administration there were offences of a general nature between men and women which merit our mention here. What the present Zambian society regards as a case of rape was an offence, but not a serious one. Headmen and elders from the affected kinship groups usually decided such matters. A goat was paid to the uncle of the woman to restore the status quo.¹⁰² If a person took somebody's daughter without the parents' consent and made her his wife, (a form of abduction under English law), his kinship group paid a goat or two before that marriage was legalized.

In connection with sexual offences with girls who had not yet reached the stage of puberty, the girl's aunt/^{or}grandmother usually ascertained whether she had been deflowered or not. If she had been deflowered, the man's kinship group paid a heavy compensation in terms of goats, sheep, hoes or spears. Alternatively, the accused person married the girl. The marriage was without the customary procedures and observances we have already described.

Cases of pre-marital pregnancies are said to have been rare. If such cases occurred the child born was killed in infancy and a fine was paid by the boy's group.¹⁰³ Such cases were resolved by making the group of the offending person pay a heavy fine or

by making the offender marry the girl.¹⁰⁴ If a marriage did not materialize, a fine sufficed while the girl's uncle retained the child.¹⁰⁵

Slaves had no rights at all in pre-colonial Toka-Leya society. They too, like the womenfolk, were under the perpetual tutelage of their masters.¹⁰⁶ The overlordship of the masters over their slaves was affirmed by the way they were acquired. For example, slaves were acquired through buying with hoes, or food during times of famine, as fines from offending kinship groups and as captives in war.¹⁰⁷ A slave could be forcibly married by her master or given in marriage to anyone of her master's relatives and friends. If a girl married a fellow slave the offsprings remained slaves of the master. But if she married a chief or any free person the children were regarded as free men or women.¹⁰⁸ Normally little or no payment was offered to the master in such marriages.

The offence of adultery could be committed by both married persons. However, people viewed the offence more seriously when it was committed by a woman than when it was committed by a man.¹⁰⁹ It is likely that society adopted this stance because a man married as many women as he could manage to support. Therefore, extra marital sexual relationships were not completely ruled out in the case of men. It was adultery with another man's wife which people disapproved.

A woman's adultery was a strong ground for divorce. This was one reason why when a person caught his wife committing adultery he could kill either of the culprits on the spot without being accused of any offence.¹¹⁰ If a man escaped after being caught thus, his kinship group 'hid him' and then offered to pay compensation in

settlement of the case.¹¹¹ While hoes and goats had been the oldest form of such payment, towards the end of the 19th century, it was common to pay cattle as an alternative to the above articles. The offender was never allowed to appear at the trial because 'he could be speared to death.'¹¹²

(j) Conclusion:

In this chapter we have examined pre-colonial Toka-Leya crimes and the way they were treated. We have done this by paying attention to/of offences manslaughter and murder, witchcraft practice, theft and those offences connected with the institution of marriage.

We have shown that the offences of manslaughter and murder varied in seriousness depending upon the circumstances under which they occurred. Less serious offences resulted in light punishment or no punishment at all. Serious offences normally touched upon recognized authorities in society such as headmen, chiefs, diviners or alien kinship groups. These offences resulted in stern punishments that included death sentences. This was so because in the case of headmen, chiefs or diviners, the community lost important services which those persons rendered while in the case of alien kinship groups, they were deprived of human labour and productive agents. With regard to both serious and less serious offences, diviners and other leaders propitiated ancestral spirits and performed rituals which culminated in the slaughtering of a black ox, goat or chicken to cleanse the land of the human blood spilled.

Offences of witchcraft practice were treated as the most serious of them all because they destroyed the family, lineage and kinship group by depleting people. The death sentence was normally the only form of punishment meted out for these offences.

Theft, because it involved taking somebody's property without his knowledge and without regard to that person's personality in the thieving act, was also a serious offence. However, its seriousness varied depending upon whether one stole from relatives, officials, from the ordinary people or whether a thief was habitual or not. More than in any other categories of offences, in theft offences, chifunda (preventive medicine) was largely used. Thereafter those who erred also paid compensation.

Almost all offences related to the institution of marriage were left to individuals or their kinship groups to settle. Adultery by a woman was punished both as a serious offence and a less serious one. When a party to a marriage contacted a venereal disease or leprosy, either of the two was entitled to sue for a divorce.

We must observe that social abhorrence of various offences varied, just as the punishments also varied. The supernatural world and society worked hand in hand on matters of social control. Punishment was generally immediate. It can also be argued that in a pre-industrial society where social organization was based on kinship groups and the belief in the wrath of supernatural forces, it was possible to maintain social control.

Footnotes.

1. Livingstone, Missionary Travels, 530.
2. Holub's Travels, 179.
3. Holub's Travels, 180.
4. Holub's Travels, 209-210.
5. U/2/2/1, Livingstone Magistrate's Court Criminal Case Records, (R.v. Simanansa), 1919.
6. U/2/2/1, Livingstone Magistrate's Court Criminal Case Records, (R.v. Mungala), 1919.
7. U/2/2/1, Livingstone Magistrate's Court Criminal Case Records, (Rv. Monga), 1919.
8. BS2/286, I, Livingstone High Court Criminal Case Records, (R.v. Simanansa and Nine Others), 1917: Justice Beaufort to High Commissioner of South Africa.
9. Interview: D. Mwindilira, 15th July, 1978.
10. Holub's Travels, 82.
11. Selous, Travel and Adventure, 249-250.
12. U/2/2/1, Livingstone Magistrate's Court Criminal Case Records, (R.v. Mwanachingwala), 1911, Comments on the case.
13. F.W. Smith and A.M. Dale, The Ila-Speaking People of Northern Rhodesia (New York: University Books, New Hyde Park, 1968), 28-29. The Ila are similar to the Toka-Leya.
14. Also see Smith and Dale, The Ila-Speaking Peoples, 413-422, where various forms of killing are discussed. These ideas agree with oral evidence regarding killing among the Toka-Leya.
15. Interview: E. Mbweeda, 15th July, 1978.
16. BS2/286, II, Livingstone High Court Criminal Case Records, (R.v. Siamusize and Sibunse), 1917.
17. BS2/286, II Livingstone High Court Criminal Case Records (R.v. Siamusize and Sibunse), 1917.
18. Interview: A. Chakanika, 8th August, 1978; Africa, I, 1, (London; 1928), 70-71.
19. Interview: E. Mbweeda, 15th July, 1978.
20. Colson, 'Social Control and Vengeance', 203.

21. Livingstone High Court Criminal Case Records, (R.v. Monga), 1919.
22. Livingstone High Court Criminal Case Records, (R.v. Monga), 1919.
23. Interview: A. Chakanika, 8th August, 1978.
24. Interview: M. Simwinda, 19th July, 1968.
25. Interview: P. Sitali, 4th August, 1978.
26. Interview: P. Sitali, 4th August, 1978.
27. Livingstone High Court Criminal Case Records, (R.v. Monga), 1919.
28. Colson, 'The Role of Cattle Among the Plateau Tonga of Mazabuka', Human Problems in British Central Africa, XI, (1951), 13-14.
29. Colson, The Social Organization, 172-175.
30. U1/3, Witchcraft: Problems and Comments, (R.v. Kasokera), 1924.
31. Interview: P.M. Mukwiza, 18th July, 1978; Also see BS2/285, Vol. 1, (R.v. Mufumpu and Mulembo), 3/8/15.
19th July, 1978.
32. Interview: J. Kabamba, E. Mittlebeeler, African Custom and Western Law (New York and London: Africana Publishing Company, 1976), 135-146.
33. Gluckman, Custom and Conflict, 87.
34. The Northern Rhodesia Journal, I, 1, (1950), 50.
35. Evans-Pritchard, Witchcraft, Oracles and Magic Among the Azande (Oxford: The Clarendon Press, 1937), 33-34.
36. Interview: J. Kabamba, 19/7/78.
37. SES2/427-27/2, 'Some Notes on Witchcraft,' by D.B. Hall, (1945), 2-3.
38. Interview: J. Kabamba, 19th July, 1978.
39. Mittlebeeler, African Custom and Western Law, 46.
40. Evans-Pritchard, Witchcraft, Oracles and Magic, 25-26.
41. Selous, Travel and Adventure, 201
42. Livingstone, Missionary Travel, 525.
43. G/104, Tribal History of the Tonga, by Val Gielgud, 67-69.
44. Interview: L.S. Mulele, 4th August, 1978.

45. M. Marwick, Sorcery in its Social Setting (Manchester University Press, 1965).
46. Interview: S. Mankanda, 19th July, 1978.
47. Interview: S. Mankanda, 19th July, 1978.
48. Interview: S. Mankanda, 19th July, 1978.
49. Interview: E. Mbweeda, 19th July, 1978.
50. Interview: J. Kabamba, 19th July, 1978.
51. Interview: J. Kabamba, 19th July, 1978.
52. Interview: Professor Colson, 19th September, 1978.
53. Interview: Professor Colson, 19th September, 1978.
54. Interview: L.S. Mulele, 4th August, 1978.
55. Interview: Professor Colson, 19th September, 1978.
56. Holub's Travels, 51-52.
57. Muntamba, 'Political and Ritual Sovereignty', 4.
58. F. Melland and C. Young. The African Dilemma (London: The United Society for Christian Literature, 1937), 104.
59. Selous, Travel and Adventure, 249; BS2/285, II, (R.v. Mufumpu and Mulemba), 1915.
60. Interview: D. Siachisiya, 22nd July, 1978.
61. E. Colson, Tradition and Contract: The Problem of Order. (London: Heinemann, 1974), 41.
62. Colson, 'The Role of Cattle,' 12.
63. Interview: D. Siachisiya, 27th, 1978.
64. Livingstone, Missionary Travels, 526.
65. Interview: Professor Colson, 19th September, 1978.
66. Livingstone, Missionary Travels, 525.
67. Holub's Travels. 68-69.
68. Holub's Travels, 68-69.
69. Interview: H. Mpola, 16th July, 1978.

70. Interview: H. Mpola, 16th July, 1978.
71. U2/2/4, Livingstone High Court Criminal Case Records, (R.v. Siakotio, Siamuchela and Siamaimpa), 1925. The boy who was killed for persistent theft was a lunatic; my informants suggested that this could have been an example of a person who had been entered by a theft spirit.
72. Interview: P. Sitali, 4th August, 1978.
73. J.G. Peristiany, Institutions of Primitive Society (Oxford: Basil Blackwell, 1954), 46-48.
74. Interview: P. Sitali, 4th July, 1978.
75. Interview: P. Sitali, 4th July, 1978.
76. Interview: J. Kabamba, 19th July, 1968; Also see I. Schapera (Ed.), The Bantu-Speaking Peoples of South Africa: An Ethnographical Survey (London: George Routledge and Sons, Ltd., 1946), 198-200.
77. Interview: D. Mwindilira, 15th July, 1978.
78. Evans-Pritchard, 'Witchcraft in Azande Society', Africa, VIII. 4, (1935), 419.
79. Evans-Pritchard, 'Witchcraft in Azande Society', Africa, VIII, 4, (1935), 419.
80. Colson, 'Social Control and Vengeance', 203.
81. Interview: P.M. Mukwiza, 18th July, 1978.
82. L. Mair African Marriage and Social Change, (London: Frank Cass and Company, Ltd., 1969), 80-82.
83. Interview: M. Simwinda, 19th July, 1978.
84. Interview: L.S. Mulele, 4th July, 1978.
85. Livingstone Mail, 25th December, 1909.
86. Interview: J. Siamonga, 4th July, 1978; KSP 3/1, Kalomo District Notebook, 1901-1963.
87. G/104/73/263, Busongo Bwa Bapati, Kalomo Secondary School Historical Interviews, 1969-1970.
88. Interview: L.S. Mulele, 29th July, 1978.
89. Livingstone Native Commissioner's Court Civil Case Records, (Masuwo v. Mukambi and Mitala), 1921.
90. Mair, African Marriage, 8, cites the Nkudo of Zaire. This was also applicable in certain cases among the Toka-Leya.

91. Livingstone Mail, 25th December, 1909.
92. Interview: K. Mufaya, 4th July, 1978.
93. U2/2/4, Livingstone High Court Criminal Case Records, (R.v. Siakotio, Siamuchela and Maimpa), 1925.
94. See for instance, KSC2/2/4, Livingstone Native Commissioner's Court Civil Case Records, 1915.
95. Interview: D. Siachisiya, 22nd July, 1978.
96. A. J. Wood. Northern Rhodesia: The Human Background, (London: Pall Mall Press, 1961), 81.
97. Interview: M. Simwinda, 16th July, 1978.
98. Interview: M. Simwinda, 16th July, 1978.
99. Interview: D. Siachisiya, 22nd July, 1978.
100. Livingstone Native Commissioner's Court Civil Case Records, (Mavu v. Mungala), 1911.
101. Interview: L.S. Mulele, 27th July, 1978.
102. Schapera, (Ed.), The Bantu-Speaking Tribes, 211. The position among the Toka-Leya was similar to that discussed by Professor Schapera in connection with the Tswana of South Africa.
103. Interview: J. Siamonga, 4th August, 1978.
104. KSP 3/1, Kalomo District Notebook, 1901-1963, 'Notes on the Native Customs and Laws.'
105. Mair, African Marriage. 75. The author discusses guardianship among the Mbundu of Angola who are similar to the Toka-Leya on this aspect, as they too are a matrilineal people.
106. Jaspán, West-Central Africa Part IV, 34-35.
107. Jaspán, West-Central Africa Part IV, 34-35.
108. Interview: K. Mufaya, 4th July, 1978.
109. Interview: P.M. Mukwiza, 18th July, 1978.
110. KSP 3/1, Kalomo District Notebook, 1901-1963, 'Notes on the Native Customs and Laws.'

111. Interview: P.M. Mukwiza, 18th July, 1978.

112. Interview: P.M. Mukwiza, 18th July, 1978.

Chapter 3.

The Setting up of the North-Western Rhodesia Administration
1890-1924.

(a) The Acquisition of North-Western Rhodesia.

European interest in North-Western Rhodesia dates as far back as the late 19th century. In 1882 King Lubosi Lewanika of the Lozi gave George Westbeeck, a European trader, a concession to hunt in the areas of Chiefs Sekute and Momba in the Machili River Valleys.¹ These areas were under Lozi political domination and the Teka-Leya of the region paid tribute to the Lozi kings. In 1889, the year when the British South Africa Company was formed, King Lewanika also gave hunting and mineral prospecting rights to an independent European hunter called Henry Ware. However, the most important step on the part of the British government to control North-Western Rhodesia was taken in 1890.

Later in 1890 Cecil John Rhodes on behalf of the British South Africa Company sent his representative, Frank Elliot Lechner, to negotiate a concession with King Lewanika for prospecting and hunting rights in his kingdom and surrounding areas.² At the signing of the Baretse (Lechner) Concession, Francis Ceillard of the Paris Evangelical Missionary Society at Lealui, played an important role to persuade King Lewanika of the need for British protection against his enemies. Under the 1890 Concession, King Lewanika surrendered mineral prospecting and hunting rights to the British South Africa Company throughout his kingdom. The Company undertook to pay Lewanika an annual subsidy of £2,000 in order to arm himself against the Ndebele.³

In 1893 the Lawley Concession was drawn up to give the

Company administrative powers which had been left out under the 1890 Agreement.⁴ The Lawley Concession was formally granted in 1898. It conferred upon the Chartered Company

.....The right to judge cases between white men and white men and to make grants of land for farming purposes in any portion of the Batoka (Tonga and Toka-Leya) and Mashukulumbwe (Ila) country to white men approved by the King.⁵

In 1899 the British government issued the North-Western Rhodesia Order-in Council to confer legal sanction to the acquisition of Toka-Leya, Tonga, Ila, Mankoya and Lozi lands of North-Western Rhodesia by a commercial company.⁶ It was not until 1900 that the Lewanika Concession was signed.⁷ The 1898 and 1900 Concessions differed from the Barotse (Lochner) Concession in that the 1898 one did not interfere with King Lewanika's sovereignty while the 1900 one reduced his administrative as well as political powers over the Toka-Leya and other groups of people which Lozi Kings had enjoyed for a long period in pre-colonial times. All the three agreements had common economic objectives. For instance, the 1890 Concession gave the Company the right to distribute land to white men and that of 1900, though making it necessary for the Litunga (Lozi king) to approve land grants by the Company to white men, still stressed the fact that the Company could make such land grants.

The overall result of the three agreements was that the whole area stretching from the Zambezi floor to the Congo border in the north, and, bordered by a straight line, roughly from Livingstone to the Copperbelt, fell under the British South Africa Company administration. This area excluded the Lozi Kingdom in the

Baretse Plain and some areas adjacent to that Plain. The entire Baretse Plain including the Lezi Kingdom was known as Baretseland Protectorate.

Earlier in 1897 the British Government sent Robert Thorne Coryndon to North-Western Rhodesia to become British Resident Commissioner. He was based at Lealui in the heart of the Lezi kingdom.⁸ In 1899, he transferred to Kalene which also became the capital of North-Western Rhodesia until 1907. It was from here that Coryndon and some of his successors were to govern the territory in accordance with British laws and local proclamations. An Administrative Council composed mainly of appointees of the British South Africa Company made proclamations. However, the Administrator, together with the Council, were placed in a subordinate position to the British High Commissioner at Cape Town in South Africa.

The High Commissioner from time to time asked the Administrator to issue proclamations for the governance of North-Western Rhodesia on behalf of the British imperial government.⁹ These proclamations became laws of North-Western Rhodesia. The High Commissioner also sanctioned or vetoed certain laws passed by the Administrator and his Council.

(b) The setting up of administrative and law enforcement agencies.

Before 1897 and shortly thereafter, British South Africa Company police forces were being deployed to patrol the Zambezi valley and areas adjacent to it, such as the Bateka Plateau and

between the Victoria Falls and Sesheke in the West. These police forces were based at Bulawayo in Southern Rhodesia. When Coryndon arrived in 1897 his first task was to ensure that a regular police force was formed as soon as possible. This became an urgent matter, particularly because of the 1896-97 Shona-Ndebele risings against Company rule in Southern Rhodesia.¹¹ Another reason why the formation of a strong police force north of the Zambezi River was necessary is that early Company officials had been struck by the lack of what they believed to be a civilized government and law and order in the region of our study. Val Gielgud, /British South Africa Company official gave the following reasons for deploying a police force:

.....what is needed is that the River should be thoroughly patrolled by the police or native messengers so that these people should see that the establishment of a form of a government is an accomplished fact and also to put a stop to witchcraft, the enslaving and slaying of children and many other malpractices which are of constant occurrence along the river front. /Inhabitants/ have not at present the most rudimentary idea of obeying an order unless backed up by a show of force.¹¹

The power to set up law enforcement agencies was contained in the 1899 North-Western Rhodesia Order-in Council.¹² For example paragraph 6 of that law stated that:

The High Commissioner may appoint an Administratorjudges, magistrates, and other officers.... for the administration of Barotseland/North-Western Rhodesia and may define from time to time districts within which such officers shall respectively discharge their functions.....¹³

Paragraph 9 of the same law also stated, among other things, that:

The High Commissioner in issuing such proclamations shall respect any native laws or customs by which the civil relations of any native chiefs, tribes or populations under Her Majesty's protection are now

regulated, except in so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction.¹⁴

Apart from a few senior police officers who accompanied Coryndon to Lealui in Barotseland, the police force was by 1897 classified as one officer and seven non-commissioned officers.¹⁵ The most important posts as well as administrative centres were established between 1897 and 1899. They were Monze, Mongu, Kalomo, Kazungula, Sesheke and the Victoria Falls.¹⁶ The last of these 'forts' to be established was Kasunga in the east of Kazungula.¹⁷ It was from this post that one of the earliest and most important police leaders, Captain John Carden led expeditions against what the administration referred to as 'people always at arms with each other and without any form of government.'¹⁸

Assisting John Carden during the same period was another British South Africa Company police officer called Colin Harding, who was later on elevated to the rank of colonel and subsequently appointed Commandant of the entire police force.¹⁹ It was upon these two men that the task of dealing with the last vestiges of the slave trade and recruiting the first police force in North-Western Rhodesia fell.²⁰

In 1901 Colonel Harding formed the first police force of North-Western Rhodesia.²¹ It was known as the Barotse Native Police Force. The High Commissioner for South Africa was the overall in-charge of all commandants, commissioned and non-commissioned officers. A newly constituted Board of Officers dealt with matters of police discipline.²²

African members of the police force were recruited mainly from among the Toka-Leya, Ila and the Tonga of the southern and

central parts of North-Western Rhodesia, from among the Lozi of Barotseland and the Ngoni and Bemba of the eastern and northern areas of the then North-Eastern Rhodesia respectively.²³

The Barotse Native Police Force expanded from an insignificant figure of 47 policemen in 1897 to about 300 men by 1905.²⁴ Moreover European members of the police force remained few at that earlier period because of diseases such as malaria and blackwater fever. A majority of them were forced to retire to Southern Rhodesia or South Africa on grounds of health. 25.

We must bear in mind that throughout the period of the British South Africa Company rule the Barotse Native Police Force was a para-military organization. Its members were armed and drilled in the fashion of an army. Given this outlook, the para-military police force was geared for any eventualities in the enforcement of chibalo (forced labour), crime detection and prevention, the collection of hut tax and the suppression of any form of opposition to Company rule.

Between 1897 and 1905 when the Barotse Native Police Force was being recruited, a process of setting up law courts, prisons, and of appointing officers to man these institutions was going on. For example, F.V. Worthington, who had accompanied Coryndon on his first appointment as Resident Commissioner at Lealui, was appointed Magistrate for the Batoka District in 1902.²⁶ Other men were appointed at Livingstone, Sesheke, Kazungula, Monze and Lealui either as Magistrates or Native Commissioners between 1901 and 1904.²⁷ These men carried out functions of administrators of districts or sub-districts, Magistrates and tax collectors. Very often these

officials had no experience of administration of justice. A majority of them were not trained lawyers, while their knowledge of African laws and customs was slight.²⁸

Magistrates' Courts dealt with cases between white men only, or where the complainant was a white man and the defendant an African.²⁹ Native Commissioners' Courts dealt with cases which involved Africans only.³⁰ In 1905 the Administrator's Court was established as the highest court in the land and its seat was at Kalomo.³¹ Whereas in the Magistrates' and Native Commissioners' Courts each officer sat with assessors to hear cases as specified in the relevant proclamation by the High Commissioner, the Administrator's Court was like a court of appeal. The Administrator, together with two other Officials, tried major criminal and civil offences and reviewed cases from lower courts.³²

The High Court of North-Western Rhodesia was established in 1906, and Justices Vincent and Watermeyer from Southern Rhodesia were appointed to it in the same year.³³ It dealt with serious criminal and civil cases. Cases from the Administrator's Court could be removed and dealt with in the above Court. When justices were not present, the Administrator's Court functioned as an appellate court. Otherwise the highest court in the land was the High Court, by virtue of its wielding superior jurisdiction.³⁴

There were also several laws passed which formed the basis of law enforcement in the earlier years of our period of study. For example, under Proclamation Number 6 of 1904, every male African between the ages of 16 and 60 was expected to comply with all orders issued by the Magistrates, Native Commissioners and police officers

to assist in the detection of criminals.³⁵ Proclamation Number 6 of 1905 did, among other things, recognize polygamy among Africans. The principle of using African court assessors when trying certain African offenders was also affirmed.³⁶

One of the most powerful pieces of legislation was Proclamation Number 30 of 1908. Apart from establishing Native Commissioners' Courts, it also laid down that these Courts were to confine themselves to litigation between Africans only in both criminal and civil cases. Chiefs and headmen could try almost all civil and only minor criminal cases.³⁷ Chiefs and headmen were empowered under the above law, to exercise duties of policemen with regard to the detection of crime and the arrest of offenders in their own areas.³⁸ In the above way, chiefs and headmen were brought directly under the control of Native Commissioners in the performance of police work for the administration.

In 1916 an elaborate law which also affected chiefs, headmen and all other Africans in the villages was passed.³⁹ Among other things, it stipulated that chiefs and headmen could be appointed or dismissed by the administration depending upon whether they complied with government policies or not.⁴⁰ This law was operational throughout the remainder of the period of British South Africa Company rule.

In the early 20th century less serious offences were tried by Native Commissioners at centres such as Kazungula, Nanzela, Sesheke, Magoye and Kalomo. Such offences were those that did not merit sentences of more than 6 months. Offenders in this category usually served their sentences at the places we have mentioned, though there were no purpose-built prisons except at Livingstone.

With regard to serious offences such as those of murder or witchcraft accusation, only preliminary enquiries were conducted at these centres. After that, the accused were sent to Livingstone for trial and sentencing.⁴¹ However, in several instances, prisoners had to wait for some weeks or even as long as four months at these centres before they were escorted to Livingstone where a temporary jail had been erected in the early 1900s. A few African and all European prisoners were sent to Bulawayo in Southern Rhodesia to serve their sentences there.⁴² This position only changed in 1907 when a few Europeans were being sent there.⁴³

(c) The early impact of the alien system of social control on the people.

The imposition of foreign agencies of social control created an intense fear of these institutions among the Africans.⁴⁴ This fear was heightened by the fact that between 1890 and 1910 British South Africa Company officials used to apply force in order to impose colonial rule.⁴⁵ For example, by 1898, people who did not attend impromptu meetings which British South Africa Company officials called to explain the imposition of European rule or hut tax, were flogged in public as Val Gielgud tells us.⁴⁶ In connection with the suppression of the slave trade between 1897 and 1903, several patrols were undertaken between the Zambezi and Kafue Rivers in which chiefs and headmen were attacked and defeated. For example, Chief M'galo of this region was attacked and defeated in 1901 by a para-military force led by Colonel Colin Harding for harbouring slaves. In 1902 a Tonga neighbourhood leader and prophet called Moonze was detained in the heartland of Toka-Leya territory at Kalomo.⁴⁷ In 1906 he was

released and shifted to Magoye, together with his entire village until 1910.⁴⁸ No doubt, such events served to enhance the invulnerability of the white man in the eyes of the Africans who had a relatively backward technology.

European officials could impose themselves upon tribal chiefs or authorities. They often interfered with the chiefs' judicial and political powers by forcibly applying justice in African areas. For instance, Gann tells us that:

From about 1896 judicial powers were in fact exercised wherever the Chief was regarded as incompetent or powerless and the Chiefs were only allowed to carry on provided they employed neither the poison ordeal nor inhuman punishments.⁴⁹

The fear and the desire to resist the institutions of the white man, made Africans resort to various forms of evasion and adjustment. For example, Knowles Jordan who was stationed at Kalomo as Native Commissioner in 1905, tells us that people would abandon their villages and either take to the bush or migrate temporarily to some area if they heard that a government official was in the vicinity calling for an indaba (a meeting between African leaders or the leaders and their people and/^a colonial official), to explain the imposition of hut tax.⁵⁰ He adds that once all men took to the bush on seeing a European official they left behind them only women, children and domestic animals.⁵¹

It is not surprising to observe that when in 1897 people in the east of our region were being told by a Company official that they would pay tax the following year, they raised no objection to the idea. In 1898 they were discovered....' to have made no attempt at going to Southern Rhodesia to earn it or raise it in some other ways'.⁵² However,

when hut tax was introduced in 1903, and its enforcement was backed by an already expanding para-military police force, it became clear that alien institutions of social control had come to stay.

When hut tax was introduced people were faced with a number of courses of action. For example, they went and worked for cash on the Southern Rhodesian or Katanga mines, found employment within the territory, took to the bush or sold their cattle and agricultural produce. They did these things because if they failed to pay they would face charges of tax evasion.⁵³ Defaulters were taken to Kalomo, Livingstone or to any nearby administrative centre to be charged and sentenced to imprisonment for a period that ranged from one to six months.⁵⁴

Another demand upon the Africans was chibalo (forced labour).⁵⁵ In the early 1900s roads and bridges had to be constructed as soon as possible. The administration was also engaged in the work of erecting telegraph posts and lines. There was the continuous process of building and expanding bomas (administrative centres). The railway line from Bulawayo in Southern Rhodesia had reached the Victoria Falls in 1903. Its extension to the borders of Northern Rhodesia with the Katanga Province of the Belgian Congo was under-way. At the same time that this work was going on, the Victoria Falls Bridge on the Zambezi River was also being constructed. All these projects made great demands upon the indigenous able-bodied men in terms of financial and free labour contributions.⁵⁶

Through the levying of hut tax and forced labour the people came to associate the administration with violence. It was common for kapasus [country policemen] and ordinary policemen to use force when arresting suspects or actual criminals.⁵⁷ We are told that by 1905 around Kalomo, people were flogged before a trial took place.⁵⁸ In 1906, Rangeley, the Native Commissioner stationed at Kalomo, also noted that offenders were flogged on the orders of a master.⁵⁹ Alternatively prisoners were tied with ropes and left in the sun for several hours before they were escorted to a police post or administrative centre.⁶⁰ One of my informants observed that the above practice earned law enforcement officers the name chiyanika (the ones who roast people in the sun).⁶¹

Throughout the first decade of the 20th century there were instances of kapasus and members of the Barotse Native Police force taking advantage of their privileged positions as members of the administration. They frequently either abducted young girls or raped people's wives while on duty.⁶² For example, in 1906, two kapasus, Chikoti and Lulaka locked up a man called Mateyu 'for having no travelling pass' around Livingstone District and took his wife whom Chikoti raped at night.⁶³ Chikoti was convicted of rape and sentenced to two years' imprisonment. Lulaka was also convicted of assisting Chikoti but was given a lesser sentence.⁶⁴

Policemen and kapasus sometimes used their guns to settle private disputes.⁶⁵ For example, in 1903 one Corporal Manankope shot a youth whom he claimed had been his 'slave' and who had deserted to go and live in a distant village.⁶⁶ Although Manankope was punished by the authorities for unauthorized use of a firearm

and also injuring the youth, this case demonstrates the nature of the behaviour on the part of policemen that caused many Africans to regard them with fear.

The European official was perhaps worse in his attitude towards law enforcement strategies than his African counterpart.

Jordan describes the situation in 1905 as follows:

O' Sullivan of the Barotse Native Police Force would pick up a couple of rookies by the scruff of their necks....and bump their heads together before setting them down....desperadoes... were sternly dealt with. ⁶⁷

The above attitude was consonant with the idea of using force to effect conformity or as a punishment. The use of force was also resorted to in the course of interrogating offenders or witnesses. ⁶⁸ This was one of the main reasons why a majority of Africans did not report to the police crimes committed in their areas or become witnesses in Courts of law, as in the words of one informant, 'they feared to be involved.' ⁶⁹

Proclamation Number 6 of 1905 had given Native Commissioners powers to sentence any African offenders 'for offences ranging from assault to robbery, to flogging in addition to terms of imprisonment.' ⁷⁰ Thus, the lash was extravagantly used against almost all African offenders, even for the slightest offence. ⁷¹ It should also be remembered that flogging as a form of punishment was used by employers against workers to effect regular attendance and discipline at work, as well as by the law enforcement officers when dealing with suspected criminals or convicts serving sentences in jails. ⁷²

Early Native Commissioners' Court case records show that the number of lashes which suspects or prisoners received for particular offences ranged from six to twenty-four lashes.⁷³ The sentence became heavier than the usual six to ten lashes if an African had committed an offence against a European.⁷⁴ It was for the above reasons that fear became a dominant Toka-Leya attitude during the first two decades of British South Africa Company rule.

When examining pre-colonial Toka-Leya means of social control, we observed the absence of the prison institution in the people's social organization. However, from as early as 1897, some people became exposed to this institution for the first time. Those who could pay compensation for crimes like murder, theft and assaults in the pre-colonial period, found themselves in jails or being executed.⁷⁵ Completely new offences such as those of 'indecent assault,' homosexual intercourse and tax evasion were created. Because of the strangeness of some of these offences, particularly that of tax evasion, we find that the greatest number of offenders, particularly in this early period were tax defaulters.⁷⁶ Almost all defaulters served jail sentences of three months since most of them did not afford the money for fines.

My informants admitted that imprisonment was feared because a relative had to stay away from home for a long period. While he served his sentence, he did unusually hard work such as cutting firewood with blunt axes, working on an empty stomach, being subjected to periodic flogging for breach of prison regulations and an all round rigorous discipline.⁷⁷ Henry Rangeley who had

been Magistrate, first at Livingstone and then at Kalomo between 1902 and 1907, also admits in his memoirs that the law had to be enforced in a particular pattern in these words:

The punishment imposed by the law of England did not seem to fit local crime.... it [the punishment] had to fit the crime and not fit in with the law; that would come in later. 78

Rangeley goes on to express his convictions in connection with the kind of punishment that would suit the Africans in these words:

.....I do believe in corporal punishment as a deterrent. Imprisonment in many cases is a mistake; and I do not like fines. And I write as a negrophilist, one who has the real interest of the native at heart. 79

It was this kind of justice which Africans feared most in the early period of colonial rule, should they be imprisoned.

As years went by, People began to distrust kapasus [country policemen], policemen, and Native Commissioners because they came to be associated with the prison institution and its tough life. These men were feared instinctively and avoided whenever the chance to do so presented itself.⁸⁰ But whenever a relative was arrested for committing an offence, people went to the extent of weeping as if a death had occurred in the village 'because people did not know whether or not their person would come back again.'⁸¹

People came to think along these lines not only because of the brutality that accompanied the arrest of a suspected or real criminal, but because some people died while serving their

sentences, and the cause of this remained a mystery to ordinary people.⁸² When he was released from jail, and bearing marks of severe beatings, only the senior members of his kinship group would welcome him from the bush. They sacrificed a black chicken to propitiate ancestral spirits of his lineage as a measure of welcoming the released prisoner again into his lineage.⁸³

The Toka-Leya performed these rites in order to cleanse the man of any evil spirits that could have induced him to commit the offence for which he had been punished. This was also meant to give him protection from the white man's institutions or agencies of law enforcement.⁸⁴ It was the responsibility of a kinship group to perform the above rites in keeping with the desire for communal peace.⁸⁵

(d) Conclusion.

In this chapter we have described the acquisition of North-Western Rhodesia by the British South Africa Company between 1890 and 1900. This was achieved mainly through the Lochner Concession of 1890.

The North-Western Rhodesia Order-in-Council of 1899 gave the British South Africa Company legal power to set up an administration in North-Western Rhodesia. The Company proceeded to do this. The most important administrative organs were the Administrative Council, the Barotse Native Police Force, the Administrator's Court, High Court, Magistrates' and Native Commissioners' Courts. In addition, chiefs and headmen were also given powers of constables. Magistrates and Native Commissioners

in particular, were based at various bomas (administrative centres). The High Commissioner for South Africa could issue proclamations which became the laws of the territory in addition to locally enacted laws.

Finally, we have considered the initial impact of the alien agencies of social control upon the indigenous people. We have observed that fear and distrust of the alien means of social control became dominantⁿ among the people in the early years of colonial rule. However, this phenomenon of fear did not reduce crime among the people. Its main effect was to make people conceal crime and conform to the dictates of the colonial regime.

Footnotes:

1. Edward C. Tabler (Ed.), Trade and Travel in Early Barotseland (London: Chatto and Windus, 1963), 59 and 84-85; Roberts, A History of Zambia. (London: Heinemann, 1976), 134.
2. Hugh Marshall Hole, The Making of Rhodesia (London: Macmillan and Co, 1926, 218-219; Francois Coillard, On the Threshold of Central Africa (London: Frank Cass and Co. Ltd., 1971 ed.), 387.
3. Hole, The Making of Rhodesia (London: Macmillan and Co., 1926), 220; Roberts, A History of Zambia, 160.
4. Hole, The Making of Rhodesia, 391; Roberts, A History of Zambia, 167.
5. Roberts, A History of Zambia, 167.
6. A.J. Wills, An Introduction to the History of Central Africa, (London: Oxford University Press, 1967), 166.
7. L.H. Gann, The Birth of A Plural Society: The Development of Northern Rhodesia Under the British South Africa Company Rule, 1894-1914, (Manchester University Press, 1968, 2nd edition), 50.
8. B.S.A. Company Reports, 1896-1897, 48.
W.V. Brelsford, The Story of the Northern Rhodesia Regiment (Lusaka, :Government Printer, 1954), 16.
9. While the Administrator was usually an appointee of the High Commissioner for South Africa, the B.S.A. Company Directors had a say on matters of policy and the recruitment of labour.
10. B.S.A. Company Reports, 1896-1897, 48.
11. Report of a Patrol along the Zambezi River, (No.3683), by Val Gielgud, 24th October, 1898.
12. Zambia Law Journal, II, 1 and 2, Lusaka, 1970, 6.
13. British South Africa Company Reports, 1898-1900, 98.
14. British South Africa Company Reports, 1898-1900, 98.
15. C/1/10, Military and Police Statistics, 15th October, 1897.
16. Brelsford, The Story of the Northern Rhodesia Regiment, 16-17.
17. Brelsford, The Story of the Northern Rhodesia Regiment, 16.

18. NWR4/19, Box 1, 'From Bulawayo to the Victoria Falls: A mission to King Lewanika,' by Capt. the Hon. A. Lawley, 1898, 368.
19. Brelsford, The Story of the Northern Rhodesia Regiment, 16.
20. Brelsford tells us that between 1897 and 1903 several patrols were undertaken aimed at stopping the Mambari and Chikunda slave traders and also crushing any indigenous opposition to British South Africa Company rule in the whole of the then North-Western Rhodesia.
21. Gvt/Zam/05/1, Proclamation No.19 of 1901.
22. Gvt/Zam/05/1, Proclamation No.19 of 1901.
23. Gvt/Zam/05/1, Proclamation, No. 19 of 1901, Section 1.
24. Brelsford, The Story of the Northern Rhodesia Regiment, 22.
25. Brelsford, The Story of the Northern Rhodesia Regiment, 18-19.
26. British South Africa Company Reports, 1898-1900, 96.
27. These men were either Native Commissioners or Assistant Native Commissioners who dealt with African administrative and judicial matters.
28. The Livingstone Mail, 15th December, 1908.
29. The Zambia Law Journal, II. I and 2, 7.
30. The Statute Law of North-Western Rhodesia, 1899-1909, Proclamation No.30, 1908.
31. The Statute Law of North-Western Rhodesia, Proclamation No.6, 1905.
32. The Statute Law of North-Western Rhodesia, Proclamation No.6, Sections 3-9, 1905.
33. BS2/3, H C No.415, Correspondence, the High Commissioner for South Africa and the Administration of North-Western Rhodesia, 1906.
34. The Statute Law of North-Western Rhodesia, Proclamation No.6, 1905.
35. The Statute Law of North-Western Rhodesia, Proclamation No.6, Section 37 (ii), 1905.
36. The Statute Law of North-Western Rhodesia, Proclamation No.6, Sections 8 and 9, 1905.

37. The Statute Law of North-Western Rhodesia, Proclamation No.30, Section 2 (a), 1908.
38. The Statute Law of North-Western Rhodesia, Proclamation No.30 Section 4, 1908.
39. The Statute Law of North-Western and North-Eastern Rhodesia, 1908-1916, Proclamation No.8, Section 13, 1916.
40. The Statute Law of North-Western and North-Eastern Rhodesia, 1908-1916, Proclamation No.8, Section 13, 1916.
41. The Livingstone Mail, 18th March, 1908.
42. I. Graham, 'A History of the Northern Rhodesia Prison Service,' The Northern Rhodesia Journal. V.6, (1964), 558.
43. Graham, 'A History of the Northern Rhodesia Prison Service,' 558.
44. NWR4/19/1/2, Reports of the Administrator, (Lusaka, 1901-1902), 450.
45. BS2/171, III, Correspondence, BNP Head Office, Kalomo, to Magistrate, Kalomo: An Enquiry held before H. Rangeley, Head of the Law Department, Kalomo, 1st July, 1905.
46. C1/6, Batonka [Tonga] History: Report of a Patrol along the Zambezi River, by N. Val Gielgud, 24th October, 1898, 381.
47. G/104, A History of the Tonga of Zambia (MS, n.d.), by Father Nchete, 2-3.
48. A History of the Tonga of Zambia, 3.
49. Gann, Birth of a Plural Society, 92.
50. E.K. Jordan 'Early Days in Kalomo and Livingstone', The Northern Rhodesia Journal, I, 4, (1951-1952), 23.
51. C1/6, Batonka [Tonga] History, 381.
52. C1/6 Batonka [Tonga] History, 381.
53. Interview: R. Simasiku, 22nd July, 1978.
54. The Statute Law of North-Western Rhodesia, Section 6 (1), 1905, 60-61.
55. Interview: J. Juao and M. Moonga, 31st July; 1978. R. Rotberg, The Rise of Nationalism in Central Africa: The Making of Malawi and Zambia 1873-1964. (Cambridge, Massachusetts, Harvard University Press, 1972), 42-44.

56. Interview: J. Juao and M. Moonga, 31st July, 1978.
57. Interview: K. Chimbelya; 22nd July, 1978.
58. BS2/171, Correspondence, Commandant, BNP to Secretary for Native Affairs, Kalomo, 1st July, 1905.
59. BS2/171, Legal Administration: An enquiry held before H. Rangeley, Magistrate, Kalomo, 1st July, 1905.
60. BS2/171, Legal Administration: An enquiry held before H. Rangeley, Magistrate, Kalomo, 1st July, 1905.
61. Interview: K. Chimbelya, 22nd July, 1978.
62. BS2/178, V, Legal Administration, (R.v. Muenga; R.v. Siamutete), 1908.
63. BS2/178, I, Legal Administration, (R.v. Chikoti), 1906.
64. BS2/178, I, Legal Administration, (R.v. Chikoti), 1906.
65. BS2/173, II, Legal Administration (R.v. Manankope), 1904.
66. BS2/173, II, Legal Administration, (R.v. Manankope), 1904.
67. Interview: L.S. Mulele, 30th July, 1978.
Jordan, 'Early Days in Kalomo and Livingstone', 20-21.
68. Interview: L.S. Mulele, 30th July, 1978.
69. Interview: E. Phiri, 30th July, 1978.
70. BS2/307, Legal Administration, Minute No. L.D. 200/78/09, Public Prosecutor's Circular, 31st August, 1978.
71. H. Rangeley, 'The Memoirs of Henry Rangeley, Part I', The Northern Rhodesia Journal, IV, I, 1965, 40-41.
72. Interview: J. Juao and M. Moonga, 31st July, 1978.
73. Lashes were usually administered at the beginning and at the end of a sentence. Deportation to one's home district usually followed on discharge.
74. The Livingstone Mail, 10th April, 1909. (R.v. Eliyamu), 1906.
75. Interview: S. Mankanda, 19th July, 1978.
76. T.R. Batten Problems of African Development, (London: Oxford University Press, 1960) 125-126.

77. Interview: L.S. Mulele, 29th July, 1978.
78. 'The Memoirs of Henry Rangeley,' 35.
79. 'The Memoirs of Henry Rangeley,' 41.
80. Interview: N. Nawa, 16th July, 1978.
81. Interview: R. Simasiku, 23rd July, 1978.
82. Interview: R. Simasiku, 23rd July, 1978.
83. Interview: Malaho, Munemba and Dolopo, 3rd August, 1978.
84. Interview: K. Chimbelya, 22nd July, 1978.
85. See Colson, The Social Organization, 165.

Chapter. 4

Adaptation During the Period of British South Africa
Company Rule 1890-1924.

Introduction.

In the last chapter we described the acquisition of North-Western Rhodesia by the British South Africa Company, the establishment of an administrative machinery and the early impact upon local people of the alien means of social control. In this chapter we shall discuss the theme of adjustment by looking at chiefs, headmen and their people. We shall also deal with this theme in the context of witchcraft, theft and marriage offences. Finally, we shall describe certain legislative measures which the administration undertook to strengthen its control over African offenders.

(a) Chiefs, headmen and their people.

The above officials were part of the colonial administrative machinery although they reflected indigenous administrative organization. Between 1900 and 1924 the official policy was to allow chiefs and headmen to continue to deal with petty offences and disputes as they had done in pre-colonial times. They also dealt with disputes which were usually referred to them from Arbitration Courts (Elders' courts). The Elders' Courts were set up in various urban centres and areas of European settlement to cater for African employees who did not have the chance of going before chiefs' courts.¹ For example, such courts were set up at Malota, Maramba and the Zambezi Saw Mills in the Livingstone as well as Kalomo Districts.²

The position of a chief was affected in the following ways in his capacity as law enforcement officer as well as leader of his own people. Under the 1908 and 1916 laws regarding the administration of Africans, a chief's status was reduced to that of a policeman. He was expected to report to Native Commissioners all crimes in his area.³ The 1913 Collective Punishments Proclamation made it possible for the administration to punish chiefs and headmen collectively, for not reporting crime committed in their areas.

From as early as 1908 the judicial role of a chief was reduced. For instance, under Proclamation Number 30 of that year, all chiefs and headmen were required to perform duties of constables and kapasus [country constables] in helping the administration to detect crime and to arrest offenders in their districts.⁴ Furthermore, chiefs' courts could only try civil and petty criminal offences under the above law, Later on in 1916, a law known as the Administration of Natives Proclamation was also passed. It required all chiefs and their subordinates to carry out a host of 'lawful orders' for the administration of their districts.⁵ The 1908 and 1916 laws also made chiefs and headmen liable to appointment or dismissal on the whims of Native Commissioners, sanctioned by the Administrator.⁶

The status of the chiefs was also considerably reduced in the eyes of their people. This was aggravated by the elevation of messengers and policemen through earning higher wages and enjoying the favours of the administration.⁷

In their role of trying cases, chiefs very often became confused with the European way of classifying cases into civil and criminal. This classification presented difficulties where chiefs were expected to fine or imprison offenders for petty crimes of theft or assault. The indigenous notion of restoring the social equilibrium persisted in several ways. For example, by 1910 in Chief Mukuni's area, if a person stole maize or a goat, he was not mutilated. Instead, his kinship group was made to pay twice or three times the quantity or number of the things stolen.⁸ In the above way the chiefs adapted to the imposed form of punishment by dropping mutilation as a form of punishment and substituting it with what used to be a lesser form of punishment in pre-colonial times. However, the substitute punishment was still indigenous as it aimed at 'repayment' rather than the deterrence of would-be thieves. Both the two forms of sentences had been resorted to in the past.

Alternatively a chief's court would order that the thief be whipped, fined and then be given land to till 'in order to show him how to raise food by working'.⁹ Chiefs detested imprisonment 'because the period during which a person served his sentence would expose his family to much suffering as no one would be helping it.'¹⁰ With regard to fines, chiefs were accustomed to 'eating them', reflecting a continuation of indigenous practice which entailed elders consuming an animal paid by an offending kinship group as part of the compensation to the offended group.¹¹

Although chiefs had been barred from trying serious offences, they, however, sought to re-assert their authority over their people by dealing with such cases as they did before the intrusion

of the alien agencies of law enforcement. For example, chiefs very often ordered witch-hunts in their areas if they believed that deaths had been caused by witchcraft.¹²

With the coming of European consumer goods, some chiefs continued to order the killing of travellers for personal material gain, particularly in the first decade of colonial rule.¹³ After 1914, due to the stringent exemplary punishments which the administration was inclined to mete out for such offences, these practices continued to be carried out in secrecy if there was no likelihood that they could be detected. When detection seemed imminent, the offences were reported to the Native Commissioners.¹⁴

Chiefs and headmen were from as early as about 1910 required to collect dog licence levies, discourage the break-up of villages, regulate the preservation of fauna and flora (animal and plant life) and supervise the making of inter-village paths in their areas.¹⁵ They found the performance of these duties an unnecessary bother.¹⁶ The break-up of villages was also inevitable in view of the institution of migrant labour and the demand for tax which encouraged it in this period. Furthermore, those suspected of practising witchcraft could leave a village due to communal pressure and settle elsewhere.¹⁷ Chiefs and headmen further saw no reason as to why they should be required by law to supervise the preservation of plant and animal life because 'even in pre-colonial times they had preserved fruit trees while wild game provided meat'.¹⁸

The greatest complaint was that against the deployment of unpaid labour, particularly that of women, in the construction of inter-village paths. People saw no reason for performing work for

which they were not paid. In order to register their disapproval, most chiefs chose to maintain an attitude of aloofness vis-a-vis the white authorities with regard to most of the above duties.¹⁹

In view of the above stance which most chiefs adopted, by 1921, European officials were continuing to remind them of their duties.²⁰ Apart from a witchcraft case which Chief Musokotwane had attempted to settle in 1910 and a few murder cases which chiefs reported in subsequent years, remarks by Native Commissioners suggest that chiefs and headmen continued to conceal such cases in their areas. This negative attitude which chiefs and headmen adopted in the performance of their work led one Native Commissioner in 1917 to remark in the following words:

At present they offer a minimum of assistance to the Government and have but little authority. Constant changing of officials act adversely on them. They get to know little of the whiteman in authority over them, rarely come in to Livingstone, and villages are practically never visited. They probably become forgetful of their responsibilities.²¹

A call by one of the District Officers later in 1917 that chiefs were supposed to be subsidised 'in order to put them under direct responsibility' was a desperate attempt to ensure that Toka-Leya chiefs became more involved in the process of local administration than before.²²

Chiefs and headmen often found it difficult to work with messengers, policemen and detective policemen. The two groups had conflicting interests in that chiefs and headmen worked as government law enforcement officers as well as indigenous leaders of their people. The other group of officials represented white authority in that 'they had the laws of the white man.'²³ The

fact that most murder and witchcraft offences which chiefs were prone to conceal were exposed by messengers, policemen and detective policemen, further accentuated the conflict between the two groups of people. Furthermore, this conflict was exacerbated by the government remuneration made to messengers and policemen.

(b) Witchcraft and murder offences.

In the course of contacts with the European system of social control, we observe that there was a change in the way Africans viewed crimes. They began to recognise that the administration punished offences of murder and witchcraft in a completely different way from what they had hitherto known. The Africans also realized that the administration required of them to report any serious crimes to the relevant authorities.²⁴

Side by side with the above attitudes was a continuation of indigenous notions of crime. For example, people continued to view crime committed by an individual as something which involved the whole kinship group of the offender. It was not only the victim who suffered but also the kinship group to which he belonged. The idea of paying compensation to the aggrieved group also persisted. As a last resort, people indulged in evading detection through various means. These trends predominated with regard to crimes of murder and witchcraft.²⁵ Apart from the deep-rooted nature of these practices, the fear of 'the white man's punishment' also tended to encourage the continuation of indigenous forms of punishment for these crimes.

We can illustrate the above ways of viewing crime by quoting the words of one of the witnesses in a murder case which was tried

at Livingstone in 1909. A man called Mulayantanda, and four of his relatives (three adults and a lame youth) had killed an old woman whom they believed had caused the death of their father called Chafinza by using witchcraft. The dead woman was related to a man called Luansa. Mulayantanda and all his four relatives were found guilty of murder. The four adults were sentenced to death while the lame youth was sentenced to life imprisonment.²⁶ One of the witnesses said these words:

Before I went to the authorities Luansa compensated me with two women. When the other two objected, it was then that I went to the authorities.²⁷

This quotation is relevant in that it shows clearly that Africans thought in terms of compensation to restore the loss incurred by the death of a person instead of thinking in terms of punishing the wrong act of killing.

There occurred many cases similar to the one we have cited above, in this period. For instance, in 1915 two persons, Siamukachifui, a headman and Chigumbwi a diviner, both of the Livingstone District, had decided to settle what the administration saw as a murder case, according to indigenous laws and customs.²⁸ The convicted headman, assisted by the diviner, decided to give the relatives of the 'discovered' wizard a hoe payment. Both the above accused were subsequently convicted and sentenced for the crime of murder.

There were also cases where a total ignorance of the European view of crime prevailed. For example in 1917, one Mwando and his friend Munyumba, were jointly charged with the offence of murder. The prisoners had waylaid a traveller in the vicinity of their village in the north-east of the Kalomo District. After killing the traveller, they took his clothes and left the body to be devoured

by vultures.²⁹

The village headman of the two accused paid a compensation of five cattle to the relatives of the deceased person after the diviner had detected the culprits. Policemen, on discovering the decomposing body, launched investigations into the circumstances leading to the murder. The words of one of the accused during the trial demonstrate total ignorance of the European way of viewing this kind of crime on the part of Africans, as follows:

I have no questions, but I want to tell you that I have only made [a] mistake [to kill the man] and I want to pay compensation.³⁰

The prisoners confessed and expressed their desire to pay compensation to the family of the deceased. They obviously did not understand how European courts of law viewed murder. It is likely that the prisoner regarded the killing of a stranger to be a lesser offence than that of a chief's son or a member of a different lineage from his own in the same village.³¹ This view is also supported by the attitude of the two headmen who had earlier on urged the relatives of the deceased person to accept compensation in terms of cattle, which the latter persons accepted without reporting the matter to the law enforcement agencies.³² The High Court convicted the two prisoners of murder and sentenced them to death, contrary to indigenous practice in such matters.³³

With regard to crimes which called for severe sentences in the pre-colonial period, Africans tended to resist the new law enforcement agencies by choosing to deal with such offences in the manner they had done before the imposition of colonial rule. For example, between 1911 and 1924, people in villages remote from areas of European settlement continued to resort to indigenous methods of trying murder and witchcraft offences. Very often

chiefs and headmen supported aggrieved families in the latter's efforts to detect and punish witches and wizards.³⁴ This was particularly true where the death of several people was involved.

A case in 1912 illustrates resistance to new ways of viewing serious crime.³⁵ In that case, it was alleged that nine deaths of people who were related to one, Chimbunda, the accused, had taken place due to the witchcraft of an old woman called Kadjimwene. The witch-hunt which Headman Chimbunda had ordered, resulted in the naming of Kadjimwene as being responsible for the nine deaths. This led to the killing of the suspected woman together with three of her children. Chimbunda was, however, subsequently arrested, tried, convicted of murder and sentenced to death by hanging.

Justice Beaufort wrote a minute to the High Commissioner for South Africa to recommend a death sentence. His words throw some light upon the practice of indigenous methods of justice for serious offences in spite of the Witchcraft Act of 1904:

The facts proved show a state of affairs amounting to a regular vendetta of murder and witchcraft motivated by revenge and partly by fear and with a view to self-preservation. Nevertheless in a country where every death from natural causes seems to be attributed to witchcraft and leads to the murder of the witch who is 'discovered' by the death of a poisoned fowl, I am afraid that nothing short of execution of the murderer will put an end to this longstanding combination of superstition and cruelty.³⁶

People also resorted to various ways of evading or trying to evade detection with regard to crimes of murder and witchcraft. The commonest of such ways was for the offenders' kinship groups to pay compensations to the kinship groups of the aggrieved families or persons, with the hope that the latter would not report the matter to the administration. This type of compensation

was different from the one we discussed previously because the first type merely reflected the persistence of indigenous ways of trying such offences. The second one was specifically meant to silence the aggrieved persons.³⁷ For example, in 1919 there came up a case for trial at Livingstone which involved two related kinship groups.³⁸ A son of one Mutugula drowned Siachibaya's grandson. A member of Siachibaya's kinship group, having decided to go and report the death of one of the boys to the boma (administrative centre), was stopped from doing so by the offender's kinship group on the understanding that a compensation would be forthcoming.³⁹

Similarly with regard to witchcraft offences, people became increasingly aware of the stringent measures the administration was taking against offenders. For instance, in 1914, the Criminal Investigation Department was established at Livingstone, for the purpose of detecting crimes which had hitherto escaped law enforcement agents.⁴⁰ In the same year the amended Witchcraft Act was also passed.⁴¹ It is to be expected in view of such measures against the above crime that people's ways of viewing it also changed.

Thus, in connection with the two offences of being or professing to be a diviner and accusing or naming someone to be a witch or wizard, people began to view the offence of witchcraft differently from the way they had viewed it before 1914. There were a few new ways of dealing with the above offences which were actually meant to evade detection. For example people would burn a witch or wizard in an ant-bear's hole and then pay a compensation to the family of that witch or wizard.⁴² Sometimes such offenders

After two decades of British South Africa Company rule, crimes of murder, witchcraft and theft continued to worry law enforcement agents. This was so in spite of the fact that in 1911 the western and north-western borders with German and Portuguese territories had been settled.⁵⁰ Prior to that date it used to be common for criminals to escape into foreign territories due to ill-defined borders. The settlement of these borders was thought to have the effect of minimizing such escapes. It is unlikely that it did.

One of the ways through which Africans began to respond to the alien means of social control was for the relatives and friends of a suspected criminal to arrest and hand him over to the police. They did this if they had strong grounds to believe that he had in fact committed a crime and that the police were after him.⁵¹ Obviously this was done in response to the Collective Punishments Proclamation. People feared that should they not reveal the identity of the culprit, they would be punished.

The more sophisticated Africans, particularly those who had lived on the line of rail, resorted to changing names.⁵² Sometimes they adopted names like 'Tickey', 'Table,' or 'Salt', in order to evade detection since it was fashionable to have such names and also those who had them were many.⁵³ It is likely that the Alien Native Registration Proclamation of 1918 was passed in view of the unreliability of both first and second names of the Africans. The first names were adopted by anybody while the forenames were mainly totems that could be found among people living in various areas of Northern Rhodesia. Furthermore, the above legislation was more useful

in identifying people according to their areas of origin than the use of tax receipts and registers was, for the purpose of identification.⁵⁴

(c) Theft offences.

In pre-colonial times crimes of theft were not disposed of by simply punishing the offender. The wronged persons were compensated in addition to the punishment. It is not surprising to observe that by 1903, six years after the alien laws had been imposed many Africans had difficulties in adapting to the new system. Under these circumstances Native Commissioners often took into consideration the African approach, especially with regard to crimes of theft. For example, in 1903 when hut tax had just been introduced, a certain Moonze extorted money by impersonating a government officer and was sentenced to two years' imprisonment, and was also required to refund the money he had taken.⁵⁵

This verdict was arrived at after the persons whose money Moonze had obtained through cheating testified against him to that effect. It is interesting to observe that, in the course of the trial, one of the witnesses called Magumbana suggested that all his property, including cattle, be confiscated by the administration and paid to the persons whose money he had obtained by cheating.⁵⁶ Although Moonze was sentenced to two years' imprisonment in conformity with the European view of punishing such crimes, the court also took into account the indigenous practice to a certain extent, in that the prisoner was ordered to pay back to the owners the money he had obtained.⁵⁷ The Court did not order the confiscation of his cattle and other property as the offended people had demanded. **This is an example**

of adaptation where the indigenus system of social control did not adapt readily to the imposed practice. At the same time, it also shows African attitudes to theft offences of that nature.

Another response to the imposed agents of social control was to evade detection. The commonest way of evading detection in theft offences was for an employed person to leave employment without giving notice to his employer and then return to his home district.⁵⁸ If kapasus were believed to be after him, his own relatives would 'hide' him in the bush and have food taken to him at intervals.⁵⁹ He returned to the village at night time. Change of districts or areas of residence by criminals who stole from Europeans was common in this period. This could have been one reason why by 1905 the Administration made a pass law which required every male person to obtain a pass from his Native Commissioner before he could move from his home district to another.⁶⁰

Sometime thieves concealed stock theft by burying the animal's skin and then consuming or distributing the meat.⁶¹ Between 1906 and 1914 the handing over of stolen goods to friends or relatives in different areas was also common. This practice was mostly resorted to by people who worked for Europeans around Livingstone, Kalomo and other administrative centres in the region.

After 1914 some Africans also resorted to forging their employers' documents such as tickets used when boarding a train and letters for requisitioning consumer goods from shops. Such consumer goods were meant to be paid for at the month's end.⁶² The sophisticated African workers either

forged their masters' signatures or altered the numbers or quantities of the goods by adding other items to the lists of goods ordered.

Throughout the period of the British South Africa Company administration, a number of people, both officials of the administration, and others, sought to use their positions to advantage. African messengers sometimes posed as tax collectors.⁶³ Laymen also continued to impersonate Lewanika's indunas (chief's or king's official messengers) in areas where European influence was minimal, such as in the east and north-east of the Kalomo District.⁶⁴

This latter trend came to a head in 1917, a year after King Lewanika's death and the accession of Yeta III. In that year, two 'Lozi indunas' Sikwayi and Silume, began to levy a money tribute on Chief Momba and his people as they claimed that they had obtained permission from the authorities at Livingstone to levy the 'tribute'.⁶⁵ The two persons were subsequently arrested, tried and punished by the Livingstone Magistrates' Court. By the early 1920s, thefts of tax receipts and passes, and forgeries were also more common than in the period before the above date.⁶⁶

Meanwhile there was slowly developing a desire among Africans to use the government law Courts for redress, particularly in cases of miscarriage of justice by indigenous chiefs' courts. They also chose to appeal from Native Commissioners' Courts to the Magistrates' Courts. For example, two cases, one against conviction for contravening the pass law and the other one involving the sale of 'a rotten blanket' came up in the Magistrates' Court at Livingstone in 1918.⁶⁷ Both of these appeal cases were dismissed. In 1924 the Livingstone District recorded ten appeals, nine of which were dismissed while the tenth one earned a reduction of sentence.⁶⁸

Although these examples indicated an awareness on the part of the Africans of the right of appeal, such appeals were infrequent in this period.⁶⁹ This shows that it was not easy for the Africans to adapt readily to European ways of social control. The Assistant Native Commissioner of the then Kalomo Sub-District, H.S. Thornicroft, testified to the lack of appeals during his tour of the areas of Chiefs Sekute, Siakasipa, Katapazi, Momba, Mukuni and Musokotwane in 1914:

...Minor disputes are settled by Headmen and any party who is not satisfied with the judgement would come to the office and the case would be reopened. Although this does not often happen I do not doubt for a minute that they would hesitate in bringing a case to be tried again.⁷⁰

Similarly, the 1914-1924 Tour Reports show an absence of any substantial number of appeal cases. This is also confirmed in the following words expressed by an itinerant Native Commissioner in 1919:

Almost all the adultery and divorce cases appear to be settled by the Chiefs and Headmen.....a great help to the Native Commissioners..... although natives understand that appeal always lies to the Native Commissioners, this is very rarely taken advantage of by the parties concerned.⁷¹

(d) Marriage offences.

After 1900 many people continued to view the arrangement of marriage and the settlement of marital disputes in terms of group responsibility and the restoration of the disturbed social equilibrium.⁷² For example in 1903 there came up a case of murder at Kalomo before the Administrator.⁷³ One, Kakhoa, had paid the required bridewealth to his wife's uncle but her family refused him to take his wife. This action on the part of bazyali (wife-givers) compelled Kakhoa to spear to death the woman's uncle. According to Kakhoa, he was correct to kill the person who represented the group of bazyali since the

group had refused him to take his wife. We must observe that under indigenous law, bazyali had the right to refuse an in-law to take their daughter under any grounds reasonable to them.

However, the Court regarded Kakhoa's action as murder and sentenced him to death. The sentence was commuted to two years' imprisonment on the grounds that:

.....life had hitherto been held of very light account in the savage parts of North-Western Rhodesia and it was very improbable that natives of the type of the prisoner could have viewed murder in the same grave light as it was regarded in civilized communities. The prisoner was a native of a very uncivilized district.⁷⁴

Sometimes after kinship groups had chosen to settle their marriage differences outside the courts of law, but failed to arrive at a just settlement to all concerned, they resorted to the use of retaliatory witchcraft or to fighting each other. For example, in a case at Kalomo before the Administrator's Court in 1907,⁷⁵ a man called Msaula and three others were charged with the offence of murdering three people. The accused persons belonged to the group of bakwati (wife-receivers) while the deceased had belonged to the group of bazyali. A member of the accused persons had committed suicide because the group of bazyali had interfered in his marriage.

Since the group of Msaula and Mafuta had lost a person, they mobilized and killed two persons who belonged to the group of bazyali in order to avenge the death of one of their members.⁷⁶ It is interesting to note that all the three accused pleaded not guilty to a charge of murder. Their reason was that they had killed members of a family which had induced their kinsman to commit suicide.⁷⁷ The Administrator's Court found the four accused guilty of murder under English law and sentenced them to death by hanging.

In colonial times the notion of group responsibility continued to be resorted to in marriage disputes. Very often the kinship groups of bazyali and bakwati continued to play an important role in deciding whether there should be a divorce or not. Some women continued to appeal to their guardian uncles so that the latter should sue for divorces on various grounds. Uncles sought redress in Native Commissioners' Courts if they had the chance of doing so.⁷⁸ This practice worked to their advantage or disadvantage depending upon whether or not the Native Commissioner trying a particular case recognized the indigenous practice. For example, in 1911 an uncle petitioned for a divorce on behalf of his niece, Lumba. The Native Commissioner had this to say in dismissing the case:

.....she should have applied for a divorce a long time ago; it is becoming far too common for women to apply for divorces on the most slender grounds.⁷⁹

Very often, this attitude by Native Commissioners went contrary to indigenous practice where ill-treatment, if persistent, was a genuine ground for divorce. In the above case it had been persistent, but the marriage had been prevented from breaking up by the elders.

Resort to the Native Commissioner's Court in this period benefited uncles who defended their nieces or grand-daughters if the 'no proper marriage' defence was raised. For example, a man called Sikumba sued Siakaimbo, the guardian of his wife, for compensation because of the adultery which his wife had committed with a man called Siambeya. This had taken place at her uncle's home after she had deserted her husband.⁸⁰ The woman's uncle raised the defence of 'no proper marriage' resulting in Sikumba losing the case. In a case of alleged cruelty of a husband upon his wife, the trial Native Commissioner also allowed a divorce and gave the wife custody of children on the grounds that 'no lobola (bridewealth)

had changed hands.⁸¹

We should observe that the 'no proper marriage' notion was resorted to by Native Commissioners, most of whom were unfamiliar with African marriage laws. Among the Toka-Leya, a proper marriage involved a girl giving a man a long bead to show consent on her part. Similarly, the family of the man gave her parents or guardian chinawinga (a form of an engagement gift to indicate that the girl would be someone's wife). Finally, the group of bakwati paid lobola (bridewealth) to the group of bazyali. Even if the lobola was deferred indefinitely, a marriage still existed, provided the two groups involved in a given marriage arrangement approved of such a marriage.⁸² It was this second form of marriage which early Native Commissioners disregarded when they pronounced a divorce.⁸³ They tended to rely upon the first procedure of arranging for marriage.

With regard to the institution of widow inheritance, the two groups of bazyali and bakwati also continued to play an important role in this period. In 1916, Siamuchinga, who had been an uncle to a deceased man sued for one hen as compensation because the kinship group of bazyali had given their widowed woman, Siauzeni to one, Sikagoma without consulting him as uncle of the deceased man as well as guardian of the woman. The plaintiff won the case on the grounds that he should have been consulted before the widow re-married, although his own blood sister had actually cleansed the widow to enable her to marry again.⁸⁴ Thereafter the guardianship would revert to her own kinship group.⁸⁵

It was not true according to customary belief that the spirit of the deceased could not worry living people as the plaintiff had

contended.⁸⁶ However, this case illustrates some of the problems that early Native Commissioners encountered and the manner in which they were dealt with. It also shows that the notions of group responsibility which were strongly ingrained in the Toka-Leya social fabric were changing slowly after the imposition of European law.

As in the field of serious offences, resort to indigenous methods of settling marriage disputes only changed slowly during the period of the British South Africa Company administration. Throughout this period, Toka-Leya marriages were predominantly being arranged by the two kinship groups involved, those of bazyali and bakwati. Chiefs and headmen played an insignificant role in the arrangement of marriages.⁸⁷ The Native Commissioners' Courts at Kalomo, Livingstone, Magoye or Sesheke also did not play any part at all in the validation of marriages. These Courts were mainly used for the trial of various criminal offences⁸⁸ and for certain marriage disputes. The strength of indigenous systems of marriage is highlighted by the tendency of men working in areas of European settlement, such as around Kalomo and Livingstone to return to their villages to get married.⁸⁹ This tendency also continued to be encouraged by colonial policy which, though not specifically discouraging inter-ethnic marriages, discouraged free movement of people.⁹⁰

Similarly, if a man or woman wanted to seek a divorce, he or she had to go back to the district of origin and lodge a complaint with either of the kinship groups of bazyali or bakwati.⁹¹ This complaint usually became the basis of a discussion between the two kinship groups to decide whether the marriage should subsist or be dissolved.⁹²

We should however, realize that Africans were quick to use Native Commissioners' Courts in their areas in cases which the kinship groups, headmen and chiefs could not resolve satisfactorily. We observe that from about 1908, Native Commissioners' Courts began to be used as 'appeal' Courts by persons dissatisfied with their marriages. The main reason for doing this was the apparent rigidity of indigenous laws of divorce which did not readily permit a divorce without convincing and recognized reasons for doing so.

When one of the reasons for a divorce was raised by an aggrieved person, the elders usually gave the two spouses a chance to reconcile without divorcing.⁹³ It was for this reason that many people felt that they could obtain quick and satisfactory justice from Native Commissioners' Courts. Additionally, nearness to such Courts also acted as an inducement to using them, while distance and ignorance of how they worked discouraged their use. Bearing the first reason in mind, we can see that change in people's attitudes became inevitable.

For example in 1909, one Mukamunyana, around Livingstone, had complained to two kinship groups who were involved in her marriage about being ill-treated by her husband.⁹⁴ She had also complained that the husband had burnt down her hut. On both occasions the elders refused to grant her a divorce. She then went to report to the Native Commissioner's Court at Livingstone, by way of 'appealing.' She was subsequently granted a divorce.⁹⁵

The new social order was very often incapable of sustaining certain customs such as the mwese (wife-swapping) custom which had been adopted from the Ila in the late 19th century.⁹⁶ It was such problems that tended to change people's attitudes towards the use of

colonial institutions of social control. For example, in 1915, this custom was dealt a blow when a Headman called Mandozi in the north-east of the Kalomo District sued his neighbour called Siazungi for committing adultery with his wife.⁹⁷ Siazungi pleaded the mweese (wife-swapping) custom to a charge of adultery in the Native Commissioner's Court. However, the Court held a contrary view by interpreting the custom as adultery. Furthermore, it was one of the repugnant customs covered by the North-Western Rhodesia (Barotseland) Order-in-Council of 1899.⁹⁸ The Court accordingly ordered Siazungi to pay compensation to the aggrieved person.⁹⁹

(e) Changes in the law enforcement system.

The trends that emerged in the course of African adjustment to alien law in the period of British South Africa Company rule forced the government to make several adjustments and changes to it. The government further sought to solve the problems highlighted, through legislation and a rigorous enforcement of the law.

For example, the 1905 hut tax law had provided for the substitution of imprisonment for three months by a five pound fine.¹⁰⁰ Since many defaulters could not raise this money, they were jailed. Because of an ever rising number of defaulters, in the early years of Company rule, the law had to be changed in 1914 so that even if a person had served his sentence, he was, on being discharged from jail, still liable to pay the tax.¹⁰¹

The above law worked together with others, such as the 1906 law, which regulated African movement in Livingstone and other areas of European settlement.¹⁰² It was re-inforced by the 1911 Village Management legislation.¹⁰³ These laws had the effect of classifying all people who came from other districts of Northern Rhodesia into

the Kalomo and Livingstone Districts as aliens.¹⁰⁴ They were required to obtain permission from their District Officers whenever they came to visit or look for employment on the line of rail or in any other areas of European settlement. The two laws were also meant to make it easy for officials to identify hut tax defaulters in their districts.

The problem of detecting thieves, murderers, witches or wizards, diviners and those who took part in divination sessions was also being tackled by a series of laws. Before the Collective Punishment Act of 1912, there had been numerous thefts of wire and other articles along the line of rail, including those of consumer goods in areas of European settlement. This law minimized such thefts. A number of African detective policemen continued to re-inforce the above law.

For instance, by 1921, a sophisticated burglar called Matimba was arrested by one of these policemen at Livingstone for a burglary he had committed at the Kalomo railway station.¹⁰⁵ One reason why these policemen became successful in their work was that very few people were accustomed to the way they worked. They never wore uniforms apart from carrying identification cards which they showed to Europeans only if they were asked to identify themselves.¹⁰⁶

People who failed to comply with the legal code by refusing to assist policemen to detect crime, or by not reporting any serious crimes in their areas, were being dealt with under the 1916 Administration of Natives Proclamation which we have already cited in connection with the duties of chiefs and headmen. This law covered offences which ranged from disobeying a chief's 'lawful orders,' 'neglecting to put out a bush fire,' to neglecting to report a death

or 'any suspicious disappearance in a neighbourhood or village'.¹⁰⁷

Ordinary people as well as chiefs were covered by this law. For example, a person who was insolent to a chief was liable to three months' imprisonment with an option of a £5 fine, or to both the fine and imprisonment. A messenger who failed to carry out his duties and instructions promptly was also liable to three months' imprisonment with a £1 fine option.¹⁰⁸ Messengers were also liable to six months' imprisonment with a £2 fine option and flogging up to ten lashes 'for disturbing the peace such as by spreading rumours'.¹⁰⁹ They were also liable to instant dismissal.

Chiefs and headmen were liable to six months' imprisonment with a not more than £10 fine option or dismissal, for example, 'for not supplying men promptly as required and requested by the Administration'.¹¹⁰ Although this law was one of the most comprehensive of the laws passed on African administration in this period, it also was one of the most difficult to enforce. This was so because, on the one hand, people did not fully understand it, and on the other, it covered and created numerous offences. For example, by the 1920s, people continued to leave their villages and built their homes elsewhere, without notifying their chiefs or the administration of their intention.¹¹¹

The 1914 Witchcraft Act was passed with a view to modify that of 1904. This was on two important aspects which the first law did not cover comprehensively. While the first aspect involved punishment, the second one covered the use of charms, medicines or any supernatural powers, to control or to profess to control the course of nature and to be present at any divination or witch-finding ceremony.¹¹² The main difference between the two laws was that

the former had restricted itself to a narrow spectrum of 'professing to be a witch or a wizard, divination and naming.'

The 1914 law, apart from covering the above three aspects of witchcraft, also embraced other aspects of witchcraft such as the use of 'witchcraft of the second order' for beneficial or protective purposes, in employment or against one's enemies respectively.¹¹³ No doubt the 1914 Act reflected a determination on the part of the government to eradicate witchcraft. However, as the post 1924 debates about the fairness or unfairness of this law, among District Officers, Native Commissioners and missionaries were to show, these laws failed to eradicate the practice. They forced people to practise it secretly in the context of what we have already referred to as 'retaliatory witchcraft.'¹¹⁴

We can observe further that legislation played an important role in the process of African adaptation to the new social and economic order if we take a serious look at the laws that were passed. The tendency by 'semi-educated' Africans to impersonate policemen or messengers was being checked by the law of 1919 which laid down a six months' sentence of imprisonment or a fine of £100 for impersonating any one of the above officials.¹¹⁵

In the same year, the Control of Working Natives Proclamation was passed to tighten control over workers who absented themselves from work. This law worked hand in hand with the Masters and Servants Proclamation passed earlier on in 1908 and the Native Labour Proclamation of 1912.¹¹⁶ The 1924 Livingstone Township Regulations were made to help check the influx of job seekers into areas of European settlement.¹¹⁷

Although escape of prisoners from lawful custody had worried the government between 1908 and 1924, there was no law passed in this period to deal with the problem, apart from the

1924 Administration of Prisons and Control of Natives Proclamation.¹¹⁸ It became an offence for anyone to be found loitering within prison premises without any lawful excuse for doing so. The overall effect of these measures was to check prison escapes, either aided or not.

In order to strengthen law enforcement, the police force continued to be expanded, particularly in the first decade of Company rule. For example, in 1903 the number of policemen in North-Western Rhodesia had stood at 300 men.¹¹⁹ In 1911 it increased to 390 men.¹²⁰ The administration also tried to increase the efficiency of the police force by enforcing the practice, initiated in 1908, of teaching European police officers and Native Commissioners African languages.

The problem of 'incomprehensible native evidence' was also being solved through the practice of using African court assessors in all courts of law, to help Native Commissioners, Magistrates and Judges understand African complaints and evidence better.¹²¹ In spite of these measures, some law enforcement officers continued to feel that 'native evidence was not to be relied upon for convicting a European because of its imperfections and exaggerations.'¹²²

The Law Department issued rules of procedure from time to time. For example, there were the rules that stipulated that African women in polygamous marriages could give evidence against their husbands. However, it was not until 1924 that Justice Macdonell instructed all Native Commissioners, Magistrates and Judges, that they

should warn Africans on trial not to make hasty denials, admissions or any responses to charges levelled against them at the preliminary enquiries. This was so because such things would prejudice the trial of the case.¹²³

(f) Conclusion.

In this chapter we examined the question of adaptation in the period of Company administration. We paid attention to the role of chiefs and various African officials, witchcraft and murder offences, theft and those offences related to marriage. We focussed attention on the continuation of indigenous views of crime and punishment among the majority of people, in spite of the imposition of alien agencies of social control and their attendant views of crime and punishment. The main indigenous notions of justice were those of group responsibility when settling disputes.

Some people also resorted to evasion as a way of adjusting to the imposed agencies of social control. This was practised with **some** success in those offences that the administration emphasized most, such as witchcraft and theft offences, particularly in the rural areas. In rural areas the application of indigenous forms of punishment to witchcraft offences tended to be more usual than in urban areas. Here, this offence posed problems of detection. We also showed how Africans came to use the imposed agencies of social control. Some people tended to use their positions of authority for personal gain. Those who were discovered were swiftly punished.

Side by side with the above tendency, there was developing the practice of using the new system for redress, particularly in the field of marriage disputes. In so doing, there often arose conflicts between alien and indigenous forms of justice. These were sometimes resolved by officials adapting imposed views of justice to indigenous ones, or vice versa, but problems of adaptation persisted. We shall deal with these when considering the period of Indirect Rule.

Footnotes.

1. Interview: L.S. Mulele, 30/7/78; Also see SEC2/283, Minute No.357, From O.S. Wallace (D.C), to G.R.R. Stephens (A/PC), 26th April, 1941. (Earlier written, sources were not available in the Livingstone Museum Archives and the National Archives in Lusaka).
2. Interview: L.S. Mulele, 30th July, 1978.
3. The Statute Law of North-Western, North-Eastern and Northern Rhodesia. The Administration of Natives Proclamation, Section 14 (2), (1916).
4. The Statute Law of North-Western, North-Eastern and Northern Rhodesia, Proclamation Number 30, Section 4, (1916).
5. The Statute Law of North-Western, North-Eastern and Northern Rhodesia, The Administration of Natives Proclamation, Section 14 (4) and (5).
6. The Statute Law of North-Western, North-Eastern and Northern Rhodesia, Proclamation Number 30, Section 4 and the Administration of Natives Proclamation, Section 19.
7. It was only after 1914 that the government began to remunerate chiefs the sum of five shillings per month. Prior to that date, they were not being paid for their duties.
8. Interview: R. Simasiku, 23rd July, 1978.
9. Interview: R. Simasiku, 23rd July, 1978.
10. Interview: R. Simasiku 23rd July, 1978.
11. See for instance, Fortes and Evans-Pritchard (Eds.), African Political Systems, 269.
12. U2/2/1, Livingstone High Court Criminal Case Records, (R.v. Mungala and R.v. Simanansa), 1917.
13. BS2/283, III, Livingstone High Court Criminal Case Records (R.v. Simwanduwi and Siachamba), 1911.
14. BS2/286, II, Livingstone High Court Criminal Case Records (R.v. Siamasize), 1917.
15. The Statute Law of North-Western Rhodesia, Proclamation No.1, 1905; HC Notices Nos. 77 (1906) and 94 (1907); The Statute Law of North-Western, North-Eastern and Northern Rhodesia, Registration and Control of Dogs Proclamations (1908, 1910 1912) and Proclamation No.8, (1916).
16. Interview: R. Simasiku, 23rd July, 1978.

17. Interview: D. Denga, 15th July, 1978.
18. Interview: D. Denga, 15th July, 1978.
19. KSC6/3/1, Livingstone and Kalomo Districts Tour Reports, 1919-1937.
20. KSC6/3/1, Livingstone and Kalomo Districts Tour Reports, 1919-1937.
21. ZA7/1/2/3, Livingstone District Annual Tour Report, 1917.
22. ZA7/1/2/3, Livingstone District Annual Tour Report, 1917.
23. Interview: E. Phiri, 3rd August, 1978.
24. Interview: D. Siachisiya, 22nd July, 1978.
25. Interview: D. Siachisiya, 22nd July, 1978.
26. BS2/282, II, Livingstone High Court Criminal Case Records, (R.v. Mulayantanda and Others), 1909.
27. BS2/282, II, Livingstone High Court Criminal Case Records (R.v. Mulayantanda and Others), 1909.
28. BS2/284, III, Livingstone High Court Criminal Case Records (R.v. Mwando), 1914.
29. BS2/284, III, Livingstone High Court Criminal Case Records (R.v. Mwando), 1914.
- BS2/284; III, Livingstone High-Court Criminal Case Records (R.v. Mwando), 1914.
31. BS2/284, III, Livingstone High Court Criminal Case Records (R.v. Mwando), 1914.
32. BS2/284, II, Livingstone High Court Criminal Case Records, (R.v. Mwando), 1914.
- BS2/283, I, Livingstone High Court Criminal Case Records (R.v. Malosa and Nine others), 1911.
34. BS2/284, I Livingstone High Court Criminal Case Records (R.v. Chimbunda and Salwinda), 1912.
35. BS2/284, I, Livingstone High Court Criminal Case Records (R.v. Chimbunda and Salwinda) 1912.
36. BS2/284, Livingstone High Court Criminal Case Records (R.v. Chimbunda and Salwinda), 1912: Justice Beaufort to HC of South Africa.
37. U/2/2/1, Livingstone High Court Criminal Case Records (R.v. Monga), 1919.

38. U/2/2/1, Livingstone High Court Criminal Case Records (R.v. Monga), 1919.
39. U/2/2/1, Livingstone High Court Criminal Case Records (R.v. Monga), 1919.
40. RC/480, Circular No.3, 1914, Relations of DOs and Town and District Police, 1926.
41. The Statute Law of North-Western, North-Eastern and Northern Rhodesia, Proclamation No.8, 1919.
42. The accepted procedure used to be for the whole village to be summoned by the chief, let the witch or wizard be tied up both arms and legs, place him or her onto a pyre of wood, set the pyre of wood on fire so that the witch or wizard burned to ashes while everybody testified with his or her own eyes.
43. Interview: D. Siachisiya, 22nd July, 1978.
44. Interview: D. Siachisiya, 22nd July, 1978.
45. Interview: L.S. Mulele, 18th July, 1978.
46. Melland and Young, The African Dilemma, 135.
47. Interview: W. Nawa, 18th July, 1978.
48. See for instance, Evans-Pritchard, Witchcraft, Oracles and Magic, 25-26.
49. Rotberg, The Rise of Nationalism, 142-146.
50. Gann, The Birth of a Plural Society, 94.
51. UAl/1, Livingstone Magistrate's Court Criminal Case Records (R.v. Liyaliyi Muyambango), 1912.
52. Interview: E. Phiri, 3rd August, 1978.
53. See for instance, the UAl/1 series of the Livingstone Magistrate's Court Criminal Case Records, 1910-1924.
54. Bl/4, No 3460, Supplement to the Northern Rhodesia Government Gazette, 14th December, 1918.
55. BS2/166, British Resident Commissioner's Court Criminal Case Records (R.v. Moonze), 1903.
56. BS2/166, British Resident Commissioner's Court Criminal Case Records (R.v. Moonze), 1903.
57. BS2/166, British Resident Commissioner's Court Criminal Case Records (R.v. Moonze), 1903.

58. Interview: Malaho, Munemba and Dolopo, 3rd August, 1978.
59. Interview: W. Siachenje, 16th July, 1978.
60. See for instance, The Statute Law of North-Western Rhodesia, Proclamation No.3, 1906, 67-68; The Statute Law of North-Western, North-Eastern and Northern Rhodesia. The Village Management Proclamation, 1911.
61. Interview: P. Sitali, 4th July, 1978.
62. For example, UA/1/1, Livingstone Magistrate's Court Criminal Case Records (R.v. James Matimba), 1920.
63. BS2/166, British Resident Commissioner's Court Criminal Case Records (R.v. Situmumbula, Kienga and Kamandusa), 1903.
64. H. Marshall Hole Papers, Visiting Commissioner's Notebook, (Unclassified), 1917.
65. UA/1/1, Livingstone Magistrate's Court Criminal Case Records (R.v. Sikwayi and Silume), 1919.
66. KSC/1/1, Livingstone District Annual Report, 1919-1939.
67. See for instance, The Livingstone Mail, (Mutondo v. Jacob), 14th June, 1918.
68. KSC6/1/1, Livingstone District Annual Report, 1924.
69. Interview: K. Chimbelya, 22nd July, 1978.
70. ZA7/1/1, Batoka Annual Report, Kalomo Sub-District, 31st March, 1914.
71. KSC6/1/1, Livingstone District Annual Reports 1914-1924.
72. See for instance BS2/164, Vol.2, (Case No.9, R.v. Sialonga alias Chinkorongo) 29/6/10, of the trial, Livingstone; BS2/164, Vol.1, Livingstone High Court Criminal Case Records (R.v. Kalombe and Namukandu), 1906.
73. BS2/166, Administrator's Court Criminal Case Records (R.v. Kakhoa), 1903.
74. BS2/166, Administrator's Court Criminal Case Records (R.v. Kakhoa), 1903.
75. BS2/280, Administrator's Court Criminal Case Records (R.v. Msaula and Others), 1907.
76. BS2/280, Administrator's Court Criminal Case Records (R.v. Msaula and Others), 1907.

77. BS/280, Administrator's Court Criminal Case Records (R.v. Meeula and Others), 1907.
78. See for instance, KSC2/1/4, Native Commissioner's Court Civil Case Records, 1915.
79. KSC2/1/1, Senkobo Sub-District Native Commissioner's Court Civil Case Records (Lumba v. Siamwise), 1911.
80. KSC2/1/1, Senkobo Sub-District Native Commissioner's Court Civil Case Records (Sikumba v. Siakaimba), 1911.
81. KSC2/1/4, Livingstone Native Commissioner's Court Civil Case Records (Mudemwa v. Sitali), 1915.
82. KSP/3/1, Notes on Native Marriage Laws and Customs.
83. Interview: M. Mukalahani, 22nd July, 1978.
84. U2/3/1, Livingstone High Court Civil Case Records (Siamuchinga v. Masukwa), 1916.
85. Interview: M. Mukalahani, 22nd July, 1978.
86. Interview: D. Siachisiya, 22nd July, 1978.
87. Interview: J. Siamonga, 4th August, 1978.
88. See for instance, KSC6/1/1, Livingstone District Quarterly Reports, 1919-1939. Most offences were of tax evasion, theft, contravention of the Masters and Servants laws, etc.
89. Interview: E. Nawa, 18th July, 1978.
90. Interview: J. Kabamba, 19th July 1978.
91. KSC2/1/4, Livingstone Native Commissioner's Court Civil Case Records (Nampongo v. Siandabo), 1915.
92. Interview: P. Sitali, 4th August, 1978.
93. Interview: P. Sitali, 4th August, 1978.
94. KSC2/1/1, Livingstone Native Commissioner's Court Civil Case Records, (Case No.22), 1909.
95. KSC2/1/1, Livingstone Native Commissioner's Court Case Records, (Case No.22), 1909.
96. The Livingstone Mail, 'Native Life and Customs', 25th December, 1909, 10.
97. KSD2/1/1, Livingstone Native Commissioner's Court Civil Case Records (Headman Mandozi v. Siazungi), 1915.

98. See the NWR Order-in-Council, 1899.
99. KSC2/1/3, Livingstone Native Commissioner's Court Civil Case Records (Headman Mandozi v. Siazungi), 1915.
100. The Statute Law of North-Western Rhodesia, Proclamation No.16, Section 6 (1), 1905.
101. The Pim Report, 111-112.
102. The Statute Law of North-Western Rhodesia, (1909), Section 2 (e), (f), and (h), 67-68.
103. The Statute Law of North-Western North-Eastern and Northern Rhodesia, (1916), 77-80.
104. See for example, B1/4, No.3460, Supplement to the Northern Rhodesia Government Gazette, (1918) 3-9.
105. The Livingstone Mail, 5th May, 1921.
106. RC/480, Circulars for 1913-1914, Relations of DCs. and Town and District Police, 1926.
107. The Statute Law of North-Western, North-Eastern and Northern Rhodesia, (1916) Proclamation No.8, Section 15 (4).
108. Proclamation No.8, Section 26 (6).
109. Proclamation No.8, Sections 25-26.
110. Proclamation No.8, Section 19.
111. KSC6/3/1, Livingstone and Kalomo Districts Tour Reports, 1920.
112. Government Gazette, IV, 3, Para 5-11, 'The Witchcraft Act', 1914.
113. 'The Witchcraft Act', Para. 10.
114. 'The Witchcraft Act', Para. 10-11.
115. Government Gazette, IX, Proclamation No.6, (1919) Sections 2, 3, 4 and 7.
116. See for instance F1/3/3, Precis of the Laws on Native Labour, Proclamation No.18, (1912).
117. Government Gazette VI, 2, (1924) 120.
118. Government Gazette VI, 2, (1924), 120.
119. Brelsford, The Story of the Northern Rhodesia Regiment, 21.

120. BS2/137, Administrator's Reports, North-Western Rhodesia, BNP, 1909-1911.
121. The Statute Law of North-Western Rhodesia. (1905)
Proclamation No.6, Sections 8-9.
122. BS2/140, Law Department Annual Reports, (1907-1911).
123. BS2/492, Law Department Annual Reports, (1918-1924)
Circular No.1, 1921.

Chapter 5.

The System of Indirect Rule 1930-1939.

(a) The Establishment of the Machinery of Indirect Rule.

The year 1924 saw the end of the British South Africa Company administration and the introduction of Crown administration. This was achieved through the revocation of the 1911 Order-in-Council which had unified North-Western Rhodesia with North-Eastern Rhodesia into one territory and had re-affirmed Company Rule.¹ A Legislative Council, which was headed by Governor Sir Hubert Stanley, was set up to replace the pre-existing Advisory Council.

The Legislative Council was composed of both elected and nominated European members. This period also differs from the previous one because the theory of Indirect Rule began to be put into practice in the whole of Northern Rhodesia.² In spite of the above changes in the political and administrative system of Northern Rhodesia, the problems of African adjustment to the law enforcement agencies were not very different from those in the previous period.

All Courts of law which had been established during the period of Company rule were retained.³ In addition to local enactments, the laws of England continued to be applied. However, although no immediate legal recognition was extended to Chiefs' Courts, between 1924-1930, customary law continued to be applied in civil cases between Africans

..... so far as that law was applicable and was not repugnant to principles of natural justice or morality or to any Order made by His Majesty in Council, or to any law or Ordinance for the time being in force. 4

Earlier on in 1922, Lord Lugard's book on the administration of colonies by Britain had been published.⁵ In that book, the author propounded what he thought was the right method of governing

colonies through what he called 'Indirect Rule'. The theory was that indigenous people could best be governed through their own institutions. This meant that indigenous rulers would participate in local administration. The main institutions of Indirect Rule were: Native Courts and Native Authorities and Treasuries.⁶ The theory gained initial approval among legislators and administrators because it would be a cheaper way of governing indigenous peoples.

However, Sir Hubert Stanley the Governor of Northern Rhodesia, together with some officials of the Colonial Office, rejected the immediate introduction of this policy. They did so on the grounds that African chiefs and headmen were not yet prepared to assume the responsibilities involved in the policy of Indirect Rule due to widespread illiteracy. Furthermore, the wish of the white settlers to amalgamate Northern Rhodesia with Southern Rhodesia at a later date, ran counter to the implementation of the policy, since white settlers favoured continued settler political hegemony.⁷ Other officials too, had argued that the Colonial Office would be financially burdened in the task of implementing the above policy.⁸ It was for the above reasons that attempts to put the policy of Indirect Rule into practice only began in the late 1920s.⁹

The first steps in the implementation of the policy of Indirect Rule were taken in 1929 through the enacting of the Native Authorities and Native Courts Ordinances.¹⁰ The first ordinance recognized Chiefs like Muskotwane, Mukuni, Siakasipa, Sekute, Katapazi and Momba as Native Authorities.¹¹ In the main, this law duplicated the Administration of Natives Proclamation of 1916, especially with regard to the duties, powers and jurisdiction which chiefs and their headmen had. It also specified penalties to which chiefs, headmen and their people were liable. For example, chiefs were still liable to appointment and dismissal by District Officers with the approval of the Governor.¹² They continued to perform the duties of crime prevention officers and constables.¹³ In addition to these duties, they were also required to make 'lawful orders' within their districts.

The Native Courts Ordinance 1929, apart from bestowing legal recognition upon Native Courts, also stated that such Courts would deal with civil and criminal matters 'in accordance with the rules made by the Governor'.¹⁴ In stating this, the Legislative Council took into account Sections 22, 27, 37 and 38 of the Northern Rhodesia Order-in-Council 1924. Section 22 recognized indigenous law 'so far as it was not incompatible with the exercise of His Majesty's jurisdiction'. Sections 37 and 38 also recognized polygamous marriages and the jurisdiction of all established courts over matters already brought before them before the enactment of the 1924 Order-in-Council.

The 1936 Native Courts Ordinance, among other things, also stipulated that:

Every Native Court shall have and may exercise civil jurisdiction, to the extent set out in its warrant and subject to the provisions of this Ordinance over causes and matters in which all the parties are natives and the defendant is ordinarily resident within the area of the jurisdiction of the Court ... 15

Native Courts were also empowered to try criminal cases as set out in their warrants for establishing such Courts under the 1936 Native Courts Ordinance.¹⁶ Kusum Datta tells us that such powers varied among the three types of Native Courts as previously established in 1929.¹⁷ Though the 1936 Native Courts Ordinance did not specify these Courts, they were as follows: Subordinate Native Authority Courts (Petty Chiefs' Courts), Superior Native Authority Courts and the Tribal Appeal Courts.¹⁸

All Native Courts were not allowed to try criminal cases where death was alleged to have taken place or which were punishable with death or life imprisonment.¹⁹ These Courts could also not try cases related to witchcraft except with the approval of a District Officer. The District Officer could only approve of such a trial upon the authorization of the Provincial Commissioner.²⁰ Native Courts were also prohibited from trying cases in which non Africans were witnesses?²

The main things which the 1936 Ordinance emphasized were that Native Authorities were given powers to try 'all native cases, criminal and civil,' except those cases we have specified above. This meant that Africans in the urban and rural areas whose home areas were within the Kalomo and Livingstone Districts, could be tried before their own Native Courts in civil and criminal matters.

The administration took these measures because Native Commissioners' Courts had tended to be overcrowded, thereby making the officials of these Courts overworked.²² Furthermore, this was going to be a relief to European court officials who had hitherto continued to experience difficulties with local laws, particularly those regarding marriage disputes which were in many ways new to them. A newspaper reporter commented that:

... natives who could mislead Native Commissioners and District Commissioners had found it difficult to do so to the chiefs and their assessors of their own tribes capable of thinking along similar lines to their own and the same traditions and instincts. 23

Native Courts were empowered to enforce the laws of the territory and, also the laws and customs prevailing in a given native authority area. For instance, they were empowered to enforce:

native law and custom prevailing in the area of the jurisdiction of the Court, so far as it was not repugnant to justice or morality or inconsistent with the provisions of any Order of the King in Council or with any other law in force in the Territory. 24

In addition to the above powers, the Native Courts were expected to enforce orders and rules made under the Native Authority Ordinance, 1936, provisions of any other Ordinance which the Courts were required to administer and the provisions of any law which the Courts would be required to enforce.²⁵

With regard to the powers of sentencing offenders, these were spelt out under Sections 13 and 14 of the above Ordinance. However, as regards the actual fines, imprisonment or other forms of punishment which Native Courts could impose, these varied from one type of Native Court to another. For instance, a Higher Native Court was empowered to imprison convicted criminal offenders for a period not exceeding six months, and to impose a fine not exceeding £20.²⁶ In civil matters, the same Court dealt with cases involving money or property whose value did not exceed £200.²⁷ Since there were no prisons in the rural areas, convicted persons continued to be sent to the prison at Livingstone or to some administrative centre nearer to a Native Authority's area.

These Courts, to a very large extent, continued to exercise customary procedure. However, the administration introduced a few procedural elements. In spite of the fact that the powers of Native Courts were not uniform, such procedural elements were of a general application. For instance, if a person applied for a hearing in a Native Court, he paid a hearing fee of one shilling.²⁸ If a litigant lost a case, he paid a stipulated sum of money to the Court to cover the cost of the trial. The administration also introduced Court Record Books and Receipt Books in the early 1930s.²⁹ As one District Commissioner put it, the chiefs had to learn 'all the paraphernalia of the Courts.. that is case record forms, receipt and summons forms, cash boxes, carbon paper and pencils'.³⁰

The Native Authorities were also required to see that all the Court fees and the Court records were well-looked after by Court clerks. Assessors or elders were also introduced as officials of Native Courts with the duties of assisting and sometimes trying cases upon the authorization of the Native Authorities.

The institution of Native Authorities was also modified by the creation of a Superior Native Authority in 1937, which was based at Livingstone.³¹ It comprised of four important Toka-Leya chiefs who were Chiefs Momba, Musokotwane, Mukuni and Sekute. Chiefs Katapazi and Siakasipa were to rank as subordinate authorities under Chiefs Mukuni and Musokotwane respectively by 1938, but they retained their Courts.³²

By 1939 all the chiefs comprising the Superior Native Authority could sit as a Native Court of Appeal, provided there was a quorum of three such chiefs at any single sitting, either at Livingstone or at Senkobo in the north of the Livingstone District. Appeals from this Court lay to the Native Commissioners' or Provincial Commissioners' Courts, both of which were designated Subordinate Courts during the period of Indirect Rule.³³ On the other hand, the Superior and Subordinate Authorities, together with their prominent headmen comprised the Livingstone-Kalomo Council of Native Authorities.

This Council would meet periodically for purposes of reviewing administrative matters in the areas of the authorities. The Council, comprising of such authorities, was also expected

to make orders for the governance of Native Authority areas as laid down under the 1936 Native Authority Ordinance.³⁴

Examples of the matters upon which they were expected to make such orders were the prevention of bush fire, preservation of vegetation and animal life, the maintenance of village cleanliness and checking prostitution.³⁵

The Native Treasury was also constituted in 1937.³⁶ This organ of the Native Authorities system was to be in charge of money raised in African areas through various legally stipulated means. Zimba between Livingstone and Kalomo was the headquarters of the Treasury. Because of difficulties encountered by the administration in getting the chiefs to choose a treasurer among themselves, as each chief vied to become treasurer, the administration decided that the money collected from Zimba should be sent to Livingstone periodically. A Native Appeal Court Clerk at Livingstone would take charge of this money.³⁷ In this way, all the four Native Authorities acquired nominal treasuries.

In order to raise the much needed money for administering their districts, the four Native Authorities were expected to collect various forms of licence fees such as those on dogs, bicycles and arms and ammunition licensing.³⁸ About ten per cent of such taxes collected within each Native Authority area went into the Native Authority Treasury while the rest went to the Government.³⁹ By 1938, the Livingstone-Kalomo Native Authority Council, like any other such councils throughout the territory, was obliged to draw some money from a special Native Treasury Fund of £30,000 set aside

in that year's estimates for the implementation of the policy of Indirect Rule throughout the whole territory.⁴⁰ In the above ways, Native Authorities were expected to govern and develop their own areas within the framework of Indirect Rule, which was essentially aimed at 'preserving the indigenous tribal system while at the same time adapting it to changing circumstances.'⁴¹

In the urban areas the need for courts similar to Native Courts had long been felt even before the passing of the 1929 and 1936 Native Courts laws. This need became more pronounced than ever before in the late 1920s because of the growth of a working population in the urban centres which had no strong roots in the rural areas. Prior to this period, for instance, Arbitration Courts had been established in Livingstone at Maramba, the Zambezi Saw Mills and the Railway Compound.⁴² These Courts had served the legal needs of urban Africans.

The Arbitration Courts were manned by elders who represented ethnic groups such as the Chewa-Ngoni, the Lozi and the Bemba.⁴³ Furthermore, these Courts had no legal recognition, although they served the purpose of settling disputes of persons who lived within the Livingstone Municipality area. Whenever they encountered problems, they referred litigants to the Native Commissioners' or Magistrates' Courts.⁴⁴ The main weakness of these Courts was that they could never order the arrest of an offender or sentence a convicted person to a term of imprisonment. On the whole, they did not have the power to enforce their decisions.

It was because of this lack of a proper Urban Native Court in Livingstone and, as was also the case in other urban areas, that the Government wanted to establish one. By 1939 the idea of establishing the Livingstone Urban Native Court had received approval in most official circles though the Court itself was not yet established.⁴⁵ We will not here deal with further developments regarding the setting up of this Court because such a treatment would be outside the period of this study.

(b) Factors which played a major role in the process of adaptation.

In the period of Indirect Rule two important factors played a role in the process of African adjustment to the imposed agencies of social control. These were the Christian Missions and the money economy. The two influences only coincided with the system of Indirect Rule. Missions were important in that through Western education and the teachings of the Christian faith, some people rejected certain indigenous practices such as polygamy, widow inheritance, elopement and beliefs in witchcraft.⁴⁶ The intrusion of a money economy continued to weaken the authorities of chiefs, headmen and leaders of kinship groups upon which the indigenous social organization was based. This was so because many people left the villages for the towns and other work places where they could find jobs and earn money with which to buy consumer goods and meet the responsibilities of marriage.⁴⁷

We can appreciate the extent of missionary influence in the region of our study if we look at the main mission groups and where they were established before and after 1924. Then we should

observe their general effects. From as early as 1886 the Paris Evangelical Missionary Society pioneered in the teaching of reading, writing and industrial arts to the Lozi of North-Western Rhodesia while they were based at Sefula.⁴⁸ By the 1920s the influence of this education had spread as far as the Livingstone District. For example, the Sekololo (Lozi) language, English, and Arithmetic were being taught by Lozi teachers and catechists at Maramba and Mukuni Mission Schools within the Livingstone District.⁴⁹ Two other missionary groups which established schools among the Plateau Tonga in the north of the Toka-Leya by 1903 were the Seventh Day Adventists and the Society of Jesus.⁵⁰ In 1928 the Brethren in Christ joined the above two groups.⁵¹

In Livingstone the church which had supported racial integration between the Europeans and Africans in the 1920s, belonged to the Universities Missions to Central Africa group.⁵² In the heartland of Toka-Leya country, the Church of Christ group established mission centres at Sinde and Kabanga in 1923 and 1927 respectively.⁵³ By 1932, this missionary group had also established Namwianga Mission near Kalomo.⁵⁴

The impact of the missionaries and their work was felt more in the 1920s than in the previous period because it was in this latter period that a majority of these mission centres were set up. As a result, in this period, the number of people who could read and write began to multiply, particularly among the working force.⁵⁵ Chiefs Mukuni, Musokotwane, and Katapazi, including some of their councillors could read and write in

this period.⁵⁶ As time went on, some Africans began to have their marriages validated in churches, so that customs like elopement were becoming less common by the early 1930s.

It can also be argued that the Christian faith which emphasized individual sin with eternal condemnation in hell or individual sanctity with a promise of life in heaven, had the effect of making crime something whose punishment was remote. In pre-colonial and early colonial times, punishment, whether supernatural or that from established institutions of social control, was immediate.⁵⁷ It is not surprising to observe that crimes of theft and witchcraft accusation became more widespread in this period than in the pre-1924 period.⁵⁸

Another effect of the introduction of missionary sponsored Western education was to create what colonial administrators often referred to as 'semi-educated natives.'⁵⁹ This class of people very often presented problems to the institution of chieftainship, which the administration wanted to preserve as a bastion of the theory of Indirect Rule. Such people were inclined to reject the Native Courts, which they saw as nothing but decadent institutions manned by ignorant persons. This class of people also presented other problems to the administration, as they were the most capable of forging travelling and other documents.⁶⁰

We observed in the previous chapter how the introduction of a money economy played a major role in creating some marriage problems such as adultery and divorce cases. After 1924, the influence of a money economy assumed wider proportions than ever

before. For example, Africans had to satisfy many of their needs and wants through money. Bridewealth came to be paid partly in money or goods bought with money and partly by traditional methods.⁶¹

In this period, in the process of wage employment, the obligation of matrilocal residence, that is the requirement that a son-in-law should reside at the village of his spouse's guardian for a number of years, increasingly fell in abeyance.⁶² Travel to places of work both within and outside Northern Rhodesia gave the Africans an opportunity to live and work with people of varied ethnic and national backgrounds. This enabled Africans to pick up the customs of other ethnic groups and to develop tastes for European manufactured goods. For example, between 1920 and 1938, there was a steady migration of people from surrounding rural areas to places like the Mulobezi Saw Mills and to Kalomo and Livingstone.

Some educated Africans from different parts of Northern Rhodesia and elsewhere, also spread the influence of the new social-economic order in the Kalomo and Livingstone Districts and towns. They normally worked as carpenters, craftsmen, house servants, tailors, wagon drivers as well as primary school teachers and catechists.⁶³ The presence of these people in the heartland of Toka-Leya territory had the effect of further widening the local people's understanding of the imposed system of social control.⁶⁴

Migration to places of work had the effect of influencing people's attitudes towards the law enforcement agencies as well as undermining the marriage institution. For example, the necessity of obtaining employment in urban work places impelled many people to obtain Native Registration Certificates. These documents were meant for identification purposes and every male person between the age of 16 and 60 years was required to carry them by law.

Some migrant workers who had to leave their wives in the villages regretted doing so as during their absence their wives would desert them or be won over by others.⁶⁵ This problem also compelled the aggrieved husbands to seek redress in the Native Commissioners' Courts. Some people began to appeal from the Native Courts and Native Commissioners' Courts to those of higher jurisdiction such as the Provincial Commissioners' and High Courts.⁶⁶

(c) Conclusion.

In this chapter we discussed the establishment of Crown administration in Northern Rhodesia. We then discussed the introduction of Indirect Rule, with particular reference to the Kalomo and Livingstone Districts. We did so by examining the 1930 and 1936 Native Authority and Native Courts laws and their implications for the indigenous political and legal institutions, and the people in general.

We observed that the Native Authority and Native Courts laws of 1930 created Native Authorities and Native Courts. The former were in actual fact a selected number of indigenous chiefs but

were recognized by the Government as rulers of their people. The latter were also Chiefs' Courts. These Courts were of three types, also with varying powers of jurisdiction within their areas.

Then in 1936 the Government passed the Native Courts and Native Authority Ordinances which were similar to the ones we have mentioned above. These laws were meant to revamp the system of Indirect Rule. Then in 1937, the institution of Native Authorities was modified, first by the creation of a Superior Native Authority which would serve the functions of an Appellate Court as well as a Local Administrative Body, embracing several Native Authorities. Second, the number of Native Courts was increased in various African rural areas and the powers of the Native Authorities as heads of these Courts, also increased. Finally on this point, the Native Treasury was created in 1937. The Native Treasury would serve the Kalomo-Livingstone Native Authority areas.

Footnotes.

1. The Northern Rhodesia Government Gazette, XIV, 6, 1924, The Northern Rhodesia Order-in-Council, 45-54.
2. This policy would entail local government through indigenous rulers.
3. F.O. Spalding, E.L. Hoover and C.J. Piper, 'One Nation, One Judiciary: The Lower Courts of Zambia,' The Zambia Law Journal, II, 1 and 2, 1970, 11.
4. Spalding, Hoover and Piper, 'One Nation, One Judiciary', The Zambia Law Journal, 11.
5. F.D. Lugard, The Dual Mandate in British Tropical Africa, 2nd Ed. (London: William Blackwood and Sons, Limited, 1929), 194.
6. T.O. Elias (Ed.), Government and Politics in Africa (Delhi: Asia, Publishing House, University of Delhi, 1963) 117; Lugard, The Dual Mandate, 194.
7. Rotberg, The Rise of Nationalism, 48-51.
8. K. Datta, The Policy of Indirect Rule in Northern Rhodesia (Zambia) 1924-1953, (Ph.D. Thesis) University of London, 1976), 57.
9. Legislative Council Debates, 28/2/29/3/29, 6th Session, Livingstone, (Government Printer), 1929, Col. 238-239.
10. The Laws of Northern Rhodesia, 1930, I, Cap. 6 (London: Waterlow and Sons, Ltd., 1931); The Native Authority Ordinance, 465-475 and the Native Courts Ordinance, 91-92.
11. RC/655, Legislation, The Native Authority Ordinance, Sections 3(1), (3) and 7, 1929.
12. The Native Authority Ordinance, Sections 4 and 5 (10).
13. The Native Authority Ordinance, Section 10 (1)-(4).
14. The Native Authority Ordinance, Section 12 (1)-(21).
15. The Native Courts Ordinance 1936, Section 8.
16. The Native Courts Ordinance 1936, Section 10.
17. K. Datta, The Policy of Indirect Rule in Northern Rhodesia (Zambia) 1924-1953, (Ph.D. Thesis) University of London: 1976, 307-308.
18. K. Datta, The Policy of Indirect Rule in Northern Rhodesia (Zambia) 1924-1953, 307-308; 312.

19. The Native Courts Ordinance, 1936, Section 11 (a).
20. The Native Authority Ordinance 1936, Section 11 (b).
21. The Native Authority Ordinance 1936, Section 11 (c).
22. Crime and the Citizen: The Northern Rhodesia Council of Social Service, Conference Proceedings, Lusaka, 1959, 40. This Conference was organized by the Northern Rhodesia Council of Social Service, the equivalent of the present Social Welfare Department, in conjunction with the Prisons and Judiciary Departments to discuss issues of crime and legal administration in the territory. The particular section of the Report quoted above is about an outline history of Native Courts, delivered by Mwenya.
23. The Livingstone Mail, 26th May, 1936.
24. The Native Courts Ordinance 1936, Section 12 (a).
25. The Native Courts Ordinance 1936, Section 12 (b), (c), (d).
26. Crime and the Citizen: The Northern Rhodesia Council of Social Service, Conference Proceedings, Lusaka, 1959, 35-40.
27. Crime and the Citizen: The Northern Rhodesia Council of Social Service, Conference Proceedings, Lusaka, 1959, 35-40.
28. SEC 380, II, Native Court Rules, para. 2, 1936.
29. KSC3/1, Chiefs' Meetings, Minutes of a Meeting held at the DC's Office, Livingstone, 11th to 13th June, 1930.
30. KSC3/1, Chiefs' Meetings, Minutes of a Meeting held at the DC's Office, Livingstone, 11th-13th June, 1930.
31. KDB6/4/3/4, Livingstone District Tour Report No. 1, 1937.
32. In 1937, these are shown as 8, but the 1940 Tour Report shows only the above mentioned 4 names. See KDB6/4/3/4, Livingstone District Tour Report, 1940.
33. The Zambia Law Journal, Vol. II, Nos. 1 and 2, 1970, 'One Nation, One Judiciary', 15.
34. The Native Authority Ordinance 1936, Section 8.
35. The Native Authority Ordinance 1936, Section 8 (f) (g) (o) (t).
36. KDB6/4/3/4, Livingstone District Tour Report No. 1, 1937.
37. This was done because of disagreements among the chiefs as to which chief should become treasurer.
38. The Rhodesia and Nyasaland Royal Commission Report (The Bledisloe Report), Colonial No. 5949, 32.

39. The Bledisloe Report, 32.
40. The Bledisloe Report, 33.
41. However, Lord Hailey argued that 'the establishment of Native Authorities and Native Arbitration Courts was meant to restructure tribal society. See Lord Hailey, Native Administration in British African Territories, Part II, (London: 1950), 84.
42. Interview: L.S. Mulele, 27th July, 1978; Interview: P. Sakwanda, 5th August, 1978; The only written indication regarding the establishment of such Arbitration Courts in Livingstone, particularly in Kashitu Compound near Maramba Compound in the 1920s, can be found in official correspondence. See for instance, File No. ZA1/9/82/4/1, Locations and Compounds: Maramba and Kashitu, 1928-1931, Minute No. 497/15M/30, From DC, Livingstone to SNA, Livingstone, 6/8/30.
43. Interview: L.S. Mulele, 27th July, 1978; Interview: P. Sakwanda, 5th August, 1978.
44. ZA1/9/82/4/1, Locations and Compounds: Maramba and Kashitu, 1928-1929
45. See for instance SEC2/406 Vol. II, Marriages, From PC, Ndola, to DS, Lusaka, 27/9/39.
46. G104, Kambole Mpatamatenga, 'Kasimbo Ambaenda'abo' (Kasimbo's Travels) (MS), n.d. Livingstone Museum Library, 42-67.
47. L.H. Gann, Birth of a Plural Society, 84-90.
48. R. Rotberg, Christian Missionaries and the Creation of Northern Rhodesia 1890-1924 (Princeton University Press, 1965), 22-23.
49. ZA7/1/2/3, Batoka District Annual Report, 1915.
50. Rotberg, Christian Missionaries, 71.
51. Rotberg, Christian Missionaries, 71-74.
52. Rotberg, Christian Missionaries, 82-83.
53. Shewmaker, Tonga Christianity, 51.
54. Shewmaker, Tonga Christianity, 51.
55. Particularly those connected with missionary work either as catechists or as primary school teachers.

56. SEC2/60, Organization and Reports in the Livingstone District, 1936. This file is found in the NAZ, Lusaka. It contains reports, notes, and correspondence by NCs, DCs, PC's etc, regarding how Native Authorities in the Livingstone and Kalomo Districts were adapting to the system of Indirect Rule by 1936.
57. Mubitana, Christian Missions, 30-70.
58. See for instance, KDB6/4/2, Livingstone Sub-District Quarterly Tour Reports, 1924-1932.
59. KSC6/3/1, Livingstone District Tour Report No. 5, 1933.
60. KDB6/4/3/4, Livingstone District Tour Report, 1938.
61. KSP3/1, Kalomo District Notebook, 1901-1963, 'Native Laws and Customs'.
62. See for instance, M. McCulloch, 'Economic Development in Inter-Tropical Africa,' (MS) (London: The International African Institute) n.d.
63. M. McCulloch, A Survey of the African Population of Livingstone (Manchester University Press, 1956), 3-4.
64. Interview: J. Siamonga, 4th August, 1978.
65. KSC6/1/1, Livingstone District Annual Tour Report, 1939.
66. Interview: J. Siamonga, 4th August, 1982.

Chapter 6.

Adaptation under Colonial Office Administration 1924-1939.

(a) Chiefs, headmen, and their people.

The six chiefs and the people over whom they exercised their authorities in the region of our study faced problems in the process of adapting to the imposed agencies of social control. Before 1929, Native Commissioners were very often disillusioned with the failure by chiefs and headmen 'to keep law and order' and 'to control the natives' in their districts.¹ Chiefs were very often reported to have been 'slack and lazy' in the trying of cases, visiting their villages and ensuring that their people practised rules of hygiene and made inter-village paths.² Village disintegration became the order of the day throughout the 1920s.³

Some chiefs and headmen found it difficult to get used to some of the regulations such as those under the 1916 Administration of Natives Proclamation. There was, for example, under the above law, the rule that the Chiefs were expected to observe strict boundaries with their neighbours. On being urged to observe this rule, chiefs very often retorted by saying that they found it difficult to observe boundaries 'with their brothers'.⁴ Chiefs and headmen also continued to conceal occurrences of crime in their areas from government officials. This was particularly true with regard to crimes related to witchcraft. All of the above factors made the law enforcement officers to take punitive measures against the chiefs and their headmen. For example, Chief Mukuni was fined a sum of ten shillings in 1927 'for not keeping order in

his village'.⁵ In the same year, Chief Musokotwane's subsidy was being withheld for a similar offence to the above.⁶

Similarly, Chief Sekute's headman, Imusho, was fined five shillings 'for not having a light on his wagon at night.'⁷ By 1928, several headmen in Chief Sekute's area were being described as 'degenerate species' who were incapable of keeping law and order among their people.⁸

The slowness with which chiefs and headmen appreciated the working of the alien agencies of social control very often led administrators to interpret this as indicating a lack of a sense of duty among them. In view of this conviction, they continued to apply punitive measures against chiefs and headmen. For instance, Chief Mukuni's headman Lihakwe, was dismissed from his job late in 1928.⁹ Similarly, Chief Musokotwane was demoted, tried, convicted and sentenced to imprisonment for having committed incest a year earlier, while his headman, Liambai, was also dismissed and imprisoned for having concealed the same offence for the whole year.¹⁰

It was against this background of trial and error by the Chiefs and headmen that by 1929 on the eve of introducing Indirect Rule some members of the Legislative Council were extremely sceptical about the wisdom of conferring responsibilities of local government upon people who had done so badly in the pre-requisites of those responsibilities.¹¹ In 1931, a District Officer gave his impression of the initial response to Indirect Rule by saying 'Chiefs fought shy the idea of increased powers... which entailed the keeping of court records.'¹²

One problem which chiefs faced in relation to their duties in

this period was that concerning proper court procedure. For instance, they found it difficult to understand notions of English justice which were mostly abstract as against their own which they found to be practical, particularly with regard to the aims of punishment.¹³ For instance, the idea of punishing someone without making him restore the stolen goods was strange to most Native Authorities.

As in the 1890-1929 period, they also found the classification of offences into civil and criminal difficult to appreciate. Very often offences like petty theft, assaults, tree-cutting in certain restricted areas, arson, and the violation of 'lawful orders,' most of which the chiefs were expected to enforce merited compensation or were being treated as meriting fines according to the chiefs.¹⁴ They also failed to appreciate the distinction between compensation and a fine.

According to one itinerant District Officer in the early 1930s, 'while the fine went to the Boma, the compensation was paid to the offended person.'¹⁵ In 1930, Chief Sekute was reported not to have been entering cases in his Record Book unless the money due for fines or damages was forthcoming. He could also alter already recorded cases, charge no hearing fees for cases unless punishment or damages were given, and was generally confusing civil and criminal procedure.¹⁶

We should also observe that such problems were widespread amongst all Native Authorities of this region in the 1930s. For instance, Chief Momba in the Kabozu Administrative District, in the far north-west of the Kalomo District was by 1930, 'using his

Case Book for writing his own letters and had heard very few cases in one quarter.¹⁷ In order for us to appreciate the prevailing confusion in court procedure in the early 1930s, we observe that a Native Commissioner remarked at one time that 'one court president fined himself for beating his wife and another also fined himself for cutting timber in a prohibited area.'¹⁸ The confusion in court procedure is also evident in cases where a chief's elders fined convicted offenders cattle or goats and then 'appropriated the fine.'¹⁹ This appears to have been a continuation of African ideas of law enforcement to show that justice had prevailed and was also a symbolic demonstration that things should return to normal.

Native Courts did not prefer certain forms of punishment which they were expected to mete out to offenders under the 1936 Native Courts Ordinance and some rules made under the same law. For instance, they were averse to imposing sentences of corporal punishment and imprisonment.²⁰ Imprisonment seemed unfairly to punish dependants. Whipping was unusual and degrading to an adult person.²¹ One reason for not liking fines was that they did not take into account the injured feelings of an offended person, while compensation did.²²

To the majority of Africans all the above forms of punishment showed an impersonal approach to punishment which was anathema to the local village situation. Where close kinship ties between kinsmen and members of the same ethnic groups existed, justice was expected to take into account the maintenance of social cohesion as far as possible.²³ It is not surprising to observe that by

1939 only four men in the whole of the Livingstone District were recorded to have been sent to prison by Native Courts, 'one for arson' and the rest 'for assault on a cattle orderly aggravated by contempt of Court'.²⁴

One setback which Native Courts also experienced was that there were very few suitable persons who could be employed as Court clerks to do duties of recording cases and assisting the Native Authorities in trying cases or obtaining Court fees, fines and damages directly in cash or by selling offenders' property.²⁵ People who were found to be suitable for the job very often felt that the job was below their dignity and preferred to work in urban areas. This lack of clerks, particularly in the early 1930s, meant that Native Courts could not do their work efficiently. This situation in turn meant that District Officers continued to exercise a rigorous check on the work of Native Authorities as presidents of Native Courts in connection with the trying of cases. This attitude was expressed by the District Officer, C.A.R. Charnaud who toured Chief Sekute's area in 1932 and said

..... but it will be long before it will be possible to relax the present rigorous check that has to be kept on all matters dealing with the work of Native Authorities. 26.

By 1935, only two of the six Native Courts in this region had clerks who received a wage.²⁷ Similarly by this date, kapasus were also very few. The clerks' and kapasus' wages were also very meagre. By the late 1930s when clerks were available for all the six Native Courts of the region, these were either the chiefs' own relatives or 'semi-educated' persons of a low calibre.

The above factors were significant in that Native Courts continued to perform badly in their role of trying cases by 1939.

Another problem which prevented progress in the working of Native Courts was that there were always delays in the payment of fines and damages by convicted persons. This meant that Court presidents delayed to record such cases and no money would be forthcoming for meeting other needs of the Courts.

In addition to administrative problems on the part of the Courts and people's attitudes towards new procedures in the functioning of Native Courts, we must observe that there was a general decline in chiefs' authority in the eyes of most Africans throughout the 1930s. This was so because of the spread of education, ideas of individualism due to wage labour, and new ideas of justice. Some people increasingly felt that Native Courts were manned by ignorant and illiterate people.²⁸ In 1937, a District Officer who had just completed a tour of the Livingstone District expressed the above view when he said:

..... the educated are dissociating themselves from the illiterate and the Christian from the pagan. An impulse to escape from communal life and, sometimes from the control of the Native Authority.²⁹

The same District Officer also went on to comment on the relationship between the educated class of Africans and the chiefs in the latter's role as justices by saying 'the elderly and ignorant chief was diffident in passing judgement upon natives more knowledgeable than himself'.³⁰

However, in spite of the problems that we have discussed concerning the administration of justice in the rural areas, a majority of people found Native Courts useful for settling their disputes. They preferred to be tried before their own Courts, headmen and elders, to being tried before Native Commissioner's Courts. In support of this argument Mwenya, one of the speakers at a conference on Native Courts said that Native Courts had the merits of having cheap and quick justice, being near to the people's own homes as well as capable of dispensing a humane justice.³¹ They also aimed at reconciliation of disputants as well as punishing the offenders.

With regard to the question of local government, there were several problems of adaptation. The apparent failure and disinclination of Native Authorities to make orders or to enforce existing ones to the satisfaction of the administration after 1929, worried Native Commissioners.

However, during the period of Indirect Rule Native Authorities did become active in making orders and enforcing them in relation to the maintenance of the indigenous institutions and ways of life. For instance, they made some orders relating to preserving the institution of the chieftainship and against prostitution.³² Native Authorities tended to relax in this role whenever the existing social order was positively threatened.³³ For example, in 1931, Native Authorities were reported not to be willing to make inter-village paths.³⁴ This work was unpopular among their people. If they insisted on making and implementing such orders, they could undermine

their own prestige among the people.³⁵

The Native Authorities and their people were by 1935 resisting the idea of dipping cattle 'due to sheer ignorance and the fear of dipping fees'.³⁶ In the same year a District Officer in the Livingstone District remarked that 'chiefs were bent on preserving popularity with their people'.³⁷ In the above ways Native Authorities saw the law enforcement system as something which might destroy them if it was not handled properly.

In 1936 when the Kalomo - Livingstone Native Authority Council was formed, Native Authorities continued to refrain from meeting regularly in order to make orders about the administration of their villages.³⁸ They were only forced to meet by periodic visits and reminders from District Officers.³⁸ To this extent we can observe that Native Authorities, by refusing to make orders or do what was unpopular among their people, were registering their protest against such unpopular duties. This was also a reflection of their failure to adapt to the imposed system of social control.

Where certain issues became directly relevant to the welfare of Native Authorities and their people, such Authorities were quick to support them. For example, in the 1930s, most Native Authorities in this region, speaking as individuals, voiced and supported demands for better wages both for their kapasus and for themselves.⁴⁰ When in 1935 tax was ~~in~~ increased on the

line of rail from ten shillings to twelve shillings and six pence, Native Authorities also opposed the measure whenever they had a chance to do so.⁴¹

Similarly, between 1930 and 1936, almost all the six Native Authorities in this region as individuals, supported the newly formed Livingstone Native Welfare Association in opposing the administration against things like police brutality, the repatriation of persons who had already served their prison sentences and periodic searches for unemployed persons and home brewed beer.⁴² They also felt strongly about the need for legislation against temporary marriages between local women and migrant labourers.⁴³ Native Authorities and their headmen also supported legislation against concubinage between African women and European men.⁴⁴ They were also the first to register their marriages because they thought by so doing, the social institution of marriage would be **stabilized**.⁴⁵

In particular, the economic stagnation of rural areas and the unequal distribution of wealth in general, led to embezzlement by the Native Authorities or by their clerks, of the little money that would go into the Native Treasury.⁴⁶ The difference between public and private property was also still alien to most Native Authorities. The lack of money in the rural areas also contributed to the failure of the Treasury System. For example, we saw earlier on in this Chapter that

Native Treasury funds were supposed to come from Court charges, and dog, bicycle, game, arms and ammunition licence levies. The collection of these licence fees was one of the duties that was not performed successfully by any Native Authority.

(b) Witchcraft and murder offences.

This quotation from a murder trial was the testimony of an alleged witch in 1925:

If the diviner found me guilty I should say I must have killed him. Take me away and kill me.... that's what we Africans believe. 48

By remarking that 'the fear of the unknown was greater than that of the boma', the Native Commissioner who presided over the trial was acknowledging the witch's belief in the power of witchcraft.⁴⁹ The people's attitude towards witchcraft is also reflected in the above quotation. The small number of recorded witchcraft cases, particularly after 1924, should not mislead us into believing that Africans had lost the belief to a remarkable degree. In fact, Roberts tells us that the practice and belief became more widespread in Northern Rhodesia in the 1930s than in the early 1920s.⁵⁰ By resorting to divinations in order to detect witches, instead of reporting them to the boma, people continued to believe that the alien system of social control was unsuitable for solving the indigenous problem of witchcraft.

Powdermaker also tells us that the persistence of ideas about witchcraft practice was demonstrated through the fact that 'the new facts of modern medicine were often conceptualized as the whiteman's magic.' Mitchell emphasized the continuation of indigenous beliefs in the modern society in these words:

Christianity, for example, has penetrated deep into African life, but one of the phenomena of modern Africa is the extent to which African thought is moulding Christianity so as to be consistent with traditional ideas and beliefs. Dozens of troubled African prophets have established independent churches whose dogmas, using selected appropriate biblical texts, have thought to reconcile such traditional customs as polygamy or beliefs in witchcraft with Christianity. 51

Africans continued to regard mulozi (a witch or wizard) as an arch-enemy of society. The ng'aka (diviner) was a useful person whose noble duty was to rid society of the witchcraft menace.⁵² To this extent, people also resorted to secret sessions of divination. Such practices usually resulted in the naming of certain persons as witches or wizards, or simply gave clues as to who the possible witches or wizards were. The aggrieved kinship groups would thereafter apply retaliatory witchcraft. There were of course isolated instances where people resorted to methods similar to those used in pre-colonial times when punishing such offenders, such as mutilation.⁵³

When a man called Kasokera was tried for murder in 1924, the weaknesses of the 1904 and 1914 Witchcraft Acts began to surface. The administrators and missionaries on one hand, and the enlightened Africans on the other, began to question the usefulness of the above two laws as means of putting to an end beliefs in witchcraft.⁵⁴ Africans in particular, became more distrustful of the alien agencies of social control than ever before. This was so because Kasokera had divined for a headman called Shamfungo to find out the cause of a death which had taken place in the village. Although Kasokera believed in good

faith that he had rendered essential services to the community, and wished that he be paid for rendering those services, both he and Shamfungo were convicted of murder and subsequently punished.⁵⁵

We observed in the previous chapter that it was one of the roles of chiefs and headmen to call diviners in order to smell witches or wizards after mysterious deaths in a given community. Chiefs and headmen continued to play this role after 1930, but in secret. Earlier on, in 1924, a headman called Kambakasulwe of Chief Siakasipa's area had invited a diviner called Siamboka to come and explain the cause of a recent death in the village.⁵⁶ Siamboka's divination resulted in naming several people as witches and wizards. The named persons were subsequently killed with the approval of all headmen and the community.

When the above case came to the notice of the administration in 1927, three years after it had been committed in 1924, the accused diviner, together with all those people who had invited him were tried, convicted of mass murders and sentenced to death. This case shows us the extent to which people in authority continued to exercise their indigenous role of witchcraft divination. It also illustrates the contention that such divination usually took place secretly in this period, because this case came to the notice of the police long after its actual commission.

The District Commissioner enlightens us on the involvement of chiefs and headmen in divinations of the above nature in his reports of the 1920s. For example, in 1925, Headman Chikamba of

Chief Musokotwane's area was reported to have been accused of using witchcraft against a neighbour's child who died shortly after the accusation.⁵⁷ No proceedings were instituted against the accusers 'due to insufficient evidence'. In 1927 a headman who had been convicted for practising witchcraft the previous year was also reported to have died in prison while serving his sentence.⁵⁸ Similarly, in 1928, Chief Momba was reported to have died at Kabozu in the north-west of Kalomo District 'from witchcraft machination'.⁵⁹ And in 1930, a body of a dead person which was seen floating on the Zambezi River, was later on discovered to be that of a person who had been killed in the locality due to a witchcraft hunt which had taken place on Long Island (an island on the Zambezi River near the Victoria Falls).⁶⁰

The dead body showed marks of having been cut with a jagged knife on both sides of the throat 'in imitation of a crocodile bite', and then pushed into the river. Obviously, this was to make anybody who might discover the body believe that a crocodile had killed the victim. Later on, thirty-eight people were arrested in connection with witch-finding and two of them were hanged.⁶¹

In the changing circumstances of the time, the example of a floating body of an alleged witch serves to illustrate one way through which people attempted to evade detection. The case also shows us that people continued to mete out modified forms of indigenous punishments against alleged witches and wizards, particularly in villages far from areas of European settlement.⁶² Sometimes the killing of an alleged witch or wizard was accompanied by the payment of a sum of money and some property to the kinship

group of the deceased witch or wizard. This action was meant to prevent the relatives of the dead witch or wizard from reporting the matter to the Boma.⁶³

On the other hand such an action serves to illustrate the theory of 'collective disapproval' of the evil practice. This also shows that although people undertook such actions as a community, members of the same community tended to distrust one another in that some people might reveal these punishments to the white authorities. In other words people were compelled by circumstances to pay compensations to kinship groups of alleged offenders in this period.

Sometimes, where the death penalty was not carried out, people used to inflict some form of bodily harm upon alleged witches or wizards.⁶⁴ It is likely that people resorted to this form of punishment in order to make the criminal suffer before he died later on from the wounds inflicted. This was also a way of adjusting to new circumstances because this had never been the indigenous way of punishing witches or wizards. Sometimes, if a person admitted voluntarily to having caused death through the use of supernatural means, his kinship group was asked to pay a heavy compensation to the group of the deceased person 'to seal off the case'.⁶⁵

Another way through which people began to deal with the problem of witchcraft, particularly after 1930, was to respond to the Muchape (Witchcraft cleansing) movement.⁶⁶ The above movement was actually born out of the Watch Tower Movement. The leaders of the Watch Tower Movement spread its teachings in the Serenje, Mkushi and later on, the Isoka and Abercorn (Mbala)

Districts of the Tanganyika (Northern) Province towards the end of 1917.⁶⁷ In 1925, Tomo Nyirenda or Mwana Lesa, was converted to Watch Tower teachings and beliefs which were essentially millennial. He became the founder and leader of the Muchape (Witchcraft cleansing) Movement. However, in his new Movement, apart from teaching about the end of the world and the doom of colonialism he taught his Movement's adherents that it was necessary to rid the world of those things that make it evil such as witches or wizards.⁶⁸

There have been two prominent interpretations attached to the Mwana Lesa Movement. One is that it was a form of protest against colonial rule.⁶⁹ The other one is that it was an adaptation of indigenous beliefs to the Christian Faith.⁷⁰ I support the latter view because, if we examine the Mwana Lesa Movement closely, it contained indigenous and alien Christian elements. In support of this stand Professor Ranger thinks that the Movement should be seen:

..... precisely as the interaction of a particular form of Christianity with the particular beliefs and customs of the Lala and Swaka peoples among whom the movement spread.⁷¹

In the region of our study the first areas to be affected by this movement were those of Chiefs Nyawa and Shindu in the north of the Kalomo District.⁷² In these areas several people saw the Muchape Movement as a means of ridding the land of the witchcraft menace. Between 1935 and 1939 several people in Chief Siakasipa's area as well as in some parts of the Livingstone District were also involved in the activities of the above movement.

For instance, a certain George Amini was arrested and convicted under the 1915 Punishment Proclamation as amended by the 1924 Punishment Ordinance.⁷³ These laws forbade the spreading of information which would cause alarm. Similarly, a headman in the north of the Kalomo District was also arrested and jailed for sending money to induce Muchape men to come to his village.⁷⁴

Although the Muchape Movement was nipped in the bud by having the culprits tracked down, arrested and jailed, the above examples serve to point to where Africans sought answers to most of their social problems. Supernatural problems, in particular, had to be solved through supernatural means and not in a white man's Court of law. After all the white man had refused to recognize witchcraft.

The words of a District Officer during the trial of a man called Siantebele sum up the general trends of African attitudes towards the imposed agencies of social control with regard to witchcraft offences. Siantebele had murdered someone on the grounds that Siantebele himself was accused of having bewitched the latter's relative in 1941 in the north-east of the Kalomo District. The District Officer said:

If he had been accused of witchcraft he should have complained to the Boma. But he has never done so and many natives are averse from doing so from different motives..... In fact many natives think that our laws help the wizards because if a man accuses another of witchcraft he is promptly punished. They are unable to distinguish between a just accusation and a slanderous one based on mere imagination.⁷⁵

(c)

(c) Theft offences.

With regard to the commission of theft offences from the mid 1920s economic factors played a prominent role to determine the trends of African adaptation to the law enforcement agencies. This was particularly true in view of the economic depression which hit Northern Rhodesia in the early 1930s.⁷⁶ What also makes this period different from the previous one is that there was a diversification of offences related to theft and techniques used to avoid detection. By 1930, Africans, more than ever before became involved in offences of fraud, forgery, debts, simple contractual relationships, theft by abusing office and those about obtaining services of various types.⁷⁷

Many Africans got involved in the theft of consumer goods, mainly in the urban areas of Livingstone and Kalomo. The commonest things which used to be stolen were items that were useful or in fashion at the time. They included blankets, clothing, kitchen cutlery, postal packets (stolen with the hope of finding money), cufflinks, mirrors and toiletry.⁷⁸ Theft of confectionery and foodstuffs continued to feature in this period as had earlier been the case. As could be expected, the main culprits were those persons who worked for Europeans because they were easily tempted to steal these things from their employers.

In connection with the theft of consumer goods, it was common for thieves to hand over stolen goods to friends or relatives in different areas or districts from where the

offences had been committed.⁷⁹ In this way, offences of 'receiving goods known to have been stolen' began to feature. Sometimes, such goods were hidden either in houses or in the bush.⁸⁰ It was also common for thieves to dispose of the stolen goods shortly after they had been stolen. They were normally sold at very cheap prices to ensure that people bought them quickly to avert detection should the police be searching for them in the homes of the people who stole them.

The practice of obtaining money or services by fraud became pronounced and widespread in this period. Persons in authority resorted to seeking pecuniary gain by virtue of their positions. One of the recorded incidents of fraud in the early 1920s involved three policemen who had searched and **extorted** sums of money from some migrant labourers returning from Southern Rhodesia to North-Western Rhodesia through Livingstone.⁸¹ The policemen had posed as the deputies of white men at Livingstone.⁸² They were eventually jailed. In the early 1930s, cases of obtaining money **or** services by cheating continued to be common.⁸³

Money was also obtained through the use of office. For example in 1929 a municipal policeman called Shinabo demanded a sum of five shillings from a man he allegedly caught urinating on the floor of a latrine instead of doing so in a bucket.⁸⁴ This was in Maramba Township of Livingstone. He had threatened the offender that he would report him at the Police Station if the latter did not give him the sum of five shillings. The

policeman was later on arrested after the alleged offender had reported the matter to the police. He was subsequently sentenced to seven days' imprisonment.

In connection with the forging of documents and the theft of postal packets referred to above, some people believed that they could use their knowledge of reading and writing to outwit the police. The case of Duncan Kapili in 1927 illustrates this point well.⁸⁵ Kapili, the house servant of a station master at Kalomo, cut off some leaves from his master's ticket book used on passenger trains and sold these to people at the railway station. He was arrested, convicted and sentenced to two months' imprisonment.

Again, in 1930, a man called Chikwanda Beliyo Moffat Stephenson impersonated a police officer by wearing a ^{pair of} khaki of shorts and a jumper, black boots and a helmet.⁸⁶ This was obviously a contravention of Proclamation Number 4 of 1919 regarding impersonation of police officers. He managed to obtain a total of £3.10s, and four registration certificates from five Toka-Leya travellers near Senkobo, in the north of Livingstone, by pretending to be a detective sergeant. The outcome of the case was that the offender was sentenced to two years' imprisonment with a recommendation of five years' deportation to his home district in the Eastern Province, after serving his sentence.

From the early 1930s, onwards, burglaries became more common than ever before. These usually involved the breaking into

and entry of important food and liquor storage buildings, European houses as well as shops.⁸⁷ By the middle of the 1930s these offences posed an unprecedented threat to European house and shop owners.

What encouraged most thieves to commit such offences was a widespread belief in what we have referred to as 'witchcraft of the second order'. It was widely believed that if someone had the above type of witchcraft he could not be detected by either laymen or policemen if he happened to commit any theft offence. Furthermore people who used it believed that a person serving a term of imprisonment could escape from lawful custody with the utmost ease without being detected by law enforcement officers.

Two notorious thieves, James Kombi and Minyoyi Libala were involved in the use of witchcraft in their activities between 1935 and 1940 around Livingstone District. James Kombi, in particular, had committed several burglaries in the Livingstone District among European and Asian traders, but was said to have evaded detection on several occasions. In 1940, he was jailed.⁸⁹

Some people resorted to the use of 'witchcraft of the second order' in order to attempt to influence the outcome of cases before the Courts.⁹⁰ A python's skin sealed with appropriate 'medicine' was worn above the elbow. Sometimes, shortly before attending a Court session, people smeared medicated vaseline on the face.⁹¹ It was also believed that roots of certain shrubs were imbued with supernatural powers to defeat an opponent's arguments in the course of Court proceedings.⁹² The use of such practices in the attempt to win cases or evade the course of

justice continued up to 1939 and thereafter. However, while oral evidence testifies to the success of such practices⁹³ there is no written evidence indicating the efficacy of witchcraft in criminal matters.

Adjustment in the field of theft offences in the rural areas was slow for a number of reasons. For example, although by 1924 much rural-urban migration had taken place, a social stratification based on kinship relationships still persisted. Official policy continued to discourage 'detrribalization'. We have already mentioned the requirement that Africans were expected to go to their home districts in order to settle most of their civil disputes. This meant that whenever offences were committed, the chiefs and headmen wanted the parties or kinship groups involved in such cases to reconcile rather than to punish the offenders.⁹⁴

Furthermore the 1936 Native Courts Ordinance had widened the purview of criminal offences that could be heard before Native Courts and their Councils to include offences like petty thefts, assaults and many administrative 'lawful orders' made by the Native Authorities under relevant legislation.⁹⁵ On the civil side, they continued to deal with simple contractual disputes and a majority of marriage matters. Major offences of witchcraft, rape, murder, assault and theft were denied the Native Courts' jurisdiction.

The significance of the above arrangement was to check the development of African methods of trial and procedure in those aspects of the law which the Native Courts were barred from hearing.⁹⁶

It is not surprising to observe that from the early 1930s the main offences were what European Administrators referred to as 'petty thefts', usually triable before Native Courts. Such offences also reflected the type of property which the majority of people owned, for example, agricultural produce such as pumpkins, groundnuts, sweet potatoes and, livestock such as goats, sheep, cattle and chickens.⁹⁷

(d) Marriage disputes.

Before we examine adaptation in the field of marriage disputes we should first take into account the main changes that took place regarding marriage arrangements after 1924. From the early 1920s there began to develop a kind of marriage which administrators referred to as 'temporary unions', particularly between male migrant workers and local women.⁹⁸ These marriages did not usually involve the consent of parents or guardians of either the man or the woman as they normally took place in urban areas or some work centres. Because of this, the question of lobola (bridewealth) did not arise.

Such 'marriages' often posed problems to Native Commissioners if either party decided to divorce the other and the Court of law had to decide whether a proper marriage existed or not.⁹⁹ Native Commissioners often pronounced the 'no proper marriage'

principle based on the non payment of lobola by the man, should the man demand compensation when his wife committed adultery. Usually the woman retained the children when such a marriage was dissolved. This position had a parallel to indigenous practice which required that the family of an impregnated girl should retain the child born out of wedlock should the man's family decide that 'their person' should not marry the girl but pay compensation.¹⁰⁰

Between 1924 and 1939 polygamy rarely existed in urban centres because of the cost of living in a predominantly wage economy. However, polygamy continued to be practised on a wide scale in the rural areas because of certain favourable factors. Among the most important of these were the need for sufficient labour to carry on subsistence agriculture and as a means of social security where kulya hina (widow inheritance) was practised. It was also practised as a means of re-inforcing one's social esteem and prestige where the institutions of chieftainship and headmanship existed.¹⁰¹

Elopement continued in isolated cases particularly in the north and south-east of the Kalomo District.¹⁰² Sometimes this type of marriage was interpreted as rape and disapproved by administrators. Christian missionaries, though not openly discouraging the practice, adopted a negative stance towards its continuance.¹⁰³ Parents also often resisted this

type of marriage if they did not approve of the individual partners involved. Sometimes they asked for compensation in terms of goats or cattle should their daughter become pregnant after elopement. Then the marriage was disallowed.

As in the pre-1924 period many people continued to marry with the consent of their kinship groups on both the woman's and the man's sides. In 1929, the government re-inforced the practice by migrant workers of going home to marry and of bringing their wives to the place of work.¹⁰⁴ Of particular significance was the fact that Native Courts were empowered to try certain offences in their own areas by the 1929 legislation we have already quoted. Thus, after 1929, there was developing a tendency in the rural areas for some marriages to be ratified in these Courts. Usually this took the form of the Courts offering final advice to the newly married persons as well as to their kinship groups regarding the need to sustain a married life.¹⁰⁵

Bridewealth continued to be paid in the form of cattle, sheep, goats, hoes and beads in addition to money. A number of practices which were part of a marriage procedure, both in the pre-colonial period and during the two succeeding decades, either completely died out or were being practised in isolated instances. For example, the customary matrilocal residence at the beginning of a marriage for a specified period of months or years, was

in some instances being substituted for a payment or a gift in the form of money, livestock or some other property, like clothing.¹⁰⁶

The kukwela (wife offering) procession at the time a newly wed girl was joining her husband also fell into abeyance.¹⁰⁷ However, kulya hina (widow inheritance) continued to be encouraged and practised in the 1930s, except that a widow could be given a choice of either to be inherited or to be cleared of the late husband's muzimu (spirit) so that she could be free to marry a man of her choice.¹⁰⁸

With regard to marriage and other offences of a nuptial nature, between man and woman, the main conflict between indigenous and imposed systems of social control occurred in connection with the classification of offences under the alien laws into civil and criminal offences. Most Africans treated many offences as meriting compensation. Certain offences which the administration regarded as criminal, were viewed as civil by the Africans. The main categories of offences that the administration regarded as criminal were: rape, abduction and defilement of girls below the age of 16 years.

With regard to the last mentioned category of offences, Africans treated it as a more serious civil offence if the girl had been deflowered than if she had not. The amount of compensation also increased. The situation became more complicated in the north and north-east of the Kalomo District where the Toka-Lepa shared

borders with the Plateau and Gwembe Tonga respectively.

Among these people the custom of elopement was more common than it was among the Toka-Leya. To a very great extent, this continued to influence Toka-Leya marriages in the 1930s.¹⁰

Since it was possible that a girl would become pregnant before a marriage through elopement was formalized, it became necessary to ask the question as to whether a girl had been deflowered or not, if the girl's parents did not want their daughter to marry the man. In this connection, most parents used to ask for compensation in the form of cash, cattle, goats, sheep and blankets.¹¹⁰

In the 1930s, it was common for persons who committed the offences of rape and abduction 'to give themselves up' to a girl's family. They then would plead with them to be allowed to pay compensation instead of being taken before a Native Commissioner's Court to stand a criminal charge. The community displayed a similar attitude towards homosexual offences in the late 1920s and 1930s.¹¹¹ Here again, offenders chose to pay compensation. Most likely many of such offences were concealed from the administration. For example, the case of incest in which Chief Musokotwane was involved, in 1927, came to light in 1928.¹¹²

Another change which took place in this period was in connection with impotence on the part of a husband as the wife's ground for divorce. Very often women side-stepped the customary practice of first reporting the matter to their husbands' kinship groups before they embarked upon divorce proceedings. It was

common for women to re-marry men of their own choice, either on a temporary or permanent basis before the elders authorized a divorce.¹¹³ Those men who were affected by this type of desertion interpreted it as adultery. They could sue for damages and then pray for divorce. Native Commissioners usually granted divorce. In many such cases Native Commissioners ordered the return of bridewealth, in addition to the payment of the damages claimed.

For example, a certain woman had deserted her husband called Chafita around Livingstone in 1930 on the ground that he was impotent.¹¹⁴ She went to cohabit with a man called Kapombe in a different area from where she had lived with her husband. The Native Commissioner decided to award Chafita the damages paid by Kapombe in addition to the return of five pounds which he had paid to the wife's guardian as bridewealth.

We should observe that despite the fact that Chafita had lived long enough with his wife while 'she cooked and did other jobs for him,' he was given back the bridewealth, due to the single factor that his wife had deserted him. The Native Commissioner did not take into account the fact that only part of the bridewealth should have been returned according to the indigenous practice because the woman 'had cooked and worked' for her husband.

In the second instance we must observe that two alternative ways of dealing with the problem of a man's impotence were being overlooked. For example, the woman was supposed to either report the matter to the elders of the husband's kinship group or ask her

own uncle to sue for a divorce in a Native Court. Instead, some women chose to desert their husbands and marry other persons. This practice made them lose before the Native Court and that of the Native Commissioner.

A woman's adultery continued to be treated as a ground for divorce, side by side with a man's impotence.¹¹⁵ A man's impotence was not an offence but the wife's guardian chose either to withdraw the woman or not to. An aggrieved husband usually divorced his wife and asked for the return of bride-wealth. Alternatively he chose to remain married but asked for compensation. Sometimes divorce was resorted to if a woman actually left her husband to go and live with someone else or, if another man had made her pregnant while her husband was away at work as a migrant worker.¹¹⁶

If under the above circumstances the aggrieved person killed either of the two offenders then, provided Native Commissioners and Magistrates felt that there had been what they called 'real provocation' of the killer by either of the offenders, the offence of murder could be reduced to a lesser one of manslaughter.¹¹⁷

However, the Courts tended to mete out heavy punishments for such offences. Towards the late 1930s a majority of the aggrieved men preferred to divorce their erring wives instead of applying instant physical justice to them or their paramours.

The question of custody of children was a moral one which entered the purview of marriage disputes during the period of this study. The dispute as to who should take custody of children after a marriage was dissolved was new among the Toka-Leya. It was actually encouraged by the inter-mixture of people who were of diverse ethnic backgrounds, especially in an urban setting. For example, in the 1930s, there was always insecurity on the part of migrant labourers regarding the custody of children. This was so because they would at one time leave for their home districts without being accompanied by their wives.¹¹⁸ We must emphasize the fact that, in a matrilineal society such as that of the Toka-Leya, the wives' uncles resisted the idea that the men take with them to their homes the children when divorces occurred. According to them children automatically went to the woman's guardian whenever a divorce occurred.

Most parents or guardians of the local women did not let their daughters accompany their husbands to their homes. In this way they were determined to preserve the pre-colonial position. The children in any marriage remained under the tutelage of a member of the wife's family irrespective of whether the man had paid lobola or not.¹¹⁹ After all the children's uncle had always been the legitimate guardian of the children.

It can be observed therefore that Native Commissioners and Magistrates created the idea of 'custody of the children' because of conflict between the institution of migrant labour and the money economy on the one hand, and indigenous customs, and behaviour which were in the process of breaking down, on the

other hand. This conflict was highlighted in the words of a Provincial Commissioner in 1930 when he said:

It is these marriages between the alien man and local or alien woman that cause trouble. The performance by the bridegroom is reduced to brideprice as he is usually in employment. In the case of a local woman the mother-in-law misses his services and is not satisfied and may be continually trying to persuade the bride to leave him although she has at first given her consent. In the case of an alien woman.... the 'guardian' produced is very likely a nominee only with no authority over the woman. 120

Hence, when dealing with this problem, law enforcement officers used the idea of 'the payment of lobola (bridewealth)' to determine as to whether there was a valid marriage or not. This would in turn influence the decision as to whether the man should be given the custody of children or not.¹²¹ The question of return of lobola on divorce arose when it actually had been paid and the husband's family pressed for its return because the daughter of bazyali (wife-givers) had wronged the husband and the whole group of bakwati (wife-receivers).¹²²

Furthermore, although the payment of lobola was proof of the existence of a marriage, it was not the single factor that determined the existence of a marriage bond, as we mentioned earlier on. It also became necessary according to indigenous practice, if people demanded the return of lobola, for the elders or chiefs to ask the question as to whether the woman had borne any children or not. If she had borne children her quality had depreciated together with the chances of marrying another man. Only part of the lobola was returned if she had borne children.¹²³

Native Commissioners also introduced the idea of establishing which party to a marriage dispute had been wrong when deciding upon the principle of custody of children. For example, if the Court found that the woman was wrong by deserting her husband, the children, while young, would remain in the custody of their mother; on attaining the age of about seven or eight, they passed on to the father.¹²⁴ This principle, like its counterpart regarding the payment or non payment of lobola, continued to prove useful to Native Commissioners and Magistrates alike in solving marriage disputes which arose from 'temporary unions', marriages between local women and alien men and vice versa, desertions and prostitution.

Beginning from the early 1920s there is an absence of reported divorce cases based on the ground that one of the parties to a marriage had contracted a venereal disease. It is possible that people were beginning to see this as of minor importance as the disease had become common.¹²⁵ Leprosy continued to be a ground for divorce because it was regarded as more dangerous than venereal disease. There is also an absence of reports of marriage disputes arising out of witchcraft accusations in the 1930s.¹²⁶ This could be ascribed to the hidden nature of such problems, in view of the stringent measures which the administration took against people who accused others of practising it.

However, by 1939, the main grounds for divorce continued to be a husband's ill-treatment of his wife, a woman's adultery, desertion and laziness on the part of either of the parties to a marriage, dislike of the other party's kinsmen, and impotence or barrenness.

(e) Changes in the law enforcement system.

The government made several changes to the laws of the territory in this period. This was particularly true between 1924 and 1936. The 1915 Punishment Proclamation was amended in 1924 to tighten control over criminals and with a view to passing deterrent punishments.¹²⁷ This measure was re-inforced by the Prison Proclamation which was also passed later in 1924.¹²⁸ This amendment to the main law aimed at controlling prison escapes and curbing crime in general. In all, not less than nine amendments which affected Africans were made to the statute law of the territory between 1925 and 1930.¹²⁹ In 1931 a new Penal Code was also introduced.¹³⁰ This measure embraced a wide range of offences that the Government sought to curb.

Towards the late 1920s and early 1930s such measures were necessary in view of the rising wave of crime, mainly along the line of rail. The main culprits, especially in Livingstone, were deported criminals from Southern Rhodesia and other persons without employment. These were frequently disembarked at Livingstone. These persons either roamed the urban areas or went back to their home districts within Northern Rhodesia. Several of such persons had long criminal records behind them.¹³¹

The administration also became worried over the high number of Africans who were being convicted under statute laws such as the Native Tax, Native Beer and the Employment of Natives Ordinances.¹³² The main offences under the Criminal Procedure

Code were various thefts. Because such statute laws were amongst the newest in the territory, some people continued to break them due to ignorance of their implications.¹³³ On the other hand, law enforcement officers took this to mean that 'Africans were inherently not law abiding.'¹³⁴ In addition to the ignorance of these laws on the part of Africans, mass convictions also reflected a major conflict between the indigenous and alien ways of social control. The introduction of the Criminal Procedure Code in 1934, only served to make people to continue to be convicted of theft, burglary and forgery offences.¹³⁵

From 1926, Legislative Assembly opinion began to turn in the direction of enacting a more comprehensive registration law than the 1915 one. The 1915 legislation had affected aliens only.¹³⁶ However, the registration law had to wait until 1928 because both public opinion and official policy varied as to the nature of the proposed law. In the legislative Council, one trend of opinion favoured as rigid a pass law as the one which was in force in the Union of South Africa at the time. Another favoured a registration law which would allow a considerable measure of freedom of movement on the part of job seekers as well as the rest of Africans.¹³⁷

By 1929 the latter trend of opinion had prevailed and the Native Registration Ordinance was passed.¹³⁸ It became operative on 1st September, 1930.¹³⁹ All male Africans between the ages of 16 and 55 were required to register themselves at a boma (administrative centre), in their home districts and

then be issued with native registration certificates. Apart from the reasons we have mentioned above for the enactment of this measure, it was also aimed at solving the problem of unauthorized movement of Africans from their home districts to urban areas.¹⁴⁰ Other reasons were to prevent tax evasion, desertions from 'lawful employment', falsification of names by deserters, criminals and vagabonds when seeking alternative employment and impersonations with regard to the jobs which people felt they could perform.¹⁴²

(f) Conclusion.

In this chapter we examined the question of adaptation before and during the period of Indirect Rule. We did so by paying particular attention to the roles of Native Courts and Native Authorities in the new social order. We tried to show to what extent these institutions played their roles to the satisfaction of the administration. However, they failed to live up to the expectations of the colonial regime. For instance, the Native Courts were unable to follow new procedures and interpretations of the criminal law. The Native Authorities too, could not fare well in the task of making and enforcing rules. Both institutions lacked qualified manpower. What the Native Courts

and Native Authorities succeeded in doing were those things which the chiefs had done in pre-colonial times. For instance, they did the settling of domestic disputes. They also tried to maintain the social-political cohesion in their areas with little success.

We also examined the theme of adptation in the context of witchcraft, theft and marriage offences, Since the process of adaptation generated several problems on the part of both the Africans and the white authorities, the government sought to remedy most of these problems through legislative and other measures.

Footnotes.

1. KDB6/4/2, Livingstone District Quarterly Report, 1937.
2. KSC6/3/1, Livingstone District Tour Reports, 1927-1930.
3. See for instance KSC6/3/1, Livingstone District Tour Reports, 1924-1930.
4. KSC6/3/1, Livingstone District Tour Report, June, 1923.
5. KDB6/4/2, Livingstone District Tour Report, 1927.
6. KDB6/4/2, Livingstone District Tour Report, 1927.
7. KDB6/4/2, Livingstone District Tour Report, 1927.
8. KSC6/3/1, Livingstone District Tour Report, 1928.
9. KDN6/4/1, Livingstone District Tour Report, 1928.
10. KDB6/4/2, Livingstone District Tour Report, 1928.
11. KDB6/4/2, Livingstone District Tour Report, 1928.
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13. L. Mair, The Role of The Anthropologist (London: George Routledge and Sons, Ltd., 1950), 179-189.
14. KDB6/4/2, Livingstone District Tour Report, 1931.
15. KDB6/4/2, Livingstone District Tour Report, 1931.
16. KSC6/3/1, Livingstone District Tour Report, 1931.
17. KSC6/3/1, Livingstone District Tour Report, 1931.
18. The Livingstone Mail, 26th May, 1932.
19. This was an indigenous custom carried out at the end of an important trial.
20. Interview: J. Kabamba, 19th July, 1978.
21. Interview: J. Kabamba, 19th July, 1978.
22. J.G. Peristiany, Institutions of Primitive Society (London: Oxford University Press, 1954), 43.
23. R.C. Clifton, 'The Effects of the Serious View Taken by the Authorities Regarding Witchcraft' Africa, I, 4, 1935, 491.

24. KSC6/1/1, Livingstone District Annual Report, 1939.
25. NAT/1/1/12/1, Minute from Acting Chief Secretary, Lusaka, to Acting Provincial Commissioner, Livingstone, 2nd June, 1937; SEC2/280, II, Native Court Rules.
26. KSC6/3/1, Livingstone District Tour Report, June, 1932.
27. KSC6/1/1, Livingstone District Tour Report, 1935.
28. KDB6/4/3/4, Livingstone District Tour Report, No. 4, 'Native Authorities and Their Courts', 1937.
29. The Northern Rhodesia Native Affairs Annual Report, 1937, 38.
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63. U2/2/6, Livingstone Magistrate's Court Criminal Case Records (R.v. Chibuno and Others), 1928.
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72. KSC1/5/4, Muchape, Minute from ~~DO~~^S, Kalomo to DC, Kalomo, 15th July, 1935.
73. KSC1/5/4, Muchape, (R.v. Amini), 1935.
74. KSC1/5/4, Muchape, Minute from CID to DC, Livingstone 1st August, 1935.
75. SEC1/1258, Witchcraft/Murder (R.v. Siantebele), 1944.
76. Hall, Zambia, 261.
77. Evidence of this proposition can be found in the U2/24-U2/26 series of Livingstone Magistrate's Criminal Case Records, 1926-1930.
78. See KSC2/2/18-KSC2/2/30, Livingstone Native Commissioner's Criminal Case Records, 1924-1934.
79. KSC2/2/23, Livingstone Native Commissioner's Court Criminal Case Records, (R.v. Jack Chila, Case No. 18), 1929.

80. KSC2/2/23, Livingstone Native Commissioner's Court Criminal Case Records (R.v. John Kainda and Japhet Muhango, Case No. 311), 1929.
81. ZA1/5/1, Correspondence on Complaints: Minute No. 703/15: B/1926: From N.C. Kalabo to Secretary, RNLB, Mongu, 28th July, 1926.
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83. See KSC5/2/4-KSC5/2/7, Livingstone Sub-District Native Commissioner's Court Criminal Case Registers, 1930-1935.
84. KSC2/3/21, Livingstone Native Commissioner's Court Criminal Case Records (R.v. Shinabo), 1927.
85. UA2/2, Livingstone Magistrate's Court Criminal Case Records (R.v. Duncan Kapili), 1927.
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87. UA1/3, Livingstone Magistrate's Court Criminal Case Records, 1931-1935, Interview: L.S. Mulele, 27th July, 1978; William Clifford, Crime in Northern Rhodesia, Lusaka: Rhodes-Livingstone Communication No. 18, 1960, 53. The author refers to crimes of the whole territory, particularly along the line of rail. He says that crimes of burglary and house-breaking increased in the 1930 and latter decades. After meticulous research in the National Archives of Zambia, Lusaka, Case Records for the 1936-1939 period could not be found.
88. The Livingstone Mail, 12th July, 1940.
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98. The difficulty lay in establishing who the guardians were and their authenticity.
99. Interview: Juao and M. Moonga, 31st July, 1978.
100. Shewmaker, Tonga Christianity, 105-106.
101. Interview: L.S. Mulele, 31st July, 1978.
102. Interview: L.S. Mulele, 31st July, 1978.
103. Interview: P. Sitali, 4th August, 1978.
104. Interview: J. Siamonga, 4th August, 1978.
105. KSP/3/1, Kalomo District Notebook, 'Native Customs and Laws.'
106. Interview: Professor E. Colson, 19th September, 1978.
107. Interview: R. Simasiku, 23rd July, 1978.
108. Interview: L.S. Mulele, 31st July, 1978.
109. Interview: P. Sitali, 4th August, 1978.
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111. KSC2/1/2, Livingstone Native Commissioner's Court Civil Case Records (Kambonde v. Kalunde and Masiye), 1929.
112. KDB6/4/2, Livingstone District Quarterly Report, 1928.
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114. KSC2/1/3, Livingstone Native Commissioner's Court Civil Case Records (Chafita v. Kapombe), 1930.
115. KSP/3/1, Kalomo District Notebook, 'Native Customs and Laws.'
116. KSC2/1/3, Livingstone Native Commissioner's Court Civil Case Records (Kambonde v. Kalunde and Masiye), 1929.

117. . J.S. Smith and B. Hogan Criminal Law, 2nd ed.,
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118. See KSC6/1/1, Livingstone District Tour Report, 1939.
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From PC Mazabuka to DC Livingstone, 25th September, 1930.
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122. . Interview: M. Simwinda, 19th July, 1978.
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125. . See, KSC5, Livingstone Native Commissioner's Court
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130. Ordinances of Northern Rhodesia, the Penal Code,
Ordinance No. 42, 1930, 215 - 303.
131. The Livingstone Mail, 'Police Report Extracts', 11th
September, 1935.
132. See for instance, KDB6/4/2, Livingstone District
Tour Reports, 1924-1932. Note Some statistics on crime
given in these reports.
133. Batten, Problems of African Development, 126.
134. The Livingstone Mail, 'Law Abiding Natives,' 10th June, 1926.
135. . See for instance, UA1/3, Livingstone Magistrates' Court
Criminal Case Records, 1931-35; KSC5/2, Livingstone District Native
Commissioner's and Assistant Native Commissioner's Criminal Case
Register, 1921-35; Evidence for the 1936-39 period was not available
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137. . The Laws of Northern Rhodesia, III, Cap. 59, 1934.

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141. The Northern Rhodesia Government Gazette, 1930, Government Notice No. 61.

Chapter 7

Conclusion.

In Chapter 1 of this study we gave a brief outline of the area, its people and their social-political organization up to about 1890, on the eve of the imposition of colonial rule in North-Western Rhodesia. In Chapter 2 we examined the means of social control among the Toka-Leya in order to enable the reader to appreciate the question of adaptation.

In Chapters 3 and 5 we dealt with the establishment of the administration and of law enforcement agencies at the beginning of the periods of Company and Colonial Office rule. We discussed the question of adaptation in Chapters 4 and 6. Firstly, we dealt with the roles of chiefs and headmen in relation to the British legal system, both in the period of Company rule and that of Crown administration. Secondly, we discussed the question of adaptation by the people in general, paying particular attention to witchcraft and murder, theft and marriage disputes.

While it is true to say that Africans adjusted to the foreign legal system to a certain extent, this did not mean that people's attitudes changed. In other words, our argument is that much of what took place was conformity to the new system under coercion. For example, the imposition of colonial rule in the early 1900s was characterized by the use of force and physical violence through para-military police patrols. The Barotse Native Police Force was the main weapon in this exercise. The general

effect of this feature of colonial occupation was to instil into the people fear and distrust of the new institutions of social control and the people who manned those institutions. In the early years, people had to choose between conforming to the colonial laws or being punished militarily or in the courts of law for opposing the administration. The evidence shows that many people chose the former course of action.

We can also argue that the laws which were subsequently promulgated also reflected the above characteristic of coercion and the expectation that people should conform to the new social-political order. For example the law of 1904 required the chiefs to comply with government demands for labour, crime prevention and the carrying of passes by all men between the ages of 16 and 60. The Administration of Natives Proclamation of 1916 demanded more conformity by the people to the new laws since it even laid down the roles of chiefs and headmen as servants of the administration and that they would be liable to various forms of punishment if they did not carry out the wishes of the administration. They would also be liable to appointment and dismissal by the colonial authorities.

Similarly, other principal laws, such as the Native Registration law of 1929, the Native Authority and Courts laws of the same year, and the Native Authority and Courts laws of 1936 had the same aims of forcing people into obedience. Most chiefs and headmen did not follow these laws because they did not, for instance, make 'lawful orders,' collect arms and ammunition licence fees or stop the disintegration of villages to the detriment of smooth tax collection.

In the implementation of Indirect Rule, Native Authorities and their subordinates also tried to work towards the expectations of the administration as they formed part and parcel of the legal system. For example, they tried cases on the stipulated civil and criminal matters, organised themselves as a Native Court of Appeal and contributed to the establishment of a Native Treasury. Native Authorities and their subordinates also supported the administration on matters that purported to strengthen the indigenous social set-up as in measures for the discouragement of prostitution, the settlement of marriage and other civil disputes.

The real significance of the colonial legal system remained a mystery to most people, chiefs and laymen alike. For example, the excessive use and abuse of imprisonment, corporal punishment and deportation did not encourage people's adaptation to the legal system. People resorted to things like theft of tax receipts, cheating under various circumstances, desertion from employment, changing districts of residence, impersonation of officials, abuse of authority and the use of Courts of law for monetary gain. In fact, most of the people who used the colonial courts of law were those who had lived in towns or some places of European settlement and worked there long enough to become familiar with the new system.

Most Toka-Leya preferred to settle their disputes among their own families, kinship groups, headmen and chiefs. This in turn re-inforced the prestige of the indigenous rulers to a certain extent as they felt that they still exercised some of their traditional functions. In this regard, things like

non-registration of marriages, polygamy and the custom of lobola persisted. Chiefs and their subordinates also continued to deal with some of the sensitive cases such as witchcraft accusation and divination, murder and theft cases. Chiefs and headmen in particular, were stopping people from reporting such cases to the authorities for fear of imprisonment. Instead, they preferred to settle these cases through the payment of compensation to fines and imprisonment in order to restore good feelings between the parties.

There is little evidence to show that people's ideas had changed by 1939 or later, on subjects like beliefs in witchcraft and the influence of the supernatural world upon events or the course of nature. Some believed that supernatural means could influence the outcome of cases under the new system. Many also believed that they could outwit law enforcement agencies through the use of supernatural means, for example in connection with theft and prison escapes. The belief in witchcraft as a theory of causation hampered people's adaptation because, by acting under such beliefs, people were breaking the new laws of the territory. At times such beliefs assumed such an overriding influence over the victims of crime that they were prevented from reporting to the authorities.

Of particular interest was the way the 1904 and 1914 Witchcraft laws were framed. They did not recognize the existence of witchcraft but sought so punish diviners and those persons who accused others of practising witchcraft. In spite of this refusal by the administration to recognize its existence,

Africans continued to believe in it. As the new social order changed from a small to a large scale one, beliefs in supernatural forces were operating at a different level. For example, they operated in connection with competition for better jobs, the causes of diseases hitherto unknown, as well as at the village level where close kinship ties still persisted and there was a premium on conformity. Furthermore, witchcraft cleansing became popular, in ^{the} 1930s among some Toka-Leya people.

Changes such as the substitution of money for cattle in the payment of lobola, and the criminalization of the theft of cattle between relatives were brought about more as a result of economic and social pressures rather than the enforcement of new laws. Generally, the new legal system was insecurely based and had little real impact except as a system of coercion through taxes and passes by 1939. Finally, there could only be real adaptation to the foreign legal system if there was sufficient interaction between the system itself and the indigenous people, so that they could fully appreciate its usefulness and the way it functioned. The coercive nature of law enforcement, lack of education and the existence of a village situation where close kinship relations prevailed, especially in the earlier period of this study, made adaptation difficult. Thus, by 1939 there is little evidence that the colonial legal system had established itself in competition with the customary system except as a means of coercion.

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(g) Particulars of persons interviewed in the Kalomo and Livingstone Districts, July to August, 1978,

1. Alex Chakanika.

Aged about 38 years at the time of this interview. He was Research Officer in the Livingstone Museum. Chakanika had conducted anthropological research in the region of this study in the mid 1970s.

2. Elizabeth Colson.

Aged over 60 years in 1978. She was an American Scholar who had conducted extensive research in Zambia, particularly among the Gwembe and Plateau Tonga people. She was at the Institute of African Studies Lusaka, at the time of this interview in 1978.

3. Sister Declan.

Aged about 60 years at the time of the interview. She worked in the Western Province in the 1930s. In the 1940s she worked in the Livingstone and Kalomo Districts of the Southern Province of Zambia at various Catholic Mission stations. She came to Livingstone Town in the late 1950s.

4. Davison Denga.

Aged about 55 years at the time of interview. He came from Chief Musokotwane's Village, north of the Livingstone District. Had worked as a Local

Court Messenger in the Kalomo and Livingstone Districts since the late 1940s. He was based at the Livingstone Local Court where he worked as a Senior Local Court Messenger at the time of the interview in 1978.

5. John Juao.

Aged over 80 years at the time of the interview. He came to Livingstone Town in the early 1920s from Tete, Mozambique. He worked in Livingstone as a house servant, and a labourer up to 1970. He was a retired person at the time of this interview.

6. Joseph Kabamba.

Aged about 55 years at the time of this interview. He was a former policeman who had worked in the Kalomo and Livingstone Districts from the late 1930s up to the early 1960s. In 1978, he lived at Kalembwe Village, in Chief Musokotwane's area, Kalomo.

7. Lubasi Dolopo.

Aged about 80 years at the time of the interview. He came from Mongu before 1920. Then he worked as a labourer for various European employers in the Livingstone and Kalomo Districts

since that date. He was a very old retired person at the time of this interview in 1978, and was living at Malota Home for the Aged.

8. Headman Mpola.

Aged about 60 years at the time of the interview, he was living in his own village, Chief Katapazi's area, Kalomo, by 1978. He was a retired policeman who had worked at various places in the Gwembe, Livingstone and Kalomo Districts as a policeman from the late 1930s to the early 1960s.

9. Headman Muchinga.

Aged about 60 years at the time of this interview. He was living in his own village, Chief Katapazi's area, Kalomo, by 1978. He was also a retired policeman who had worked in Mongu, Kalomo and Livingstone Districts from the 1930s to the 1960s.

10. Mufaya Kawiwi.

Aged about 60 years in 1978. He had lived and worked in Livingstone since the early 1930s. He worked as a messenger, and policeman. He was a retired person at the time of interview in 1978 and was living at Maibwe Village, Chief Sekute's area, Livingstone.

11. Mukalahani Mundindili.

Aged about 65 years at the time of the interview in 1978. He worked as a Chief's kapasu (country policeman), messenger and colonial policeman in Livingstone and Kalomo Districts from the 1930s to the 1960s. He was in Mukuni Village, Livingstone District in 1978.

12. R.M. Mukwiza.

Aged about 50 years at the time of the interview in 1978. He had worked at various levels of the Local Court administrative system in Kalomo and Livingstone Districts since 1940s. Originally he came from Siachitema Village, Chief Siachitema, Kalomo. By 1978 he was the Provincial Local Court Officer based at the Livingstone Local Court.

13. L.S. Mulele

Aged about 60 years at the time of this interview in 1978. He was working as Deputy Headmaster of Nansanzu Primary School. He came from Nyawa Village, Chief Nyawa, Kalomo. He had a wide knowledge of local Toka-Leya marriage and other customs.

14. Tickey Munemba.

Aged over 80 years at the time of this interview in 1978. He came from Ibolokwa Village, Chief Lubindatanga, Mongu. He had worked as a labourer in various jobs within the Livingstone, Mongu, Mamwala

and Kalomo Districts. He was a retired person living at Malota Home for the Aged in Livingstone in 1978.

15. Mwandi Monga.

Aged about 80 years at the time of this interview in 1978. He had worked as a messenger in various areas of the Kalomo and Livingstone Districts since the late 1920s. He was a retired person living at Maramba in Livingstone at the time of the interview.

16. Peter Mwileli.

Aged about 65 years at the time of this interview in 1978. He had worked as a messenger and policeman from the 1930s up to the late 1960s when he retired. He was then a farmer living at Syakalembwe Village, Chief Musokotwane, Kalomo.

17. Diamond Mwindilila.

Aged about 65 years at the time of the interview in 1978. He had worked as a messenger, ~~kapasu~~ (country policeman) and colonial policeman from the 1930s up to early 1960 when he retired. He was living at Katapazi Village, Chief Katapazi, Kalomo, during the period of this study in 1978.

18. Elias Nawa.

Aged about 60 years at the time of the interview in 1978, at Syanalumba Primary School, Livingstone. He

was a teacher. He had come from Nasiwi Village, Chief Nawasilundu, Mongu, in the late 1920s. He had worked in various parts of the Livingstone and Kalomo Districts since then.

19. Nelson Nawa.

Aged about 65 years in 1978. He came from Jafuta Village, Chief Mukuni, Livingstone. He had worked as a labourer, foreman and stores officer in the Livingstone District, 1940-1970. He was a retired person at the time of this interview.

20. Sister Patrick.

Aged about 59 years in 1978. She was working as a Boarding Mistress at St. Mary's Secondary School, Maramba, Livingstone. She had worked in the Livingstone and nearby districts since the late 1940s.

21. Elias Phiri.

Aged about 60 years at the time of the interview in 1978. A migrant labourer from Koweme Vilage, Chief Kathumba, Katete, Eastern Zambia. He had worked in Livingstone since the early 1920s. He was a Security Guard at Linda Secondary School, in 1978.

22. Pearce Sakwanda.

Aged about 60 years. He was Deputy Headmaster at Linda Primary School in 1978. He came from Kanongesha

Village, Chief K̄nongesha, Kalomo in the 1930s. Since then he had worked as a teacher in Kalomo and Livingstone Districts.

23. Daniel Siachisiya.

Aged about 59 years. He came to Livingstone Town in the early 1940s from Mukuni Village, Chief Mukuni, Livingstone. He was a retired person doing farming in Chief Mukuni's Village in 1978.

24. John Siamonga.

Aged 60 years in 1978. Originally he came to Livingstone to work as a labourer, early in the 1930s, from Maibwe Village, Chief Sekute, Livingstone. At the time of the interview he was living at Maibwe Village, doing farming.

25. Wankie Sianchenje.

Aged 60 years at the time of the interview. He came from Jafuta Village, Chief Mukuni, Livingstone, in the early 1940s, to work as a labourer in Livingstone Town. He was a retired person living in Jafuta Village in 1978.

26. Richwell Simasiku.

Aged about 60 years in 1978. He came from Kukuni Village, Chief Mukuni, Livingstone, to the Livingstone

Town in the early 1940s. He worked as a policeman in Kalomo, Livingstone, Choma and Mongu Districts. He was a retired person in 1978.

27. Mankanda Simwala.

Aged about 70 years in 1978. He was former messenger in the Kalomo and Livingstone Districts from the 1930s to the 1960s. He was a retired person in 1978 and was living at Lukuni Village, Chief Musokotwane, Kalomo.

28. Meleki Simwinda.

Aged about 70 years in 1978. He was a former messenger and policeman. He had worked mostly in Livingstone, Namwala, Choma and Kalomo Districts from the late 1920s up to early 1960s. He was a retired person living at Musokotwane Village, Chief Musokotwane, Kalomo, in 1978.

29. Sitali Peter.

Aged about 60 years in 1978. He had worked as a policeman in the Mongu, Livingstone, Kalomo and Gwembe Districts since the 1930s. He was a retired person living in Sitali Village, Chief Sekute, Livingstone, in 1978.

30. Siyunda Chimbelya.

Aged about 65 years in 1978. He had come from Mukuni Village, Chief Mukuni, Livingstone, to Livingstone Town in the 1930s. A former Boma messenger. He was living at Mukuni Village in 1978.

31. Malaho.

Aged over 80 years at the time of the interview. He came from Senanga District before 1920 and worked as a labourer in the Kalomo and Livingstone Districts since that time. He was a retired person at the time of the interview, living at Malota Home for the Aged.

32. Eliot Mbweeda.

Aged about 40 years. He was a teacher at Musokotwane Primary School, Chief Musokotwane, Kalomo.

Appendix A *

Early Administrative Posts.

<u>Route:</u>	<u>Distance in Kilometres:</u>
Livingstone to Kazungula	72 kilometres.
Kazungula to Sesheke	80 " "
Sesheke to Lealui	402 " "
Livingstone to Kalomo	153 " "
Kalomo to Monze	161 " "
Kalomo to Nkala	169 " "
Kalomo to Lealui	426 " "
Sijoba to Monze	230 " "
Kazungula to Siakasipa	89 " "

* LMA, NWR/4/19/12, Report by the Administrator, Kalomo, 1901-1902.

Appendix B .

CHIEFS AND NATIVE AUTHORITIES OF THE LIVINGSTONE AND KALOMO

DISTRICTS, 1890-1939.

CHIEF:

HEADQUARTERS:

Musokotwane .

Lukuni.

Mukuni .

Lukambo.

Momba .

Kabozu.

Sekute .

Chundu.

Katapazi .

Kayube .

Siakasipa .

Senkobo.

NATIVE AUTHORITIES AFTER 1929:

Musokotwane.

Mukuni.

Sekute .

Momba .

NATIVE AUTHORITIES WITH COURTS BY 1939:

Musokotwane.

Mukuni .

Sekute .

Momba .

Appendix C.

LEGISLATION AND ORDERS AFFECTING AFRICANS AND FOR GENERAL
LAW ENFORCEMENT PASSED BETWEEN 1890 AND 1939 .

DATE,	SHORT TITLE.	DESCRIPTION.
1899	North-Western Rhodesia Order in-Council	Acquisition and Jurisdiction.
1900	North-Eastern Rhodesia Order in-Council	Acquisition and Jurisdiction..
1901	Proclamation No. 19.	Barotse Native Police .
1904	Proclamation No. 12.	The Witchcraft Prevention Act.
1906	Proclamation No. 6.	Establishment of the High Court of North-Western Rhodesia (Zambia).
1908	Proclamation No. 30.	Establishment of Native (African) Courts in Conjunction with Proclamation No. 6 of 1905.
1911	Northern Rhodesia Order-in-Council	Unifying North-Western and North-Eastern Rhodesia into Northern Rhodesia (Zambia). (Revoked previous NER Orders - in - Council).
1912	Proclamation No. 9	The Collective Punishment Proclamation-[Control of Natives (Africans) and their puninshment].

DATE,	SHORT TITLE,	DESPRIPTION,
1912	Proclamation No. 17.	Establishment of the N.R. Police Force.
1914	Proclamation No. 5.	Suppression of Witchcraft (Revoked previous Proclamations and Regulations on Witchcraft).
1916	Proclamation No. 8.	Administration of Natives (Africans). Sometimes referred to as 'for the Control of Natives' (Africans).
1924	Northern Rhodesia Order-in-Council	Principal Legislation placing Northern Rhodesia (Zambia) under direct Colonial Rule with appointed Governors.
1924	An Ordinance to Amend the 1912 Prisons. Proclamation	Prison Administration and control of criminals.
1929	Native Authority Ordinance	Establishment of Native Authorities.
1929	Native Courts Ordinance.	Establishment of Native Courts.
1930	Government Notices Nos. 23 and 24 of 1930.	Native Authorities and Native Courts came into being.

DATE	SHORT TITLE	DESCRIPTION
1930	Government Notice No. 61 of 1930 (Registration of Natives Ordinance).	Native registration rules.
1936	The Native Authority Ordinance.	Native Authorities and their powers.
1936	The Native Courts Ordinance.	Native Courts.
