

THE GOALS OF CRIMINAL JUSTICE SYSTEM IN  
KENYA

DOES PUNISHMENT ACHIEVE

THESE GOALS ?

A CASE STUDY OF THEFT

A Dissertation submitted in partial  
fulfilment of the requirements for  
the LL.B. Degree, University of  
Nairobi.

by

ANNE A.A. CHITE

NAIROBI JUNE, 1980.

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A.A. A.CHITE

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## A B S T R A C T

Kenya is one of the rapidly developing countries in the world. Together with this development, Kenya is also befallen with high crime rate.<sup>1</sup> It is because of this high crime rate experienced in Kenya to-day that we found it necessary to open up the door to some research on crime identification and crime reduction. Due to the limited scope of this dissertation and the time allocated to the same, we have chosen to discuss in detail only the crime of theft. However, for illustration purposes other crimes are touched on.

The main aim of this research has been to ascertain whether the present criminal justice system is achieving its goals. Whether, the criminal, after punishment in this country fits the model aimed at by the punishment which is administered.

It is believed that this kind of research coming from a person who is outside the criminal justice system may be less biased and hence acceptable.

There is a saying, which most of us might have heard, that "if you stand too close to the portrait, you get a great view of the nose but you would not see the face". So it is with many who work within the criminal justice system. The head of a unit may have a tendency to limit his or her world to the boundaries of that unit. There is also a tendency to confine that unit's goals within the unit's boundaries. The heads of different

segments of the criminal justice system may well have different points of focus. For the police, it may be the number of arrests. For prosecution or prosecutors, it may be the number of prosecutions resulting in conviction. For the defence lawyer, it may be the number of acquittals. However, each head shares the same ultimate goal, the reduction of crime.

One problem arises. That is, that, by becoming near sighted and losing peripheral vision, each one can fail to see the large goal. Each can therefore, quite unwittingly, contribute to overral failure to reach the goal.

In the world, people live in groups. Within these groups there are deviants. That is, persons who cannot or will not conform to the rules. Still, the society in an effort to maintain its integrity attempts to control their behaviour through folkways, mores, and laws. Those who violate criminal law are dealt with through the usual government machinery. Harsh sentences are meted to these people in an attempt to gain conformity. The question is, do these harsh sentences deter, or do they reform the offenders? If retributive, do they take into account the concept of equivalence? These are some of the issues which are discussed in this dissertation.

Looking at the various crimes being committed, it can be stated with certainty that the crime has increased as a result of development process, urbanization,

industrialization, lack of housing and migration into the city from rural areas, resulting in the growth of slums, wherein, crimes are unlimited. Development has also brought with it an increase in consumer goods and a new outlook towards life; but with unequal opportunity for the acquisition of these goods. Coupled with this is the diminishing clan life and village ties on the one hand and the emergence of a more individualistic style of life characteristic of western countries on the other hand. For better or for worse, such a change in life outlook has not been accompanied by the other incidents of western countries such as the provisions for old age, for unemployment, and for the disability to work. It seems therefore, that the rise in crime rate is almost inevitable unless some socio-economic steps are taken.

In Nairobi City alone, the population is nearing one million people,<sup>2</sup> and with the problem of lack of employment and housing, crime has continued to rise. Added to this problem is the fact that there is already a very high rate of male migrants into Nairobi.<sup>3</sup> This means that most of the ~~would~~ <sup>stop being a sexist</sup> <sup>but it's true</sup> be bread winners are faced with the difficulty of getting jobs. There have to be some other ways in which these loving parents and husbands, ladies and

gentlemen can procure their daily bread. Since there is no legitimate means of acquiring the necessities, theft has become the most immediate solution.

Admittedly, there have been various writings, which must have caught the attention of most readers in Kenya, concerning crime and prevention of crime. But Kenya has not exhausted all her resources in the effort to find a solution or solutions to this problem. It is useless giving up the research just because other countries have failed to improve their crime pattern. We should not sit back and watch our crime rate swell. That is why we have not hesitated to denounce absurd suggestions like the one offered by Mr. Saikwa in his article "An Approach to Penal Administration in East Africa",<sup>4</sup> wherein, inter alia, he tries to convince us that the only solution remaining is to treat offenders using spiritual measure, particularly, when dealing with persistent offenders who have proved to be irreconcilable and beyond redemption. The approach of serious research is to find out why the particular offender is irreconcilable. If you save a poor man's soul, and the body which is the house of that soul is not saved from, say, poverty, hunger and lust, you have not saved the person. That is why the soul always ascends when



a person is dead. Life is competitive, and that is a known natural phenomenon. Therefore, we should judge and treat thieves in accordance with the prevailing social order. The criminal's conscious faculties remain oriented towards the "good life". Mr. Saikwa, admits however, that those involved in penal administration have tried to increase the police force, and to enlarge the prisons to cope with the influx of criminals, but in vain. It is submitted therefore, that instead of wasting land which in any case is now very expensive and scarce, not to mention man-power, we should realise that the solution lies elsewhere.

Assuming therefore, that we have not hit upon the correct formula, and assuming that we need a more effective system to deal with our criminals, it is proposed that a completely different approach should be tried, first to detect and secondly to prevent theft from being committed; but should it be committed, it is hoped it will be done by a smaller number and that therefore, they can be treated in the new system.

Chapter One of this dissertation introduces the theory of punishment, its legislation and the justifications thereof.

Chapter Two, takes up a case study of theft.

In our circumstances it has been necessary to write very little about what is already written about theft but rather we have concentrated on the causes of theft. These are, the economic gap, differential opportunity, poverty, the problem facing the slum dwellers and, strange as it may seem, idleness.

In chapter Three, we have examined the merits and demerits of the three theories of punishment discussed - the retributive, the deterrent and rehabilitation theories.

Chapter Four contains concluding remarks by way of a summary and suggestions for a more efficacious method of crime reduction.

FOOTNOTES

- 1 See Table 1.
- 2 See Table 2.
- 3 See Table 3.
- 4 Saikwa, " An Approach to Penal Administration in East Africa" 1966, 2 East Africa Law Journal p.25.

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INTRODUCTION

Punishment implies that justice is done to the offender. Justice is a social virtue arising out of and expressing itself in the obligation towards other members of the society.

In the various attempts to state what the object of criminal punishment should be, five different views have been put forward; to punish the criminal for his wrong doing; to reform him and so turn him into a useful member of society; to deter others from wrong-doing by showing him up as a bad example; to make him atone for his inequity by a process of moral retribution; and to protect the public against an evil doer.<sup>1</sup>

Although there may be a bias in favour of one or more of those alternatives, nevertheless, no modern system of government adopts any one criterion to the exclusion of the others.

Most legal and ~~police~~ systems are based upon such punishments as fines, flogging, and incarceration with hard labour. Even within the modern system, we find that in every day personal conduct most people control others through censure, snubbing, disapproval or banishment. There is, however, the question of the extent to which people can use punishment as a technique of control. This extent is limited by the degree to which

they gain the necessary power.<sup>2</sup> It is the birth of this power that we shall consider before we examine the three theories mentioned above.

The modern state has various systems: the economic system, the technological system and others like the criminal justice system, under which system, punishment falls. In order to trace the criminal justice system's power to punish, an anatomical study of criminal justice system is necessary.

The criminal justice system is a part of the total social system. It subsumes the legislative system, law enforcement subsystem, correctional subsystem, and judicial subsystem.

In a modern legal system the power to punish is acquired in this way:

There is the entity called the legislature. This is an area of great importance in the criminal justice system of any state. The legislature produces many laws that affect the other systems within the criminal justice system. It produces the laws that tell us what behaviour is forbidden and provides penalties for engaging in prohibited behaviour.<sup>3</sup>

The existence of the law gives the law enforcement subsystem the authority to apprehend the law violator.<sup>4</sup> Without a specific law prohibiting the

behaviour the police cannot legally act.<sup>5</sup> These laws enable the courts to decide guilt or innocence<sup>6</sup> of a person, and the correctional subsystem furnishes an attempt to rehabilitate people. Thus the functions of our judicial system are determined by the legislature.

The law enforcement subsystem basically has three desired goals: to keep peace, to prevent crime and to apprehend the law violators. Without the law enforcement subsystem the rest of the criminal justice system cannot perform their functions. The police who fall under this system apprehend the offenders and bring them to courts where the judiciary performs its duties.

From the foregoing it is at once clear that punishment is a legal act. However, it is not liquid: it must be proportioned to the degree of guilt on the part of the offender or else an injustice will be done.

According to Kadish and Paulsen, the end of law and other human institutions, when administering punishment is to produce the greatest happiness for the greatest number of the members of the society, by increasing pleasure and diminishing pain.<sup>7</sup> At the moment we will agree with this theory, because as will be seen, the number of complainants exceed the number

of defendants, and the idea is to see that the majority do not suffer in the hands of the minority. Therefore, the system diminishes their pains and increases their pleasure by convicting the offenders and keeping them away from the society. Since punishment is infliction of pain it cannot just be inflicted on a man, unless the result is to increase the sum total of pleasure in the society. It is believed that punishment of the offender will deter him from committing similar acts on a future occasion. It is also believed that the spectacle of the offender being punished will deter other members of the society from being tempted to achieve their own pleasure by following the offenders' example. Punishment therefore helps in maintaining the necessary social equilibrium and we cannot do without it if we intend to reduce crime.<sup>8</sup> However, punishment has certain factors acting against its full result, for example, in the society there are criminals who feel that they are not sharing in political and socio economic life, so that the law to them serves the ruling class, and they have no intention of obeying the law which has not provided for them what they consider the necessities of life as it has done for the people it serves, that is the haves.

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*cahshit*

We now turn our minds to the three theories which are the concern of the criminal justice system.

## 1 The Retributive Theory

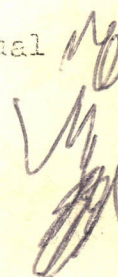
*Never as flow!*

This is a theory of counter suffering. It is an old theory. In primitive society it found expression in the doctrine of an eye for an eye and a tooth for a tooth, the lex talionis; it was archaic Hebrew law but was later rejected as a result of christian teaching. Since the power to revenge was taken by criminal justice system, instead of the offended person revenging, it is the public as a "trustee" for the offended individual which exercises that revenge through their representative- the court- against the person who has infringed the canons of behaviour. The doctrine should ideally be based on proportionality: a large theft should attract a long sentence, a moderate theft a middle sentence.

Retribution is an attempt to establish a principle of equivalence in a realm where there is no known or ascertainable standard of equivalence. In our view it is not possible, to impose a penalty commensurate with the antecedent harm. The reason for this inability to measure penalty will be evident in chapter three of this dissertation.

## 2 The Deterrent Theory

Whereas retribution can be said to be mainly concerned with past conduct, deterrent is directed towards future behaviour. It has two aspects, that is individual





and general. Everyone particularly magistrates believe in general deterrent effect of sentences. The argument goes this way : by making a certain action a punishable offence and ensuring certainty of conviction, and if sufficiently severe sentences are given in addition to open court and press reporting, it becomes known that such a punishment will be the result of committing such a crime and we expect that people will refrain from doing so for fear of punishment.

On the face of it, everyone may agree that criminal sanctions and knowledge of the sentences that are given or may be given do have some slight deterrent effect. But the real problem is, how much effect can we attribute to deterrence in our present situation? It suffices for the time being to mention only the economic -gap as a hindrance to the effective realisation of this theory. It seems clear, therefore, that the need to pass deterrent sentences will vary from time to time depending upon the needs of society at any one stage. This line of argument will be pursued further in chapter two and three of this dissertation.

### 3 The Rehabilitation or The Reformatory Theory

The object here is to rehabilitate the offender. To encourage him to abstain from criminality in future, by providing him with, say, social support in the form of probation, or a second chance in the form of an absolute or conditional discharge. In the case of young offenders,

there are special legislative provisions governing his rehabilitation, such as, the Prisons Act, The Bostal Institution Act and Children and Young Persons Act.<sup>9</sup> These will be examined in chapter three of this dissertation.

Now, the concept of reformation is a move from the classical concept of retribution and deterrence to something more positive. This trend of change has been rendered necessary by the fact that problems of offenders to a large extent are linked with the type of psychological complex not previously realised in the treatment of offenders.

We intend to submit, and we shall do so in chapter three of this dissertation; that this theory has failed, in part, because of non-consideration of the offenders' welfare, particularly, after his release from the corrective institutions. This view is supported by a statement made by a former Chief Justice of Kenya.

In that unfortunate statement Mr. Mwendwa said: -

" . . . for my part, I am of the opinion that all things being equal, in the near future the courts in Kenya shall pay more attention on deterrence, and on the protection of the public than on retribution and reformation. That in my view will be more likely to achieve better results in the fight against the criminal elements."<sup>10</sup>

he doesn't support

whose support are you talking about the bitch

(udo adoma) In our view, the Honourable Chief Justice (as he then was) is of the inclination that harsh sentences

deter, and that the overriding aim in reformation is the protection of society by serious and sustained attempts to prevent further relapses into crime. We disagree with this view, and again we shall establish in chapter two that it is easier to deter people who have alternatives to the acts of crime they commit than people without alternatives at all. It is hard to achieve best results because we have ignored personal rehabilitation of the offender. Mr. A.K. Saikwa, ( he was then Commissioner of Prisons, Kenya) pointed out in one of his speeches:

"There is now an urgent urge to explore new methods for the prevention of crime and the treatment of offenders which would fairly reflect our society's interest in protecting itself and yet would provide maximum opportunity for the individual to turn away from a career of crime. In addition to ensuring secure custody of those who constitute a potential danger to the community, our treatment of offenders should aim at discovering in each individual inmate his positive potentials and developing them as far as possible in setting up a penal treatment towards his rehabilitation".<sup>11</sup>

This was a good suggestion, and in fact if it had been implemented, we would by now have gone a step forward towards our effort to reduce theft and other crimes. The problem is that the judges and the magistrates still favour sentences aimed at punishment or deterrence.

To make Mr. Saikwa's suggestion of practical use a few suggestions are put forward in Chapter four. These include (a) placement of offender in the "right" ward, (b) removing sentencing from the hands of the judge or magistrate as it is felt they are not the proper persons to discharge that function and (c) generally taking the individual's own circumstances into consideration before sentencing.

The approach suggested may lead to disparities in sentencing, but it is submitted that we may have to forego the notion of fixity of the law and its certainty for the sake of justice. The merits and demerits of the reformatory theory will be examined in detail in chapter three.

FOOTNOTES

- 1 Ferri, E. Criminal Sociology (Agathon Press, Inc. New York, 1967) p. 80.  
All these five views can be reduced to only three: retribution, rehabilitation and deterrence.
- 2 Ndulo, M., 'The Theory of Punishment', Zanro, Zambian Journal of Contemporary Issues No. 3 August (1977) p. 31.
- 3 An example of such a law that tells us what behaviour is forbidden and provides for penalties for engaging in prohibited behaviour is, The Penal Code, Chapter 63, Laws of Kenya, which is an Act of Parliament establishing a code of Criminal Law. It lays down general rules as to criminal responsibility.
- 4 An example of the law in this country that gives enforcement subsystem the authority to apprehend is, The Criminal Procedure Code, Chapter 75, Laws of Kenya.
- 5 The Kenya Constitution Chapter V, gives a person protection of fundamental rights and freedom of individual. Section 77(8) reads: 'No person shall be convicted of criminal offence unless that offence is defined, and the penalty is therefore prescribed, in a written law.' Section 72 generally provides for the protection of right to personal liberty save as may be authorized by law in the provisions laid down in the same section.
- 6 Ibid: Chapter IV : Part 1 & 2; These sections discuss establishment of the courts; the making of legal bodies, the High Courts and other courts, which deal with the punishment of the offenders.
- 7 Kadish and Paulser; Criminal Law and Its Process Cases and Materials (2nd ed. Little, Brown and Company Boston Toronto. (1969)  
In reading this book one concludes that the main aim of punishment is to produce the greatest happiness of the greatest number of the members of the society, by increasing pleasure, and diminishing pain.

8 Gachuki, D.W.; ' The Administration of Justice  
in Kenya', The Hanging Bill, Kenya's Legislative  
Response To The Crime of Robbery ( A paper  
presented at the Kenya Law Society Conference  
6th - 8th April, 1978- Wherein it is noted  
that the then Chief Justice Mwendwa expressed  
his view that the courts should lay more emphasis  
on deterrence and on the protection of the  
public than on retribution and reformation if  
ever we intend to fight against the criminal  
elements. This idea we are opposed to.  
8b See table 4

- 9 (i) The Prisons Act, Chapter 90, Laws of  
Kenya;
- (ii) The Detention and Camps Act, Chapter  
91, Laws of Kenya;
- (iii) The Children and Young Persons Act,  
Chapter 141, Laws of Kenya.

10 Footnote 8 supra , Gachuki D.W.

11 Saikwa, A.K.; 'An Approach to Penal Administration  
in East Africa', East African Law Journal  
vol. 2, (1966) p.25.

## CHAPTER TWO

A STUDY OF THE RISING THEFT RATEUNIVERSITY OF NAIROBI  
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" A person who fraudulently and without claim of right takes anything capable of being stolen or fraudulently converts to the use of any person, other than the general owner thereof, any property, is said to steal that thing or property".<sup>1</sup>

General Punishment for Theft

" Any person who steals anything capable of being stolen is guilty of a felony termed theft and is liable, unless owing to the circumstances of the theft or nature of the thing stolen some other punishment is provided, to imprisonment for three years".<sup>2</sup>

Theft is normal; it plays a definite role in society. It is not a behaviour so dissimilar from that of non-offender. This is so because in the modern society life is very different from what it was in the old days, when people worked together in forms and other undertakings and shared the products of their labour. In certain tribes, like the Luo's there was a custom of inheriting debts and/or property of the deceased member of the family, or alternatively such property was held in trust for the benefit of the members of the deceased person. Thus there was a great sense of belonging to each other. Things have changed, now, it is individual ownership of property and individual access to other amenities. *eg fish (20)*

You  
sure?

It is human nature to compare and compete. The offender in trying to keep pace with society values tries to acquire things which have become very essential for survival. In the process, they resort to illegitimate ways. What we believe is similar in all human beings is the desire to achieve maximum comfort, which is the order of the day.<sup>3</sup> Thus people steal because they need, not because they want what they do not need.

However, some commentators have stressed greed. That people steal not because they need something but because they simply want something which they cannot afford or are too lazy to work for.<sup>4</sup> This theory is erroneous. A person may steal a motor car not because he needs the car but because of the money value of that car. He can then use that money to buy the things that he needs most.

There is, therefore, a positive correlation between material wellbeing and theft. This is illustrated by the fact that in the past fifteen years, there has been constant rise in cost of living. The commodities affected are those, or include those which are consumed by the low class members of the society. This include among others not mentioned, bread, tea-leaves, cooking oil, salt, potatoes, beans and vegetables. On the other hand, there has been no marked rise in earnings especially for the low-income group. Compounding this situation is the high



percentage of unemployment. Most urban immigrants are unemployed. The result of all these is the increase in theft.

We submit the following as causes of theft: people feeling that they deserve more than they have been able to achieve; job frustration; real need; human development, that includes industrialisation and urbanization and finally, the conditions prevailing in the urban slums. All these factors have made collective action impracticable resulting in social disorganization. For those concerned, there is no other way of solving these problems, theft becomes a traditional response.

The Conflict- People Feeling That they Have Not  
Achieved What they Deserve

People who move from rural areas to the city for instance, are faced with a discrepancy between what they expected or feel they deserve and what they actually obtain. Some gap between expectation and attainment is tolerable but a crisis point is reached when the gap widens rapidly. This is the stage we have attained in the course of the sixteen years of independence. It is as if independence was an "on your mark, get set go," signal! Those who had the right outfit for the race have gone too far up the economic ladder, while those who remained behind

are too far behind and will never catch up. That is the gap between the haves and the have nots.

While in the rural areas, these people are at least housed and the family ties remain to some extent close. When they arrive in the city, they find that what they conceived as meretricious, is in fact not so, as a result of this they rebel. This is the relative deprivation theory which is mentioned here because ,economic crimes, theft being one of them are often considered to have basically economic motivations as well as obvious economic expressions. These are the experiences of those people who came to the city for the first time.

On the other hand, we have a group of disgruntled people who were born in the city and lived in it for many years. They form a colony of problem makers. They face the same problem of expectation. The problem of wanting to live as the next door neighbour. The background of this group is rather different from that of the rural migrant. The group is large, but in this dissertation, we shall confine ourselves to, Ngara area, Muthaiga, Eastleigh, Mathari Valley, Kariobangi, Ruaraka, and Garden Estate, Nairobi.

In these areas, there are many unmarried women *Lucy* who have leased houses . Their main pre-occupation

is to make money as prostitutes. That is the trade. They have no desire to have children. And when this misfortune befalls them, they are not interested in bringing them up. The children are a great disturbance to the mothers' social lives. These women have, in the past produced and continue to produce children who are unwanted and whose fathers cannot be traced. These children have no homes. They form a large population in this city - parking boys is just but one branch of them. These children do not go to school. They start criminal behaviour at the age of eight years.<sup>5</sup>

*— whose Law, there is 5/33*

It is noted that nearly all the hard core criminals in particular, thieves, are from the group whose childhood backgrounds are of this nature, fatherless and disinterested mothers.<sup>6</sup> These young boys even when taken to approved schools do not reform, they grow to be middle aged, and over while committing the crime of theft and/or allied offences.

These persons, frustrated by lack of opportunity and poor living conditions direct their aggression or release their tensions and hostilities upon members of the society who seem to have that which they do not have, instead of directing their wrath against the govern-

ment who have power to improve their positions, and who are directly more responsible for their frustrations . The government is responsible in the sense that it has power to pass a bill through its legislative machinery to prohibit prostitution and to provide stringent penalties against those who violate this law. Instead, the government is busy attacking street boys. What can these street boys do? In the light of what has been said, they have no alternative save to behave in the manner they do. The government's main concern is with the product of prostitution and not with the act of prostitution itself. These children and adults are forced into stealing and related crimes like embezzlement as means of obtaining culturally defined goals of material wealth and social status or even defy accepted norms about how such goals are to be achieved.

\* Frustration Arising out of Family Situations - And The Realistic Conflict - Need.

Whereas sexual frustration does not directly lead to theft, frustration arising out of family situations is most directly related to theft. Children and adults whose background are traced to some irregularity of parental care, have been found to turn into criminals, in particular, thieves, or people with inclination to theft. These are people who grow in tense family situations, those who grow as homeless citizens and those who grow under stress

of deprivation.

That theft in reality is caused by need is illustrated by the case of Joseph Corper, a vagrant who turned thief and swindler in nineteenth century Germany, in his retrospect he narrates some of his crimes in this way:

" At first I had no ill-will to the well-to-do , and I have no quarrel with those who had treated me so harshly. Gradually, however, I realised my grievance against society and began to wage war on it by acts of pilfering the first of which I committed in the house of a small farmer where my mother was in service. Tormented by hunger, I got in through a window and stole a loaf of bread and a few kreutzers. This was my first theft and it had bad results for me, for , when faced with it, I confessed and was cruelly flogged by the farmer. Out of revenge, I killed one of his fowls every day". 7

This one person decided to engage in civil war. A response to a situation, to an environment. Sociologically, it shows that if you subject people to an unpleasant environment, you can predict that they will rebel against it.<sup>8</sup>

While at Pangani Police Station, on 10th November, 1979, the writer interviewed one Karanja, accused of theft. He had one previous conviction. He said he liked it better in jail because he was sure of food, accommodation and medical care. He claimed that he committed the second crime purposely because life was too hard outside prison.<sup>9</sup>

### Job Frustration

This is applicable particularly to the low-income group. It is composed of: the house servants, the labourers, factory workers and people in similar small jobs. These people work long hours but in return they receive very little reward. The employee may be on a monthly salary of Ksh230/=. if he is living in a place like Riruta, his bus fare is Ksh.120/= return journey per month, that is sh 4/= per day. He remains with Ksh.110!-. , out of which he may have to buy his lunch at sh1/= per lunch for thirty days, thus spending sh30/- in total, bringing his personal expenses to Ksh.150/=. The house rent may be as low as Ksh.75/=. , if he is lucky. After spending on rent he will have Ksh.10/= remaining. In the meantime we must note that he has not accounted for the maintenance of his family. In order to be able to maintain the family, that is at least to buy food, he will do away with his lunches, and also he will have to walk to his working place, waking up in the morning at 5 am. , and going without breakfast. If this cannot yield good results, then some of these frustrated people resort to theft. They may combine working with theft, or resign completely from working to finally participate in theft.

Human Development, Urbanization and Industrialization

There has been a tendency for one city or a few towns being dominant socially, economically, and politically. Concentrated in these urban sections are the government, commercial centres, transport and communication facilities, and even the administrative talent crucial to industrial development. Investment funds flow into it, job opportunities are centered there, and it has become a major target of migrants seeking better or different ways of life.

Large sums of money are poured into projects in the cities where big impressive buildings are put up. Kenyatta Conference Centre is one such building. Prestigious hotels are put up by foreign investors creating short-term rather than long-term or permanent employment. The industries which consume money brought in for development are positioned near the developed cities. An especially big traffic of job seekers are directed by these amenities to Nairobi. Ability of economy to generate urban employment is reduced, whereas the probability of greater influx of untrained manpower is enhanced. The result of this industrialization and urbanization is complex division of labour and a growing differentiation among the people. There is a strong impetus among the illiterate to pursue these goals by any means practicable. The rich people are in high

positions in the economic and political structures. Herein you will find the few elites who found themselves in the "basket of fruits". Whereas life to these few fortunate is golden, there are the majority of slum dwellers in Nairobi who lead life close to subsistence and are very disgruntled.

### Theft and Urban Slums

The position is that, whether the urban migrant moves alone or with his family, he is generally forced to live in squatter communities, shanty towns, or in stabilized slums of the older parts of the city. He is soon resocialized to a different life style from that of his home life. The greatest impact on the new migrant comes from this slum way of life in which the physical problems are less threatening than the sociological aspects that are reflected in various deviant behaviour patterns such as alcoholism, illegitimacy, prostitution, delinquency, and crime.<sup>10</sup>

Housing is another big problem facing slum dwellers. If a slum dweller manages to acquire a room of his own, that is considered a big luck. What normally happens is that three or more families share these rooms. That is a total of six or eight adults. They may have between them a total of twelve children. A total of eighteen people will be staying in this small room. This has necessitated



an arrangement whereby the children stay away most of the time, in order to allow their parents to socialise. In the later stage, a very liberal atmosphere develops. The children who have attained the age of eight years and over, are allowed to go out at night to share sleeping accommodation with their friends who might be comparatively in a better situation. In the slum areas, the parents have lost total control over their children. For the obvious reasons which we have stated and which are beyond their control. These children grow up being very well aware that they have to provide for themselves. This triggers into various conduct, including criminal conduct.

The research shows that the majority of reported crimes and delinquency is committed by slum dwellers and much of it occurs in slum areas, although their area of operation is liquid, depending mainly on where there can be a good catch. This view is shared with the Officer-in-Charge of Criminal Prosecutions, Nairobi area, Mr. Jeremiah Odera Odede.<sup>11</sup>

The research shows further that a number of slum dwellers are economically hard pressed and socially out-cast people. The family in slum area gradually loses its

ideals of community welfare and sometimes of cohesive family life. Marriage bands are loosened and sex-partnership becomes the sole aim of marriage. Often, both parents try to work, but they lack the support of the other family members who were always available to care for the children in the village, and the neglected or the destitute child is either victimized by adults for their anti-social activities or takes to law violation activities as an easy means of supporting himself. Children grow to adulthood in an environment of social economic and emotional deprivation.

It is concluded, that, lack of adequate living space and absence of recreational facilities force these youngsters to spend much of their time in the streets looking for something to do, someone to talk to and someone to feed them. At the same time, their street life is frequently, though not always consciously, oriented towards seeking some sort of recognition and status in their peer group and some means of acquiring money and /or material possession to which their middle class counterparts have ready access. Thus their independence from informal social controls imposed by the family, their almost complete freedom of action, their sense of fatalism, their object hatred of authority figures, their rationalized distrust of and disassociation from the middle class and their ready

access to crime, vice, alcohol and drugs easily provide the opportunities and impetus for illegal and delinquent activities. Under these circumstances it is not unexpected that such deviant behaviour will mature. It matures when the youth whose life was thus patterned grows into an adult, who specialises in theft.

We summarize below what we feel are the major areas that have contributed more to the crime of theft, and that must be in the near future given special attention, if we are to minimise theft:

- 1 An imbalance between the concentration of modernization and economic power in urban areas and the backwardness of the rural population in terms of development.
- 2 An imbalance between population growth and the ability of the economy to create employment.
- 3 An imbalance between the demands for talent by the economic system and the development of skills.
- 4 In urban areas a reduction in the role of the family and elders as the main socializing agents of youth with adequate social control replaced by other institutions, resulting in the development of behaviour patterns

among youth that differ radically from family expectations.

- 5 Changes in values that rejects a fatalistic acceptance of the relatively impoverished conditions under which people traditionally have lived.

The United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1970 came to more or less the same conclusion, they said:

" As any country begins to open up, outgrows its traditionalism and responds to outside influences or new ideas by modernizing, industrializing and concentrating people in certain areas, its people and particularly its younger generation seize the many new opportunities. And in doing so a small but progressively increasing number of them succumb to temptations and seek illegal satisfaction through crime." 12

We have now seen that behaviour\$, particularly criminal behaviour\$ which incline towards economic crimes are shaped mostly by economic factors and any endeavour to reduce theft will have to take these factors seriously into consideration.

FOOTNOTES

- 1 The Penal Code, Chapter 63, Laws of Kenya s.268 (1).
- 2 Ibid; s.275.
- 3 The idea comes from a sample of literature found in Vold, The Theoretical Criminology (New York, Oxford, 1958).  
  
Sellin, T., ' A Research Memorandum of Crime in The Depression' Social Science Research Bulletin No.27, New York (1978).
- 4 Tobias, Urban Crime, (Victor Golloncz Limited, London, 1956) , argues that some people who steal are not poor nor are they in need of the particular thing which they steal, but they want just to acquire these things because other people have them. He argues that need and want are different. However, we argue that the main course of theft is need. In most cases studied during this research it was established that the thief steals because of need that even if he steals a car, he will convert it to money which is what he needs most.
- 5 While at Pangani Police Station, Nairobi, four children were brought in for allegedly having stolen . One was eight years old. The four children confessed to the interviewer, that it is true they stole some items from the complainant, but the reason is that they were in need. They said that their mothers did not care for them, and that, in fact, the mothers encouraged them to steal because every evening the mothers asked them to produce the money they earned for that day.
- 6 An interview was held with an officer-in-charge of Criminal Division, Pangani, Nairobi, he noted that most of the repeaters are those with bad family background. He said: " These children never had any direction in life, theft has been their means of earning their livelihood, and they show no intention to reform".

- 7 Griffiths, A; German and Australian Prisons (Butterworth, London, 1951 at pp 202-3.
- 8 Cleaver, E., Post Prison Writing and Speeches, (ed. Robert Scheer, New York, 1969) , at p. 157.
- 9 On the 9th November, 1979, a very interesting conversation went on between the writer and the accused. The accused was very open and felt that he was airing his view to someone who could change things for him in future, that perhaps after his release, he will find that things have changed, and that he can acquire a better position in the society.
- 10 Clinard, M.B., ' Slums and Community Development' Trend in Property Crime (New York, The Free Press, Wiley, 1973) P. 75
- 11 On 9th November, 1979, the writer had an interview with Mr. Jeremiah Odera Odede, Officer-in-Charge of Criminal Prosecutions Nairobi Area, who held the same opinion and stated that most crimes are committed by slum dwellers, and not necessarily committed in the slum areas, but that the criminals move about to make it difficult for the police to trace them.
- 12 Elkan, W., Migrants and Proletarians (London, Oxford University Press, 1960) see also Lloyd Rodwin, Nations and Cities. (New York, Houghton Mifflin, 1970) at p. 5.

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CHAPTER THREETHE GOALS OF CRIMINAL JUSTICE SYSTEM -  
ARE THEY SUCCESSFULLY ACHIEVED?

In the previous chapters, the legality of punishment and identification of some of the possible causes of theft have been discussed. The task remaining is to find out whether the aims of criminal justice system are being satisfactorily achieved in the penal institutions that we have in this country. The investigation of that effectiveness is limited to the offence of theft. Occasionally, we shall be touching on other crimes, but only for comparative and illustrative purposes.

The research has shown that, inter alia, differential opportunity, urbanization and modernisation of society are the major causes of theft. Modernisation in this context implies a decline in respect of conventions, a reduction in social control, a lessening of appreciation of the rights and property of others. The logical conclusion is that, theft increase should accompany the modernisation process. Since Kenya's development and modernisation is concentrated in the cities, especially in Nairobi city, this problem is reflected and is characterised by instability, impersonal relationships, social disorganisation and weakened social control.

The city's material administration has permitted a few to succeed and many to fall short of success. These relative failures have collected themselves in the city slums as was established in chapter two of this dissertation, and therein have developed patterns of behaviour hostile to the interest of the general community but in harmony with the communities basic ideas. Slums harbour an alarming amount of not only physical deprivation and despair, but also doubt and cynicism about the relevance of outside world's institutions. Furthermore, the slum dwellers question the sincerity of efforts to close the gap. Far from ignoring and or rejecting the goals and values espoused by more fortunate segments of society, the slum dweller wants the same material and tangible things for himself and his children, as those who are more privileged. The effectiveness of the deterrent, rehabilitative and the reformative theories of punishment will be scrutinized in the light of the above background.

There are various ideas about the subject of punishment, but there are no ideas coming from Kenyan researchers because there has been no serious research made on the subject. Among non-Kenyan researchers, there is an argument that rehabilitation of convicted



offenders is the best method of preventing crime.<sup>1</sup> There are others who believe that it is the deterrent effect of criminal sanctions that offer the greatest protection to the society.<sup>2</sup> Still others maintain that the detention of dangerous or anti-social offenders is the only guarantee that they will not commit further crime at least during the period of custody.<sup>3</sup> There are yet others who feel that criminal sanctions find their justification not in the prevention of crime, but rather in the alleged moral right and duty invested in the courts to inflict punishments on convicted offenders as an expression of society's disapproval of their crime.<sup>4</sup>

We hold the opinion that from the interviews held with some convicted thieves and some offenders awaiting trial, and looking at our criminal chart for the last ten years, that none of these theories can claim effectiveness.

At this stage, we wish to examine the above theories against the research we have conducted to sustain our allegations, that an adherence to these theories would not be effective in the reduction and elimination of crime.

#### 1 Retributive Theory

We saw in chapter one that this theory works on the notion that punishment should fit the crime.

It is a theory of counter suffering. It makes no attempt to establish a principle of equivalence in a realm where there is no known or ascertainable standard of equivalence.

Some penologists have argued that the concepts of collective revenge is not one which can be regarded as desirable for civilised society. Instead they have supported retribution in the sense of reprobation or denunciation whereby the sentence permits the society as represented by the sentencer, to indicate its disapproval of the breaking of its laws by a punishment commensurate with the gravity of the offence. Fitzjames Stephen, the most famous English criminal judge of the nineteenth century, was of the opinion that we should punish not simply to prevent crime, but to show our hatred of crime.<sup>5</sup> Sentences in the Great Train Robbery Case<sup>6</sup> of thirty years for robbery with twenty five years concurrent for conspiracy, were based partly on the magnitude of the offence and partly on the desires to show public revulsion to the crime.

The main weakness in this theory is that it fails to consider that the interest, feelings and desires of individuals are diverse beyond any calculation. Nobody can claim to be able to tell

what physical pain inflicted as punishment for violence is in any way equivalent to the pain suffered by the victim of violence. The sensitiveness of the attacker and the attacked, both in body and in mind may differ to a degree impossible to ascertain; what is agony to one may be a trivial inconvenience to another. For example, a traditional doctor can extract teeth without administering anesthetic, general, or local. The pain suffered will vary with individuals. Some people scream; others make no move even though six teeth are removed consecutively as was the case with the Luo tradition. Similarly, the cutting off by execution of a life which holds no promise of good cannot be equivalent for extinction of a life which may have been fruitful and beneficial.

For example, in the case of a thief, he is imprisoned or fined. One thing we forget to ask ourselves is whether deprivation of liberty which is a torture to some men and a very slight affliction to others, is of any invariable requital for evil doing. Even if we consider the supposed equivalence in its crudest form of an eye for an eye, and a tooth for a tooth, it is plain that the eye and a tooth may be of much greater value to one man than another. It is said, that the loss of one eye did not end Nelson's career, but to a jeweller and many other kinds of craftsmen it might mean the irremediable loss of his livelihood.<sup>7</sup>

The retributive theory when carried to the extreme of exact moral tit-for-tat produces a lot of injustices in respect of a conviction of theft, because the research shows that there is always a "good" reason for committing the crime. In any case, the society is to some extent to blame for the offenders' failure to acquire legitimate economic support.

Punishment may well be just a way of maintaining tranquility of society. If so, this can be best attained when the society practises division of labour according to natural aptitude. Every creature has an appropriate task to perform in life and his duty is to pursue it with all his might in a vigorous existence in order to fulfil it to the best of his ability, but he must be given the opportunity to do so.

The theory does not provide an alternative to the criminal. After his sentence, he is thrown back to the same society in which he was a social misfit. One very important thing we must realise is that criminals are aware of their social existence,<sup>8</sup> they are therefore aware of the competition between their claims on life and claims of others and the perpetual necessity of adjustment<sup>9</sup> between them and this realization becomes an integral, almost automatic part of his intellectual and moral being. Therefore, it cannot be

expected of retribution as a theory or even in practice to eradicate the crime of theft. Retributive theory remains non-contributive to the reformation of offender which is the main goal of all the three theories which though administered differently, are aimed at reformation of the offender. However, harsh punishment may seem to be, the people who commit economic crimes are never deterred. That is so because of the need that we discussed in Chapter Two - people steal because they are in need. In that chapter we noted that thieves have similar economic desires like non-offenders and are prepared to take chances in order to acquire what they need. Even if hanging is done in public and therefore scaring, there is still the possibility of not being found out. It is possible to hang the wrong person. Therefore, if the hanging cannot deter robbers, there is no punishment that will deter thieves.

## 2 The Deterrent Theory

We saw in chapter one that this theory is based on the premise that when punishment is harsh and severe, criminals and would be criminals will be frightened and thus deterred from committing crime.<sup>10</sup> Whereas this may be true for other offences, we submit that a thief's circumstances are very diverse. The cases studied revealed that most of the thieves are desperate persons,

may be houseless, jobless or they may be in some employment earning very little salary and hence the need to subsidize their income. This person will commit theft under various impulses at various times. He is an unhappy man, his mind is infected by his chronic poverty and social dissatisfaction. He may or may not engage a lot in alcoholism. He is a person who commits theft as a result of reasoning or weighing considerations for or against the fruits of the intended crime, and therefore, he is not up to be repressed by the form of example.<sup>11</sup>

Of course, in developed countries like Sweden The United States, The United Kingdom and Germany many rich people indulge in theft and bank robberies.<sup>12</sup> In these countries, however, there might be no relation between crime of theft, standard of living and distribution of wealth. These countries will have to diagnose their own problems, analysing their own conditions as they are. Each country has her own social economic problems. However, we are not making a comparative study of crime and its causes in various countries, ours is a research on the Kenyan situation.

Bentham's utilitarian theory confirms that, thieves do actually think before they commit the offence. Kadish and Paulsen, in their book draw our attention to the fact that:

" Pain and pleasure are the greatest spring of human action, when a man perceives or supposes pain to be the consequence of an act, he is acted upon in such a manner as tends, with a certain force to withdraw him, as it were, from the commission of that act. If the apparent magnitude or value of the pleasure or good he expects to be the consequences of that act does not deserve the risk involved, he will absolutely be prevented from performing it. The mischief which would have ensued from the act performed, will also by that means be prevented . . . ." 13

The measure is therefore, the magnitude of pleasure or pain derived from the act. This magnitude of pleasure or pain varies with individuals. The deterrence therefore begs the question: Who can be deterred? There are certain classes to whom punishment is a meaningless event. In early days in England hangings were done in public. The excitement drew a large crowd of on-lookers. As the crowd pressed together for a good view of the thief about to drop to his death, the pickpockets would mill through the crowd, plying their trade.<sup>14</sup>

If a person, for economic reasons decides to take up theft as a line of earning his or her income, unless offered an alternative means of earning that income, he or she can never conform to the requirements of criminal law.

In most cases the thief does not operate on the assumption that penalty will be afflicted. A professional hit man does not reason that he is going to steal a car or to rob a bank that the police are going to catch him and that the consequences of his action will be to increase the misery in his life. Rather, he concludes that he is a clever man and counts on his experience. He also reckons that his mouthpiece and bondsmen are ever ready. What the prospective thief can see vividly is the opportunity to enrich himself. Theoretically, he spends before he receives stolen goods or money. In an economy like ours, he sees the possibility of buying a plot somewhere in Spring Valley, or he sees his children being able to go to a good school, St. Mary's School or Kenya High perhaps. On the social side, he ponders over dating beautiful women and being able to spend exorbitantly the way the capitalist does. It is submitted therefore, that the effectiveness of the deterrent fails because it is dependent upon the certainty of conviction.

The problem facing the criminal justice system is that these people cannot be deterred due to lack of change in their expectations. It is therefore expedient to take into consideration, if we must inflict punishment on these people the fact that criminals are, as Mueller correctly points out that:



"Criminals are human beings much like the rest of us. That they move about from place to place. They play or work more or less; they laugh and mourn and are otherwise moved emotionally as we are; they form personal attachment to persons, things and places as we do; just as we are, so are they eager for approval of those with whom they associate, and are cut down when they fail to secure it, they are ambitious for a place in the "sun" being in the circle of those who are, in general seeking the same type of satisfaction that they desire for themselves. They think, learn and forget as we do; and finally, in respect of their physical make up they resemble our neighbours in our city block. Moreover, in all these respects they differ among themselves much as members of our club differ among themselves". 15

We have accepted Mueller's view. As a result we have reached a conclusion that unless we make certain provisions to accommodate the needs of criminals and would be criminals, the theory of deterrence can never achieve the desired goals.

The incidence of a particular crime in relation to a particular punishment will give some indication of the general deterrence power of punishment. For example, the English Report of 1938 on corporal punishment revealed that after the introduction of flogging robbery with violence increased. It was in fact, on the basis of this Report that flogging was abolished, and it is not without interest to note that since then there was a steady decrease in the incidence of the crime.<sup>16</sup>

In Kenya, lower courts have a tendency of invoking the factor of deterrence in determining the sentences to inflict, especially in cases of robbery with violence, theft, traffic offences and receiving stolen property. With the exception of traffic offences, the need here is clearly to ensure security of the person and the privacy of his home and property. Despite the stress on deterrence, theft, robbery with violence and house breaking has become a common occurrence in Nairobi. Despite the severe sentences deterrence has failed.

It is submitted, that where strong passions of deep psychological motives are involved, the prospect of detection and punishment have relatively little effect. Again we give a foreign example, but this is not to say that we have no local example, but the fact is that we have not kept detailed statistics of certain criminal trends and therefore local examples may not carry legal force. However, take the case of the Danish experience in World War II, 1944, when Germans deported all the Danish police. For some time therefore, the country was without any effective police force. The result was that there was a considerable increase in offences against property but significantly no comparable increase in murder. This statement

supports our earlier claim that economic crimes are inevitable for they are committed because of need not want. The general incidence of crime in a particular country is much more a reflection of accepted moral standards, of the absence or presence of special frictions, than of the efficacy of the police, and perhaps we can add, the efficacy of the courts. Thus, so long as there are wide disparities of income, absence of fair conditions for economic well-being, and high rate of mass unemployment, particularly among the young and the male family heads, the incidence of property oriented crime, coupled with violence will continue to increase. The courts passing severe sentences will have no effect on the criminals. These people have to eat, drink and participate in all human affairs pertaining to the particular society in which they live.

### 3 The Reformative Theory

We stated in chapter one of this dissertation that the purpose of reformation is to instill some useful skills in the inmates as they serve their term, so that they can become better citizens and useful human resources upon discharge.

Thieves and other criminals are sent to penal institutions to undergo incarceration. There are four types of these institutions in Kenya, the prisons, youth institutions, Extra Mural Penal Employment Scheme and Detention Camps under Chapter 90, 91 and 141 of the Laws of Kenya.<sup>17</sup>

Hard core thieves are normally sent to a maximum security prison, where they serve long term sentences. In prison they undertake industrial training in a complex workshop which the government has equipped with machinery and tools. In fact, inmates are given a chance to select the type of training they would like to settle on while in prison. This would indicate that on their release, they would be expected to engage themselves in such trades as carpentry, leatherwork, metal-work, upholstery, sign-writing, soap making and printing which they have learnt and which are useful in the commercial / industrial activities in this country.

In the medium security prison which are short-term, emphasis is placed on agricultural training. inmates receive guidance from qualified personnel in proper use of land as a resource both on the small scale and on a large scale, where the weather conditions are favourable. Inmates are kept fully occupied for at least eight hours a day, performing tasks that will hopefully be useful to them on their release.

Notwithstanding all that the government has done to reform these offenders, the result has been discouraging. One of the reasons for our failure

to reform these criminals is the condition under which the reformative measures are undertaken.

While the prisoners are in prison as a punishment other sufferings are inflicted on them in addition to the disciplinary measures and the mere loss of liberty, which should be enough. Once these offenders are treated harshly without due consideration for their human dignity, they tend to rebel against the prison regime. Such harsh prison regimes are hardly likely to be conducive to rehabilitation. A research in two of these prisons reveal that, certain criminogenic processes are generated or intensified within such prisons as a response to strong repressive methods of control or emotional depression. In this connection, the Minister for Home Affairs, Mr. S. Ole Tippi~~g~~ drew the attention of prison personnel to their duty in the following words:

" A prison's duty is to rehabilitate people by encouraging them to abandon criminal tendencies . . . ; and it is the work of the prison to ensure that those who leave are prepared to live like good citizens." 18

Even though the government has made all the effort to train prisoners in various professions while in prison, the conditions under which they are trained are poor. This is the fault of the prison officials. They have allowed typical colonial type of administration

to continue in Kenya prisons. The colonial masters rated Africans as sub-human, and this explains the intolerable conditions they left behind and which we continue to sustain. The food in prison is mostly starch or proteins. The prisoners are badly fed and hence they do not take prison work seriously. They are dressed in derogatory clothes in the form of uniforms with numbers plastered on them. They have awkward working and sleeping hours. All these acts indicate an attempt to dehumanise the prisoners, they cannot therefore, operate as an incentive for them to reform. B. Adh

An observation made at the Industrial Area Prison, Nairobi reveals that prisoners' complaints are justified, they are ill treated. On the day of the visit, there were, about forty men on sight. They looked as though they had just finished a day's work. They were now waiting for supper before being locked up immediately thereafter. The time was 4 p.m. The prisoners had prison numbers plastered on their uniforms, their heads were ~~clean~~ <sup>clean</sup> ~~closely~~ shaven, which in fact might have made them of interest to the phrenologist. No razor was allowed so that in addition to the stubble on their heads, their faces were covered with a sort of dirty moss representing the growth of hair that a pair of clippers could not remove. It was explained to the writer that the prison

rests on safety and security, they are determined to minimise chances of violence or suicide.

Notwithstanding the safety reasons, it was noted that prisons have succeeded in making a large number of human beings objects of contempt. Coupled with this is the cruelty of the prison personnel. For example, one prisoner complained that as he was digging, his supervisor passed a cane across his back, on the shoulders, claiming that he, the prisoner was not working hard enough. The prisoner has nowhere to take his grievances because a prisoner is not allowed to complain, that alone is a privilege, once in prison it seems as if all one's constitutional and legal rights are temporarily lost.

Ten prisoners were interviewed at Kamiti Maximum Prison during the research. Nine admitted having stolen as charged. There was one prisoner however who denied ever having stolen in his life. He asserted that his imprisonment was a miscarriage of justice. The point is that, the ten prisoners deplored prison conditions. They stated that imprisonment is not only a custodial court order, but that once you are in prison, you are there to be punished. So that in actual fact, the prisoner is punished twice. The one prisoner who denied the theft of a windscreen stated vehemently that he did not steal the windscreen in question and yet he was convicted. He was jailed

for two years with eight strokes of the cane. He appealed . On appeal, it was held that the prison term be increased to three years, but without corporal punishment. By the time this appeal was heard, the prison personnel had already administered the punishment. This shows how anxious the prison personnel are to inflict pain on these prisoners. The prisoner tried while in prison to lodge a complaint but in vain. So that in total he was punished twice by different courts for the same offence. Can this sort of prisoner reform, and from what?

While serving his sentence , this prisoner was put among the hard core most of whom were thieves. He listened to the story of stealing for the whole time he was in prison. Idle as they are from late evening till the following morning, they talk about nothing but their endeavours in theft, and how on their release, they would try their hands on bigger deals than the last ones. The prisoner convicted of windscreen theft vowed ,that, he must steal on release, because, apparently,he said, someone else can serve his sentence. This case supports our earlier claim that some criminals act on the assumption that they will not be found.



Another interview was held with Mr. Ignatious, J. Nderi, Director of Criminal Investigations. He agreed with the view that rehabilitation of criminals in Kenya is inadequate and that in fact, we have ended up training criminals in our penal institutions, in particular the prison. He argued that first offenders were mixed with hard cores and this should not be done because hard cores destroy first offenders by convincing them that crime is not all that bad, and that one definitely, can take it up as a profession though a risky one. He specifically referred to the crime of theft. He suggested that first offenders should be separated from second or subsequent offenders irrespective of the length of their sentences. Since this has not been the case, rehabilitation of offenders has failed in most cases. Instead, crime infection has spread from hard core to first offenders. These hard cores call the prison a "club". On their release they give warning to the remaining inmates not to use their mats because they will be back soon. It is evident therefore, that they leave prison unreformed. And indeed they come back before the month ends or begins. In addition to not being reformed, hard cores become homosexuals. They pick up this practice soon after joining the "club". They practice this act throughout the term of their sentences, the new inmates fall in the pattern. They call homosexuality

"playing squash". As we are all aware, sexual impulses are a condition of human nature that must be satisfied. A denial of sexual intercourse would be a frustration of one of the very important human impulses and therefore it would be a great punishment and a good reason for conforming with the norms of the society so that one may not be denied the opportunity to achieve it. If then, it is one of the needs taken care of in prison, through homosexuality, not to mention, food, clothing and medical care, there remains very little in the free world to make an offender want to reform and to stay out of prison. For reformation to be complete, one of the things we have to do is eradicate completely from our prisons, homosexuality.

#### Youth Institutions

The young offenders between fifteen and twenty-one years of age are committed either to Bostal Institutions or to the Youth Corrective Centre. Kamiti absorbs those youths with less serious offences, but theft cases are rarely viewed as less serious, hence, the offenders are committed to Bostals or Youth Corrective Centres.

These institutions though costing the government a substantial amount of money have not yielded good results. The youth come out without being reformed.

Perhaps the reason is that the remoulding done at the institution is not utilised on release. On release the youth are thrown back to the same society which had failed to provide for their needs. The society has nothing at all to offer because the government has not taken into account the need to absorb these youths in useful occupations. They return to their slum homes, if they have any, or they filter back into Grogan Road into the numerous scrap lying there. This becomes their operational base. The best they can do to sustain themselves is to beg, and since people are not very generous these days, the solution is to engage in theft.

Indeed, the fact is that these youth have a genuine need, this sharpens the poignancy and loudens the frustration which exists because of the discrepancies in existing opportunities for fulfilment of the same. It is submitted therefore, that the slum dweller may not respect a law that he believes draws differences between his right and others, nor would he respect a police force that applies laws so as to draw such differences.

For the foregoing reasons, it is further submitted that prison as a reformatory institution has failed to achieve the desired goals.

FOOTNOTES

- 1 Kadish and Paulsen., Criminal Law and its Process cases and materials (2nd ed. Little, Brown & Company, Toronto, 1969) at page 125.

It is assumed first that human behaviour is a product of antecedent causes. These causes can be identified as a part of the physical universe, and it is the obligation of the scientists to discover and to describe them with all possible exactitude.

Knowledge of the antecedents of human behaviour makes possible an approach to scientific control of human behaviour. Finally, and of primary significance to the purpose at hand, which is the control of crime, it is assumed that measures employed to treat the convicted offender should serve a therapeutic function, that such measures should be designed to effect changes in the behaviour of the convicted person in the interest of his own happiness, health, and satisfactions and in the interest of social defence, human conduct can be controlled and can be changed. Rehabilitation therefore, figures on top of the list as a preference of treatment for offenders.

- 2 Anderaes, J., Journal of Criminal Law, Criminology and Police Science, Vol. 43(1954) at page 176.
- 3 Mewett, A.W., ' Habitual Criminal Legislation Under the Criminal Code,' Canada Bar Review 139, (1961).
- 4 Stephen, J.F., History of Criminal Law (Vol. 2 Cambridge Press 1966) .  
Holds the view that criminal law should operate to give a distinct scope to moral indignation and hatred of the criminal.
- 5 Ibid., p.117.
- 6 Wilson and Others (1965) 1 Q.B. 402.

- 7 Kadish and Paulsen, Supra at page 308.
- 8 Social existence here means the fact that the criminal has to live some sort of life and be able to provide for himself and his family in all aspects of life.
- 9 Adjustment in this context means that the individual must find means to survive, the way in which he will do this varies. He may steal, or he may work out some other means of acquiring social necessities. In this category you will find criminals of choice.
- 10 Kadish and Paulsen, supra,p.280.
- 11 It is our submission that when a person steals because he is economically hard-pressed, and believes that he has no alternative to that act, he will only remember the pleasure that he would derive from that act, and it will not be until he is apprehended that he will begin to worry about the punishment.
- 12 Morris, J., The Criminal Area: A study in socio-economy (London Rouledge and Kegen Paul,1957) p.153.
- 13 Kadish and Paulsen, supra,p.14.  
The belief in value of deterrence rests on the assumption that we are rational beings who always think before we act, and then base our action on the gains and losses involved.
- 14 Ibid. The Same author, Kadish and Paulsen, in chapter four, talks about general attitude of the public, (those who trade in crime) are not deterred because of the uncertainty of being caught.
- 15 Mueller, G., Essays in Criminal Science (South Hackensack, N.J., Rothman,1961) p.231.
- 16 'Journal of Criminal Law and Criminology'  
Published for Northwestern University School of Law by the Williams and Williams Company, Baltimore (1972).
- 17 See Chapters 90,91 and 141, Laws of Kenya.
- 18 'Daily Nation' 20th July,1979 at p.4.

CHAPTER FOURCONCLUSION

The main concern of this dissertation has been to find out whether punishment achieves the goals of the criminal justice system, viz: Retribution, deterrence and rehabilitation. Theft has been the case study.

With regard to retribution the conclusion is inescapable that punishment does not and cannot attain that goal. That is because as observed in Chapters one<sup>1</sup> and three<sup>2</sup>, the theory of retribution is based on counter suffering and can only be satisfied if the punishment imposed and the antecedent harm are equal. However, it was observed that there is in general no equivalence in punishment vis-a-vis the antecedent harm. That is particularly so with the offence of theft and the punishment thereof. The punishment<sup>ed</sup> offender cannot be said to have suffered as much as, and for the same reasons, as the victim of the offence. Full retribution in this context would only be realized if the offender would be deprived of the same commodity he stole from the victim and it so happened that he had as much practical use and sentimental attachment to it as the victim. Obviously, that is neither practicable

because it is not in every case that a thief keeps the commodity stolen. He would more often than not steal only to sell. It would be undesirable because in the author's view to counter misery with misery is an exercise devoid of merit: two wrongs do not make a right. Punishment, or at any rate the present punishment for theft, does not therefore fulfil the retributive aim of the criminal justice system.

The deterrent aim remains equally unachievable in respect of the offence of theft. As seen in chapters two <sup>3</sup> and three <sup>4</sup>, theft is an economic crime. The main reason for the commitment of crime is the desire to achieve maximum comfort, which for some offenders is hindered by various factors such as price-rise in consumer commodities, lack of earning capacity, unemployment, poverty, human development, urbanization and industrialization, slummarization and, differential opportunity gap.<sup>5</sup> The antidote for the hindrance is theft and other property crimes. Thus being committed to satisfy the material needs of the offender, theft cannot be reduced or eliminated by punishment. A needy person assumes that he will not be caught, that if he is caught he will not be severely punished and that even if punished he will

have satisfied his needs. It is hoped that chapter three convincingly demonstrates the futility of attempting to deter people from committing theft in a situation where so many factors combine to deprive so many persons of their material needs.

Turning attention to reformation of the offender, a conclusion has been made that the thief is not reformed after serving sentence. That is so for two reasons: One, the motivation for the offence of theft is necessity, and a needy man cannot be reformed. All he desires is satisfaction of his needs. Second, even if such a man was susceptible to reform, the prison conditions are, as seen in chapter three<sup>6</sup> utterly uncondusive to reform. On the contrary, they serve to harden feelings and full opportunity is seized to attain higher levels of sophistication in future crimes.

In brief, punishment does not achieve retribution, or deterrence or reformation of the offender. Be that as it may, it must not be forgotten that the above three aims are, either singly or in combination, geared to one ultimate aim: the reduction and elimination of crime. The dissertation has therefore explicitly and implicitly posed the question, 'to what extent does punishment help in attaining the ultimate goal of crime elimination'?. The answer to the question has been



it does not help at all!

It may be asked why that should be so. Chapter two<sup>7</sup> endeavoured to postulate the causes of the offence of theft. These in summary are:

- a) Unemployment - (real need, poverty) - economic gap between the haves and the have nots,
- b) Unpredicted price-rise in consumer goods;
- c) The conditions prevailing in urban slums;
- d) Differential opportunity gap;

If it is accepted that these are the causes, or some of the causes of theft, then, reason dictates that any serious attempt at reduction and/or elimination of the offence must be rooted in the assumption that these causes must be eliminated. How they can be weakened or eliminated is the subject matter of the suggestions below.

#### Suggestions

The following suggestions are offered for the reduction or elimination of the causes of theft mentioned above:

One: Unemployment - (Poverty, economic gap between the haves and the have nots).

If a large number of people are left unemployed thus creating a large gap between the majority of the population which are unemployed and the few who have more than their requirements, those who do not have will not respect the laws which they believe are laid down to protect the haves and their properties. It is therefore suggested that employment opportunities be created. There are enough reasons for creation of employment. For instance, the consumer market is rising every day because of population increase, development and industrialization; and at the same time there is the demand for employment opportunities, therefore, the government should consider spreading capital investment to the rural areas where there is large land which can accommodate factories. This will also help relieve overpopulation by the unemployed in towns and in the city in particular since it is the centre of most development activities. Many people will get employment in rural areas, in particular, the semi-skilled and unskilled persons will not need to go to the towns to secure jobs. Creation of jobs in the rural areas will also relieve housing problems facing the unemployed and the city workers as many people return to the rural areas where they can live in their own homes.

There is also the possibility of building mud houses in the new factory sites in the rural areas for the unskilled workers. This would be more acceptable in the rural areas more than it would be in the city and there will be less embarrassment for the mud-house dwellers.

It is also suggested that a state be established whereby, every normal human being can be said to be engaged in some sort of work that is good enough to enable him and his family to lead a normal life. To do this, we have to abandon our capitalistic mode of life and adopt the collective ownership of means of production and labour; and by that assuming really human conditions of life to every human being who shall have done his duty in furnishing his daily toil in some way or other. It was established in chapter two<sup>8</sup> that most offenders are of young age between late teens and late-twenties, and that parental care is lacking, particularly among the slum dwellers and the children born of prostitutes. It is suggested that prostitution be made strictly illegal, and the idle slum dwellers and prostitutes be absorbed in governmental or/and private sectors. To eliminate prostitution, we would have to think hard. Because of its functional nature and its economic aspects, prostitutes are following an occupation which parallels the goals of any other occupation. In prostitution there are economic and cultural considerations common to the general society. Prostitution is an

economic commodity, namely, the sale of sex privileges for monetary considerations. Full time, this illegal behaviour is a gainful employment, often a highly lucrative one. The problem as concerns prevention and elimination of theft is the number of the unwanted illegitimate children that they produce that become a source of criminally minded persons due to frustration. The answer to this problem is to absorb these prostitutes and other idle females in the industries at any capacity. The author acknowledges an example already set by the Nairobi City Council which has employed women of all ages. They are seen cleaning the roads and among other duties cutting grass, so that the would be prostitutes and others are kept busy and with expectation of an income. In this way they are equipped with the necessary facilities to enable them to keep children born by them and to educate them just like the working class prostitutes do. Having given the prostitutes the capacity to rear children and having accomplished the rest of the foregoing, it is believed we shall have accomplished the drying up of the greatest springs of crime of theft, namely, extreme riches, extreme poverty and idleness.

Two: Unpredicted Price-rise in consumer goods

It is quite logical that price-rise in essential consumer commodities coupled with unemployment and poverty will result in the deprived resorting to theft and hence even if punished under the existing law, will not be deterred or reformed. It is suggested therefore, that manufacturing or agricultural industry should be protected in order to avoid hard times, shortages and abnormal rises in the prices of food stuffs both of which have a direct connection with crime against property. This would prevent a mass of criminal disorders better than does the penal code. Permanent monopoly of certain industries not only multiplies infractions, but foments other crimes against property.

Three: The Conditions prevailing in Urban Slums

In chapter two<sup>9</sup> we established that slums harbour and produce most criminals, thieves included. Obviously, slums have to be cleared before any good results can be realised in the endeavour to prevent and eliminate theft. Admittedly, slums have existed for years; they grow increasingly larger and new ones are spawned. In this sense they can be said to be self perpetuating, either replenishing themselves from within or being, augmented by new ones created through migration from without the city as was explained in

chapter two <sup>10</sup>. The augmentation factor from without the city can be taken care of through suggestion one above <sup>11</sup> in the process of creating employment in the rural areas.

To eliminate the existing slums, basic changes will have to be made in society. The only way to do this is to equitably distribute wealth, this it is hoped will eliminate poverty. The realization of this objective requires pronounced changes in the economic system and in social control. This is not easy to achieve, but it can be done. There are, certain individuals who are in certain positions of political and social power, who are at present unwilling to promote these changes, whether because of economic costs, the elimination of cheap labour, the loss of political power, or unwillingness on the part of middle and the upper-class persons to permit lower-class people to live in or even near their own areas. These people must be made to change their attitude if slums are to be eliminated. This could be done by passing by laws to this effect. Then the slum population should be dispersed and ultimately integrated into areas occupied by other social strata. This is the most logical solution to the slum problem. Integrated into upper and middle-class neighbourhoods, particularly with the integration of slum children, the negative aspects of the slum way of life might be mitigated. This would bring them

to the city business and cultural facilities, a situation which would be advantageous to all groups. We suggest the cheapest material be used for the housing project for the slum dwellers for obvious reason that the slum dwellers cannot afford expensive houses.

In the meantime, it is suggested that the government should step up law enforcement in slum areas because this is where traditional and primary group ties are most weakened, the stigma, the lack of power and the status of the poor is greater. Slums yield most vagrants, prostitutes, illegitimate children, dependancy, infant mortality, high death rate and diseases, lack of interest in formal education and characteristic attributes of apathy and social isolation. All these factors contribute to the ineffectiveness of punishment.

#### Four: Differential Opportunity

At present, education matters alot anywhere in the world. The writer has observed that the elite and the politician know better how to manoeuvre and to manipulate the exploitation of the wealth of the nation. All good jobs and good things go to them and their relatives. Their children can afford to go to good schools, thus they perpetuate the economic control in the country. For punishment to be efficacious we must

work towards reducing the gap. There is only one way as we see it, and that is to create more employment opportunities as suggested above. Once the economic power of the poor is improved, education should be made compulsory. This in our view is the only way of closing the differential opportunity gap. This will enable the mass to get employment instead of resorting to illegal opportunities. To achieve this, we suggest, that educational facilities be spread all over the republic. At present it is mostly concentrated in the towns and in the city. Good teachers should be equally distributed. In this way the education gap between the urban and rural children may be closed, thus creating equal chances of getting employment .

Fifth:

It was established in chapter three <sup>12</sup> that punishment administered in prison as it is, does not deter ~~x~~or reform the offender. These are the reasons: firstly, first offenders and occasional offender and hard cores are put together as inmates. This has resulted in recidivism and is a hindrance to the aims of punishment. The long idle nights in prison without adequate night supervision offers best opportunity for the inmates to receive tuition from hard cores in sophisticated techniques in the performance of various



types of crimes. To-morrow when released, they step out of prison gates as qualified thieves, robbers, burglars and the lot. Once they culture this conduct, it is very difficult for the criminal justice system to correct them. It has also been found that the larger the offender stays in prison the greater the chances are of him to return there. In point of fact, it is in prison that men are trained in more sophisticated crimes, at state expense. To make punishment efficacious therefore, it is suggested that first offenders, occasional offenders and even up to second offenders should not be sent to prison, that other ways of punishment be found, and that first offenders should be isolated from the hard cores.

Secondly, extremely poor relations between prisoners and prison personnel contributes to the failure of punishment to reform or to deter. These are: unwarranted authority over inmates and the wide latitude with which they may be interpreted. Infractions of rules are usually arbitrarily punished by withdrawal of certain privileges, additional prison time and solitary confinement. As a result the offender becomes rebellious and the correctional subsystem is rendered useless. These relations must be improved.

Lastly, bad public attitude has contributed to the failure of punishment in the present system. Once a person has been imprisoned he is stigmatized in the same way as a person who had been in a tuberculosis sanatorium was often stigmatized in the past. Ex-inmates often find it so difficult to face this stigma and get and hold a job, so that inspite of their best intentions to go " straight ." they feel forced to return to criminal activities. It is suggested that the public should be educated by, if necessary ,giving public lectures on " prison and after prison". The lectures should stress the fact that an ex-convict is a person just like any one of us and that since he was sent to prison to reform he must have learnt a lesson, and therefore should be accepted back in his society without prejudice.

To repeat, it is believed that unless the government address&itself to the above suggestions the crime of theft will continue to increase however rigorous the punishment may be.

CHAPTER FOURCONCLUSIONFootnotes

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## CRIME KNOWN TO THE POLICE 1967-1976- IN THE WHOLE REPUBLIC

## TOTAL NUMBER OF CASES REPORTED BY CRIME AND BY YEAR

Offences	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
Murder(including attempt)	509	529	585	606	645	756	874	878	912	925
Man-slaughter	7	8	5	9	5	171	233	169	157	179
Rape(including attempt)	178	256	241	238	271	290	257	254	294	228
Assault	5,876	6,872	7,406	8,560	9,268	11,046	11,708	11,576	11,946	12,518
Other Offences against the person	1,041	1,026	896	890	860	974	1,043	1,055	985	1,086
Robbery & allied offences	2,354	2,278	1,096	2,287	3,164	3,720	3,120	3,941	4,562	4,573
Breakings	7,424	6,947	6,614	5,744	8,092	9,657	10,366	12,160	13,455	14,008
Cattle Theft	2,284	1,990	1,930	1,906	2,292	2,165	1,978	1,969	1,863	1,568
Theft of other stock	1,398	1,172	1,218	1,315	1,418	985	724	635	645	624
Theft over ₹400/=.	1,383	1,477	1,296	1,513	2,092	2,860	3,153	4,276	4,725	4,755
Other Thefts	7,621	6,957	6,585	6,921	8,639	8,714	9,783	12,114	13,412	13,406
Theft from vehicles	2,289	2,584	1,827	1,973	3,122	4,023	3,747	3,356	3,683	2,905
Theft of Bicycles	2,744	2,012	1,731	1,858	1,859	2,235	1,900	1,942	1,837	1,520
Theft of Produce	413	305	403	369	541	467	400	365	468	814
Other offences against property	3,311	2,042	2,756	2,989	3,306	3,992	4,193	4,855	4,936	5,405
All other penal code offences	3,809	3,784	3,513	3,389	4,096	5,174	5,603	5,833	5,817	5,948
Total	42,659	41,039	38,702	41,567	49,668	57,229	59,082	65,378	69,695	70,467

Source: Criminal Investigation Department.

From: 1972 Cases under the Traffic Act Chapter 405, Section 46 started to be included under

REPORTED PENAL CODE CASES FROM 1967 - 1976 - NAIROBI AREA ONLY

TABLE 4:10

	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
Murder (including attempt)	17	25	22	25	40	60	52	66	44	42
Manslaughter	2	1	-	-	-	1	18	4	1	1
Rape (including attempt)	32	20	28	30	35	40	43	59	25	29
Assault	782	966	940	881	955	1151	738	790	652	875
Other offences Against the Person	69	62	60	64	60	78	70	66	54	51
Robbery and Allied offences	1029	1122	704	1177	1736	2016	1495	1714	1540	1681
Breakings	2051	2017	1881	1938	2205	3128	2857	2589	2202	2311
Cattle theft	19	7	9	11	7	16	13	34	14	40
Theft of other stock	18	25	13	36	27	35	30	11	19	22
Theft over K100/=.	692	795	671	878	1382	1813	1903	2228	1505	1610
Other thefts	1526	1433	1509	1541	1870	1809	1401	1616	1329	1136
Theft from vehicles	1502	1746	1156	1215	2198	3089	2755	2190	1749	1314
Theft of Bicycles	1138	716	596	544	643	681	512	491	307	269
Theft of Produce	10	38	24	16	13	24	5	15	14	1
Theft of Servant	349	365	314	447	553	572	644	810	628	72
Receiving stolen property	181	140	116	116	128	156	241	346	308	18
Other offences against property	382	393	448	548	653	742	645	644	515	64
All other Penal Code Offences	1002	919	605	626	673	725	662	663	588	65
<b>TOTAL</b>	<b>10801</b>	<b>10790</b>	<b>9096</b>	<b>10093</b>	<b>13178</b>	<b>16136</b>	<b>14084</b>	<b>14336</b>	<b>11494</b>	<b>1161</b>

SOURCE:

Criminal Investigation Department, Nairobi.

TABLE NO.2

PROJECTED POPULATION BY DISTRICT - NAIROBI

IN THOUSANDS

NAIROBI	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
	534	566	597	629	663	700	736	776	818	863	913
KISUMU (for comparison only)	414	438	450	469	487	508	528	550	573	598	626

Source: (Central Bureau of Statistics)  
(Ministry of Finance & Plan-  
ning).

TABLE 3

	1962	1969
Total	266,794	509,286
Male	109,806	303,219

Source: Statistic Division, Ministry  
of Finance & Economic Planning.

TABLE 4

(a)

Court, Place of Trial	Date of Sentence	Sentence	Offence Quoting Law & Section	Name convicted Under
1. R.M.Thika	18.11.60	4 months imprisonment	Theft sec. 270 of the P.C.	Peter Gachathi s/o Munyoro
2. R.M. Kiambu	16.6.61	<ol style="list-style-type: none"> <li>1. 1 year imprisonment</li> <li>2. one year imprisonment</li> <li>3. 9 months imprisonment</li> </ol>	<ol style="list-style-type: none"> <li>1. Forgery C/Sec. 345 of P.C.</li> <li>2. Uttering false Documents C/Sec. 349 of P.C.</li> </ol>	Peter Gachathi s/ Kinuthia.
			<ol style="list-style-type: none"> <li>3. Attempt to obtain money by false pretence Sec. 308 and 390 of the P.C.</li> </ol>	
3. A.C.Kigumo	18.7.62	Fd. Shs.150/= . or 4 months imprisonment	Theft cont. sec. 276 of the P.C.	Githire s/o Kinu
4. R.M. Thika at Fort Hall	6.11.62	12 months imprisonment and to pay \$240/= . to the complainant or 3 months imprisonment.	Obtaining money by false pretences C/Sec. 314 of P.C.	Peter Gacathi s/o Munyoro
5. A.C. Kandara	28.12.63	Fd. \$100/= . or 3 months .Extra-Mural Pencil Employment	Theft C/Sec. 275 P.C.	Peter Gachathi
6. A.C.Kandara	29.2.64	Fd. \$500/= . or 6 months imprisonment	Theft of Radio C/Sec. 275 of P.C.	Peter Gachathi
7. A.C.Kandara	28.2.64	Fd. \$500/= . or 6 months imprisonment	Escape from Lawful custody C/S. 123 of the P.C.	Peter Cachathi s/o Munyoro



Court ,Place of Trial	Date of Sentence	Sentence	Offence Quoting Law & Section	Name convicted under
3. R.M.C Thika	30.12.64	One year imp.	Obtaining goods by false pretences	Peter Gachathi s/o Munyoro
9 R.M. Thika at	15.4.65	2 years imprisonment on each count.Sentence to run concurrently.	Obtaining money by false pretences C/S.315 of the P.C. 2. _____ do _____ 3. _____ do _____	Peter Gachathi s/o Munyoro
10. R.M. Thika	4.8.67	4½ yrs. and 12 strokes	Theft of stock C/S. 278 of P.C.	Peter Gachathi s/o Munyoro
11. D.M. Kiharu	5.7.71	1. 6 months imp. 2. Fd. \$450/= . or 6 months imp.	Stealing of good C/S.275 P.C.	Peter Gachathi s/o Munyoro
12. S.R.M. NAIROBI	23.8.72	Fd. 200/= . or 100 days imprisonment.	Obtaining credit by false pretences C/S 316(a) of P.C.	Peter Gachathi s/o Kinuthia
13 R.M. Thika	2.11.72	Fd. 1,300/= . or 9 months imprisonment	Obtaining goods by false pretences c/s. 313 of P.C.	Peter Waiganjo Kinuthia
14 D.M.III Kiharu	12.2.73	6 months imprisonment without fine	Escape from a lawful custody C/S. 123 of P.C.	Stephen Waiganjo Gachathi
15 SRM NAIROBI	23.8.73	Fd. \$200/= . or i.d. 100 days imprisonment	Obtaining credit by false pretences C/S. 313 of P.C.	Peter Gachau

A(c)

Court, Place of Trial	Date of Sentence	Sentence	Offence Quoting Law & Section	Name convicted Under
16 R.M. Kiambu	10.12.73	Fd. 250/=.	Obtaining by false pretences	Peter Gachau
17 R.M. Muranga	31.174	3 years imprisonment with hard labour	Obtaining by false pretences C/S 313 of the P.C.	Peter Gachathi c/o Munyoro
18 R.M.'s Kiambu	25.2:77	12 months imp. Order to pay 400/= to the complainant	Stealing C/S. 275 of P.C.	Peter Gachathi Kinuthia
19. D.M.III	11.6.78	Fd. \$600/= i.d. 6 months imp.	Obtaining money by false pretences C/S. 313 of the P.C.	Peter Josephat

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