

School of Law

Oblig Essay

1993/94

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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by

MOONO LACANE

entitled

**PEOPLES' CALL FOR RETRAINING OF POLICEMEN, IS IT NECESSARY?
A CRITICAL ANALYSIS.**

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**"PEOPLES' CALL FOR RE-TRAINING OF POLICEMEN IS IT NECESSARY?
A CRITICAL ANALYSIS."**

BY

MOONO LACANE

**AN OBLIGATORY ESSAY SUBMITTED TO THE FACULTY OF LAW OF THE
UNIVERSITY OF ZAMBIA IN PARTIAL FULFILMENT FOR THE
REQUIREMENT
FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS LL.B.**

**FACULTY OF LAW
UNIVERSITY OF ZAMBIA
LUSAKA**

NOVERMBER,1994.

DEDICATION

TO

**MY FATHER MR. IRON MOONO, WHO TREASURED MY EDUCATION AS A
FIRST BORN SON. HE ALWAYS SAYS TO ME THAT**

**"LIFE IS TO STRUGGLE SO KEEP ON STRUGGLING TILL YOU ACHIEVE
WHAT YOU WANT".**

ACKNOWLEDGEMENTS

I wish to thank the following people for having made the completion of this essay possible.

Firstly, I wish to express my sincere gratitude to MISS MAGRETE MUNALULA for not only having agreed to take up the task of supervising my work, but also for the constant and extremely useful advice and guidance throughout the various stages of the work. Her guidance and assistance have been invaluable in many ways.

Secondly, my profound gratitude goes to my most forgiving and understanding wife, MINA, who together with our four cheerful children, has been my source of burning inspiration to academic success. I beg her to forgive me for having, at many times, neglected my family roles during the past three years.

Thirdly, I argue my children to take over where I have left, since I have shown them the way to success.

PREFACE

By 1990, article four of 1973 constitution which gave UNIP the sole political party was repealed and ushered in a plural political society. By the end of 1991, the new Zambian third republic was born and movement for multiparty Democracy (MMD) assumed office of governing the great republic. The new rebirth put in place a free press and freedom of speech, after lifting the state of emergency which had prevailed since 1963. using these apparatus at their disposal, the Zambian society started debating the calibre of to-day's policemen, is he properly trained to meet the challenges of the changing society. The republic witnessed on increased crime rate a reduction in convictions and a fast rusting police force. In this research paper, I will attempt to answer the current debate amongst the populace. The call for policemen retraining is it necessary?

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CHAPTER ONE

INTRODUCTION

The functions of the Zambia Police force are spelt out in chapter 133 of the laws of Zambia and section 5.

Specifically provides:

"The force shall be employed in and throughout Zambia for preserving the peace, for the prevention and detection of crime and for the apprehension of offenders against the peace and for the performance of such duties may carry arms".

A criminal offence is committed by violating penal laws and this action is visited by criminal sanctions upon proof in court beyond reasonable doubt. Therefore, for a suspect to be convinced of a crime in a court of law, a policeman has to work double time; thus, he has to identify and apprehend the author of the crime and also most significantly, he has to prepare sufficient evidence in order to successfully prosecute the perpetrator of the alleged crime.

Crime rate in Zambia, like in any other country is on the rapid increase ² and this is evidenced by political leadership, the judges, the magistrates and, of course different forces voiced concern on the rapid crime wave since independence. And as if this is not enough, our women folk through their lobby groups specifically directed to women, these crime include rape, indecent assault and other assaults on women. Our police force, the law enforcement agency in this country, have in their possession data on crime statistics to prove that the cry against crime increase is not an empty slogan.

Table one below shows the general crime trend in Zambia from 1964 to 1988 whilst table two also below, shows the number of arrests made and number of arrests not made between 1964 and 1984.

TABLE I

TABLE SHOWING THE CRIME TREND AS FROM 1964 TO 1988³

<u>SERIAL NUMBER</u>	<u>YEAR</u>	<u>TOTAL CRIME RECORDED</u>
1	1964	64,733
2	1965	76,376
3	1966	76,526
4	1967	78,990
5	1968	90,793
6	1969	98,693
7	1970	101,440
8	1971	101,290
9	1972	98,195
10	1973	106,354
11	1974	117,010
12.	1975	106,453
13.	1976	121,504
14.	1977	126,926
15.	1978	131,926
16.	1979	143,619
17.	1980	153,343

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14.	1977	126,926
15.	1978	131,926
16.	1979	143,619
17.	1980	153,343

18.	1981	139,810
19.	1982	
20.	1983	143,745
21.	1984	145,411
22.	1987	
23.	1988	125,000

TABLE 2

**TABLE SHOWING NUMBER OF CRIMES REPORTED, NUMBER OF ARRESTS
MADE AND NUMBER OF ARRESTS NOT MADE**

SERIAL NO.	YEAR	NO. OF CRIMES REPORTED	NO. OF ARRESTS MADE	NO. OF ARRES NOT MADE
1	1964	67,733	34,720	33,013
2	1972	98,195	50,125	48,070
3	1974	117,010	61,204	55,806
4.	1980	153,343	71753	81,590
5.	1984	145,411	73,628	71,783

TABLE 1 is a manifestation of rapid increase in the crime rate in Zambia while **table 2** reveals police inability to effect arrests in good time. The Force Public Relations Officer, writing in a Police Magazine, had this to say about the inability of Police to effect arrests in good time.

"A look at the police crime statistics shows that between 1982 and 1987 the police arrest rate dropped from 95,000 to 48,000 offenders. This cannot be attributed to less and less people offending. Rather, experience has shown us that Zambia to-day suffers from more criminality than ever before. Therefore the drop in the arrest rate can be attributed interalia to poor logistics, a drop in police manpower and various other factors. Within the same period, conviction rate dropped as well from 80,000 to 34,000. That is an astonishing drop of more than 50 percent. One can attribute this to poor police investigations, though it cannot be ascertained due to lack of logistics. To strengthen this argument is the the acquittal rate which rose from 7,000 in 1982 to 55,000 in 1986.

Frightening as these figures may be, they only represent the tip of an ice berg. There are many acquittals of criminals at local courts too, and infact there may be an equal decline in conviction and arrests rate"⁵.

SCOPE

Against this background of crime situation in Zambia, the research paper restricts itself to investigate whether the Zambian people's call for retraining and restructuring of the Zambia Personnel is necessary or, in other words can the increase in crime be related to poor training of police officers who pass through the doors of Lilayi Police training school. I am however a ware that Mr. T. Musonda Assistant Superintendent Stationed at Force Headquarters, a distinguished lawyer and Policeman is working on a new syllabus which will be

ollowed at Lilayi training school, paramilitary and mobile training school. I believe his research paper will also be useful in providing the basis of a new syllabus that will be used in the three training schools in the Zambia Police Force. This research paper restricts itself to looking at material content embodied in the syllabus relating to the law of evidence and constitutional law.

It is worthwhile to note that good governance of any country is reflected on how the police force operate. If the police force of any given country does not observe human rights when going about its day to day operation, then the governance of that country is said to be poor. The Police force can only observe human rights if the recruits at the three training schools are armed with constitutional law. Therefore, the police force has to strike a balance between observing human rights and bringing suspects to book. It is the duty of the Zambian Police Force to apprehend the authors of crime and gather evidence to prosecute perpetrators. It is common knowledge that a high crime rate in a country scores not only potential foreign investors, but also makes life for the people precarious. The mere presence of police officers in townships, town centres and villages make life pleasant for the citizens for they are assured of protection.

METHODOLOGY

Over the years, people of Zambia in different foals have complained that their Police Force is not doing enough to curb crime. Having this in mind, I have interviewed a lot of people from different walks of life. The Acting Assistant Dean of the Law School has been interviewed with a view to ascertain whether the programme offered to policemen in the school of law is sufficiently programmed to produce a policeman who will stand the test of time.¹⁶

Sub-inspector Hachunde and instructor of Lilayi police training school with massive experience in training recruits has been interviewed with a view to ascertain whether men and women who pass through the doors of Lilayi are sufficiently equipped to deliver the desired goals. Judge Chileshe of Kitwe High Court has been interviewed with regards to his experiences with policemen who appear before him whether the evidence they present is upto the required standard. Constable Mubita of Wusakile Police Station has been interviewed to throw some light with regard some difficulties he has experienced when giving evidence in a court of law.

I have also interviewed Chief Inspector Bwalya of Kitwe prosecutions department to shade light on some of the problems the department experiences with regard to investigations and collection of evidence by policemen in stations. In this research paper, I have used secondary sources in the form of literature such as books, magazines (specifically the Nkwazi Police Magazine) and newspapers. The task of this paper has been very demanding and due to limited time and resources done in Lusaka and Kitwe and the paper has restricted itself to training of police officers.

ORGANISATION OF THIS PAPER

CHAPTER ONE

This is an introduction to the research paper, it sets the scope and historical background of the Zambia Police Force from 1899 to 1964.

CHAPTER TWO

This chapter employs itself to explore the structure and the duties of the police force. Thereafter, the paper proceeds to further explore the establishment of training schools in the Zambia Police Force and their training programmes from 1954 to 1990. The paper will as well endeavour to like at training programmes offered to policemen by higher institutions of learning like the University of Zambia. The chapter concludes itself by ascertaining whether the programmes of study offered by Police training schools and higher institutions of learning are adequate enough in moulding a policeman who will stand the test of time.

CHAPTER THREE

This chapter forms the substantive and main body of this research paper. It discusses in detail the main deficiencies in programmes offered by training schools in Zambia Police Force. The law of evidence will be discussed in relation with evidence offered in police training schools. The paper will also discuss criminal law and constitutional law and compare whether they are any deficiencies to the same as offered by training schools in the Zambia Police Force. The chapter will commit itself to discover the deficiencies in programmes offered by higher institutions of learning. The need to incorporate the law of evidence for policemen studying for a certificate in law at UNZA will be emphasized.

CHAPTER FOUR

This is a conclusion of the research paper. It draws conclusion about the quality of training in Police training schools and higher institutions of learning and makes recommendations which the author feels should be looked by police administrators and administrators of institutions of higher learning. The paper will finally conclude by the author's recommendations in restructuring the administration of the police force if it is deliver the expected results.

HISTORIC DEVELOPMENT OF THE ZAMBIA POLICE FORCE

The history of the Zambia Police Force is intervened with the political history of Zambia and cannot be insulated from it. However, the full history may never be written, for all too little is known of the pre-colonial period whose unrecorded history becomes more obscure with every adjustment to western ways. This brief account begins, with history recorded, however, sketchily, at the coming of the British South African company in the late nineteenth century.

The origin of the Zambia Police Force can be said to date back to 1889⁷ when the charter to administer Southern Africa was given to the British South African company (BSA Company). This was precipitated by the discovery of gold and diamond in South which brought about wide spread conviction of the prospective riches of the Northern lands. Consequently, the British Government granted a Royal charter of incorporation to the British South African Company (B.S.A. Company) of which Cecil Rhodes was the guiding figure⁸. The company was given power to obtain territory by treaty from its native rulers, to administer the areas so obtained and to engaged in all forms of economic activity. In particular, section 4 of the Royal charter of October 29th 1889, entrusted the administration of

the Rhodesia to the B.S.A. Company and empowered it to enforce laws, establish a police force and courts to try offenders.

On 27th June, 1890, Locher shape signed a treaty with paramount chief Lewanika by which the later agreed to accept a British protectorate and to confer upon the company full commercial and mining rights. "..... it is believed that a detachment of policemen raised in Southern Rhodesia in 1899 was included"⁹ on this expedition.

Later, in 1890, Alfred Sharpe and Joseph Thomson obtained concessions from all principal chiefs between Bantyre and the borders of the Congo free state. The Barotseland North Western Rhodesia which was run under the terms of the order in-council of 1889 and the North Eastern Rhodesia which was run under the order in-council of 1890.

THE POLICE FORCE IN NORTH EASTERN RHODESIA

North Eastern Rhodesia was administered by the company under the supervision of the commissioner for Nyasaland and **SIR HARRY JOHNSON** was appointed imperial commissioner with headquarters in Nyasaland. The duties of the commissioner can be seen from the quotation of one writer in the Nkwazi Police Magazine:

"His major duties were to raise a police force. In connection with the Indian authorities, a volunteer force of spoys, sikhs and Indian Mohammendans, calvarymen from the Indian army were recruited. Their duties were closely bound with the political development and administration of the Northern territory. In 1893, this force was gradually replaced by new draft of sikhs and Zanzibaries while natives from Malawi formed part of the Police Force."¹⁰

THE POLICE FORCE IN BAROTSELAND NORTH WESTERN RHODESIA

North Western Rhodesia was directly controlled by the crown through the high commissioner for South Africa. In 1887, a part of British South African police came to North Western Rhodesia from Southern Rhodesia accompanied by Sir Robbert Coryndon, a British administrator, who made his headquarters near chief Monze's village. The following year, Colin Harding come here on a private visit and was asked to take command of the North western police. Subsequently, new stations were opened in Kaleya valley near Mazabuka, as a result additional police reinforcements were sent in from Southern Rhodesia".¹¹ This drain on police resources from southern Rhodesia coupled with European ill health due to Malaria, led to a decision to form a local police force. Consequently, the Barotse Native Police was formed in 1900.¹² The men to man the Barotse native police were originally recruited from local tribes but officers came from the British South African Police. However, this practice was abolished and soon were recruited although the local continued to provide the majority of recruits.

NORTHERN RHODESIA POLICE BETWEEN 1911 AND 1964

In 1911 the crown agreed to amalgamate North Eastern and North Western Rhodesia by the 1911 order-in-council. The two police constabularies were disbanded and Northern Rhodesia police formed men and officers from the two forces were fused in the new force, whose duties became both military and civil.¹³

In 1924, the British South African company which was mandated to administer the colony handed over administration to Her Majesty Government. Northern Rhodesia Police force was now run by the order-in-council of 1924.¹⁴

The police force continued to perform dual functions; namely military and civil duties.

"The civil section of the police force continued to be commanded by the officer from the military up to 1932 when captain **P.R. WARDROPER** was appointed the first commissioner of police, under a police ordinance which set the police force as a separate entity from the military".¹⁵

The military wing became Northern Rhodesia Regiment and by the year 1932 the police force was separated from the army and it became a distinct organ on its own on 24th October, 1964, the force changed its name to Zambia Police.

During this period, society was very simple and did not therefore demand a very sophisticated police force. Heinous crime was not rampant, the only crime that pre-occupied the police force most, was the politically motivated ones due to the birth of nationalism manifested in the formation of political parties to fight for political Independence.¹⁶

FOOT NOTES

1. Section 5 of chapter 133 of the laws of Zambia.
2. Nkwazi police magazine volume April 1988 page 23
3. Ibid P. 23
4. Ibid P. 25.
5. Nkwazi police magazine volume 7 September 1990 at page 15.
6. University of Zambia, School of Law Handbook 1991 - 1992 at page 14.
7. Nkwazi magazine volume 5 April 1988 page 23.
8. Ibid P. 23
9. Ibid P. 27
10. Ibid P. 30
11. Ibid P. 32
12. Ibid P. 32
13. Nkwazi police magazine volume 1 July, 1982 page 15.
14. Muna Ndulo, law in Zambia (East African Publishing House 1984) P. 50.
15. Nkwazi polic magazine volume 1 July 1982.
16. Ibid P. 10.

CHAPTER TWO

THE STRUCTURE OF TRAINING SCHOOLS IN THE ZAMBIA POLICE

There are basically three police training schools in the Zambia Police Force, namely Lilayi Police training school which is situated fifteen kilometres away south of Lusaka. Mobile police training school, KAMFINSKA, which is situated about fourteen kilometres north of Kitwe along Ndola-Kitwe dual carriage road and Paramilitary training base which was established in 1967 and situated at SONDELA, 80 Kilometres South of Lusaka.

Lilayi training school is the most important and busiest of them all. It is consistently involved in the basic recruit training and other retraining or advanced police training. Kamfinska training school is a creature of Kamfinska Mobile unit which was formally established in 1935 and based at Bwana Mkubwa near Ndola on the copperbelt of Zambia. That unit was a reserve force for regular police force and served as a crack antiriot task force to take care of the populous copperbelt. This unit was later taken and based at KAMFINSKA, near Kitwe. The unit trainers its own Manpower requirements. The training programmes were radically different from those of the regular police wings. Its emphasis was on not and arms-foot drills; and there was a total abstentions of law related disciplines. The objectives of the unit were the suppression of disorders.

Paramilitary training base which is situated 80 kilometres South of Lusaka is a creature of paramilitary unit which is based fourteen kilometres South of Lusaka. Paramilitary unit was created after independence in 1967. The idea of setting a paramilitary wing in the Zambia police force was copied by UNIP Government from the Eastern block or communist countries with a view to serve the aspirations of the

then ruling party. Paramilitary training base offer specialised military training in field craft and anti-riot tactics.

The recruits are not taught law and police duties, unlike their counterparts from Lilayi police training school.

I have observed with dismay that both graduates from the three training schools go in the field as police officers with little or no knowledge in both statutory and common law unlike their counterpart from lilayi police training school. As if this was not enough chapter 133 defines a police officer as "Any person serving in the police force"¹. This means that a mobile Kamfinsa graduate and a paramilitary training base graduate all enjoy the privileges of being a police officer as provided by the police act chapter 133.

2. **LILAYI POLICE TRAINING SCHOOL**

HISTORICAL BACKGROUND.

The police force Headquarters command was based at Livingstone until 1935 when Lusaka became the political Headquarters of Northern Rhodesia. It comprises of the general duties, prosecutions, criminal inventions and the special branch.²

In 1949, the site for police training depot had been considered to be situated in the forest reserve, a few kilometres North of Lusaka a long the great North Road. It was however, rejected due to lack of adequate sources of water supply.

In 1955, after considerable delay, the police force training post was moved to Lusaka, at Lilayi. Upon its move to Lusaka, the military tag of "training depot" was dropped and changed to police training school.³ In 1955, the police training school become operational having been under construction from 1951. The first 137 native police recruits (all of them only primary school qualifications) were

put under training. The duration of the course programme was 6 months and the syllabus followed will be discussed later.

By 1956, the first white direct entry Assistant Inspector (grade II) recruits were put on training under a different programme which was much more superior in content. These trainees consisted of British school leavers. During training they were called probationers a name which was abolished in 1957 and changed to cadet Assistant Inspectors. The white officers were taught advanced principles of English common law and criminal procedure. The Africans on the other hand being lowly educated, were taught basic elements of criminal offences under the penal code ordinance, and how to give evidence in court. After training African Police graduates had inferior legal knowledge, as compared to that of the white cadre assistant inspectors. So that when the two categories of officers went into the field, the African policemen could not make formal arrests on their own, but would take all the cases to the "charge officer" where white Assistant Inspectors would make decisions.

THE NATURE OF POLICE TRAINING FROM 1932 TO 1955

When the civil police was completely attached from the military set up in 1932 the emphasis in police training was to equip the native police recruits with the most elementary ideas of law and crime prevention. The technical areas taught were those based on the use of coercive tactics and brutal methods of suppression of crime. Crime was investigated mechanically rather than scientifically since the recruit training did not sufficiently cover the principles of criminal law.⁴

This study has found that the indigenous police recruits, in the colonial days, were trained on how to apprehend criminal suspects only and never to make arrests. The African policemen were more subjected to physical education and

semi-military training. The police training syllabus and the approach, all remained unchanged up to ¹⁹⁹⁴1955. From 1955 up to date, the police standard duration is still 6 months. And the other in-service courses ranged between the periods of two weeks up to 16 weeks.⁵

TRAINING SYLLABUS FROM 1955 TO 1994

Although one cannot with precision mention the date when the first police training syllabuses were formalised in the present form, it is nevertheless true to say that its genesis can be traced back to the era when the first 137 African recruits from all the three countries which formed the federation of Rhodesia and Nyasaland, were put under training in 1955, opening LILAYI Police training school. During that period, upto 1972, the general level of academic background required as a qualification for the entry point of a constable was Grade VII. On many occasions even those recruits who could not meet the entry qualifications, but were literate enough to write a few sentences in English were taken on as recruit constables. So standards were not maintained, and that did not worry the colonial authorities since the uneducated policemen were not meant to make legal arrests once set in the field for policing, the exception being where the white officers were convinced that the native policeman was sufficiently educated would they allow the African to make formal arrests, of fellow Africans only, However even though the African policemen were less educated once in the field, they were effective in suppressing all forms of crime because the public was unsophisticated.

In 1956, the first batch of white recruits arrived at Lilayi police training school. They came straight from Britain and were all of English stock. The general educational background was Form V and VI and they ranged ages between 18 and 22 years.⁶

To illustrate the type of police training which prevailed in the colonial days and continues to exist, the following are the syllabuses for various entry points of police recruits and in-service courses.⁷

5. SYLLABUS FOR MEN AND WOMEN RECRUIT CONSTABLES

a. QUALIFICATIONS

Zambian, not more than 25 years of age and generally single

b. ACADEMIC BACKGROUND

Grade 9 certificate holders and Grade 12 failures, that is ones with only G.C.E. "O" Levels, or result 8, 8 and 9 divisions. This syllabus is tailored to provide the basic necessary knowledge and skill in law to enable graduates when they get in the field to successfully carry out their duties as first or front liners in the fight against crime.

The course content is as follows:-

1. Police duties as prescribed by CAP 133, Cap 160 and all police procedures of an inquiry or charge office.
2. Elementary criminal responsibility and offences of some divisions of the penal code 146, criminal procedure code CAP 160 and items of evidence and principles.
3. Some statutes of Zambia, pertinent to police operations e.g. Cap 480, National parks and wild life act, liquor licensing Act, Dangerous drugs act, Mental Disorders act, Juvenile Act and Nads and Nads Act. ⁸

There is the syllabus for the basic supervisory course which is intended for non-commissioned officers, that is sergeants and sub-inspectors. Law content is

similar to that offered to recruit constables except that emphasis is paid to leadership qualities and management skills. After completion of the course the officers are expected to go back in the field and play the role of grassroots supervisors in the police force. ⁹

6. **DIRECT ENTRY SUB-INSPECTORS AND ASSISTANT SUPERINTENDENT SYLLABUS**

The candidates for direct entry to Sub-inspector Rank are the holders of a full school certificate or suitable G.C.E. "O" levels which among them must include English language with a distinction, merit or credit as passing grade. the direct entry Assistant Superintendents must be University graduates, holding degrees of any disciplines or facilities.

There is no record of any University graduate with an LLB degree or Lawyer join the police force.

The course content for the two categories, termed in the police language (A.T.C.) Advanced training course, covers, law material which were initially meant for white Assistant Inspectors, last held in 1963. However the following subjects are taken on during 16 weeks of the course duration.

- a. principles of criminal law and laws of evidence.
- b. Constitutional law and Caps 776, 133, 122, 146, and 160 of the laws of Zambia.
- c. Police duties and management.

Police training is handled by police law instructors who should be of the rank of and not less than sub-inspector, but of any educational background, no fast or hard rule. Officers are drawn from the field with at least three years of policing experience since their initial police training. These officers do not undergo

intensive training in the principles of English law except in some cases where ex-police prosecutors are copied in the instructional staff.

Before they start instructing courses, law instructors undergo instructional techniques covers inside and outside Zambia. The knowledge acquired is sufficient for all categories of courses except for syllabuses covering local command courses and the two direct entry points of sub-inspectors and Cadet Assistant Superintendents.

The police force has failed to attract LLB degree holders or advocates of the high court for Zambia to teach legal education to senior and superior police commanders. So the police force has sometimes called upon the **National Institute of Public Administration** in Lusaka, to help in imparting knowledge of professional character. Most of the very superior officers shun attending command courses organised locally because they feel that that the local police training school and bases are not suitable for their levels.

The institution lacks conducive facilities for learning, and that instructional or teaching staff are of lower ranks, of which police disciplinary ethics do not allow. This may sound like fiction but this has been and still is, the prevailing state of affairs in the Zambia Police Force. The author has personal experience of the short comings in the field of police training. Zambia police training school based at Lilayi is one of the oldest and bedrock of the police system. It was created at the inception of Northern Rhodesia police force in 1932. At Independence, the wing inherited colonial training facilities and programmes, which have remained unchanged up today.

FOOT NOTES

1. Section 2 of the Zambia Police Act Chapter 133
2. Nkwazi Magazine, volume 3, December 1984, Lusaka.
3. Ibid p. 15
4. Nkwazi magazine, volume 1, April. 1982
5. Ibid p.10
6. Ibid p. 20
7. Curriculum development centre, Lilayi, 1985
8. Ibid p. 12
9. Ibid p. 15

CHAPTER THREE

In this particular chapter, I am examining the courses taught at Lilayi training school with objective of highlighting how inadequate these courses are, beginning with the law of evidence and constitutional law. With regard to the law of evidence, I will discuss in detail competence and compellability of witness, corroboration and confessions.

1. LAW OF EVIDENCE

(A) COMPETENCE AND COMPELLABILITY OF WITNESSES.

When police receive a report of crime from members of the public, the first step is to ascertain whether the report so received reveals any offence in chapter 146 or other statutes. If the report reveals any offence, the police officer will endeavour looking for evidence with a view to successfully prosecute the author of the crime. A suspect can only be detained in police cells if there are some persons willing to testify against him before a competent ^{court} ~~cover~~. The issue as to whether a witness who is to testify before court is competent and compellable is very critical. If justice is to prevail both to the accused and the complainant, a police officer who is under training at Lilayi training school ought to receive proper lecture on this vital topic. Competent and compellability of witnesses is covered in skeleton form at Lilayi training school.

"COMPELLABILITY OF WITNESSES"

Usually every person who is competent to give evidence is also compellable although he may refuse to answer on question which he swear will tend to expose him to criminal charges"¹

This statement does not equip a recruit (some one who is under training at Lilayi) to understand in total the main ~~ferets~~^{tenets} of this vital subject. With this in mind, I will exhaustively discuss the law relating to competence and compellability of witnesses, paying particular attention reception of evidence from spouses.

The general rule with regard to spouses is that they are neither competent nor compellable to give evidence against one another. However, to every general rule, there are some exceptions. Section 151 of the criminal procedure code chapter 160 gives a statutory exception to this rule and allows a spouse to be competent but not compellable.

- a. "In any inquiry of trial, the wife or husband of a person charged shall be a competent witness for the prosecution or defence without the consent of such person.
 - b. In any case where such person is charged with an offence under chapter xv of the penal code or with bigamy.
 - c. In any case where such a person is charged in respect of an act or omission affecting the person or property of the wife or husband of such a person or the children of them.
2. For the purpose of this section "wife" and "husband" include the parties to a customary marriage".²

This provision which is similar to section 4 of the British criminal Act of 1896 received judicial interpretation in the case of RVALGAR.³ A wife who had been lawfully married obtained a decree of nullity on the ground of her husband's impotence. After a decree had been pronounced she was called as a witness for

the prosecution at her former husband's trial for alleged criminal offences. The husband was convicted and he appealed on the ground that the trial judge erred in law when receiving evidence from her former wife as she was incompetent witness.

The House of Lords quashed the conviction and held that the former wife's evidence was inadmissible as she was not a competent witness. This case demonstrates the fact that spouses are technically incapacitated to give evidence against one another in some specified criminal offences and this deficiency in the law must be corrected if peoples' rights are to be upheld. The case of *THE PEOPLE V. MUSHAIKWA*,⁴ again demonstrates the fact that peoples' cry for police re-training is not just an empty slogan. The accused was arrested killing his brother Kansisiyo Moyo Mushaikwa and the only person who witnessed the incidence was the accuser's wife. SILUNGWE J. as he then was, presided over this matter and ruled the wife of an accused in a case of *Murar* is not a competent witness for the prosecution. The judge stated that:-

"I have no doubt at all in my mind that this case does not fall within the provisions of S. 151 of the CPC but that it is governed by common law the wife of the accused is not a competent witness for the prosecution and consequently no degree of consent by the accused can turn the other spouse into a competent witness for the prosecution,"⁵

It is worth to mention that police is precluded from tendering on accused's spouse as a witness even though the accused has consented that his spouse should tender evidence for the prosecution. However, the accused's spouse is a competent witness for prosecution in the following circumstances:-

- (a) Where a spouse has committed an offence of treason.

- (b) Where a spouse has committed rape, abduction, indecent assault, defilement, supplying drugs to procure abortion, unnatural offences and incest.
- (c) Where one spouse assaults, unlawfully wounds or grievous harms the other.
- (d) Where one spouse commits an offence of bigamy if married under CAP 211.

It is also important to note that even though a spouse commits the above mentioned offences, his or her spouse is only competent and not compellable. In a situation where a husband assaults his wife and the wife refuses to give evidence against her husband, police should not proceed to arrest the husband. The proposition was put beyond doubt in the case of *HOSYKNV COMMISSIONER OF POLICE*,⁶ the appellant intent to do grievous bodily harm. Two days before the trial the appellant and the woman testify against the husband but the police forced her to do so. Relying on the evidence of the wife, the court convicted the appellant and he appealed to the House of Lords. The court quashed the conviction and held that even though the wife is a competent witness against her husband in some certain specified offences, she ought not be forced into the witness box. Law instructors (police who teach recruits) at Lilayi should seriously study S. 151 of the CPC and understand it in total. Taking someone's right ^{is} by serious matter especially in a situation where the only witness is a spouse. It is sad to note that an accused is put in custody for as long as two years and on his trial, the judge or magistrate dismisses the case on the ground that the only witness who is a wife to the accused is not a competent witness. In our society very few citizens are conversant with the law but However, with the advent of plural politics and creation of civic educational organisation, the law has been disseminated to the populace. A situation will soon arise where

citizens who were previously prosecuted and acquitted on the ground that their spouses were not competent witness, will soon bring actions against the state for unlawful detention. The police therefore, before enforcing the law, ought to understand it in total to spare the millions of kwacha to settle the suits.

(b) **CORROBORATION**

Writing in a police magazine, the force public relations officer had this to say with regard to the rate of acquittals:

"A look at the police crime statistics shows that in 1982, 7,000 cases of acquittal were recorded whilst in 1986 the number of acquittals rose to 55,00."⁷

This study has found that the number of acquittals has increased in recent years because the teaching of the law of evidence specifically on corroboration has gone down. Corroboration is taught in skeleton ^{form} ~~form~~ at lilayi police training school.

"When you receive a report of rape from a woman or girl, your immediate task is to ascertain the state of the complainant. How the complainant is dressed, is she wearing torn clothes, is her hair disorganised and is she having wounds on her body, is she willing to be medically examined."⁸

At many occasions, police face a situation where the only witness to testify before court is a child of tender age. The question that comes to the mind of a police officer is to whether such evidence require corroboration as a matter of law or not cross and wilkins () says:-

"The general rule, in civil and criminal cases alike is ^{that} ~~that~~ the court may act on the testimony of one witness. However corroboration is required as a matter of law:

- (a) In criminal cases, before they can be a conviction for prejury, for various sexual offences or on the unsworn evidence of a child"⁹.

Section 122 (i) of the Juvinales Act provides inter Alia:-

"where in any proceedings, any child of tender age is called as a witness, the court may receive his or her evidence so long he understands the duty of speaking the truth provided that where evidence admitted by virtue of this section is given on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating him"¹⁰

The above cited authorities make it plain that the evidence of a child of tender years ~~material evidence~~ ^{must be corroborated} if police is to win a case in a situation where the child is the only witness.

In CHISHAV THE PEOPLE,¹¹ the case against the applicant rested solely upon the evidence of a fourteen years boy Charles Makumba. He gave evidence to the effect that on 25th May, 1978, he had been selling refreshments at a bus station in Chingola and whilst attending to the complainant, he saw the accused relieve the complainant's purse. The boy's evidence was not corroborated.

The accused was convicted and he later appealed. The supreme court quashed the conviction and SILUNGWE C.J. as he then was found as a fact that there was no corroboration of the sworn evidence given by the boy and that the judge in the court below erred when he convicted relying on the sworn evidence of a child.

The offence of perjury also requires corroboration if conviction is to be secured and s.104 (1) provides inter alia.

"Any person who, in any judicial proceeding, knowingly gives false testimony touching any matter pending before court is guilty of misdemeanor termed "perjury".

"S.107 A person cannot be convicted of committing perjury or of subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false".¹²

The offence of procuration requires corroboration if conviction is to be secured.

'S140 Any person who-

Procures or attempts to procure any girl or woman under the age of 21 years to have unlawful carnal connection or a common prostitute, either in Zambia or elsewhere is guilty of misdemeanour.

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused".¹³

Exceeding speed limit also requires corroboration.

"S.192 (3) Any person who drives a vehicle on any road at a speed greater than prescribed or specified as the maximum speed shall be guilty of an offence

(4) No person shall be convicted of any offence under this provision merely on the evidence of one witness solely to the effect that in the opinion of the witness, he was driving a vehicle at a speed greater than the maximum provided".¹⁴

As a reaction to the increased number of acquittals in our courts of law, the police command should seriously consider to include corroboration as a matter of law in the recruits syllabus. Peoples' cry for re-training of the police is not just an empty slogan and therefore the police should re-organise the recruits syllabus to enhance efficiency in the police force.

CONFESSIONS

In many occasions, police may arrest a suspect and proceed with investigations. At the end of the day the suspect may admit that he is the author of the crime and sometimes police may not recover the stolen property. In such a situation, the only evidence to the police is the confession statement made by the accused admitting the fact that he is the author of the crime. The issue which should be considered is to whether the court will admit the confession statement made by the accused as prosecution's evidence and also whether this vital topic is adequately taught at Lilayi training school. This topic is covered in a skeleton form:-

"When a person is arrested, a warn and caution statement should be administered and if he admits the charge this should be recorded in the note book and should be produced before court¹⁵. With regard to the above statement, it is clear that the subject on confession is not adequately taught at Lilayi training school. With this view in mind, the writer will discuss the law relating to confessions and strongly recommend that this ought to be incorporated in the new recruit syllabus which the police command is working on.

A confession may be defined as a statement made by an accused person admitting that he has committed a crime. If the confession is voluntary it will be admitted as evidence against the accused and if it is involuntary the general rule is that it won't be admitted as evidence against the accused. The confession made by an accused is said to be involuntary if in obtaining it police used force, inducement, threats or promise. A confession is also said to be involuntary if it is obtained by promise, inducement force or threats authority is one who is perceived by the person making the confession as having the power to carry out the threat or one

who the maker of the statement believes he is capable of influencing the outcome of the proceedings, e.g. magistrates, parents, or employers. In *RVCLEARLY*,¹⁶ the court held that a statement made by the father to an accused son who was investigated for murder amounted to an inducement and therefore involuntary "put your cards on the table, tell them the lot, if you did not hit him they cannot hang you".

In *RV THOMPSON*,¹⁷ the prisoner was tried for embezzling the money of the company, it was proved at the trial that, on being taxed with the crime by the chairman of the company, he said "yes I took the money" and afterwards made out a list of the sums which he embezzled, and with the assistance of his brother paid to the company part of such sums. The chairman stated that at the time of the confession no threat was used and no promise made as regards the prosecution of the prisoner, but admitted that, before receiving it, he had said to the prisoner's brother "it will be the right thing for your brother to make a statement, and the court drew the inference that the prisoner, when he made the confession, knew that the chairman had spoken these words to his brother. The court of appeal held that the confession of the prisoner had not been satisfactorily proved to have been free and voluntary and the appeal was allowed. Therefore when an employer brings his employee to the police station and makes a complaint that the employee had stolen his property and further that the employee had confessed to have stolen the same. Police should interview the complainant to ascertain whether the confession was freely made. If the employer induced his employee to make a confession, this confession should not be tendered as evidence against the employee because it is inadmissible. An inadmissible confession may lead to the discovery of some fact, such as hiding place of stolen goods. Evidence of the facts discovered may be given and will be admissible.

Where the voluntary confession statement of an accused is the only evidence, the court will not convict and therefore, police should look for other pieces of evidence to corroborate the same. This proposition was put beyond doubt in the case of WATSONVR,¹⁸ the appellant was charged jointly with one Oliva with burglary and theft. The evidence was that the first accused oliva was seen loitering near the complainants house by the complainant on his return to the house, and was arrested on suspicion and subsequently admitted that he was present assisting another man ran out from the house carrying a bundle. This other man was chased but was not caught and the bundle was not recovered. There was no evidence at all against the appellant to show he was the man who ran away, with the exception of a statement he made to the police when subsequently charged. The appellant was convicted and he appealed. In allowing the appeal, the High court of Nyasaland held that, that was a case in which it was, unsafe to convict upon the accused's statement alone.

¹⁹
In THE PEOPLEV HAMAINDA, The accused was charged and convicted of stock theft. The evidence against him consisted of a confession alleged to have made by him. The appellant appealed against conviction. SCOTT J. " In the case of WATSONVR, the then chief justice of Nyasaland dert with a problem which is similar to the one presented to me, where the only evidence is in the form of confessions made to the police and it is unsafe to convict upon the accused's statement alone".

In order for a confession statement made by an accused to be admitted in evidence against him, the police in the warn and caution statement must record the actual words said by the accused ~~one~~^{di} are not taken, the court will reject the confession statement. This proposition is supported by the case of THE PEOPLEV LUKAS CHIWAVLA,²⁰ The accused was convicted of assault actual bodily harm. The prosecution alleged that the accused struck the complainant on the head with a

hammer in which he stated that it was the complainant who struck him first and that in striking back he was acting in self defence. when convicting him the magistrate relied on a confession purported to have been made by the accused to the arresting officer. However, the police witness did not produce before court any written statement made by the accused nor words which he used. The prisoner appealed to the High court. Allowing the appeal GARDENER J. stated that "whenever evidence which purports to be a confession is tendered to the court, it is most desirable that the exact words used by the accused should be given in evidence".²¹

CONSTITUTIONAL LAW

This subject is only taught to direct entry Assistant superintendent and sub/inspectors. It is also taught to serving officers who intend to work in the criminal investigation department. However, this course is not taught to recruit constables who form the back bone of the police force. This sad situation has a historical background. The present recruit syllabus was prepared in 1955 when lilayi police training school was opened. Before independence, native police were not allowed to make arrests. Arrests were only made by white police officers who came from Britain and joined as direct Assistant Inspectors. However, after independence, native policemen were empowered to effect arrests but the syllabus at training school was not changed to include constitutional law. Since constables are now empowered ^{to arrest} constitutional law should be introduced in recruit syllabus. This subject is very vital to recruits as they will learn the provisions in the constitution and only then can they appreciate to observe human rights of individuals who they daily arrest.

CERTIFICATE IN LAW

In order to remedy the short comings of training at lilayi training school, the cacaulty of law at the University of Zambia has for a long time now, being offering a one year programme for in-service police officers. The programme of study is structured as follows:-

- a. Criminal law
- b. Legal process
- c. Constitutional law
- d. Introduction to public administration.

The police force do appreciate the efforts made by the law school in offering advanced training for its officers. However, I have for a long time now, observed with regret that police officers who pass through the gates of the school proudly with certificate do not contribute fully towards the operations of the force. The Assistant Dean in the law school, DR. CHANDA was interviewed to ascertain as to whether the status quo with regard to the courses offered for a certificate course should be maintained. "In my view, policemen who persue a certificate in law, should not take introduction to public administration as one of their courses. The course in question has no relevance to police work instead of taking introduction to public administration police should be taught elementary law of evidence."²²

I concur with DR. CHANDA'S proposal that instead of officers taking introduction to public administration they should rather take elementary law of evidence. If the programme is structured as proposed, it will enable a certificate graduate to automatically join the prosecution department. It must be noted that prosecutions of criminal cases in surbodinate courts is handled by policemen who undergo a specialized prosecutors course at National institute for Public Administrative NIPA). Due to limited resources, NIPA is not able to train the required number of prosecutors to handle criminal cases in surbodinate courts. Most of the

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prosecutors are learner prosecutors who are just learning the job from their counterparts who have been privileged to attend prosecution course at NIPA. With this in mind, the proposed introduction of elementary law of evidence to policemen should be given serious consideration. This will enable the certificate graduate join the prosecutions department which is experiencing critical shortage of personnel.

I interviewed judge Chileshe of Kitwe High Court to throw some light as to whether policemen who appear before him do a fine job in investigating crimes and presenting evidence. The Judge stated that "most of the police officers who appear before me do not properly understand or know the law of evidence. I have acquitted many accused persons simply because police fail to corroborate some pieces of evidence"²³. Constable Mubita of Wusakile Police Station in Kitwe, who has served for fifteen years was also interviewed to throw some light on his experiences when giving evidence in court and stated that " At times, the magistrate acquits the accused and blames me for failing to record a statement from certain persons who were to corroborate evidence of the complainant".²⁴ Chief Inspector Bwalya of Kitwe prosecutions department was also interviewee and stated as follows:

"I have been receiving uncompleted dockets from stations and it has been difficult for me to proceed prosecuting the accused persons. Men and women from stations fail to record corroborating statements to secure conviction, I am of a view that the syllabus at training school should be restructured"²⁵. I also interviewed sub-Inspector Hachunde a law instructor at lilayi training school to ascertain whether the recruits he trains are well drilled, he stated as follows" I think recruits ~~are~~ ^{are} properly trained. We have specific instructions from our officer-in-charge on what to teach them and we exactly do that. However if there is any proposed change to the syllabus, we can competently handle that as long as the command briefs us what to do"²⁶

From the foregoing, it is a prove fact peoples' cry for re-training of policemen is not an empty slogan.

FOOT NOTES

1. = Recruits Lecturer Notes pages 25
2. = S.151 of the criminal procedure code chapter 160
3. = RV ALGAR (1954) IQB 279
4. = PEOPLEV MUSHAIKWA (1973) ZR 104
5. = Ibid page 108 Judgement by SILUNGWE J.
6. = HOSYKNV Commissioner of Police (1979) AC 474
7. = Nkwazi police magazine volume 7 September 1990 page 7.
8. = Recruit lecture notes page 30
9. = Cross and Wilkins Outline of the Law of Evidence, sixth edition
Butterworth and company, London June 1986 at page 71.
10. = S.12(1) of the Juviniles Act CAP 217
11. = CHISHAV THE PEOPLE (1980) ZR 57
12. = S.104 (1) and S. 107 of the penal code CAP 146
13. = S.140 of the penal code CAP 146
14. = S. 192 (3) And (4) of the Roads and Road Traffic Act CAP 766
15. = IILAYI LECTURER NOTES
16. = RV CLEARLY (1963) 48 CR. APP 116
17. = RV THOMPSON (1893) 2QB 12
18. = WATSONV R(1960) R & n 560
19. = PEOPLEV HAMAINDA Unreported (1972)
20. = PEOPLEV LUKAS CHIWALULA, Unreported
21. = Ibid Judgement by Gardner J.
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25. = Interview with Chief Inspector Bwalya of Kitwe prosecutions Department.
26. = Interview with sub-inspector Hachunde of Lilayi Training School.

CHAPTER FOUR

This chapter draws conclusions about the quality of training in police training Schools and University of Zambia and makes recommendations which I feel ought to be incorporated in the reform programme vis-a-vis recruit syllabus.

In order to produce a knowledgeable policeman who will deliver the expectant results, the quality of trainers at police training schools ought to be completely over hauled. Presently, because of economic constraints the country is experiencing, trainers are not exposed to further training after completing the 6 months recruit programme. It is therefore inevitable that the police command can make advantage of a certificate programme offered by law school at the University for policemen. The certificate graduates who proudly pass through the doors of the school are adequately trained to teach recruits at police training schools. The environment at training schools must be completely over hauled. Lilayi police training school which trains ninety percent of the total police workforce was built in 1954 and its buildings have deteriorated over the years making it uncondusive for training. The training school libraries which is the source of knowledge must be well equipped with reading materials. Qualifications for recruit constables must be lifted. Presently a holder of a Grade 9 certificate and Grade 12 failure is eligible to be recruited as a police constable. Over the years, our educational system has deteriorated and a Grade 9 of today is equal to a Grade 7 of 1970. With this view in mind only Grade 12 holders with good passes ought to be eligible for training as police constables.

I recommend that the recruit syllabus in all three police training schools, thus paramilitary training base at Sondela, Kamfinsa mobile training school in Kitwe and Lilayi police training school ought to be completely resustated. The new reform

programme with regard to recruit syllabus should encompass competence compellability of witness. This vital subject will enable a police officer faced with a noverty situation, to know when a spouse is competent and not competent to testify against each other. This will, in the long run, bring to a halt rampant unlawful detentions of suspects whose charges are dismissed by the courts of law on the ground that the prosecution witness is not competent. The courts when acquitting suspects have with regret hinted that the prosecution has failed to corroborate evidence of its witnesses. A policeman, being a forerunner in investigating crimes ought to be knowledgeable as to when corroboration is required as a matter of law. With this in mind the new reform programme vis-avis recruit syllabus should encompass when corroboration of evidence is required as a matter of law. Confessions when properly administered are excellent pieces of evidence to case beyond reasonable doubt. Due to deficiency on confessions in recruit syllabus, the courts have thrown away confessions or ordered trial within trial to ascertain the legality of the confession. With this in mind, trainers should teach the subject of confessions in its totality.

With regard to constitutional law, this should be incorporated into recruit syllabus as a matter of urgency. The course will enable a policeman to uphold suspect's human rights and will minimize over detention of suspects in police cells.

Presently, paramilitary and mobile police officers do not exercise the powers of arrests due to deficiencies in their recruit syllabus programme. With the current shortage of personnel in the police a population of nearly a_λ⁹ million people, this status quo is not sustainable. The recruit syllabus prevailing at lilayi applied to the other two training schools in the combat division so that the recruits will exercise the powers of arrest. I further recommend that a certificate programme offered by law school to policemen ought to be restructured. Introduction to public administration should be done away with and be replaced by elementary evidence.

This will enable certificate graduate from law school to join the prosecution department which is experiencing shortage of personnel.