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SCHOOL OF LAW

PROBATION SERVICE AND EXTRA-MURAL PENAL
EMPLOYMENT AS FORMS OF PUNISHMENT IN
ZAMBIA.

BY

ROBERT JOSEPH CHAZANGA

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(i)

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that the obligatory essay prepared
under my supervision by

ROBERT JOSEPH CHAZANGA

entitled

PROBATION SERVICE AND EXTRA-MURAL PENAL EMPLOYMENT
AS FORMS OF PUNISHMENTS IN ZAMBIA

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(ii)

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

TOPIC: PROBATION SERVICE AND EXTRA-MURAL PENAL EMPLOYMENT
AS FORMS OF PUNISHMENT IN ZAMBIA

BY

ROBERT JOSEPH CHAZANGA

Submitted in partial fulfilment of
the Bachelor of Laws Degree.

September, 1991

SUPERVISOR: MR. ENOCH M. SIMALUWANI

DEDICATION

This obligatory essay is dedicated to my late dear daughter, Lito, and to my beloved late wife, Dorothy, who passed away on 20th November, 1990 and 1st February, 1991 respectively. I shall live to remember them, and may their souls rest in peace.

and

To Lomans, my first born daughter and her husband Mabwuto, who volunteered to look after the orphans: Chiluba, Sophia and Joseph after the untimely death of Dorothy.

ACKNOWLEDGEMENT

First, I sincerely thank my supervisor, Mr. Enoch Mwetwa Simaluwani for being most supportive and willing to direct me in the research and writing of this essay. I will live to remember his good nature and patience. Without his continued support and advice, this essay was going to be a non-starter; second, my sincere thanks go to my late wife Dorothy, who endured my absence from home during my four years stay at the University of Zambia. She did her best to look after the children during my absence. It is a pity she is unable to witness my graduation, may her soul rest in peace.

Third, my special thanks go to Mr. and Mrs. Menyani for giving me moral and material support during my stay at the University.

Fourth, my profound thanks go to Mr. E.E. Miti, my brother Magistrate who encouraged me to read hard in order to qualify for admission into this institution of high learning. Indeed, his advice came to fruition in 1987.

Fifth, last but not least, my heartfelt thanks go to Ms. Bertha Lukungwe for typing this work which by and large interfered with her busy office schedule. I will live to remember her patience and co-operation.

CHAPTER ONEINTRODUCTION

Deterrence has long been accepted by the courts as one of the main purposes of punishment and perhaps as its ultimate justification. Besides, it is only common sense that one way of preventing certain misconduct is to punish those who engage in them, and indeed it is a technique that any parent knows well.¹

Punishment for criminal offences is generally viewed as serving one or more of the three main purposes: (a) deterrence, both of the criminal himself (special deterrence), and also of society at large (general deterrence); (b) the rehabilitation of the criminal; and (c) to a lesser extent and as a last resort, the isolation of the hardened or dangerous criminal from society, that is "restraint".²

In this paper, I wish to discuss the rehabilitation of the criminal offender.

There are many forms of non-custodial sentences which give an offender an opportunity to reform viz. "suspended sentences, fines, forfeiture, payment of compensation, finding security to keep the peace and be of good behaviour or to come up for judgment"³ absolute and conditional discharge,⁴ probation service,⁵ and extra-mural penal employment.⁶

Of the above-mentioned forms of punishment, I have decided to write on two of them only - Probation Service and Extra-mural penal employment because the courts use them sparingly vis a vis

public demand for them and other non-custodial sentences. One notable proponent who spoke on rehabilitation is His Excellency the President, Dr. K.D. Kaunda who wrote in his book "Humanism in Zambia and a Guide to its Implementation" Part II, that "reforming prison inmates should be the primary goal of our prisons.... We do not believe in punishing people for the sake of punishing them, we believe in reforming them."⁷ He again cautioned the courts at the first Judges and Magistrates seminar held at Mulungushi Conference Centre on 23rd August, 1987. The President urged the courts to be considerate and to opt for non-custodial sentences when metting out sentences against offenders. He emphasised the need to reform prisoners and to rehabilitate them back into society without discrimination based on their criminal past.⁸ Even before His Excellency the President made these observations, many leaders and ordinary citizens at different fora made similar remarks i.e. urging the courts to use custodial sentences sparingly so as to give offenders chance to reform. In 1974 when Parliament was debating ~~on~~ the Penal Code Amendment Act (No. 2 of 1974) Mr. Willa Mung'omba (M.P. for Mporokoso) observed during the debate on the Act thus: "It is not by having stiff penalties that we can curb crime.... It is by starting from the bottom i.e. by having a good system of investigation, by having a good system of research."⁹ Mr. Henries, the Attorney-General of Liberia once said: "for centuries, imprisonment has been a means of punishing offenders and prevents them from especially escaping committing new crimes or causing harm to others. It has also been regarded as a deterrent to criminality.... It has however proved ineffective as a deterrent; rather in some instances it has contributed to recidivism."¹⁰

The two forms of punishment (probation service and Extra-mural penal employment) belong to the reformation (rehabilitation) theory of punishment.¹¹

In this paper I will try to highlight the advantages of such sentences to the offender, the community in which he lives and to the nation as a whole. And since prevention is better than cure, I will attempt to provide ways and means through which crime can be controlled.

In Zambia, Probation service is ~~found~~^{provided for} under section 3(1) of the Probation of Offenders Act Cap 147¹² and under section 73(1) (b) and section 10(c) of the Juvenile's Act Cap 217¹³ of the Laws of Zambia.

Extra-mural Penal employment is ~~found~~^{provided for} under Part XXI, section 135 of the Prisons Act Cap 134¹⁴ of the Laws of Zambia.

Talking about Probation Service and Extra-mural penal employment without defining the terms, will obviously put an uninitiated reader in total disarray. These are non-custodial sentences or orders the court makes upon convicting an offender as opposed to custodial measures where convicted persons undergo a term of imprisonment - with or without hard labour.

I had an occasion of interviewing some Judges, Magistrates, Probation officers, Prison officers and prisoners themselves as to the effectiveness of custodial sentences. A number of them stated that such sentences were ineffective in so far as the reformation of prisoners is concerned. Prisoners, they said, come out of the prison walls better instructed in crime than

4

they went in because of their long association with some jail birds in prison. Prisoners themselves were divided. Some appreciated that the different skills and education they are taught gives them some means of livelihood after serving their sentences. Some disliked custodial sentences because they missed their families, feared their property or crops in the field to go to waste and worse still the consensus was that prison life is degrading. The majority preferred non-custodial sentences of say suspended sentences, fines, probation and Extra-mural penal employment.

The material used in this essay is secondary data taken from books, statutes, law reports, annual reports of government department, case records, essays and speeches. The data is supplemented by information gathered during personal interviews during the research.

Chapter two is dedicated to the sentencing process, chapter three to Probation Service, chapter four to Extra-mural penal employment and chapter five, the concluding chapter, is dedicated to the general discussion of the Essay.

FOOTNOTES

1. B. Slattery, A handbook on sentencing (Dar-es-Salaam),
1970, p. 27.
2. Kennelt John Ball, (1951) Cr. App. R. 164.
3. Section 24 of the Penal Code, Cap 146 of the Laws of Zambia.
4. Section 41 Ibid.
5. Section 3(1) of the Probation of offender's Act Cap 147
of the Laws of Zambia. Sections 10(c) and
73(1)(b) of the Juvenile's Act Cap 217 of the
Laws of Zambia.
6. Section 135 of the Prisons Act Cap 134 of the Laws of Zambia.
7. K.D. Kaunda, Humanism in Zambia and a Guide to its
Implementation Part II, (Lusaka, Government
Printers) 1971.
8. K.D. Kaunda, Courts are too harsh (Times of Zambia No. 6,891
of 24th August, 1987), Lusaka, 1987 at page 1.
9. W. Mung'omba, (M.P. Mporokoso) Parliamentary debates (1974)
p. 303,
10. K.T. Mwansa (1986) Aggravated robbery and the death penalty
in Zambia: An examination of the 1974 Penal
code Amendment Act (No. 2) paper presented at
the Law School seminar on 30th January, 1986
at UNZA, p. 14.
11. J.J. Labu Schagne, Penology (Pretoria - Unisa Press) 1978
p. 98.
12. Section 3(1) of Cap 147 Op. Cit. p. 3.
13. Section 10(c) and 73(1)(b) of Cap 217 Op. Cit. Pp. 12 and 36.
14. Section 135 of Cap. 134 Op, Cit. p. 57.

CHAPTER TWOSENTENCINGCriminal Justice Process

Sentencing is the climax of the criminal justice process. It serves as the focus of the criminal law and the criminal trial, and constitutes the point at which the criminal justice system most consciously and visibly expresses its denunciation of criminal behaviour, attempts to deter or incapacitate people from further wrong-doing, or orders reparation or redress of the harm done.¹

The public needs protection from criminals. The public thus question both the ability and willingness of the criminal justice system to take the action necessary to protect it from crime.

A century ago, the utilitarian approach identified protection of the public as a primary goal, and rehabilitation was said to have replaced ~~punishment~~ and retribution in offering a more effective and humane means for achieving public protection.²

The theory of rehabilitation is based on humanitarian concerns and a utilitarian "common sense" theory that the most effective way to prevent crime is to transform offenders into law-abiding citizens. Although the theory has had a major impact on criminal law and correctional efforts since the turn of the century, evaluations of the programmes and efforts to rehabilitate have led to the conclusion that little effect

is to be observed upon offenders from treatment programmes, especially in a prison setting.³

While we accept the view that imprisonment has on reducing criminal recidivism by isolating or separating the offender from the general public, from certain selected persons, or from situations which could lead to criminal behaviour, many people are of the view that imprisonment should be reserved for those who committed serious crimes and who represent a serious threat to the personal security of others. Those who commit minor offences e.g. petty thefts, assaults, malicious damage to property and the like should be spared from custodial sentences. Instead, non-custodial sentences, should be ordered in order to rehabilitate them. This view is the President's view in this country. Apart from what he wrote in Humanism Part II, he reiterated his call for non-custodial sentences at the 1987 seminar of Judges and Magistrates held at Mulungushi Conference Hall, Lusaka. Dr. Kaunda said:

"By sending first offenders to long prison sentences, courts not only deprive children of parental love but also contribute to personality disorders of children who fall prey to drugs, alcohol and aggressive anti-social behaviour.... The Judicial system should reflect the development and aspirations of society."⁴

The President called for the critical examination of the legal procedures and judgments as some were against humanism. Under humanism, emphasis should be on rehabilitation of convicted people instead of long prison sentences.⁵

Sentence Assessment

"Trying a man" said Mr. Justice McCardie, "is as easy as falling off a log compared with deciding what to do with him when he has ~~been found~~ guilty."⁶ The assessment of sentence is therefore a very difficult thing and is a real test of a Magistrate's or Judge's wisdom.⁷

The criminal procedure code, Cap 160 of the Laws of Zambia is silent with respect to many important sentencing issues. These issues, such as the procedure to be followed at the sentencing hearing, have been decided on a case by case basis by Judges. To put it the other way round, sentencing is within the discretion of the court.

The law of sentencing has two sources: statutes and cases, with the latter providing a more positive direction as to how a court's discretion should be exercised in particular instances.⁸

The court will first and foremost concern itself with the provisions of the statute. He will investigate the statutory limitations on a court's powers - in particular those defining a court's sentencing jurisdiction, and those laying down maximum and minimum penalties for given offences. The Magistrate will further examine the process by which the severity of a sentence is determined and the various factors which courts take into consideration in making such decisions.

The penalty section of the Act should always be studied before the nature of the penalty to be inflicted is decided upon. This is to avoid the risk of a sentence of imprisonment

only being imposed where the law provides for imprisonment only in default of payment of a fine, or the risk of imprisonment and fine being ordered where the law only permits one but not both, of these penalties, or hard labour being ordered when the law does not permit it.⁹

Before passing sentence the court may also take into account of these notable considerations:

- (a) The seriousness of the class of offence to the community;
- (b) The prevalence of the offence in the district;
- (c) The aggravating or extenuating circumstances surrounding the commission of the offence;
- (d) Public opinion to a particular offence;
- (e) The antecedents of the accused.
- (f) The youth or age and health of the accused.
- (g) The probable effect on accused, of the sentence contemplated.¹⁰

Pains of Imprisonment

G.M. Sykes came up with the concept the "pains of punishment." He identified four of them viz.

- (i) Deprivation of liberty;
- (ii) deprivation of goods and services;
- (iii) deprivation of heterosexual relationships;
- (iv) deprivation of autonomy.¹¹

At page 61 of the old Magistrate's handbook (known then as "Directions to Magistrates"), it is stated that.... while prisoners receive what is to many of them a better diet than they do in their own homes, nevertheless the unavoidable association of first offenders with other offenders, some of them "oldlags", must always make a magistrate anxious to keep a man out of prison if he can. Cells.... are generally association cells, where conversation may be expected to include the general subject of crime, and in particular subjects of actual crimes. The prisoner is thus made used to the idea of crime and criminals, and may emerge from prison far more criminally minded, and better instructed for crime, than he went in."¹²

These deprivations or frustrations of modern prisons Sykes says "are acceptable and unavoids implications of imprisonment, but they are also painful and we should explore the way in which the deprivations and frustrations pose profound threats to inmates' personality and sense of worth,"¹³ This view is also expressed in the Magistrate's Handbook at page 67. It states that the prisoner feels the pinch of prison life because he feels his loss of liberty and absence of his women and beer. To these punishments is added the fear and worry of his family's (wife and children) livelihood, especially in town. To add insult to injury he also worries about working without pay in prison.¹⁴

Taking into account the pains of punishment i.e. (imprisonment), as expressed by Mr. Sykes and the Magistrate's handbook, and also public opinion, it is indeed advisable to spare certain prisoners from custodial sentences.

I had an occasion to interview some Judges and Magistrates over the question of custodial and non-custodial sentences. Mr. Justice Simuziya said that for offences which are not of a serious nature, it is better to order non-custodial sentences where it is possible. He revealed that he has attended many commonwealth conferences on the subject of sentencing and most commonwealth countries are working out measures of encouraging rehabilitation (non-custodial measures to reform the offender) as opposed to incarceration. Mr. Justice Musumali expressed the same view but added that other things being equal, courts should strive to see to it that the punishment befits the crime. Both Judges were of the view that if non-custodial measures were employed, that could reduce congestion in our prisons. Mrs. Samakai, a Magistrate, was of the view that custodial sentences were not the only answer to the problem of reforming offenders. Probation service and suspended sentences are better methods of giving offenders a second chance, she said.

All prisoners I interviewed except one preferred non-custodial sentences to imprisonment. Most of them loathed the 4 pains of imprisonment as propounded by Sykes. Mr. Boniface Chola, 27 years, who was detained during the President's pleasure in 1984 for murder (offence committed when he was a juvenile), stated that short term prison sentences were better

than long sentences. The longer one stays in prison the more he learns about crime because of long association with tough tested prisoners. He said those detained during the President's pleasure are worse off because the President does not review their cases. Many of them have lived in prison for as long as 26 years without being released. Speaking for himself, a prison was not a place to return to given a second chance. He complained that the State was denying him chance to marry and to raise a family of his own. While he appreciated the education and skills he has learnt from prison, he said that the acquiring of such skills is a worthless exercise for prisoners like him who don't know their time of release from prison. Mr. Chola had just been transferred from Livingstone where most of the detainees (President's pleasure) are kept.

Mr. Robert Kalolo, 32 years was jailed in January, 1991 for house breaking and theft. He is serving an 18 month's sentence. He spoke ill of custodial sentences because one tends to come out of the prison walls a worse off criminal than he went in because of long association with hard core criminals. Speaking for himself he had reformed and will never dare to return to prison again. He knew nothing about Probation service and Extra-mural penal employment. He however, appreciated the skills he was being taught in prison. He said he will make use of the carpentry skill he has learnt in prison when he got released.

Mr. Boniface Lusaka, 25 years, is serving a 2 years sentence for being in possession of a fire arm without a licence. He is married and has two children. He said he missed his family a great deal and did not know what was happening to them. He would have loved to be given a suspended sentence rather than being sent to jail where his freedom is curtailed and separating from his family is a source of worry.

One prisoner who did not want to be named appreciated prison life because that was his world. He said each time he is released he found normal life abnormal and each time decided to return to jail.

None of the prisoners I spoke to appreciated the prison diet of Nshima (thick porridge), beans and Kapenta without saladi.

The Prison Superintendent (Officer in Charge) Mr. Maseka told me that Lusaka Central Prison was opened in 1902. He is not sure of its capacity then but said that to-day, the prison can accommodate 600 - 1000 inmates.

According to him, he saw nothing wrong with custodial sentences but condemned the mixing of remand and convicted prisoners in the cells. If he had things his way, he would keep Remands in separate cells to save them from being spoiled by convicted prisoners who often turn themselves into tutors of crime. He said prisoners were well fed and well looked after. Prisoners, according to him, appreciate the academic education and training in various skills which the Prisons Department offers to them. According to Mr. Maseka, prisons are capable of reforming offenders within the prison cells.

FOOTNOTES

1. Government of Canada report on sentencing, Ottawa, 1984, p. 1.
2. Ibid p. 6.
3. Ibid p. 7.
4. Times of Zambia No. 6,891, Monday, August, 24, 1987, p. 1.
5. Ibid p. 1.
6. L.K. Young (1968) Magistrates Handbook (Lusaka, Government Printers) 5th Ed. p. 45.
7. L.K. Young Ibid p. 45.
8. B. Slattery, A handbook on sentencing, (Dar-es-Salaam), 1970, p. 3.
9. L.K. Young, Op. Cit. p. 45.
10. L.K. Young, Op. Cit. p. 47.
11. G.M. Sykes, The Society of captives, p. 63.
12. H.C.F. Fox, C.D.G. Barbord, Directions to Magistrates (Livingstone, Government Printers), 1951, p. 61.
13. G.M. Sykes, Op. Cit. p. 63.
14. H.C.F. Fox, C.D.G. Harbord, Op. Cit. p. 67.

CHAPTER THREEPROBATION SERVICE

In Zambia, probation service is administered under S. 3(1) of the probation of offenders Act, Cap 147¹ and under sections 73(1)(b) and 10(2)(c) of the Juvenile's Act, Cap 217² of the Laws of Zambia.

There is no statutory definition of probation. However, the term is well defined in the Department of Social Development's 1986 annual report. "Probation is an open non-custodial method of treatment of offenders provided for under the probation of offenders Act, thereby affording the offender the opportunity to reform without being removed from his/her family and community."³ While the probationer is required to abide by certain legal requirements incorporated into the order, the probation officer on the other hand is required to supervise and assist the offender in any way possible, including securing education, training, or employment as the case may be.⁴

Notable writers have also defined probation as "a procedure under which a defendant found guilty of a crime upon verdict or plea is released by the court, without imprisonment subject to conditions imposed by the court and subject to the supervision of the probationer by a probation officer."⁵

Before examining in detail the development of the probation service in this country, it is necessary to give a brief account of how the service started in England. It will also be putting the cart before the horse if nothing is mentioned about the brief history of imprisonment as a form of punishment under the English legal system.

"It is a historical fact that we have travelled far from the opinion of a committee of the House of Lords which in 1863 reported in favour of severely deterrent regime based on hard labour, hard fare and a hard bed... and expressed the view that in so far as the moral reformation of the prisoners might also be an aim, it should be achieved primarily through the discipline of stringent punishment."⁶

Until the report of the department committee on prisons (The Gladstone Report) was published in 1895, these views prevailed and found expression in separate confinement and punitive hard labour. Thus prisoners were isolated at all times in their cells, at work, in chapel, and at exercise, while they were employed on such degrading and unproductive work and the tread mill, the short drill, and the crank.

The committee of 1895 recommended that, for the future, reformation and deterrence should be treated as primary and concurrent objectives, and that prison treatment should be effectually designed to maintain, stimulate, and awaken the higher susceptibilities of prisoners and turn them out of prisons, better men and women both physically and morally, than when they went in.⁷

Brief History of Probation Service

Probation service in England was introduced in the thirteenth century. Its origins can be traced back to reprieves granted to offenders who could claim benefit of the clergy.⁸ It was done through responsible volunteers

(who were prepared to do probation and after care work). The system which started in England extended to United States and to-day many French speaking countries e.g. in Africa, use teams of volunteers each under a trained assistant social welfare officer.⁹

Modern probation theory and methods are more intimately related with the development in social work.

It should be noted that rehabilitation did not really come into its own as a motive for punishment until after the emergence of imprisonment as a method of punishment. And this was as a result of the positivist school's reaction against the mechanical systems of proportionality advocated by the classical school.¹⁰

In Northern Rhodesia, the legal position for probation was first made in 1933 but it was not until 1954 that a regular system of probation was developed.¹¹

Probation started after the first world war. Before that offenders were sent to South Africa and Southern Rhodesia where such probation and reformatory facilities were available. After the second world war i.e. in 1953 the government passed the probation of offenders ordinance (now Cap 147 of the Laws of Zambia) which set out the law in relation to probation.¹²

Probation was established under the social welfare service, which service had trained personnel. The Director of Social Welfare was gazetted as the Principal Probation Officer.¹³

During the Federation of Rhodesia and Nyasaland, the prisons service ceded to the Federation. But the Federal constitution recognised territorial responsibility of their approved schools. Northern Rhodesia had its first approved school in Ndola in 1961 and another one in Mazabuka in 1963.

Probation Supervision

Probation supervision means a great deal of more than mere surveillance of defendant by the Officer (Probation Officer). It consists primarily helping the relationship between the officer and the probationer through which case work and counselling change the probationer's attitudes and strengthen his ability and desire to remain law abiding and responsible.¹⁴ We have two types of supervision. One is institutional based and the other community based. Institutional based calls for an offender to be put in a correctional institution like Nakambala. Community based means that the probationer is supervised from his place of residence.

The modern function of probation as epitoned in the pre-sentence investigation report draws upon social diagnosis. This in turn grows out of the social worker's need "to know" in order "to work out" a problem, to apprehend and to develop a line of orientation in connection with his client's dilemma. This social diagnosis is an attempt to arrive at an exact a definition as possible of the social situation and personality of a given client. To arrive at a diagnosis the worker uses raw materials and data about the client gleaned from other

social agencies, relatives, parents, friends, schools, employers, public records, and any other such sources as may be available.¹⁵

Probation service is of two types - one for adults and the other for juvenile offenders.

In respect of juvenile offenders, probation service is utilised to the full. It is popularly used in towns. Rural areas lack the service due to administrative and financial constraints.¹⁶ However, now that the old social welfare department and the Community department have been amalgamated to form one department of Social Development, hopefully the staff position might improve.

Mrs. S. Chisense, the Principal Social Development Officer stated during the interview that there are plans to involve the Mine based social welfare personnel in probation work. The church will also come in in due course. And if the department's financial position improves, chiefs may also be asked to assist. She disapproved government monopoly in running the service. If she had things her way, many institutions were going to be allowed to engage in probation work but supervision at inspectorate level was going to be the concern of the government.

Mrs. Chisense lamented over lack of correctional institutions for juvenile offenders. She said the present institutions - Insakwe probation hostel in Ndola, Nakambala Approved School in Mazabuka and Katombora reformatory were old and in poor state of repair. The institutions were also not within easy reach of towns which have the highest rate of child delinquency.

Citing figures in the commissioner for juvenile welfare's paper of January, 1989, which paper he presented in Ethiopia entitled "Consultancy on Juvenile Delinquency in Zambia"¹⁷ she stated as follows:

- (a) In January, 1989, out of the total number of 60 inmates at Nakambala Approved School, 17 were from Copperbelt - mostly Luanshya and Mufulira; 12 were from Western Province, 10 from Northern Province, while the remainder was shared among other provinces. Southern Province where both Nakambala Approved School and Katombora reformatory are located had contributed only 2 inmates.
- (b) At Katombora reformatory, out of 100 inmates in January, 1989, 47 came from Copperbelt Province (Mufulira and Luanshya), 8 were from Southern Province. The rest were distributed among the other provinces as follows:

Central Province	-	11
Lusaka	"	10
Western	"	6
Luapula	"	5
Northern	"	5
North Western Prov.	-	5
Western	-	3

The long distance between the present correctional institutions and places where such inmates come from poses a big problem in as far as parental and guardian communication with the offenders in such correctional institutions is concerned.

In the result, many inmates escape in order to rejoin their families. In 1986, 7 inmates escaped from Nakambala approved school and 42 escaped from Katombora reformatory. The questionnaire on Nakambala and Katombora of 1989¹⁹ revealed that at Nakambala 50 inmates out of 60 had no contact with their parents. At Katombora, out of 100 boys, 77 were not visited by parents or guardians. At Nakambala approved school ~~one~~ inmate was visited 13 times in 1989 by his parents who lived in the neighbourhood. At Katombora, one inmate was visited 24 times and another 26 times by parents and relatives who live within the neighbourhood of Katombora reformatory. This clearly shows that the nearer the institution is to the places where inmates come from the more visits an inmate will receive. From the data provided above, the majority of the cases come from Copperbelt. But Ndola for example is 850 Km. from Nakambala approved school and Katombora is 1,500 Km. from Ndola. There is therefore need to establish more correctional centres e.g. on the Copperbelt. Related to this problem also is the fact that the country has no, correctional facilities for girls/women. In colonial days, we had two of these for coloured girls only. One was Rosh Haven for delinquent girls in Ndola, and the other was Highridge House for delinquent girls in Kabwe. These were abandoned shortly before independence for want of inmates. Probation service was not extended to African girls then. Even the boys correctional institutions on the Copperbelt were exclusively as mentioned above for whites and colourds.

We had only one centre in Ndola for Miners' children i.e. Nakaputa approved school in Masala. This was abandoned in 1963.

As for adults, probation supervision has proved somehow impracticable. This is because adults cannot be kept in a correctional institution. It is degrading and not only degrading but social welfare problems are aggravated by isolating a bread winner from his family, Mrs. Chisense said. Most Judges and Magistrates I interviewed to this effect preferred suspended sentences and fines for adult offenders whom the courts feel should not undergo incarceration. Many were sceptical about probation supervision for adults because it poses many problems with regard to the execution i.e. lack of transport to supervise a number of them in one district/town, lack of trained personnel to counsel them, and the like.

The following tables show the trend of juvenile delinquency in the country for the period 1985-1990.

- Table 1. Shows probationers by sex for the period 1985-1990.
- Table 2. Shows the number of cases investigated for the courts in 1986.
- Table 3. Shows delinquency case disposals for the year ending 1986.

From Table 1 one may say that the number of probationers has been fluctuating during the period under review but weight by weight the number seems to be declining.

Table 2 reveals that juveniles who commit criminal offences are from the lower strata of our society. One tends to agree with Merton's theory of crime when he sees the causes of crime to be in the social structure and the disadvantage of the lower class to reach societal goals of wealth and success. Table 2 clearly shows that the majority of juveniles commit theft related crimes.

Table 1. Probationers by Sex 1985-1990

	MALE	FEMALE	TOTAL
1985	303	41	344
1986	271	32	303
1987	223	28	251
1988	285	32	317
1989	233	27	270
1990	285	30	255
			(breakdown according to sex)

Source: Records at the Department of Social Development,
Lusaka.

Table 2. Investigations for Courts (Delinquency)

(i)	<u>Offences against administration of lawful authority.</u>		
	Escape from lawful custody	-	9
	Trading without licence	-	2
	Illegal entry into Zambia	-	1
	Criminal trespass	-	1
	Unlicensed driving	-	<u>2</u>
	Sub-total	-	<u>15</u>
(ii)	<u>Offences injurious to the public in general</u>		
	In possession of dagga	-	5
	Defilement	-	5
	Obtaining goods by false pretences	-	<u>7</u>
	Sub-total	-	<u>17</u>
(iii)	<u>Offences against the person</u>		
	Assault (common)	-	16
	Assault (OABH)	-	64
	Indecent assault	-	13
	Unlawful wounding	-	10
	Rape	-	5
	Manslaughter	-	1
	Aggravated robbery	-	<u>7</u>
	Sub-total	-	<u>116</u>
(iv)	<u>Offences relating to property</u>		
	Burglary and theft	-	50
	Store breaking and theft	-	17
	Office breaking and theft	-	8
	Theft	-	234

Table 2 (Cont.)

(iv) <u>Offences relating to property</u>		
Shop lifting	-	1
Store breaking	-	30
Theft from person	-	16
In possession of stolen property	-	22
Theft of motor vehicle	-	4
Theft from motor vehicle	-	20
House breaking and theft	-	74
Entry and theft	-	9
Malicious damage to property	-	9
Stock theft	-	3
Others, unspecified	-	<u>18</u>
Sub-total	-	<u>522</u>
Grand Total	-	<u>670</u>

Source: Department of Social Development Annual Report, 1986.

Table 3Delinquency: Case disposals - 1986

<u>Type or Order</u>		<u>Number of Orders</u>
Probation	-	84
Approved school	-	52
Reformatory school	-	58
caning	-	330
Fine	-	51
Imprisonment	-	17
Conditional discharge	-	35
Absolute discharge	-	9

Table 3 (Cont.)

Delinquency: Case disposals - 1986

<u>Type or Order</u>		<u>Number of Orders</u>
Suspended sentence	-	16
Case withdrawal	-	1
Acquitted	-	2
Dismissed	-	6
To give proper security	-	6
Others, unspecified	-	<u>3</u>
	Total	<u>670</u>

Source: Department of Social Development Annual Report, 1986.

It is a pity that annual reports for the period 1986-1990 are not ready but are being compiled. The department however, handled 285 probation cases in 1990.

In 1977 there were 493 probation cases handled by the then Department of Social Welfare. Out of this number, 80 were females. Of the 233 cases closed in the year, 33 were released as being unsatisfactory. Only 24 persons over 18 years were made the subject of probation order and this number includes 3 females.²⁰ In 1986, 303 probation cases were handled, of which 32 were females. Of the 139 cases closed in the year, 29 were released as being unsatisfactory. Only 6 persons over 18 years were subjected to probation supervision. Three of these were males and the other three were females.²¹

Adequate supervision is lacking taking into account the number of probationers needing supervision and the present staff position. For example as at 1986, the department had 26 senior social development officers, 35 social development officers and 133 Assistant social development officers.

Four social development officers were seconded to Home Affairs and one was seconded to Zambia Police.

This means that the department had a total number of 199 probation officers in the field.

Mrs. Masisani, a Senior Probation Officer at Headquarters told me that staff development was one of the department's priorities, i.e. the department is doing its best to improve staff performance and service delivery through training programmes both at home and abroad. The University of Zambia offers two training programmes - degree and diploma in social work. The department has two training schools for the junior staff. These are Kitwe Social Development Staff Training College and Monze Social Development Staff Training College.

Apart from short courses conducted at these schools, a number of seminars and workshops are held there as well.

Combination of Orders

A probation order should not be combined with certain orders e.g. punitive orders like caning.²² But it may be combined with orders of costs, or compensation.²³ Pursuant to section 3(2) and 4 of Cap 147, which set out the conditions of the probation order, when an Accused fails to observe any of the conditions of his recognisance during the period set, he may be summoned to court and be sentenced for the original offence.²⁴

A probation order has the effect for a maximum of three years and a minimum of one year, and in addition to any conditions relating to residence, employment and the like, contains the requirement that the probationer submit to the supervision of a Probation Officer. ~~If~~ a probationer is convicted of another

offence during the term of probation order, he may be summoned back to court that made the order and be convicted and sentenced for the new offence and/or to be simply sentenced for the original offence. The same is true if the probationer violates any of the conditions of the Probation Order.²⁵ Section 10 (1) states that "a conviction for an offence for which a probation order is made shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and at any subsequent proceedings which may be taken against the offender under the foregoing provisions of the Act".²⁶ Section 11 (1) deals with the amendment of Probation Orders. It states that "subject to the provisions of this section, where, on the application of a probation or of the Probation Officer responsible for the supervision of the Probationer, the court which made the probation order is satisfied that the provisions of the probation order should be varied, or that any provision should be inserted or cancelled, the court may by order amend the probation order accordingly. Provided that no order shall be made under this section reducing the probation period, or extending that period beyond a period of three years from date of the probation order."²⁷ Section 12(1) deals with the discharge of the probation order. It states that "the court by which a probation order was made may, on application of the probationer or the Probation Officer responsible for the supervision of the probationer, discharge the probation order, and, where the application is made by the Probation Officer responsible for the supervision of the probationer, the court may deal with it without summoning

the probationer."²⁸ Section 12 (2) reads as follows:

"Where an offender in respect of whom a probation order has been made is subsequently sentenced for the offence in respect of which the probation order was made, the probation order shall cease to have effect."²⁹

Section 13 (1) deals with the selection of Probation Officers. It reads: "The Probation Officer who is to be responsible for the supervision of any probationer shall be selected by a Senior Probation Officer. And Sub-Section 2 states that where a woman or girl is placed under the supervision of a Probation Officer, the Probation Officer shall be a woman."³⁰

The probation order shall

- (a) name the place (residence) where the probationer will reside;
- (b) name the district where the probationer will reside; and
- (c) name the institution where the probationer will reside if it is ordered that he be sent to an institution. The order has also to specify the period a probationer shall remain in the institution.³¹

The probationer is obliged to inform the Probation Officer responsible for his supervision of any change of residence,³² This is important because if the probationer changes residence without informing the Probation Officer, the Probation Officer will lose contact of the probationer. For example, Appendix IV of the 1986 Annual report reveals that Probation Officers dealt with 303 cases of probation. These consisted of 221 cases brought forward from 1985 and 82 orders were made. A total of 139 cases

were closed, 110 of them satisfactorily and 29 unsatisfactorily through breach of orders or loss of contacts. That left 164 cases which were carried forward to 1987 for continual supervision. The low rate of successful completion of probation is attributed to a number of administrative problems, especially lack of transport to carry out the necessary supervision.³³

Upon discharge or amendment of a probation order, the court shall furnish copies of the order to the probationer, the Principal Probation Officer, the Probation Officer responsible for the supervision of the probationer, and the person in charge of the institution, if any, in which the probationer is to reside or is residing.³⁴

FOOTNOTES

1. Section 3 (1) of the Probation of Offenders Act Cap 147
of the Laws of Zambia.
2. Section 73 (1) (b) and Section 10 (2) (c) of the Juvenile's
Act, Cap 217 of the Laws of Zambia.
3. Department of Social Development Annual report, 1986 p. 3.
4. Ibid p. 3
5. Sol. Rubin, H. Weihofan, G. Edward, S. Resenzweig,
The Law of Criminal Correction (New York, West
Pub. Co.) 1963, p. 179.
6. L.K. Young, Op. Cit. p. 47.
7. E.E. Miti's Obligatory Essay, Non-Custodial Measures and
Orders Passed Upon convicts in Subordinate
Courts in Zambia. 1986. p. 18.
8. E.E. Miti's Obligatory ~~Essay~~ Op Cit p. 34.
9. E.E. Miti's Obligatory Essay Op Cit P. 34.
10. E.E. Miti's Obligatory Essay Op. Cit. p. 14.
11. E.E. Miti's Obligatory Essay Op. Cit. p. 59.
12. Cap 147, The Probation of Offenders Act.
13. E.E. Miti's Obligatory Essay, Op. Cit. p. 23.
14. Ibid p. 23.
15. Ibid p. 23.
16. E.E. Miti's Obligatory Essay Op. Cit. p. 59.
17. The Commission for Juvenile Welfare report (paper)
presented in Ethiopia; Consultancy of
Juvenile Delinquency in Zambia, Lusaka, 1989.
18. Department of Social Development Annual report, 1986 ,
p. 15.
19. Ibid p. 15.

20. Department of ~~Social~~ Welfare Annual Report 1977.
21. Department of Social Development Annual Report 1976.
22. B. Slattery Op. Cit. P. 145.
23. B. Slattery Op. Cit. p. 145.
24. Section 7 of Cap 147.
25. Section 8 of Cap 147.
26. Section 10 (1) of Cap 147.
27. Section 11 (1) of Cap 147.
28. Section 12 (1) of Cap 147.
29. Section 13 (1) of Cap 147.
30. Section 13 (2) of Cap 147.
31. Section 4 (1) of Cap 147.
32. Section 4 (1) of Cap 147.
33. Department of Social Services Annual Report, 1986, p. 3.
34. Section 6 of Cap 147.

CHAPTER FOUR

EXTRA-MURAL PENAL EMPLOYMENT

Extra-Mural Penal Employment in African Traditional Societies

Extra-mural penal employment is defined as "Public work an offender is ordered to do by the court that convicted him for a given offence."¹

In African traditional society extra-mural penal employment was very common. It was usually ordered in respect of minor offences like common assault, petty thefts and offences which did not threaten peace and safety of the community.²

Jean Hara in her obligatory essay "Imprisonment as a Means of Rehabilitation in Zambia" 1984/85 at page 1 clearly states that "very little is known about the prison system in Zambia to-day. Social Workers, Judges, Lawyers and Magistrates know very little about our penal system though they are the most involved."³ From her assertion, it is even more difficult to know whether or not Extra-Mural Penal Employment existed in colonial days apart from that practiced in tribal societies, that is to say, it is not clear whether or not the system existed under B.S.A. and colonial rule.

Evidence as to when Extra-Mural Penal employment was introduced is found in Mr. E.E. Miti's Obligatory essay "Non-custodial Measures and Orders passed Upon conviction in Subordinate Courts in Zambia", 1985/86 at page 67. It is stated in that essay that Extra-mural penal employment was introduced by Prisons Act No. 56 of 1965 as an additional alternative to ordinary imprisonment sentences. This punishment did not come into effect

until September 1968. Authorised officers were appointed under the provisions of Part XXI Section 135 of the Prisons Act, Cap 134 of the Laws of Zambia.⁴

Under this Act, Extra-mural penal employment is to be ordered by the court to enable the offender do public work as an alternative to imprisonment, provided that the person so sentenced agrees to accept extra-mural penal employment work as an alternative to imprisonment. Only male prisoners are subjected to Extra-mural penal employment. Further the order can be made only in respect of a prison term of not more than 3 months, or where the offender is committed for failure to pay a fine, costs, compensation or sum adjudged under any written law.⁵

Authorised officers, not prison officers, supervise such offenders outside prison contact. Such a person (authorised officer) may be District Executive Officers and other Government officers etc.⁶ Extra-mural work has to be done in declared areas only.

In 1968 only three people were ordered to do Extra-mural penal work and only ten were ordered in 1969. But statistics of 1969 show that over four thousand (4,000) prisoners were sentenced to terms of imprisonment ranging from one week to three months.⁷ Under normal circumstances, these prisoners were supposed to be considered for public work (extra-mural penal employment) instead of sending them to prison. The financial saving which would be made is obvious. Furthermore, such form of penalty obviates the stigma of imprisonment which could occur in the case of first offenders, (those who have been convicted for petty offences.)

The following tables show

- (a) the number of such prisoners who were ordered by the courts in Zambia to perform public work as an alternative to imprisonment. Table 1 below covers the period 1968 to 1972;
- (b) the number of men who went to prison from 1969 to 1972 for non-payment of fines but subsequently paid their fines and were discharged. (Table 2).
- (c) The number and percentage of men who went to prison for a prison term under 6 months for the period 1983-1987. The table (Table 3) shows those who went to prison for a term of under one month; one month and under 3 months; and 3 months and under 6 months respectively.

Table 1

YEAR	NUMBER SENTENCED TO UNDER 3 MONTHS	NUMBER ORDERED TO PERFORM PUBLIC WORK
1968	4,304	3
1969	4,979	10
1970	4,299	26
1971	3,216	5
1972	-	-
Total	16,798	44

Source: Prisons Department Annual report, 1971 p. 4.

Prisons Department Annual report, 1972 p. 11.

Table 2

YEAR	NUMBER OF MEN WHO WENT TO PRISON FOR NON-PAYMENT OF FINES, BUT WHO SUBSEQUENTLY PAID	REMARKS
1969	726	These men were under normal circumstances supposed to be considered for Extra-mural penal employment (public work).
1970	1,172	
1971	997	
1972	1,038	
Total	3,933	

Source: Prison department Annual reports for 1969, 1970, 1971 and 1972.

Table 3

	1983		1984		1985		1986		1987	
	NO	%	NO	%	NO	%	NO	%	NO	%
Under one month	916	2.76	1,027	9.53	801	6.83	836	6.96	595	5.62
One month and under 3 months	1,107	9.38	866	8.04	1,230	11.55	970	8.08	611	5.78
3 months and under 6 months	1,661	14.07	1,616	14.99	1,707	15.63	1,769	14.74	1,334	12.64
Weekend Imprisonment	2	02	-	-	3	02	2	02	-	-
Extra-mural penal employment	-	-	-	-	-	-	-	-	-	-

Source: Prisons Department's Annual reports 1983, 1984, 1985, 1986 and 1987.

Under normal circumstances, those who failed to pay the fines when ordered to do so, were supposed to be considered for extra-mural penal employment. In 1986, 642 men were imprisoned for non-payment of fine but were subsequently released after payment of the fine.⁸

From prison sources, extra-mural penal employment fell in disuse almost, in 1972.⁹ No one knows why this is so, but the prison officer in charge of Lusaka Central Prison suspected this was due to the introduction of weekend imprisonment. I tend not to agree with this view because weekend imprisonment was introduced primarily for drunken driving offences under the Roads and Road Traffic Act, Cap 706 of the Laws of Zambia.

Magistrates I interviewed at both subordinate courts (Chikwa Road and Boma Courts) in Lusaka expressed their reluctance to make orders of Extra-mural penal employment because of the difficulties involved in carrying out such orders. First, the prison Act has not clearly defined the declared areas, second, it does not give a comprehensive list of authorised officers. Chaila J. had also a problem in the case of the people Vs. Dominic Munengo HPR/9/78 (unreported)¹⁰ in finding out whether or not Kabulonga girls Secondary School and Kamwala Secondary School in particular and Lusaka in general were declared areas in accordance with the provisions of Section 135 of Cap 134 (Prisons Act). For this reason the case was adjourned in order to ascertain the position. When the court reconvened, the state advocate after investigating the issue told the court that she did not find anything to show that Lusaka in general, and Kabulonga Secondary School and Kamwala Secondary School in particular have been declared areas for the purposes of Section 135.

None of the 8 Magistrates I interviewed had ordered extra-mural penal employment since joining the bench. Some were Magistrates of 14 years standing. A survey at Chikwa Road Subordinate Court and Bom^a Court revealed that for many years no one dared to make such orders except in 1987/88 when the late Mr. Mukubesa, then Magistrate at the Civic Centre Court sentenced 6 people to Extra-mural penal employment (public work) and specifically ordered some to dig graves. The 6 people: George Bowa, John Mulilo, Dominic Munengo, Aliyele Mwanza, Kephaz Zulu and Stackson Mwale all were convicted and sentenced for committing price control cases as the Judgment of Munengo attached to this essay will show. The sentences were not carried out because Chaila J. reversed the orders. I had an occasion to interview Mr. Justice Chaila to this effect and said he reviewed the cases because the Magistrate erred in law by failing to ask the accused whether or not they were willing to do extra-mural work. Secondly, the areas he ordered them to work were not declared zones i.e. areas for the purposes of Section 135 of Cap 134, thirdly, he was not supposed to specifically pronounce which work they were to do. On revision the Judge substituted the Extra-mural sentences with fine sentences. Each Accused was ordered to pay K500,00 and in default 3 months simple imprisonment. Munengo's Judgment is marked Appendix "A".

From the foregoing it is apparent that extra-mural penal employment is not popular with the courts because most Magistrates are not conversant with the provisions of the Act and more so with the rules made under it. This is evident from their claim that the Act is not explicit as to which areas are declared areas and who the authorised officers are. From the case of Munengo also, even the High Court was at loss as to whether or not Lusaka in general and Kabulonga Secondary School and Kamwala Secondary School in particular were declared areas for the purposes of Section 135 of Cap 134.

Research has however, revealed that after the enactment of the Prisons Act No. 56 of 1965, many rules have been made under it. The first rules appeared in statutory instrument No. 388 of 1966.¹¹ These rules have ever since been subjected to amendments but any given amendment is read in conjunction with **Statutory** Instrument No. 388 of 1966. Other rules made after S.I. No. 388 of 1966 are as follows:

<u>GAZETTE NOTICE NO.</u>	<u>PURPOSE</u>
1277/68	- Published a list of authorised officers ¹² (see appendix "B").
1278/68	- Published a list of districts which were declared areas ¹³ (see appendix "C").
1592/68	- Published a list of declared areas ¹⁴ (see appendix "D").
1593/68	- Published a list of authorised officers (see appendix "E").

- 2044/68 - Published change of words i.e. "district" for "declared area".¹⁶
- 2045/68 - ~~Published change of words i.e. by the~~ delition of the words "Districts" and "District" wherever they appear and the substitution therefore of the words "Areas" and "Area".¹⁷

Further, statutory instrument No. 134 of 1968 published a schedule of earnings scheme (Part VII) of the rules:¹⁸

Prisons (amendment) (No. 2) Rules, 1968

First stage	-	1 ngwee per day
Grade C Prisoners	-	1 ngwee per day
Grade B Prisoners	-	2 ngwee per day
Grade A Prisoners (other than stage Prisoners)	-	3 ngwee per day

Prisons (amendment) (No. 3) Rules, 1968

The rule amended the third schedule by deliting words of 3 ngwee per month gratuity (special stage prisoners) and substituted by words of ~~3~~ ngwee per day plus 20n per month gratuity.

Statutory Instrument 243 of 1968, Prisons (amendment) Rules, 1968 were amended in Part XVII by the insertion of the following new rule:

"218 (3) The warrant of commitment to undergo extra-mural penal employment to be issued by a court to a prisoner in pursuance of an order made under Section 135 of the Prisons Act, shall be in the form set out in the seventh schedule."
(See appendix F).¹⁹

Statutory Instrument No. 108 of 1971 Prisons
(amendment) Rules, 1971 inserted a new rule i.e. rule
No. 154A (1):

"Where a prisoner is employed in work for the
private benefit of any person, the prisoner shall
at all times during such employment, be under the
supervision of a Prison officer."

Section 154A (2) read:

"When a prisoner is employed in work for the private
benefit of any Person, the person shall pay to the
government (a) such full normal wages for the work;
and (b) in such a manner as may be determined by the
Minister."²⁰

Critical analysis of these rules reveals that almost
all districts of Zambia are declared areas for the purposes
of Section 135 of Cap 134. A list of authorised officers
is also very wide. All district Executive Officers,
Provincial Officers in charge of public works, Provincial
Agricultural Officers are authorised officers in their
areas of jurisdiction. In Lusaka for example, even the
Officer Commanding, Arakan Barracks, Superintendent of
Lusaka Central Hospital (now U.T.H.) and the Chief Registrar,
Department of National Registration are authorised officers.
These officers (in Lusaka) were gazetted as such under Gazette
notice No. 1277 of 1968, which means by the time Judge Chaila
was reviewing the cases of Munengo and others, Lusaka was a
declared area.

From the foregoing, it goes without saying that the law is very explicit of what areas are declared zones and which officers are authorised officers for the purposes of Section 135 of Cap 134. If only Magistrates applied their minds to these rules, execution of Extra-mural penal employment punishment/orders could be well handled or implimented by these authorised officers.

FOOTNOTES

1. Mr. E.E. Miti's Obligatory Essay - "Non-Custodial Measures and Orders passed upon conviction in subordinate courts in Zambia." 1985/86. Academic year. p. 20.
2. Ibid p. 20.
3. Miss Jean Hara's Obligatory Essay "Imprisonment as a Means of rehabilitation in Zambia" 1984/85 Academic year, at page 1.
4. Mr. E.E. Miti's essay Op. Cit. p. 67.
5. Section 135 (1) (a) (b) of the Prisons Act Cap 134 of the Laws of Zambia.
6. Ibid Section 135 (2).
7. Mr. E.E. Miti's essay Op. Cit at page 68.
8. Prisons Department Annual report 1986 at p. 11.
9. Mr. E.E. Miti's Essay, Op. Cit. p. 70.
10. The People vs. Dominic Munengo, HPR/9/78 (unreported).
11. Statutory Instrument No. 388 of 1966.
12. Gazette notice No. 1277 of 1968.
13. Gazette notice No. 1278 of 1968.
14. Gazette notice No. 1592 of 1968.
15. Gazette notice No. 1593 of 1968.
16. Gazette notice No. 2044 of 1968.
17. Gazette notice No. 2045 of 1968.
18. Statutory Instrument No. 134 of 1968.
19. Statutory Instrument No. 243 of 1968.
20. Statutory Instrument No. 108 of 1971.

APPENDIX AIN THE HIGH COURT FOR ZAMBIA

HPR/9/88

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

THE PEOPLE

vs

DOMINIC MUNENGO

Before the Honourable Mr. Justice M.S. Chaila in open court at Lusaka on the 22nd day of June, 1988.

For the State : Mrs. C.S. Mulenga, State Advocate

For the Accused : Not present

JUDGMENT ON REVIEW

The accused in this matter was convicted of the offence of evading price control regulations made under Chapter 690 of the laws of Zambia.

The particulars of the offence were that he on the 15th day of June, 1988 in the Lusaka District of the Lusaka Province of the Republic of Zambia dealing in controlled goods did evade price control regulations by selling 11 loaves of Supa Loaf bread into slice @ K1.00 each than so permitted by law.

He pleaded guilty to the offence and on his own confession he was convicted and was sentenced to imprisonment for 3 months with hard labour and in addition the learned trial Magistrate imposed extra-mural penal punishment at Kabulonga Girls Secondary School. This case was drawn to my attention for two reasons. It is doubtful whether the provisions of section 135 have been complied with and secondly whether it was not necessary for me to review this case having regard to the previous decisions in the other three cases namely the People vs Aliyele Mwanza, the People vs Kephas P. Zulu and the People vs Stackson Mwale. In view of the State's interest in the matter I decided to have this review in an open court and the Director of Public Prosecutions to assist the court. The learned

Director of Public Prosecutions has kindly sent Mrs. C.S. Mulenga, State Advocate. After I had informed the learned State Advocate on whether or not Kabulonga Girls Secondary School and Kamwala Secondary School in particular and Lusaka in general are declared areas in accordance with the provisions of Section 135 she asked for an adjournment in order to get further instruction from the learned Director of Public Prosecutions. When the court reconvened, she confirmed what she had told the court earlier on that there was nothing in the record to show that the learned trial Magistrate had obtained consent from the accused. She also told the court that she has not found anything to show that Lusaka in general and Kabulonga Girls Secondary School and Kamwala Secondary School in particular have been declared areas for the purposes of section 135. She further confirmed that the order would not be effective since there was no consent. In her last address she left the matter to the Court's discretion. Section 135 of the Prisons Act provides:-

- "(1) Where in any declared area a male prisoner is -
- (a) sentenced to imprisonment for a period not exceeding three months; or
 - (b) committed to imprisonment for non-payment of any fine, compensation, costs or other sum adjudged to be paid under any written law;

The court so sentencing or committing that person may, with his consent, order that he shall perform public work, in accordance with this part, outside a prison for the duration of such imprisonment.

- (2) Upon making an order under subsection (1), the court shall order the person in respect of whom the order is made to report forthwith to an authorised officer of the District in which it is sitting or to any other specified officer under the control of such authorised officer."

There is no evidence that Kabulonga Girls Secondary School and Kamwala Secondary School are declared areas. Secondly the record does not show that the prisoners were asked for their consent to be sent to

Kabulonga Girls Secondary School or Kamwala Secondary School to do public work. Failure to get consent from the accused persons, the order by the learned trial Magistrate becomes a nullity. I find on the question of consent that the learned trial Magistrate should not have proceeded to impose extra-mural penal punishment. As I pointed out in the other cases reviewed recently it is a trite law and there are numerous cases decided by the Supreme Court that where the legislature provides for a fine and imprisonment the courts must first consider option of fine before imposing custodial sentences unless there are aggravating circumstances. Regulation 17 of Statutory Instrument No. 87 of 1982, does provide for an option of a fine. The record does not indicate whether or not the learned trial Magistrate considered the question of a fine before imposing a custodial sentence. The accused person was a first offender who readily pleaded guilty to the charge and should have been given a lenient sentence. On that ground also I would set aside the imprisonment sentence. The learned trial Magistrate should have considered an option of fine. The record does not show that there were aggravating circumstances. The sentence of 3 months imprisonment is set aside and the order to do Extra-mural penal punishment either at Kabulonga Girls Secondary School is also set aside and in their place I impose a fine of K500.00 and in default 3 months simple imprisonment.

Delivered in an open court at Lusaka on the 22nd day of June, 1988.

M.S. Chaila
JUDGE

APPENDIX 'B'GAZETTE NOTICE 1277 of 1968

Schedule of authorised officers for the purposes of Section
135 of Cap 134 (Prisons Act 1):

SCHEDULE

<u>DISTRICT</u>	<u>AUTHORISED OFFICER</u>
Kabwe	- District Secretary
Kabwe	- Provincial Officer-in-Charge, public Works Department.
Kabwe	- The Secretary, Kabwe Hospital, Ministry of Health.
Kabwe	- Provincial Agricultural Officer
Mumbwa	- District Secretary
Mazabuka	- Officer-in-Charge, Roads Department, Ministry of Works and Housing.
Mazabuka	- Officer-in-Charge, Mechanical Services Department.
Mazabuka	- Officer-in-Charge, Public Works Department.
Mazabuka	- Welfare Officer, Department of Social Welfare.
Mazabuka	- Medical Officer-in-Charge, Ministry of Health.
Mazabuka	- Manager of Schools, Ministry of Education.
Mazabuka	- The Secretary, Mazabuka Township Council.

<u>DISTRICT</u>		<u>AUTHORISED OFFICER</u>
Livingstone	-	Provincial Medical Officer
Livingstone	-	Chief Stores Officer, Government Stores.
Livingstone	-	Regional Immigration Officer.
Livingstone	-	Resident Secretary
Livingstone	-	Chief Health Inspector C/O Town Clerk's Office, Municipality of Livingstone.
Choma	-	Officer-in-Charge, Forest impregnation plantation Section, Forest Department.
Choma	-	Secretary, Choma Township Council.
Gwembe	-	Secretary, Gwembe Rural Council.
Namwala	-	Secretary, Namwala Rural Council.
Lusaka	-	Officer Commanding, Arakan Barracks
Lusaka	-	The Superintendent, Lusaka Central Hospital.
Lusaka	-	Chief Registrar, Department of National Registration.
Chipata	-	Provincial Officer-in-Charge, Public Works Department.
Mongu	-	Provincial Agricultural Officer
Kasama	-	Regional Forest Officer, Forest Department.
Kasama	-	District Agricultural Officer.
Kasama	-	The Matron, Kasama Central Hospital.

<u>DISTRICT</u>	<u>AUTHORISED OFFICER</u>
Mansa	Secretary, Mansa Rural Council
Mansa	Officer-in-Charge, Fishing Department
Mansa	Superintendent, Mansa Hospital
Mansa	Officer-in-Charge, Department of Agriculture
Kitwe	Officer-in-Charge, Public Works Department
Luwingu	Officer-in-Charge, Forestry Department
Ndola	Medical superintendent, Ndola General Hospital
Ndola	District Registrar, High Court of Zambia.
Kawambwa	Officer-in-Charge, Department of Agriculture.
Kawambwa	Officer-in-Charge, Veterinary Department
Kawambwa	The Secretary, Kawambwa Rural Council
Kawambwa	The Clerk of the Court, Ministry of Justice.
Kawambwa	Officer-In-Charge, Ministry of Transport, Power and Communications.
Chingola	Commanding Officer, 61L Battalion, Zambia Rifle
Chingola	Manager of Schools, Ministry of Education
Chingola	Medical Officer-in-Charge, Ministry of Health.

APPENDIX 'C'GAZETTE NOTICE NO. 1278 OF 1968

Schedule of declared areas for the purposes of
Section 135 of Cap 134 (Prisons Act).

SCHEDULEDISTRICTS

Kabwe

Mumbwa

Mazabuka

Livingstone

Chipata

Choma

Kasama

Mansa

Kitwe

Luwingu

Ndola

Kawambwa

Chingola

Gwembe

Namwala

Lusaka

Mongu

APPENDIX 'D'GAZETTE NOTICE NO 1592 OF 1968

Schedule of a list of declared areas for the purposes
of Section 135 of Cap 134 (Prisons Act).

SCHEDULE

Kalabo	Mankoya	Mongu-Lealui
Lukulu	Senanga	Sesheke
Lusaka	Feira	Mkushi
Serenje	Chipata	Chadiza
Katete	Lundazi	Chama
Petauke	Kawambwa	Nchelenge
Mwense	Mansa	Samfya
Chinsali	Isoka	Kasama
Luwingu	Mbala	Mpika
Mporokoso	Balovale	Kabompo
Kasempa	Mwinilunga	Solwezi
Choma	Gwembe	Siavonga
Sinazongwe	Kalomo	Livingstone
Mazabuka	Monze	Namwala
Chililabombwe	Chingola	Kalulushi
Kitwe	Luanshya	Mufulira
Ndola Rural	Ndola Urban	

APPENDIX 'E'GAZETTE NOTICE NO. 1593 OF 1968

Schedule of a list of authorised officers for the purposes of Section 135 of Cap 134 (Prisons Act).

SCHEDULE

<u>AUTHORISED OFFICER</u>	<u>DISTRICT</u>
District Secretary	- Kalabo
District Secretary	- Mukinge
District Secretary	- Mongu-Lealui
Assistant District Secretary in Charge	- Lukulu
District Secretary	- Senanga
District Secretary	- Lukulu
District Secretary	- Senanga
District Secretary	- Sesheke
District Secretary	- Lusaka
Assistant District Secretary in Charge	- Feira
District Secretary	- Mkushi
District Secretary	- Serenje
District Secretary	- Chipata
Assistant District Secretary in Charge	- Chadiza
Assistant District Secretary in Charge	- Katete
District Secretary	- Lundazi
Assistant District Secretary in Charge	- Chama
District Secretary	- Petauke
District Secretary	- Kawambwa
Assistant District Secretary in Charge	- Nchelenge
Assistant District Secretary in Charge	- Mwense

<u>AUTHORISED OFFICER</u>	<u>DISTRICT</u>
District Secretary	- Mansa
District Secretary	- Samfya
District Secretary	- Chinsali
District Secretary	- Isoka
District Secretary	- Kasama
District Secretary	- Luwingu
District Secretary	- Mbala
District Secretary	- Mpika
District Secretary	- Mporokoso
District Secretary	- Balovale
District Secretary	- Kabompo
District Secretary	- Kasempa
District Secretary	- Mwinilunga
District Secretary	- Solwezi
District Secretary	- Choma
District Secretary	-
Assistant District Secretary in Charge	- Siavonga
Assistant District Secretary in Charge	- Sinazongwe
District Secretary	- Kalomo
District Secretary	- Livingstone
District Secretary	- Mazabuka
Assistant District Secretary in Charge	- Monze
District Secretary	- Namwala
District Secretary	- Chililabombwe

AUTHORISED OFFICERDISTRICT

District Secretary

Chingola

District Secretary

Kalulushi

District Secretary

Kitwe

District Secretary

Luanshya

District Secretary

Mufulira

District Secretary

Ndola Rural

District Secretary

Ndola Urban

APPENDIX 'F'

SEVENTH SCHEDULE

Republic of Zambia

The Prisons Act, 1965

The Prisons Rules, 1966

(Rule 218 (3))

In the Subordinate Court of the.....class for the.....
.....District holden at.....case No.....
ORDER TO A MALE PRISONER TO PERFORM PUBLIC WORK, SECTION 135 OF THE
PRISONS ACT, 1965.

To: (Name of Prisoner):.....
.....

Whereas you, being a male Prisoner, were on the.....
.....day of.....
196.....at.....

(being a declared area) sentenced to imprisonment for a term of
.....* committed to Prison for a term of
.....

*Committed to imprisonment for a term of.....
.....for non-payment of.....

And whereas you have consented to the making of this order

NOW THEREFORE IT IS HEREBY ORDERED that you perform public
work, in accordance with Part XXI of the Prisons Act, 1965, outside
a Prison for the duration of such imprisonment.

AND IT IS FURTHER ORDERED that you report forthwith to:†.....
.....

Made at.....the.....day of.....
.....196.....

* Delete as appropriate.

CHAPTER FIVEGENERAL DISCUSSIONDISCUSSION

The theory of rehabilitation is stated by Thomas in these few words:

"The aim of sentences based on the rehabilitative theory of punishment is to encourage the offender to abstain from criminal behaviour in the future by providing him with the social, educational or vocational training which is necessary to enable him to conform to the social pattern from which his delinquency is a departure."¹

Paragraph 5.3 of the 1986 Annual report of the Social Development Department echoes Thomas' view that sentencing must aim at "...open non-institutional method of treatment of offenders...thereby affording the offender the opportunity to reform without being removed from his/her family and community.... The probation officer is required to supervise and assist the offender in any way possible, including securing education, training, or employment as the case may be."²

These views clearly indicate that reformation outside the Prison walls is a better method of giving offenders a second chance.

This paper is an attempt to promote two forms of punishment that affords rehabilitation of offenders outside the Prison setting - the probation service and extra-mural penal employment. The paper also mentions in passing other related sentences -

suspended sentences, fines and conditional discharge which many of the Judges interviewed favoured as better methods of dealing with offenders who commit less serious offences.

Apart from what Thomas, Probation Officers and Judges said, notable writers and members of the public have also expressed their desire to promote community based correctional methods. Here I have in mind what the President wrote in Humanism Part II and what he said at the first Judges and Magistrates seminar in 1987. I have also in mind what Mr. Willa Mungomba said in Parliament. Both the President and the then member of Parliament for Mporokoso (Hon. Mung'omba) were of the view that courts should as much as possible spare offenders from custodial sentences in order to give them chance to reform outside the Prison setting. Sentences, which promoted the rehabilitation process of offenders were preferred.

Non-custodial sentences and notably the probation service and Extra-mural penal employment are most suited punishments to first offenders and those who commit lesser criminal offences.

From the research this paper has revealed the Magistrates are reluctant to met out such sentences for various reasons. Some avoid them because there aren't suitable facilities for carrying out such rehabilitation e.g. lack of transport to enable probation officers supervise probationers and also shortage of staff in the Social Development Department, others avoid them out of ignorance of what the law on probation of offenders and extra-mural penal employment provides; others don't entertain

given a custodial sentence for the previous offence in addition to the new one. Fines to those who can afford them are a surest way of the rehabilitation process because after paying, the offender is discharged and lives normally with his fellow men in the community.

Suggestions

From the discussion it is clear that courts are to blame for neglecting probation and Extra-mural penal employment forms of punishment. Since such a neglect has been attributed to their ignorance of the legal provisions in Cap 147 and 134 of the Laws of Zambia, and ignorance of the theories of punishment to a certain extent, it is suggested that their training at the National Institute of Public Administration should include the subject of criminal justice in addition to criminal law, criminal procedure and criminal evidence. This will help them to understand the theories of punishment. Also in criminal procedure the provisions of Caps 134 and 147 should be taught. For those already in the field, seminars or workshops should be arranged so as to acquaint them with this knowledge. It is also strongly suggested that the department of Social Development should expand its training program for Probation Officers and should extend the service to other institutions like the Mines and the Church. Transport or in lieu of transport, transport money should be given to probation officers in order to enable them supervise probationers properly.

Conclusion

This paper has attempted to highlight the advantages of non-custodial sentences in general and probation service and Extra-mural penal employment in particular. The paper has recommended rehabilitation outside the Prison setting as the best method of giving an offender a second chance. The paper has suggested that Magistrates should be taught some theories of punishment and should be taught the provisions of Caps 134 and 135 thoroughly. And in order to encourage community based correctional methods, it has been strongly suggested that probation services should be expanded through training programmes and extension of the service to private institutions - the Mines and the Church.

FOOTNOTES

1. 27, M.L.R. 546 at page 562.
2. Department of Social Development, 1986 Annual report on
at page 3.

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5. Statutory Instrument No. 388 of 1966.
6. Statutory Instrument No. 134 of 1968.
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5. Kenneth John Ball, (1951) cr. App. R. 164,
6. 27, M.L.R. 546,
7. Prison Department Annual report, 1986.
8. Department of Social Welfare 1976 Annual report.
9. Department of Social Welfare 1977 Annual report.
10. Department of Social Development 1988 Annual report.
11. The Commissioner of Juvenile Welfare report (paper) 1989.