

JUVENILE JUSTICE IN ZIMBABWE: THE NEED FOR POLICY REFORM.

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ABSTRACT

This study highlights the weaknesses of the juvenile justice system in Zimbabwe and makes a case for law reform. It is the author's contention that whilst juvenile justice entails balancing two important considerations, namely the need to protect society against criminal behavior and the need to pay special attention to the personal circumstances of the offender with a view to promoting his wellbeing, the disposal however is heavily weighted in favour of protecting society and thus emphasizing retribution and reparation. There is therefore little in the criminal justice system in Zimbabwe that seeks to promote the wellbeing of the juvenile offender in any meaningful way. Juvenile justice is not only about the treatment of children in conflict with the law, but also about the root causes of offending behaviour and measures to prevent such behaviour. It is about the manner in which police arrest or interrogates children, the way the judges and magistrates make decisions about guilt or sentencing, the role of the social worker in juvenile justice and the way the prison officials treat juveniles in their care. The findings suggest that the disposal of juvenile offender cases in Zimbabwe is unsatisfactory. Highlights of the research findings include: (1) there is no special investigation method for juveniles; (2) juveniles are mixed with adult offenders in prisons; (3) there is no legal representation for juveniles in the courts; (4) there is shortage of social workers to produce probation reports which are a pre-requisite before a magistrate passes a sentence; (5) the court environment is not friendly for juveniles as they are tried in adult courts; and (6) all the respondents reiterated that the juvenile justice system in Zimbabwe is in a very bad shape and needs to be revamped taking into consideration international best practices such as pre-trial diversion.

DECLARATION

I, Kudzai Jiri, do hereby declare that this dissertation is the result of my own investigation and research, except to the extent indicated in the acknowledgements, references and acknowledged sources or comments included in the body of the report, and that it has not been submitted in part or in full for any other degree at any other university or college.

Student's Signature

Date

Supervisor's Signature

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Much credit is also extended to those who have helped me through this journey, but I take responsibility for all the mistakes that may be encountered in this research project.

May God bless you all.

DEDICATION

To God the Almighty before everything else, for the gift of life, conscientious mind and perseverance I thank you. I dedicate this work to my beloved mother and good friend, Gladys Tovani.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
CPEA	Criminal Procedure and Evidence Act
CRC	Convention on the Rights of the Child
JDLs	Rules for the Protection of Juveniles Deprived of their Liberty
NICRO	National Institute for Crime Prevention and the Rehabilitation of Offenders
SPSS	Statistical Product and Service Solutions
VOM	Victim Offender Mediation
UDHR	Universal Declaration of Human Rights
UN	United Nations

CHAPTER 1

1.0 INTRODUCTION

1.1 INTRODUCTION

This chapter gives a general background to the study, statement of the problem, research objectives and questions, scope of the study, significance of the study and a chapter summary at the end. The chapter is also an introduction to the study as a whole. This study examines the disposition of cases involving juvenile offenders in Zimbabwe and looks at effective alternatives of dealing with juvenile offenders. The study has been motivated by the general assumption that the disposition of cases involving juveniles and young offenders is unsatisfactory. A number of juveniles are being unnecessarily prosecuted and incarcerated. This has resulted in a lot of problems which include juveniles being exposed to the influence of hard core criminals.

1.2 BACKGROUND OF THE STUDY

Everyday thousands of children around the world get caught in adult formal justice systems. Children are arrested and detained by police, tried by magistrates and sent to institutions, including prisons, under systems of justice which in many cases are set up for adults. Although there are explicit international guidelines on proper administration of juvenile justice, and on community-based conflict resolution and rehabilitation of juvenile offenders, children's rights and special needs are being ignored.

Like many other countries, Zimbabwe developed laws that regulate human interaction and thus serve to safeguard individual human rights and protect society generally and this formal system is mainly meant to cater for adults. These laws are therefore instruments for enforcing societal rules, which Hoghughi (1983:19) defines as ‘a set of behavioral expectations, rules or guides shared by an identifiable social group’. In cases of deviant behavior societal laws tend to emphasize more the protection of society or the maintenance of order or stability in society than protect the rights and welfare of individuals who have violated societal norms. This is critical for young offenders whose vulnerability makes them deserve special protection from society as well as from the formal justice system.

The punitive legislation in Zimbabwe has culminated in the disposition of cases involving juveniles and young offenders being unsatisfactory. A number of juveniles are being unnecessarily prosecuted and incarcerated. This has resulted in a lot of problems which include juveniles being exposed to the influence of hard core criminals. Sentencing options provided by the system have been applauded as semi-diversional but still they will have criminal records which will mark the rest of their lives. The procedures for the arraignment or indictment of juvenile offenders are generally the same as those of adult persons as outlined in the Criminal Procedure and Evidence Act. Minors can be prosecuted and sentenced by the ordinary courts.

However, it is widely accepted that, at one time or another, most youth will commit some sort of offence. Most will grow out of this behavior but, if they are caught and drawn into a retributive justice system they will be labeled as an offender and their

experience of the negative aspects of the criminal justice system will reinforce that identity.¹ The labeling perspective suggests that the process of arrest, trial and conviction changes the self image of the juvenile. He/she increasingly sees himself as a delinquent, act as if delinquent and others respond to him as if he has always been delinquent. The differential association theory suggests that criminal behavior occurs when individuals have more contact with delinquent than non-delinquent attitudes. In some instances juveniles commit offences as part of a process of growing up. In other instances juveniles commit offences due to socio-economic conditions they find themselves in. Young offenders need encouragement to become law abiding.

Incarcerating juveniles and other persons even for short periods usually results in them acquiring new criminal skills at a very early age and eventually becoming hard core criminals.² There is no clear cut dividing line between the philosophies and approaches underlying a general justice system and that to be applied to juveniles. The difference lies more especially in emphasis, in particular between weight given respectively to punishment and to securing the offender's social re-integration. The young offender is still in his or her formative years thus the need to save him from following the path of a criminal which might be introduced to him or her by incorporating him into the criminal justice system and calling him a criminal. The treatment of a child in conflict with the law should take into account among other things "the desirability of promoting the child's reintegration and the child's assuming a constructive role into society."

¹ Mays 1975 p. 12

² Brown 1997 p.14

Incorporating juveniles into the criminal justice system has the undesirable consequence that they acquire at a very early stage in their lives a previous conviction which seriously affects their future lives. The disadvantages of incarcerating a juvenile offender are put in a nutshell by Mutambikwa when he says, “ sending the younger offender under the age of 18 years to prison should be resorted to sparingly as a last resort because prisons in this country have little resources in money and trained manpower to organize and implement effective rehabilitation programmes of prisoner.”³

*“With the advent of social science to the arena of punishment however, a now clearly defined school of thought has arisen whose insistence on the reform of the convict as the central theme of criminal sanctions excludes or subordinates all other ends of punishment”*⁴

This study therefore aims to find alternate ways of dealing with juvenile offenders besides the prevailing punitive system that pertains in Zimbabwe.

1.3 STATEMENT OF THE PROBLEM

Every day, thousands of children around the world get caught in adult formal justice systems. Children are arrested and detained by police, tried by magistrates and sent to institutions, including prisons, under systems of justice which in many cases are set up for adults. At each and every stage of the formal justice system, children encounter problems and that is where the statement of the problem arises.

³ Mutambikwa 1998 p.4

⁴ Johnson et al p. 352

The disposition of cases involving juveniles and young offenders is unsatisfactory as a number of juveniles are being unnecessarily prosecuted and incarcerated. This has resulted in a lot of problems which include that juveniles are being exposed to the influence of hard core criminals. Sentencing options in the CPEA and the Children's Act have been applauded as semi-diversional but still they will have criminal records which will mark the rest of their lives. The main objective of this study is to fully divert juveniles and young offenders from the criminal justice system.

The police in effecting their arrests do not always afford juveniles the special care and protection they deserve. There is no special unit assigned to deal with juvenile crime- this falls under the general crime prevention unit. Units exist for drugs, theft from cars, and if an offense by a juvenile offender falls under any of these, any investigating officer of that unit deals it with.

As a department, Social Welfare is badly structured and understaffed. A social worker is involved in dealing with a lot of matters like dealing with refugees, welfare organizations, crèches, street kids, juvenile offending and other child welfare matters in that area. Thus probation work is only one part of the numerous duties of a social worker in an area, which is too big to be handled by one person. This quite obviously raises problems of delay, incomplete and scant investigations in all instances and particularly in probation work. As highlighted in the discussion above, brain-drain has not left the social work field alone.

Although legislation provides for remand of juveniles in the custody of their parents or guardians, this is not always possible. Some are of no fixed abode, and some are not willing to take them into their custody. Consequently, most remands have to be

effected to the remand homes set up and they are so few and they end up being remanded with adults where they do not cater for juveniles. Overcrowding is the major problem. Whether remanded in or out of custody, long delays have exacerbated the problem. Juvenile offenders spent long periods waiting the determination of their cases. There is also delay by social workers to compile the report. Consequently magistrates quite often, in petty offenses, resort to sentencing in their own discretion, without having had sight of the report. In serious cases long remands have been inevitable whilst waiting for the report. This is totally against the best interests of the child whose right to a speedy trial is paramount and it is inconsistent with the principles of juvenile justice.

The formalistic approach is thus failing to protect children's rights. Even for juvenile offender, who has a whole life ahead of him, to have criminal record can scar the rest of his life. If possible, there should be no trials for young offenders, serve for recidivists and those who commit serious crimes.

Where custodial sentences are imposed the problems encountered are sometimes those of overcrowding. The institutions and probation homes are often stretched to their limits, being required at any given time to accommodate more juveniles than their holding capacity. Because of large numbers of juvenile offenders, there is no more individuality. There is no longer individualization of treatment in disposal methods and options are constrained by availability of facilities. This is obviously undesirable where the case does not warrant imprisonment and where the child needs institutional care in order to achieve his rehabilitation.

This therefore calls for research in this area and the research will add to the wealth of knowledge on juvenile justice and hopefully policy makers will take it up for implementation.

1.4 HYPOTHESIS

The Government of Zimbabwe could improve its juvenile justice delivery system by utilising international best practices on juvenile justice such as pre-trial diversion. However, this can only be done if Zimbabwe reforms its juvenile justice policies.

1.5 RESEARCH OBJECTIVES

The following are the objectives of the study:

- a) To analyse and critique legislative provisions in relation to juvenile justice in Zimbabwe;
- b) To establish how juvenile offenders are handled at every stage of the criminal justice system in Zimbabwe ; and
- c) To determine alternative rehabilitative and educational ways of administering juvenile justice in Zimbabwe.

1.6 RESEARCH QUESTIONS

The following research questions will be answered:

- a) What are the legislative provisions in relation to juvenile justice in Zimbabwe?
- b) How are juveniles offenders handled at each stage of the criminal justice system?

- c) What alternative rehabilitative and educational can be provided for the administration of juvenile justice in Zimbabwe?

1.7 IMPORTANCE OF THE STUDY

The study will contribute to the national and global body of knowledge by providing new findings to the study area. It will also provide solutions which can mitigate the national problems of the unsatisfactory delivery of juvenile justice in Zimbabwe.

1.8 DELIMITATION OF THE STUDY

This study will only focus the legislative provisions with regards to juvenile justice system in Zimbabwe. The main thrust will be on disposition of juvenile cases in Harare, Zimbabwe, from arrest, court proceedings, and incarceration in prisons. Sentencing options will be explored in order to divert children from the formal judicial system.

1.9 DISSERTATION OUTLINE

This dissertation comprises five chapters that are structured in the following way:

Chapter 1 introduces the study and provides a background to the study by highlighting the research problem and the background of the organization under study. It also sets out the objectives of the study, research questions, research proposition, justification and scope of the study.

Chapter 2 is literature review which explores what other publications have said on juvenile justice. National legislation with regards to juvenile justice will be outlined, together with international best practice provisions on the subject. The chapter provides a platform for the discussion of results in Chapter 4.

Chapter 3 discusses the research methodology of the study, which includes, among other things the selection of research philosophy, approaches and strategies. It also covers sampling and data collection methods used in the study.

Chapter 4 deals with data presentation, analysis and interpretation of the research findings.

Chapter 5 concludes the study and offers recommendations and areas for further research.

1.10 CHAPTER SUMMARY

The current legislation on juvenile justice in Zimbabwe is punitive in nature. The disposition of cases in Zimbabwe has been unsatisfactory, with juveniles unnecessarily incarcerated. The main aim of this research is to advocate ways of dealing with juveniles extra-judicially. Alternatives should be rehabilitative and educative to the juvenile, at the same time making them to take responsibility of their actions.

The findings of the study, if accepted, will be of significance to the Government of Zimbabwe in providing a human rights based approach of dealing with juveniles.

The next chapter gives an account of what literature says on juvenile justice.

CHAPTER 2

2.0 LITERATURE REVIEW

2.1 INTRODUCTION

This chapter explores what literature says on the research topic. This chapter will present key national and international rules and guidelines that provide the framework for proper administration of justice and the mechanisms for enforcing them. It then looks at the gaps that exist in Zimbabwe between these frameworks and the actual situation on the ground. Issues that will be covered include the following:

- What is a juvenile?
- What is juvenile justice?
- Theoretical Framework
- International Framework on the administration of juvenile justice
- National Framework on the administration of juvenile justice

A literature review is a critical analysis of a segment of a published body of knowledge through summary, classification and comparison of prior research studies and theoretical literature (University of Wisconsin, 2009). Hart (1998) defines it as the selection of available documents on the topic, which contain information, ideas, data and evidence and the effective evaluation of these documents in relation to the research being carried out. From these definitions, literature review is a critical analysis of existing publications that are relevant to the area of study.

2.2 WHAT IS A JUVENILE?

Before delving into the subject matter of juvenile justice, it is particularly important to define the term juvenile. A juvenile is a young person “below the age of 18 years dealt with in terms of the Children’s Act [Chapter 5:02] or who falls foul of the law and comes before the courts.”⁵ In Zimbabwe, a person attains the legal age of majority at 18 years in terms of the Legal Age of Majority Act. Any person below the age of majority may be defined as a child or juvenile and as such may lay claim to the rights accorded to juveniles by the law.

2.3 JUVENILE JUSTICE DEFINED

According to Roy (2001) children justice, or juvenile justice as it is often called, is about not only the treatment of children in conflict with the law, but also about the root causes of offending behaviour and measures to prevent such behaviour. There are many aspects of a juvenile justice system: the people involved in it, the way they act, the procedures involved and other facilities. For example, it is about the manner in which police arrest or interrogates children, the way the judges make decisions about guilt or sentencing, the living, educational, recreational and safety conditions in detention facilities and programmes for rehabilitation and reintegration (Beijing Rules).

As stated earlier, many children who come into conflict with the law are treated as adult criminals, in justice systems that are abusive and that deny children their basic rights. This failure of the justice system to address the special needs of children places young people at risk and creates problems when they re-enter society as young

⁵ Criminal Law (Codification and Reform) Act [Chapter:9.23]

adults. It is not enough to merely try to reform a system that was designed for adults. Fundamental shifts in policy and practice are needed to ensure that the protection of children's rights is given priority in the design of a juvenile justice system, and that the system operates so that the best interests of the child are always taken into account. Each component of a juvenile system should, in its facilities and its mode of functioning, protect the rights and welfare of the child (Abramson, 2001).

The process of going through the formal criminal justice system can be disturbing for children. The UNCRC and other key international rules and guidelines which provide the framework for the proper administration of juvenile justice state that effort should be made to keep young people out of the formal justice system and to make use of alternatives wherever possible. Once a young person has been branded a criminal by going through the formal justice system, they are more likely to remain criminals. Young people who are diverted away from the criminal justice system have much lower reoffending rate, and this is particularly the case with first-time offenders (Justice, 2000).

2.4 THEORETICAL FRAMEWORK

Governments have several theories to support the use of punishment to maintain order in society. Theories of punishment can be divided into two general philosophies: utilitarian and retributive. The utilitarian theory reiterates that punishment is justified by crime prevention. The theory seeks to punish the offenders to discourage, or deter future wrong doing. The basic theories on why punishment is done are: deterrence (to keep them from doing it), incarceration (to keep those who do it away from the society), rehabilitation (to help those who deserve it) and

retribution (because they deserve it). Any form of punishment should fall in line with any above mentioned theory of punishment. The retributive theory seeks to punish offenders because they deserve it.

Under the utilitarian philosophy, laws should be used to maximize the happiness of society. Because crime and punishment are inconsistent with happiness, they should be kept at minimum. Utilitarians understand that a crime-free society does not exist, but they endeavor to inflict only as much punishment as is required to prevent future crimes. The utilitarian theory is “consequentialist” in nature. It recognizes that punishment has consequences for both the offender and society and holds that total good produced by the punishment should exceed the total evil. In other words, punishment should not be unlimited.

Under this philosophy, laws that specify punishment for criminal conduct should be designed to deter future criminal conduct. Deterrence operates both at general and specific levels. General deterrence means that punishment should prevent people from committing criminal acts. The punishment serves as an example to the rest of society, and it puts others on notice that criminal behaviour will be punished. Specific deterrence means that the punishment should prevent the same person from committing crimes. Specific deterrence works in two ways. First, an offender may be put in jail or prison to physically prevent him or her from committing another crime for a specific period. Second, this incapacitation is designed to be so unpleasant that it will discourage the offender from repeating his/her criminal behaviour.

Rehabilitation is another utilitarian rationale for punishment. The goal of rehabilitation is to prevent future crime by giving offenders the ability to succeed

within confines of the law. Rehabilitative measures for offenders usually include treatment for afflictions such as mental illness, drug addiction and chronic violent behaviour. It includes the use of educational programs that give offenders the knowledge and skills needed to compete in the job market.

The counterpart to utilitarian theory of punishment is the retributive theory. Under this theory, offenders are punished for criminal behaviour because they deserve punishment. Criminal behaviour upsets the peaceful balance of society, and punishment helps to restore the balance. The retributive theory focuses on the crime itself as the reason for imposing punishment. Where the utilitarian theory looks forward by basing punishment on social benefits, the retributive theory looks backward at the transgression as the basis of punishment. According to Morris (1986), *“regardless of whether punishment has any deterrent value, criminals “deserve” to be punished to rectify the imbalance in the distribution of benefits and burdens. Punishment of the offender restores equality between the offender, the victim and the society”*.

There are different moral bases for retribution. To many retributivists, punishment is justified as a form of vengeance: wrongdoers should be forced to suffer because they have forced others to suffer. This ancient principle was expressed succinctly in the Old Testament of the Judeo-Christian Bible: *“When a man causes a disfigurement in his neighbour....it shall be done to him, fracture for fracture, eye for eye, tooth for tooth...”*

Mainstream criminal justice systems are based on the idea of retribution: that is, punishment for an offence committed. Restorative justice on the other hand

emphasises the importance of restoring the balance of a situation disturbed by crime or conflict and making good the harm caused to the individuals concerned. An overview of the differences between restorative and retributive justice is given in the following table:

Table 1: Differences between restorative and retributive justice

Retributive justice	Restorative justice
Crime defined as a violation of the law of the state	Crime defined as violation of the rights of one person by another
Focus on establishing blame, on guilt; on the past (did they do it?)	Focus on problem-solving, on liabilities and obligations in future (what should be done?)
Adversarial relationships and process	Dialogue and negotiation
Imposition of pain to punish and deter/prevent	Restitution as a means of restoring both parties: reconciliation/restoration as a goal
One social injury replaced by another	Focus on repair of social injury
Responsibility for action directed from the state to offender :- victim ignored-offender passive	Victim's and offender's roles recognised in both problem and solution:- victim's rights/needs recognised-offender encouraged to take responsibility
Offender accountability defined as taking punishment	Offender accountability defined as understanding impact of action and helping decide how to make things right

Response focused on offender's past behaviour

Response focused on harmful consequences of offender's behaviour.

Source: Justice (2000)

In Zimbabwe, whilst juvenile justice entails balancing two important considerations, namely the need to protect society against criminal behavior and the need to pay special attention to the personal circumstances of the offender with a view to promoting his wellbeing, the disposal however is heavily weighted in favour of protecting society and thus emphasizing retribution and reparation. There is therefore little in the criminal justice system in Zimbabwe that seeks to promote the wellbeing of the juvenile offender in any meaningful way.

Like many other countries, Zimbabwe developed laws that regulate human interaction and thus serve to safeguard individual human rights and protect society generally and this formal system is mainly meant to cater for adults. These laws are therefore instruments for enforcing societal rules, which Houghugh (1983:19) defines as 'a set of behavioral expectations, rules or guides shared by an identifiable social group'. In cases of deviant behavior societal laws tend to emphasize more the protection of society or the maintenance of order or stability in society than protect the rights and welfare of individuals who have violated societal norms. This is critical for young offenders whose vulnerability makes them deserve special protection from society as well as from the formal justice system.

2.5 THE INTERNATIONAL FRAMEWORK

This section presents the key international rules and guidelines that provide the framework for the proper administration of juvenile justice and the mechanisms for enforcing them. The instruments highlighted in this section can be used in many different ways including; as a measure or evaluative tool to look at national legislation and as an advocacy tool in showing shortcomings of national legislation in developing new policies and laws.

Globally, there is increasing recognition that children and young people should be dealt with differently to adults. This is further explained in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice otherwise known as the “Beijing Rules”. A few countries in the region are already implementing proper juvenile justice through diversion programmes and these include South Africa, Malawi and Uganda. Zimbabwe’s international obligation to implement a diversion programme is also required under two key treaties which have been ratified by the Government which are the African Charter on the Rights and Welfare of the Child and the United Nations Convention on the Rights of the Child.

Although the rights of young persons in conflict with the law should be seen against a wider backdrop of human rights, there are several international instruments which have a direct bearing on the subject. These include the United Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC), the United Nations for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the United Nations Standard Minimum Rules for the

Administration of Juvenile Justice “Beijing Rules” and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

2.5.1 United Nations Convention on the Rights of the Child (CRC)

Zimbabwe signed and ratified the CRC on 11 September 1990. This effectively means that it is bound by all provisions in this treaty. Some other treaties which have been ratified since then include the ACRWC, the Beijing Rules, the Riyadh Rules and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. According to Article 40 (3) of the CRC, it provides that ***“State parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as accused of or recognised as having infringed the penal law...”*** It is in this light that many countries including Zimbabwe have set up reformatory homes.

Article 37 (b) of the CRC provides that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used as a measure of the last resort shortest appropriate period of time. Similar sentiments are also echoed in section 19 of the Beijing Rules which provides that the placement of a juvenile in an institution shall be a disposition of the last resort and for the minimum necessary period. Section 19 of the Beijing Rules aims at restricting institutionalisation in two regards. The rule therefore makes the appeal that if a juvenile must be institutionalised, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for the confinement and bearing in mind the different kind of offenders, offences and institutions. In fact, priority should be given

to “open” and not closed institutions. Furthermore, any facility should be of a correctional nature rather than of a prison type.⁶

Article 37 of the CRC also deals with the issue of torture and deprivation of liberty and provides among other things that: “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be only used as a last resort and for the shortest appropriate period of time. The Article further states that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person” and goes on to say that *‘every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so....’*

Article 40 of the CRC more specifically covers the rights of all children alleged as, accused of, or recognised as having infringed the penal law. Thus it covers treatment of the child from the moment an allegation is made, through investigation, arrest, charge, any pre-trial period, trial and sentence. The Article requires state parties to promote a distinctive system of juvenile justice with specific positive rather than punitive aims. It details a list of minimum guarantees for the child and it requires state parties to set a minimum age of criminal responsibility, to provide measures for dealing with children who may have infringed the penal law without resorting to judicial proceedings and to provide a variety of alternative dispositions to institutional care.

⁶ General Resolution 40/33 of 29-11-1985

2.5.2 United Nations Standard Minimum Rules for the Administration of Juvenile Justice “Beijing Rules” (1985)

The Beijing Rules provide guidance on protecting children’s rights and respecting their needs when developing separate and specialised systems of juvenile justice. They were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights and child development approach.

Part 5 of the Beijing Rules cater for institutional treatment. Section 26 has the objectives of institutional treatment which are to provide care, protection, education and vocational skills with a view to assisting the juveniles to assume socially constructive and productive roles in society. Subsection 3 provides that juveniles should be kept separate from adults at the institution. Subsection 6 states that “Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalised individuals, with a view to ensuring that they do not leave the institution at an educational disadvantage.”

2.5.3 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (1990)

The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social reintegration. Prevention is seen as not merely a matter of tackling negative situation, but rather a means of promoting welfare and well-being.

More particularly, countries are recommended to develop community-based interventions and programmes, to assist in the prevention of children coming into conflict with the law and to recognise that depriving children of their liberty should be utilised only as a means of last resort.

The Riyadh Guidelines recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused. It advocates a multidisciplinary and intersectoral approach to the prevention of children coming into conflict with the law and recognises children to be full participants in society.

2.5.4 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

These rules, known as the JDLs, set out standards applicable when a juvenile (any person under the age of 18) is confined to any institution/facility (whether this be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence, or simple because the juvenile is deemed ‘at risk’) by order of any judicial, administrative or other public authority. In addition, these rules include principles that universally define specific circumstances under which children can be deprived of their liberty, emphasising that deprivation of liberty must be a means of last resort, for the shortest possible period of time, and limited to exceptional cases. The JDLs serve as an internationally accepted framework intended to counteract the detrimental effects of

deprivation by ensuring respect for the human rights of juveniles and ensuring the dignity and welfare of the children is upheld while in custody.

Section 12 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides that juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programs which should serve to promote and sustain their health and self respect, to foster their sense of responsibility and to encourage those attitudes and skills that will assist them in developing their potential as members of the society.

2.5.5 African Charter on the Rights and Welfare of the Child (ACRWC)

The African Charter on the Rights and Welfare of the Child provides that the essential aims of treatment of every child during trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation. Section 2 (b) provides that “State parties to the present Charter shall ensure that children are separated from adults in their places of detention or imprisonment.” It is in the light of the above mentioned provisions in different international treaties that particular institutions will be analysed to establish whether such facilities match the international standards, taking into account the fact that Zimbabwe is a signatory to a number of important international treaties.

2.5.6 Other international instruments

Two other international documents worth mentioning are:

- Standard Minimum Rules for the Treatment of Prisoner (1995), which first established the principle separation of young people from adults in custodial facilities.
 - UN Minimal Rules for Non-Custodial Measures: the ‘Tokyo Rules’ (1990), which are intended to promote ‘greater community involvement in the management of criminal justice, specifically in the treatment of offenders’ and to ‘promote among offenders a sense of responsibility towards society’.
- The rules cover pre-trial, diversion, sentencing and post-trial issues.

Finally, the entire framework for the protection of children’s rights should be viewed in the wider context of human rights protection as embodied in the Universal Declaration of Human Rights (UDHR) of 1950 and the protection framework by the UN. In particular, attention should be paid to the principles stated in the International Covenant on Civil and Political Rights (1966), which prohibits the death penalty for crimes committed when under the age of 18 (Article 6.5) and states specifically that in ‘the case of juvenile persons, the [court] procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation’ (Article 14.4).

According to Abrahamson (2001), despite the elaborate international framework highlighted above, the fact remains that there is a gap between this and the real situation on the ground. In many countries there is inadequate legislation, and where an appropriate legislation exists, it is not properly implemented. Too many children come into contact with the formal criminal justice system unnecessarily and, once within the system, they are badly treated. There is insufficient use of alternatives;

community-based measures are not well known and not promoted. Although it has been long since the UNCRC came into force, the administration of justice around the world is far from being satisfactory. Juvenile justice remains neglected issue in terms of government's reporting of the situation in their countries and, more crucially, in terms of the reality on the ground.

2.6 NATIONAL FRAMEWORK ON THE ADMINISTRATION OF JUVENILE JUSTICE

There were three main legal instruments that deal with young offenders in Zimbabwe, namely the Criminal Procedure and Evidence Act (Chapter 9:07), the Children's Act [Chapter 5:02], and the Criminal Law (Codification and Reform) Act (Chapter 9:23) (Code).

2.6.1 The Children's Act [Chapter 5:02]

The Act replaced the Children's Protection and Adoption Act [Chapter 33] enacted on 27 October 1972 which provided for the establishment of juvenile court. Section 3(1) of this Act empowers the Minister of Justice to establish a children's court anywhere in Zimbabwe. Further, section 3(2) state that every Magistrate court should be a children's court for the area of jurisdiction for which no juvenile court has been established. The officers of this court comprise of a magistrate, assessors when necessary, a children's court assistant to conduct the prosecutions at the public instance and a probation officer appointed in terms of section 46 of the Act. Section 5 states that this court is not bound by any rules relating to civil or criminal

proceedings and, unless otherwise directed, shall be conducted in such a manner as appears to the presiding officer to do substantial justice.

2.6.2 Jurisdiction of the Children's Court

The court not only deals with juvenile offenders, but also children in need of care, the adoption of children and related matters. In the definition section, a 'child' refers to a person under the age of sixteen years and includes infants, who are defined as a person under the age of seven. A minor is referred to as a person under the age of twenty- one years. However, section 3 of the Legal Age of Majority Act No.15 of 1982 changed the majority age to eighteen years.

In terms of criminal procedure, the court does not have jurisdiction over infants. This is because of the acceptance in statute law of the common principle of *doli incapax*. This is to the effect that children under the age of seven have an absolute immunity to criminal prosecution since they are deemed to be absolutely incapable of committing crimes as they cannot form the necessary *mens rea*. This is applied to all categories of crime and even when it can be proved that the child in question knows the wrongfulness of what he was doing.

In relation to this is the presumption that children between the age of seven and fourteen lack criminal capacity. If the prosecution cannot establish that the child's mind is sufficiently mature to understand and that he does not understand the wrongfulness of the action, the presumption can be successfully rebutted. The State is then required to prove that the essential elements of the crime are present. In terms of offences, the children's court can hear all except the indictable offences.

In terms of section 4(7) of the Act, every duly appointed prosecutor is an *ex-officio* children's court assistant of any children's court held within any province. Such assistant has the right to adduce evidence relevant to the proceedings and cross-examine witnesses giving evidence there. He also, in terms section 5(4), has the duty to inform any witness that he has the right to refuse to answer any incriminating questions put to him. In this way the Act seem to endorse a degree of participation by the presiding officer, perhaps for the protection of the juvenile.

Section 5(5) directs the proceedings to be held *in camera* and, in order to protect the privacy of the juvenile the name, address, school or any other information likely to reveal the identity of such juvenile cannot be published. This can only be disclosed if the presiding officer feels that it is in the public interest to do so.

The Children Act, to an extent, complies with the stipulations of the Beijing Rules. Rule 7 provides that a juvenile has a right to be legally represented, has a right to have their parent or guardian present and the right to confront and examine witness. However, although the right to legal representation is provided in the Act, in practice it is very rare as it is expensive. As read with the Criminal Procedure and Evidence Act (Chapter 9:07) which governs the trial procedures, the Children's Act fulfils the aims of juvenile justice by providing a procedural infrastructure which seeks to spare the juvenile from the harsh experience of a full criminal trial. The various disposal orders this court can make are detailed in section 21 and they include probationary supervision, foster care and placement in a training institution.

The Children's Act emphasizes the protection of children while Criminal Law (Codification and Reform) Act emphasizes punishment of offenders and the

protection of society from bad elements. Part 1 of the Code embodies the issue of criminal capacity and young offenders have been categorized into three groups. First is the age group of those aged below seven years, next are those above seven but below fourteen and lastly is the group comprising those above fourteen years. The age differences entail a difference in the way the children in conflict with the law are handled.

2.6.3 Children below 7 Years

According to the Criminal Law (Codification and Reform) Act a child below seven years shall be deemed to lack criminal capacity and shall not be tried for and convicted of any crime, which he or she is allegedly to have committed before attaining that age. Such a child cannot be prosecuted even where prosecution can prove that they appreciated.

2.6.4 Children between 7 and 14 Years

Section 7 of the Code provides that a child who is over the age of 7 years but below 14 years at the time of committing the alleged crime shall be presumed, unless the contrary is proved beyond reasonable doubt;

- i. To lack the capacity to form the intention necessary to commit the crime; or
- ii. Where negligence is an element of the crime concerned to lack the capacity to behave in the way that a reasonable adult would have behaved in the circumstances.

The onus is on the state to establish beyond reasonable doubt that the accused child was mature and did understand that the act constituting the offence was wrongful.

Our local courts have taken the approach that children of this age should not be prosecuted for mere childish pranks but for criminal acts. However, the consent of the Attorney General should be sought before such a child is prosecuted.

According to section 230 of the Code, which deals with defense of minority it is provided that the presumption of criminal capacity that applies to a child between 7 and 14 can be rebutted if, at the time of the commission of the crime for which the child is charged, the child was sufficiently mature;

- To understand that his or her misconduct was unlawful or morally wrong, and
- To be capable of conforming with the requirements of the law

In deciding whether a child was sufficiently mature to have required the understanding and capacity, the court must take into account all relevant factors including the following;

- a) the nature of the crime the child is charged,
- b) the child's general maturity and background
- c) the child's knowledge, education and experience
- d) the child's behaviour before, during and after the conduct which forms the basis of the charge.

Simply by rebutting this presumption, the state, of course, has not proved that the child had the requisite state of mind. After successfully rebutting the presumption of incapacity for a crime of intention the state would obviously still have to prove that the child in question did actually form the intention and for a crime of negligence that the child did actually act in a negligent fashion.

2.6.5 Children above 14 Years

These young offenders enjoy no presumption of incapacity to commit crimes. This means that they are deemed capable of violating the law and are liable for their criminal conduct in the same manner as adults. However, although there is no presumption of incapacity, the court may still find that a particular young person of tender years was so immature that he was unable to, and did not form the requisite intention. It should be noted that the question of *doli incapax* is a subjective one. It is therefore very important to take heed of the professional opinion of the probation officer. In the case of S v C (a juvenile)⁷ it was held that,

“A court should be extremely slow and reluctant to subject a young person to the punishments prescribed for adults rather than to afford a young person the benefit of institutional care. The discretion as to which recourse to follow cannot be properly exercised if the magistrate does not call for the report and recommendation of the probation officer. While in some cases such a report is unnecessary, in most the failure to receive a report of a probation officer before exposing a child to adult punishment is a serious misdirection.”

2.7 THE JUDICIAL PROCESS

Having looked at the current legislation on children matters, nothing much has changed in terms of procedure. It is important to look at how the procedure operates in practice. While a special court has been set up in terms of legislation, in practice most juvenile criminal matters are dealt with in the ordinary criminal courts, compliance being made with special procedural requirements of the Children’s Act

⁷ 1997 (2) ZLR 395

and the Criminal Procedure and Evidence Act (CPEA), relating to juvenile trials. The children's court deals with convicted offenders who have been referred to it by an order of court made in terms of 327(1) (a) of the CPEA. It does not itself, carry out criminal trials. It can hold an enquiry into the circumstances of a juvenile offender who has been referred to it as a child in need of care.

Although a Children's Court has been established, it is not a court of first instance as cases have to be referred to the Magistrate courts and such referrals are only made upon the recommendation of the probation officer after conviction. It therefore follows that although the court exists, very few juveniles are brought before it. The vast majority appear before magistrates courts, which will hold the proceeding *in camera*.

Another critical issue in the magistrates' court is that most juveniles cannot afford a legal representation. Legal representation is vital because court proceedings are difficult to comprehend, particularly to juveniles. The court structure can also be intimidating to the child. The question arises therefore on whether justice can realistically be attained where the accused is unrepresented, confused and fearful. Clearly, the necessity for legal representation is greater where the person concerned is a juvenile.⁸ In the case of Powell v Alabama⁹, Sutherland J put it in this way:

“Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with the crime he is incapable generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence, left without the aid of counsel he may be put on trial without

⁸ Magade (1997)

⁹ US 45 (1932) p.68-69

proper charge and convicted upon incompetent evidence or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence even though he may have a perfect one. He requires the guiding hand of counsel in every step in the proceedings against him. Without it, though he may not be guilty, he faces the danger of conviction because he does not know how to establish his defence.”

Most juveniles represent themselves in criminal cases whereas the same juvenile would be regarded in a civil court as incapable of instituting or defending an action.

As highlighted in Chapter 1, thousands of children around the world get caught in adult formal justice systems. Children are arrested and detained by police, tried by magistrates and sent to institutions, including prisons, under systems of justice which in many cases are set up for adults. At each and every stage of the formal justice system, children encounter problems and that is where the statement of the problem arises.

When children are alleged to have infringed penal law, or are accused of or recognized as having infringed penal law, the importance of diversion (i.e., dealing with them outside the formal justice system) is clearly highlighted in international guidelines. Article 40.3 (c) of the CRC calls for, “whenever appropriate and desirable, measures for dealing with such children without resort to judicial proceedings, provided that human rights and legal standards are fully respected”.

The police are usually the first point of contact within the formal criminal justice system for children coming into conflict with the law. The action taken by the arresting police officer and any other police officers involved has the potential to change the child’s life in a positive direction, but this will depend on the attitudes,

beliefs, knowledge, skills and resources of the officers handling the case. Problems arise from the moment an allegation is made, through investigation, arrest, charge, any pre-trial period, trial and sentence, which is the focus of the survey to see how cases involving juveniles are being dealt with on the ground.

2.8 SENTENCING OPTIONS BY THE COURTS

Sentencing policies with regard to juveniles go beyond the absolute theory of punishment, which is retributive in nature. This theory requires that the offender should be punished in order to square off his debt to society and to mollify the injured party and other members of society. This theory thrives on the idea of just deserts and 'getting a taste of his/her own medicine'. On the other hand there are other alternatives of punishment, which translate into prevention, deterrence, both individual and general and reformation. Punishment as a preventative measure is justifiable primarily where the interests of society, as opposed to those of an individual are paramount, that is, when the offender is a danger to the society. However, in sentencing juveniles, the relative theories are more important, particularly the reformatory and deterrent aspects.

The criminal court trying a juvenile offender has available to it ordinary punishments in terms of section 336 of the Criminal Procedure and Evidence Act (CPEA). These courts have an additional range of sentencing options available to them. The options can be interpreted as semi- diversional. These are specified in section 351 of the CPEA and section 21 of the Children's Act. Severity ranges from cautioning or reprimanding the offender on the one hand to the imposition of a prison sentence on the other. The types of sentence can be placed into three categories namely;

- Non-custodial sentences, and
- Custodial sentences

2.8.1 Non-custodial Sentences

2.8.1.1 Payment of a Fine

Many young offenders are not employed; therefore when a fine is imposed upon them, the burden lies on the shoulders of their parents or guardians. There is virtually no or very little deterrent effect, as this serves no purpose on the rehabilitation of the juvenile offender.

2.8.1.2 Caution and Discharge

This is usually done where there are compelling reasons or where the offence is of a trivial nature or where the court believes that the juvenile acted out of character and is unlikely to appear the courts again. Under the procedure of caution and discharge, the accused person appears in court and is given a warning concerning his conduct and is then released. The caution has the effect of an acquittal except that a previous conviction is recorded.

2.8.1.3 Postponed or Suspended Sentence

At times the courts may impose a wholly suspended sentence. The most important factor considered is the nature of the offence and the age of the offender. If it is a crime such as petty theft the sentence incorporates that the offender will not commit a similar case involving theft for a special period, lest the suspended sentence is brought into effect. This is a bit deterrent since an individual lives in fear of

committing such a crime. The court in passing a sentence also considers the likelihood of whether or not the juvenile will commit a similar offence in the future.

2.8.1.4 Corporal Punishment

This sentence is only available for males. In recommending this punishment it should be remembered that a person's dignity is one of his valuable possessions, and the older he gets the more profoundly this dignity is affected by corporal punishment. The general guidelines in S v Maisa 1968(1) SA 271 should be kept in mind. They are that corporal punishment should be applied in exceptional cases for someone in or below the early twenties. Corporal punishment is seen as barbaric, inherently brutal, cruel, inhumane and degrading. The Constitution was amended and Act No.1 of 1992, now section 353 of the CPEA, introduced juvenile whipping. Corporal punishment was abolished before independence but was re-introduced just after independence.

2.8.1.5 Probation

Probation is a system whereby an offender is placed for a specified period under the supervision of a social worker. During this time the offender must keep in conduct with the person under whose supervision he has been placed and must follow the instructions given to him and he must generally be of good behaviour. It is provided in section 351(3)(a) of the CPEA and it states that the individual should be 19 years of age and less than 21 and should have been convicted of an offence other than murder, treason or rape. The period of probation is determined in line with the provisions of section 352 of the CPEA.

2.8.1.6 Community Service

This is a type of sentence that requires an individual to work without pay for a civic or non-profit organization. It is in doing such activity that it is deemed that the individual is repaying to the community for the offence he has committed. In Zimbabwe it is available for juveniles aged above sixteen and first offenders who are convicted for less serious offences punishable by a short-term imprisonment. Unlike imprisonment, which has very destructible effects, community service is far more constructive. The offender ends up learning a positive lesson from performing work for the community. The option is especially beneficial in that juveniles continue staying with their families whilst on punishment.

2.8.2 Custodial Sentences

2.8.2.1 Institutionalization

This is a process whereby juvenile offenders are placed in a home or an institution for correctional purposes. This is in terms of section 351 (1) of the Criminal Procedure and Evidence Act (CPEA), and section 20 (1) (v)-(vi) of the Children's Act. In Zimbabwe, section 99(1) of the Constitution constitutionally established the Prison Service, "for the administration of prisons in Zimbabwe and for the protection of the society from criminals through the incarceration and rehabilitation of offenders and their re-integration into society. Reformatory homes are places where children in conflict with the law are sent for institutional care. There is a worldwide move against keeping children in conflict with the law in any institution. This is clear in section 37 (b) of the Convention on the Rights of the Child (CRC) which reads;

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention and imprisonment of a child shall be used only as a measure of the last resort and for the shortest appropriate time.”

Shieffor (1997) maintains that institutionalization should be the last resort after everything has failed. The dilemma of incarcerating juveniles is stated by Lang¹⁰ very precisely when she says;

“At present, the children who find themselves in remand homes are like the proverbial round in a square hole. They simply do not fit in anywhere in the system falling to betwixt and between persons who should be in custody and persons who deserve to be out of custody.”

According to Magade¹¹ (1997), there should be emphasis on decarceration rather than incarceration of young offenders. Neither the youth nor society is served by the incarceration of young people. Once children are incarcerated this destroys any hope of positive development of these children into useful and productive members of society and it increases the risk of recidivism and the conversion of the youth into hardened criminals.

2.8.2.2 Imprisonment

Imprisonment is mainly imposed for serious offences such as murder and rape. It is extremely harsh and it should never be resorted to unless if it is absolutely necessary.

¹⁰ Lang 1993 p. 4

¹¹ Magade 1997 p.13

According to Walker¹² imprisonment can only be resorted to if the court is of the opinion that:

- The offender is unwilling or unable to respond to non-custodial penalties.
- The custodial sentence is necessary for the protection of the public, that is, if the offences are not simply dangerous but are so frequent and troublesome that a custodial sentence is necessary for the protection for the protection of the public.
- The offence was so serious that a non custodial cannot be justified.

It cannot be denied that there are certain when imprisonment will be necessary such as when the juvenile has been convicted of murder. However, for other non-serious offences imprisonment should be exercised with a caution.

2.9 THE NEED FOR REFORM

The prison system around the world faces a barrage of problems. Since the year 2000, service delivery in the Zimbabwe Prison Service has been on the decline and to this date the Service is still grappling with a myriad of challenges mainly resulting from low budgetary support, effects of climatic change and harsh economic conditions. As a result of these negative factors, the Service experienced among other adverse shortages of uniforms for both officers and inmates, shortage of food, inadequate accommodation, lack of transport and generally poor prison conditions. True to this day, the Service is still not able to meet some of its Constitutional mandate and human rights based ways of dealing with incarcerated persons such as

¹² Sentencing: Theory, Law and Practice, Butterworths, London 1985 p.310

the bringing of inmates for trial within stipulated time frames, provide adequate food and uniforms and other basic human rights.

According to Boone (2003), prisoners in most African prisons face years of imprisonment in often cramped and dirty quarters, with insufficient food allocations, inadequate hygiene, and little or no clothing or other amenities. There is a generally a veil of ignorance as to prison conditions which fuels neglect and abuse of Africa's incarcerated. It is therefore imperative to investigate African prisons and generate information about the issues affecting the continent's penal system, Zimbabwe included. Several common themes of human rights abuse emerge when condition in prisons are investigated, among them shortage of resources and good governance in prisons, overcrowding and poor conditions in prisons, failure to protect vulnerable groups such as women and children and lack of proper rehabilitation systems. According to Clifford (1969), overcrowding is the most pressing concern for African prisons which has led to a multitude of problems which have affected the prisoner's right to dignity in prisons and is very undesirable for juvenile offenders.

Large numbers of children in conflict with the law are socio-economic victims, denied their rights to education, health, shelter, care and protection. Many of them have had little or no access to education. The problem faced by children in conflict with the law was one of the priority areas for action set out by Kofi Annan, United Nations-Secretary General, in the document 'We the Children: End-decade review of the World Summit for Children, in 2001. He identified the following priority actions for the future:

- a) Legislation should be advanced to ensure that children are only deprived of their liberty as a last resort and for the shortest period possible. A minimum age of criminal responsibility should be established and due process ensured for all children involved with the justice system
- b) Alternative structures should be developed to deal with children without resorting to judicial proceedings, always providing that children's rights are respected and that restorative justice systems are encouraged so as to promote community involvement in victim –offender reconciliation.

There is need for reform in order to transform the children's court from a retributive institution to a reformative one. The starting point is to look at the redefinition of what constitutes criminal behaviour. Hoghughi (1983) calls for decriminalization of act currently defined as criminal or illegal in order to divert juveniles away from criminal courts. He further stresses that deviant behaviour of children within a defined age group should be seen as a manifestation of behavioral problems and such children need to be helped to work themselves out of behavioral problems.

It has been suggested that another way of avoiding the negative impact of a court appearance is to use the diversionary technique, which allows for the diversion of juveniles away from the crime and the criminal courts (Hoghughi 1983). This is a form of community participation in the control and treatment of deviant behavior. The United Nations (1986:7), putting a case for diversion pointed out that it 'serves to hinder the negative impacts of subsequent proceedings in a juvenile justice administration, for example, the stigma of conviction and sentence and having a

criminal record'. Midgey (1975) argues that there is a stigma associated with a court appearance and suggests that young offenders should be dealt with extra judiciary. It is therefore necessary to provide remedial and preventative services in the community.

As an increasing number of juveniles are processed through the formal judicial system, it becomes necessary to divert them away from this system and try as far as possible to keep juveniles in the community. This is necessary for a number of reasons which are listed below;

- Juveniles are often the victims of harsh socio-economic circumstances, which propel them into deviant actions. Incarceration will not help them to develop better ways of coping with their circumstances, but will simply reinforce their alienation from the wider community.
- Most of the offences committed by juveniles are minor, for example shoplifting or vandalism. While these should be taken seriously, juveniles are at an impressionable age and may be influenced to act more responsibly through strategies other than the punitive and retributive. Adolescence typically undergo a rebellious and defiant period while still maturing. Most will 'outgrow' their deviance and assume more responsible roles as they become older. Overreacting to juvenile delinquency may therefore be counterproductive and reinforce deviant tendencies.
- Incarceration of juveniles in police cells and prisons, apart from the fact that these institutions are already overcrowded, may lead to worsening

problems, e.g. emotional damage, contact with hardened offenders, and risk of contracting HIV virus if sexually assaulted while imprisoned.

As Muntingh & Shapiro (eds) (1994) point out, diversion can be described as the channeling of prima facie cases from the formal criminal justice system, on certain conditions, to extra judicial programmes, at the discretion of the prosecution. Diversionary options in no way intend to make offenders less accountable or responsible for their actions, but rather to provide offenders with the opportunity to rethink their lives without getting a criminal record. In principle, a case is eligible for diversion when it is not in the best interests of the offender, the victim, the criminal justice or society that he/she should be prosecuted or convicted. The primary aims of diversion can be identified as follows;

- a) To make offenders responsible and accountable for their actions
- b) To provide an opportunity for reparation
- c) To identify underlying problems motivating offending behavior through personalized services
- d) To prevent offenders from receiving a criminal record and being labeled as criminals as this, may become a self-fulfilling prophecy
- e) To open up the judicial process for educational and rehabilitative procedures to come into action to the benefit of all parties concerned
- f) To lessen the caseload on the formal judicial system

These alternatives are fully discussed in Chapter 5 as recommendations.

2.10 CHAPTER SUMMARY

In a nutshell, the above discussion shows some loopholes and disadvantages of the treatment of juvenile offenders under the present criminal justice system in Zimbabwe. There is need for change and this need for change is echoed by a number of authors. Magade (1997) states that “...there is need to emphasize more on restorative justice...which embodies the restoration of harmony between the young persons, the victim and society. There is also an urgent need to divert youth from the formal criminal justice system by pursuing vigorously the non-custodial alternatives...” Lang (1993) also echoes the sentiments that if a young person is dealt with under the criminal justice system or institutions which are identified in the public eye as being places where criminals are kept, society at large views, that person as a criminal. More importantly, the juvenile’s perception of himself is that he is a criminal and this is re-enforced if he mingles with actual convicted criminals. This labeling of a juvenile as a criminal is believed to be a major factor influencing juveniles to commit further crimes.

The next chapter deals with research methodology.

CHAPTER 3

3.0 RESEARCH METHODOLOGY

3.1 INTRODUCTION

This chapter examines the research methodology adopted in this study in order to address the research objectives as outlined in Chapter 1. It first outlines the philosophy that underpins the approach taken with the research, discussing the researcher's stance to research. The chapter then outlines the reasons for the adoption of a qualitative and quantitative method. It also provides an overview of the data collection methods used for the study, as well as the means used to analyse the data. The chapter concludes with sections on the limitations of the research and ethical considerations.

3.2 WHAT IS RESEARCH METHODOLOGY?

Crotty (1998) defines research methodology as the strategy, plan of action, process or design lying behind the choice and use of particular methods and linking the choice and use of methods to the desired outcomes. The choice of the research methodology is influenced by the researcher's theoretical perspective and also his attitude towards the ways in which the data will be used (deductive or inductive approach) (Gray, 2004). It should also explain the rationale behind the selection of the methods adopted (Crotty, 1998). The way in which research is conducted may be conceived of in terms of the research philosophy subscribed to, the research strategy employed and the research instruments utilized in the pursuit of the research objective(s) and solution to the research questions.

3.3 RESEARCH PHILOSOPHY/ PARADIGM

Paradigms are universally recognised scientific achievements that for a time provide model problems and solutions to a community of practitioners (Kuhn, 1962:63). They offer a framework comprising an accepted set of theories, methods and ways of defining data. There are two main research paradigms or philosophies namely; positivist and phenomenological. The table below shows how the two philosophies can be distinguished:

Table 2 : Research paradigms

	Positivist Paradigm	Phenomenological Paradigm
Basic Beliefs	The world is external and objective	The world is socially constructed and subjective
	Observer is independent	Observer is part of what is observed
	Science is value –free	Science is driven by human interests
Researcher Should	Focus on facts	Focus on meanings
	Look for causality and fundamental laws	Try to understand what is happening
	Reduce phenomenon to simplest elements	Look at the totality of each situation
	Formulate hypotheses and then test them	Develop ideas through induction from data
Preferred methods	Operationalising concepts so that they can be measured	Using multiple methods to establish different views of phenomena

include	Taking large samples	Small samples investigated in depth or over time
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Source: Easterby-Smith, Thorpe and Lowe 2002:27

Given the research problem as outlined in Chapter 1, the best fit was to follow the phenomenological paradigm. This was done recognizing the above as well as the following parameters identified by Hussey and Hussey (1997) for phenomenological paradigm:

- It tends to produce qualitative data: this would fit well with the area of study on juvenile justice.
- Data is rich and subjective: the qualitative data would be rich by nature, and the gathering process would be subjective due to the level of involvement of the researcher
- The location is natural: the setting for this research was in government departments rather than a laboratory setting.

3.4 RESEARCH STRATEGY

The purpose of this section is to indicate what type of study was undertaken to provide acceptable answers to the research problem. The research strategy alternatives are many. According to Leedy and Ormrod (2001), they include alternatives such as the creation of an experiment (common in pure scientific research); surveys (often used where large volumes of data are involved with quantitative methods of analysis); grounded theory (where the theory is generated by the observations rather than being decided before the study); ethnography (a phenomenological methodology which stems from anthropology, which uses

observed patterns of human activity); action research (where the research takes more of the form of a field experiment); modelling (where particular models are developed as the focus of the research activity); operational research (which looks at activities and seeks to understand their relationship, often with particular emphasis on operational efficiency), and case studies (which seek to understand social phenomena within a particular setting).

Given the nature of the research problem as outlined in Chapter 1, the researcher adopted the action research alternative as being the most appropriate for this research project where took more of a field experiment.

3.5 RESEARCH DESIGN

Research design is about how to conduct a study such that the information gathered is as true a representation of reality as possible and that similar results can be obtained if someone else comes and conducts the same study at a different time. According to Berg (2001), the difference between qualitative and quantitative research is that qualitative research refers to the meanings, concepts, definitions, characteristics, metaphors, symbols and descriptions of things, while quantitative research referred to the measures and counts of things.

Both qualitative and quantitative research design were used in this research. According to Bryman, (1988), the decision to choose a specific methodology should be based on its suitability to answer the research questions. Denzin and Lincoln (1998) asserted that qualitative research emphasises the process of discovering how social meaning is constructed and stresses the relationship between the investigator and the topic studied. Conversely, quantitative research is based on the

measurement and the analysis of causal relationships between variables. This study adopted the qualitative approach which is best when investigating respondents' feelings, opinions and other subjective variables.

The proposed research design was informed by the research purpose, questions, the proposed time frames and the researcher understood what would be practical given the scope of work. A mixed method approach combining both qualitative and quantitative methods with a stronger bias towards qualitative techniques was used. A survey study was conducted aiming to illustrate how juvenile offenders are handled in Zimbabwe, as well as contributing factors, impacts, and responses at individual and institutional levels. Quantitative data was collected through questionnaires and through statistics which were requested from the relevant offices such as the judiciary, the police and prisons.

Table 3: Comparison of quantitative and qualitative research approaches

	Quantitative	Qualitative
	<ul style="list-style-type: none"> - Seek to confirm hypotheses about phenomena - Instruments use more rigid style of eliciting and categorizing responses to questions 	<ul style="list-style-type: none"> - Seek to explore phenomena - Instruments use more flexible, iterative style of eliciting and categorizing responses to questions
Analytical objective	<ul style="list-style-type: none"> - To quantify variation - To predict casual relationships 	<ul style="list-style-type: none"> - To describe variation - To describe and explain relationships
Question	Closed – ended	Open – ended
Data format	Numerical (obtained by assigning	Textual (obtained from audiotapes,

<p>Flexibility in study design</p>	<ul style="list-style-type: none"> - Study design is stable from beginning to end - Participant responses do not influence or determine how and which questions researchers ask next - Study design is subject to statistical 	<ul style="list-style-type: none"> - Some aspects of the study are flexible (for example, the addition, exclusion or wording of particular interviews questions) - Participant responses affect how and which questions researchers ask next
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(Source: Mack *et al.*,2005:3)

3.6 STUDY POPULATION AND SAMPLE SIZE

The group that one wishes to research is called population in the study. Saunders and Thornhill (2003) defined pollution as the aggregate of the individual units of the analysis from which a survey will be derived. Therefore, the research setting in this study is Harare Province and the research targeted Police headquarters, Prison headquarters and the Judicial Service Commission for statistics on juvenile offenders. Questionnaires were targeted at officials from the above offices on the procedural aspect, to determine the way they handle juvenile offenders. Data was obtained from the Commissioner of Prisons, the Commissioner of Police and the Chief Magistrate. The number of participants varied from 3 to 9 per station or office depending on the response the researcher was getting from the authorities (estimated number of people for the whole sample was fifty (50).

3.7 SAMPLING METHODS

Sampling has been defined by Polit and Hungler (2009) as the process of selecting a portion of the population to represent the entire population. Zikmund (2003) argues

that an advantage of sampling is that samples are sufficiently accurate if they are properly selected. The size of the sample is an important parameter of the sample design since it affects the precision, cost and duration of the study. In selecting a sampling technique, the researcher was guided by the two broad sampling methods namely probability and non-probability sampling. According to Saunders, Lewis and Thornhill (2007), probability sampling methods include simple random sampling, systematic, stratified and cluster sampling while non probability sampling techniques include convenience sampling, snowball sampling and purposive sampling. Purposive sampling can further be divided into judgmental and quota sampling, according to Cooper and Schindler (2001).

Two sampling types were used in this survey, namely, purposive sampling method and snow ball method.

3.7.1 Purposive Sampling

Purposive sampling was used in this research where the researcher identified institutions where the research was going to be carried out i.e. Police authorities, Prison authorities and the Courts. The researcher identified respondents based on their known potential to provide useful information related to the subject of research. Purposive sampling was also used to identify key informants for interviews.

According to Saunders, Lewis and Thornhill (2007), purposive sampling is a non-probability sampling technique in which a researcher selects the sample based upon some appropriate characteristic of the sample members. A purposive sampling

approach was used to select a sample of those that are experts in certain aspects of the study.

3.7.2 Snowball Sampling

Besides purposive sampling, snowball sampling was used to select other respondents. This approach involves pre-selected respondents pointing evaluators to other respondents who may provide relevant and valuable information such as experts in the area of policies.

Respondents who participated in this study were split into three groups namely senior management, supervisors and non-supervisors. The design sample size distribution for each level was as follows:

Table 4: Sample size distribution for each level

Strata	Sample size	Pilot Study
Senior Management	5	1
Supervisors/middle management	20	3
Non Supervisors	25	4
Total	50	12

3.8 DATA COLLECTION TECHNIQUES

Data collection is an essential component to conducting research and according to O’Leary (2004), there is no method of data collection that is inherently better than another and therefore which data collection method to use depends upon the research

goals and the advantages and disadvantages of each method. In this study, two data collection techniques were used as relevant to the study's objectives and questions as outlined in Chapter 1.

The researcher used data collection techniques such as desk top review, screening records and reports, key informant interviews, and questionnaires. An initial literature review in form of a desktop review was done, focusing on the existing information on juvenile justice. Once an information gap analysis was done, development of adequate data collection tools was done.

Data was collected from the respective authorities upon permission being granted. Field-notes were being taken as well. For qualitative data, since a juvenile offending is a sensitive issue, the privacy, confidentiality, and safety of the subjects was protected throughout the processes of qualitative data collection. For the quantitative data, the researcher contacted the relevant authorities for permission to collect data. The purpose of the research project as well as the techniques and procedures for questionnaire survey were explained. After that the researcher distributed the questionnaires through purposive sampling technique. Mainly, the two data collection methods used were self-administered questionnaires and semi-structured interviews.

3.8.1 Primary and Secondary Sources of Data

According to Zikmund (2003), primary data is raw data that is specifically collected for the purposes of the study at hand. Primary data is advantageous in that it is

collected for the problem at hand and therefore relevant. However, it can be costly in terms of time and financial resources. Secondary sources of data are interpretations of primary data and they exist from previous work or publications relevant to the problem at hand, but not obtained specifically for the purposes of the current study (Cooper and Schindler, 2001). These can be either internal or external to the organization. According to Zikmund (2003), the main advantage of secondary sources of data is that it is less expensive to acquire than primary data, it can be obtained more rapidly and it can be the only available data when it is not possible to obtain the data through primary data collection procedures. Zikmund (2003) also gives disadvantages of secondary data, that it is not designed to meet the needs of the problem at hand, it can be outdated and there could be no means to verify its accuracy. This study made use of mostly primary data sources and these were self-administered questionnaire and personal interviews.

3.8.2 Self-administered Questionnaire

A questionnaire is a list of carefully structured questions chosen after considerable testing, with a view to elicit reliable responses from a chosen sample (Moser and Karton, 2004). In general, questionnaires are effective mechanisms for efficient collection of certain kinds of information. The questionnaire was the main data collection instrument. Brink and Wood (2008) state the following aspects as characteristics of a questionnaire:

- Each respondent enters their responses on the questionnaire thereby saving the researcher's time compared to conducting personal interviews.

- It is less expensive.
- Respondents feel that they remain anonymous and can express themselves without fear of identification.
- Data on a broad range of topics may be collected within a limited time.

This instrument was designed to gather information on what the how official handle juveniles in different institutions and at different stages. The questionnaire was very simple, avoiding misleading, double barreled and ambiguous questions and anonymity was guaranteed.

3.8.3 Interviews

According to Kahn and Cannell (1957), an interview is a purposeful discussion between two or more people. Kvale (1996, p. 14) regarded an interview as “ ... an interchange of views between two or more people on a topic of mutual interest, sees the centrality of human interaction for knowledge production, and emphasizes the social situatedness of research data.” There are many reasons to use interviews for collecting data and using it as a research instrument. Gray (2000) has given the following reasons:

- There is a need to attain highly personalized data.
- There are opportunities for probing and seeking clarification
- A good response rate is guaranteed.

A semi- structured interview guide was used which many authors refer to as semi-structured interview. Corbetta (2003) gives an explanation of semi-structured interviews as follows:

- The order in which the various topics are dealt with and the wording of the questions are left to the interviewer's discretion
- The interviewer can give an explanation and seek clarification and prompt the interviewee
- Additional questions can be asked that may have not been anticipated in the beginning of the interview

Easterby-Smith, Thorpe and Lowe (2002), assert that in a semi structured interview, the interviewee is given the opportunity to talk freely about events, behaviour and beliefs in relation to the topic area and also provide with the opportunity to probe answers where the interviewee will explain or build on their responses. The study thus used semi-structured interviews to achieve these benefits. Significantly, interviewing is a particularly efficient means of collecting data when the research design involves an analysis of people's motivations and opinions (Keats, 2000), as was the case in the present study.

The themes for the interview schedule (set out in Appendix 4, 3, 4 and 5) were structured around the issues raised in the review of the literature. Interviews were conducted on middle management (supervisors) and senior management who supervise implementation of juvenile justice.

3.9 PILOT STUDY

This has been defined by Bloom and Fischer (1982) as a smaller version of a larger study that is conducted to prepare for the main study. A pilot study can involve pre-testing a research tool, like a data collection method and it can also be used to test an idea or hypothesis. A pilot study was conducted with 12 participants as shown in Table 3 above. These 12 did not participate in the actual study because it could influence their later behaviour if they had already been involved in the research (Haralambos and Holborn (2000). All twelve managed to complete the questionnaires within 30 minutes; they all understood the questions and no apparent problems were encountered during the completion of the questionnaires.

3.10 TRIANGULATION

While many studies successfully utilise one method, combining methods, an approach known as triangulation, can be a useful research option (Denzin, 1970; Flick, 2002). Denzin (1970) defines triangulation as the combination of methodologies in the study of the same phenomenon. He argues that the use of different methods by a number of researchers studying the same phenomenon should lead to greater validity and reliability than a single methodological approach, especially if their conclusions are the same.

As Mason (2002) has stated, the aim of triangulation is to corroborate one source and method with another and to enhance the quality of the data. Decrop (1999) indicated that triangulation can reduce and/or eliminate personal and methodological biases

and increase the probability of generalising the findings of a study as the data is gathered from different angles and by different methods.

Easterby-Smith, Thorpe and Lowe (2002) identify four types of triangulation:

- Data Triangulation- where data is collected at different times or from different sources in the study of a situation.
- Investigation Triangulation- where different researchers independently collect data on the same situation and compare the results.
- Methodological triangulation- where both quantitative and qualitative methods of data collection are used.
- Triangulation for theories- where a theory is taken from one discipline and used to explain a situation in another discipline

The researcher used investigation triangulation which is a combination of questionnaire to quickly collect information from a lot of people, and then interviews to get more in-depth information from certain respondents to the questionnaires. Methodological triangulation was also used where both qualitative and quantitative methods of collecting data were used.

3.10.1 The Credibility of Research Findings

In research, attention has to be paid to two particular concepts on research: reliability and validity. Reliability can be assessed by posing the following two questions:

- Will the measure yield the same results on different occasions?- (positivist approach)

- Will similar observations be made by different researchers on different occasions? - (phenomenological approach) (Easterby-Smith, Thorpe and Lowe, 2002).

The researcher is of the opinion that data collection for the research was valid and reliable since considering the sampling method was purposive. Targeted officials were obligated to provide official statistics and information on how they handle juvenile offenders. A different researcher may make similar observations on the same study.

3.10.2 Threats to Reliability

Robson (1993) asserts that there may be four threats to reliability:

1. Subject error- a questionnaire completed at different times of the week may generate different results.
2. Subject bias- interviewees may have been saying what they thought their bosses wanted them to say especially when they feel intimidated.
3. Observer error-researchers may use different approaches to elicit answers from respondents.
4. Observer bias- deals with the interpretation of responses.

In this research however, there might be some extent to which the researcher might have interpreted the data, other than what the respondent meant. There was no subject error as all the questionnaires were filled at the same times for different classes' respondents.

3.10.3 Validity

It is concerned with whether the findings are really about what they appear to be about. Robson (1993) has also charted the threats to validity which provides a useful way of thinking about the concept:

- History-information you get after an event happening may be misleading.
- Testing-if respondents think that the results of the outcome may disturb them in some way this is likely to affect the outcome
- Instrumentation- what instrument has been used to collect the data.
- Mortality which refers to participants dropping out of studies.
- Maturation-other events happening during the year have an effect on participants.
- Ambiguity about causal direction
- Generalisability- sometimes referred to as external validity.

The researcher is of the opinion that data collection for the research was valid since the questionnaires were administered freely and voluntarily after getting authorization from the authorities. There were no risky events that happened in the duration of the study that could trigger bias towards the results. The instrument used to collect data (questionnaires) was fairly reliable.

3.11 ETHICAL CONSIDERATIONS

People face ethical dilemmas when they are used as study participants and therefore researchers need to exercise care that the rights of individuals and institutions are safeguarded (Polit and Hungler, 2009). The following research principles were taken

into account during the research and the researcher was guided by ethical considerations given by Polit and Hungler (2009):

- Permission to conduct the study was granted.
- The participants' cooperation was requested in advance and the researcher undertook not to disrupt normal flow of business in the organizations.
- The research principles of beneficence and respect for human dignity were observed during data collection. The principle of beneficence encompasses freedom from harm and exploitation (Ibid). The principle of respect for human dignity includes the right to self-determination and to full disclosure. This was honoured in affording the respondents to decide independently, without any coercion and the right to full disclosure was respected in describing the nature of the study to participants and highlighting their rights to participate or refuse to participate in the study.
- Confidentiality was maintained and no names were disclosed in the research report.

3.12 DATA ANALYSIS

Content Analysis-The research design and data was highly qualitative and was subjected to qualitative content analysis. All the responses were evaluated to see how closely they relate to the objectives of the study. Statements of particular relevance during the writing of the research were directly quoted from the interview responses as well as from the answers to the questionnaires. There was also need to constantly examine and reexamine the relevance of certain issues raised in the interviews

related to the research topic. This was an ongoing process throughout the data analysis process.

In-depth literature review-An in-depth literature review were conducted simultaneously with content analysis. Unlike in the initial review, this was broadened to include contextual documents allowing for a highly situated and contextually responsive analysis. Literature review was also critical for triangulation and secondary routine data was subjected to simple Excel/SPSS based analysis.

Quantitative data was analyzed by the SPSS 9.0 software program. Descriptive statistics were employed to illustrate the demographic characteristics of the sample. Data was presented in the way of charts, graphs and tables.

3.13 LIMITATIONS OF THE STUDY

The research methodology selected encountered the following limitations:

- a) The sample size was fairly small due to time and costs yet a large sample could have given more reliable results
- b) There was no guarantee that all questionnaires sent reached their destination and were read and filled.
- c) Failure to release sensitive information as research focused on juvenile information which is sensitive.

I circumvented all these limitations by using the purposive sampling method. I targeted those in authority, who had powers to authorize the release of sensitive information. That way most of the questionnaires I send were read, filled and returned because those in authority gave a green light to do so.

3.14 CHAPTER SUMMARY

This chapter highlighted the research methodology that the researcher employed in finding research questions that are outlined in Chapter 1. The researcher was guided by the phenomenological research philosophy. Data collection was done by the use of self-administered questionnaires and personal interviews. Questionnaires were used to quickly gather information from many people in a short space of time and interviews were conducted to get an in-depth knowledge on how juveniles are handled at different levels, such as at police stations, courts, and prisons.

The next chapter covers research findings and data analysis.

CHAPTER 4

4.0 DATA PRESENTATION AND ANALYSIS

4.1 INTRODUCTION

This chapter focuses principally on the results of the study. The first part will present the findings that have been noted from the available literature particularly from policy documents as well as the legislative instruments that have been obtained from the various Ministries and other governments departments. The second part will focus mainly on the results of the questionnaires and interviews that were conducted during the course of the data gathering process. However, before we delve into the findings of this research, it is imperative to give brief highlights on the background information of the persons so interviewed. This chapter therefore presents the research findings, data analysis and interpretation.

4.2 BACKGROUND INFORMATION OF RESPONDENTS

Since the aim of this research was to find actual information regarding how juveniles are being dealt with, the target respondents were senior officials like Permanent Secretaries and directors in the relevant ministries such as the Ministry of Home Affairs, the Ministry of Justice and Legal Affairs and the Ministry of Labour and Social Services and other governments departments such as the Zimbabwe Prison Services and the Department of Social Services. Experts and eminent scholars in the field of human rights and juvenile justice were also consulted. Most of the respondents were drawn from Harare mainly due to the limitations of time as well as the limited resources to expand the research activities outside Harare.

4.3 RESPONSE RATE

Out of the 50 questionnaires distributed, only 42 were filled and returned. This was as a result of the chosen sampling method (purposive), where those in authority would use their discretion to choose participants.

4.4 RESEARCH FINDINGS

It is submitted that although infrastructure set up by the operative legislation for the administration of juvenile justice is in principle acceptable, in practice it has many shortcomings. Through interviews with the police, court officials such as the magistrates and prosecutors, social welfare officers and prison officers, I have made the following findings:

4.4.1 RESULTS FROM POLICE

Figure 1: Percentage distribution of police respondents by sex

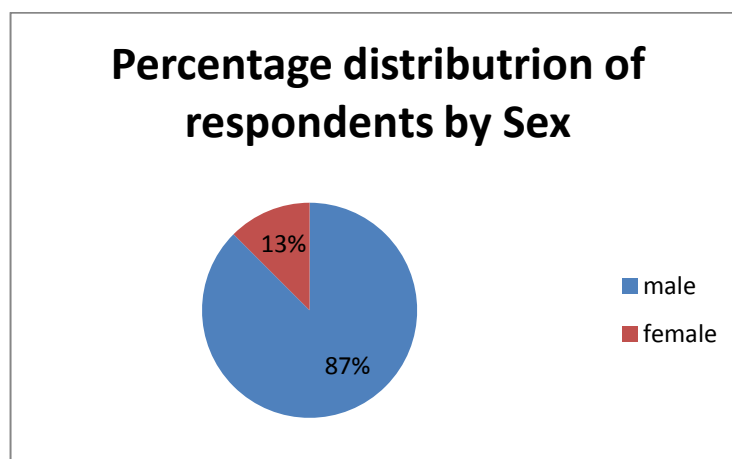
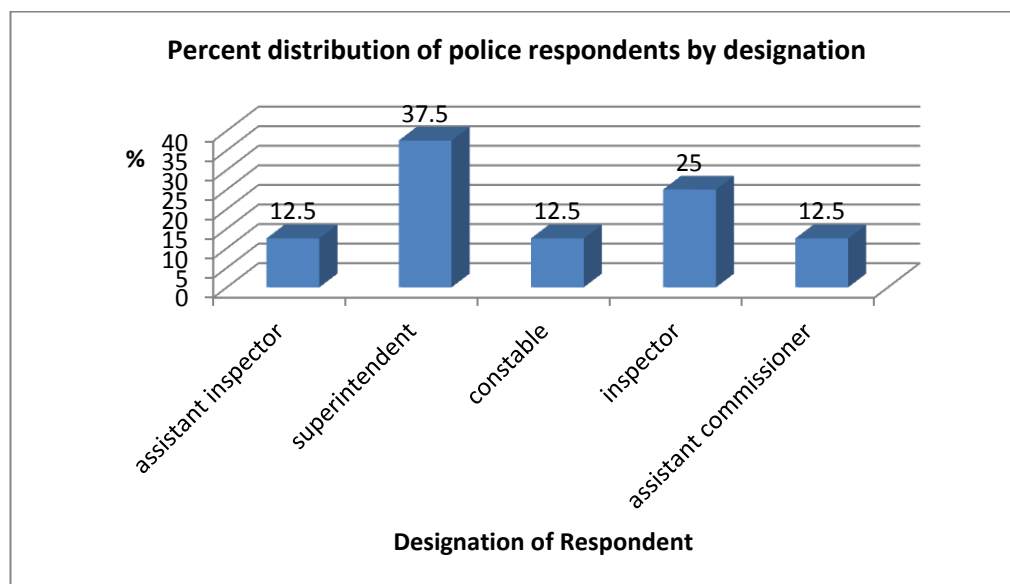


Fig.1 above shows that the 88% of the police respondents were males, while the remaining 12 % were females. This was due to fact that the sampling method was purposive where the Officer in Charge used his own discretion to nominate

respondents who participated in this study. They were of different ranks as highlighted in Fig.2 below:

Figure 1 : Percentage Distribution of Police by Designation



4.4.1.1 The Investigation

The police take care of the investigations of crimes that are said to have been committed by juveniles. There is no particular or specific method of investigation followed when investigating cases involving juveniles as indicated in the Table below. All the police confirmed that there is no different investigation method for juveniles.

A particular investigation method is important as it involves getting some evidence on which the juvenile may win or lose the case. There is no data available to address this. Most, if not all, most of the interviews are one-off events at which children offenders give a cautioned statement as highlighted in Table 5 below.

Table 5: Investigation Arrangement

Investigation Arrangement	Frequency	Percent	Valid Percent	Cumulative Percent
Single sitting	4	50.0	50.0	50.0
Multiple sittings	4	50.0	50.0	100.0
Total	8	100.0	100.0	

Half of the police respondents (50%) highlighted that the investigation process could be done in one sitting and vice versa. The investigation process requires confidentiality, individuality, and acceptance of the child offender, which cannot be developed in a single sitting. The investigating officers should ensure that all the principles of casework are upheld, and that the dignity and sanctity of the juvenile offender are well respected. The investigation process could be used as a process indicator on its own and can be measured qualitatively.

The police in effecting their arrests do not always afford juveniles the special care and protection they deserve. The complaint from Social Welfare was that increasingly frequently, the police remand juveniles in prison pending investigations without referring these offenders to Social Welfare. There is no special unit assigned to deal with juvenile crime- this falls under the general crime prevention unit. Units exist for drugs, theft from cars, and if an offense by a juvenile offender falls under any of these, any investigating officer of that unit deals it with.

4.4.1.2 The Arrest

All the police interviewed confirmed that juveniles are arrested just like adults, particularly when they have committed what are termed adult crimes such as rape and murder. As highlighted in Table 6 below, 75% of the police respondents indicated that they just record a statement and 25% of them just detain juveniles.

Table 6: Percentage Distribution of the Procedure of Arrest

Arresting Procedure	Frequency	Percent	Valid Percent	Cumulative Percent
Recording a statement	6	75.0	75.0	75.0
detain	2	25.0	25.0	100.0
Total	8	100.0	100.0	

On arrest of the juvenile offender, the police are required in terms of section 113A of the CPEA, to warn his parents or guardian if they can be located, to attend court when the juvenile appears. The parent or guardian must also be present when they record any warned and cautioned statements. If the child is of no fixed abode, the matter is referred to a social welfare that assigns a probation officer. Only at this stage should the statement be recorded. The police must then release the child into the custody of such parent or probation officer and proceed to compile a record.

4.4.1.3 Detention of Juveniles

According to Table 7 below, 63% of the police highlighted that they know that any person should be detained for not more than 48 hours before being heard in court. Although a child should appear in court within 48 hours, shortage of transport to complete investigation and take the child to court hinders the police, hence a child can be detained more than 48 hours. 12% of the police indicated that the child can only be heard in court soon after the investigations while 25% indicated that they bring the child to court soon as possible. However, 63% of the respondents indicated that juveniles are arraigned before the courts within 48 hours.

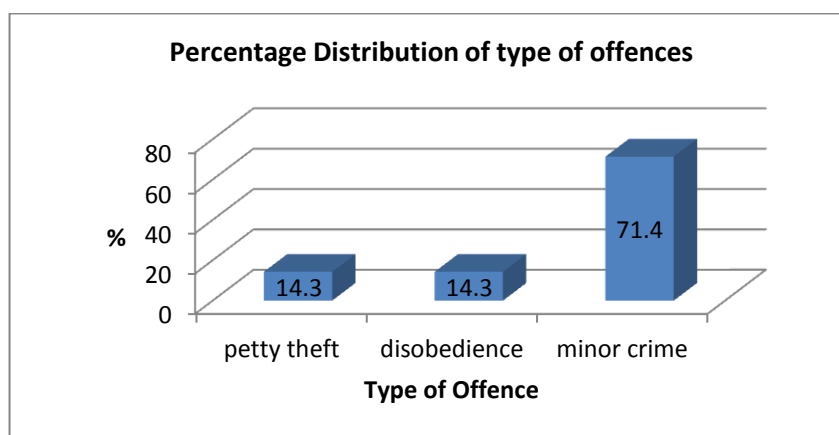
Table 7: Detention by the Police before being brought to Court

Time taken before a juvenile is taken to court	Frequency	Percent	Valid Percent	Cumulative Percent
Soon after finishing investigations	1	12.5	12.5	12.5
within 48 hrs	5	62.5	62.5	75.0
as soon as possible	2	25.0	25.0	100.0
Total	8	100.0	100.0	

4.4.1.4 The Crime

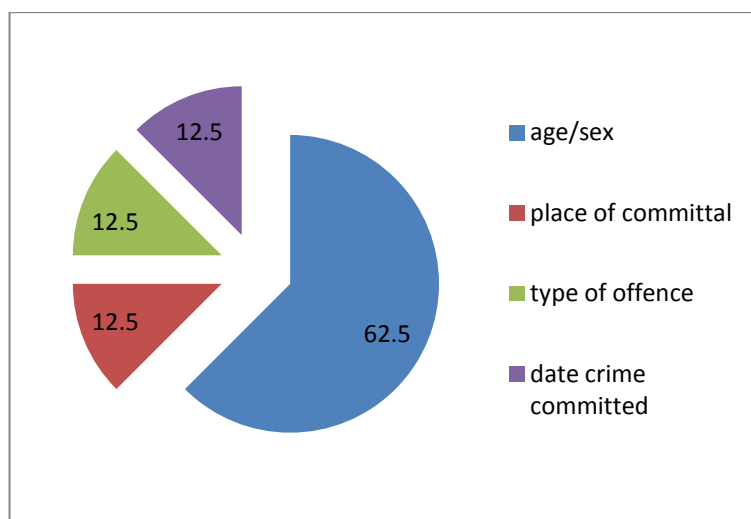
The police reiterated that the majority of offences committed by juveniles are minor, for example, theft, disobedience and truancy. These crimes are commonly committed by children living on the streets. About 71% of crimes committed by juveniles are minor offences as shown in Fig. 3 below:

Figure 2: Percentage Distribution of types of offenses



4.4.1.5 Information Recorded

Figure 3: Percentage Distribution of Juvenile Information Recorded



According to Fig.4 above, the basic information about the juvenile offender is recorded into a crime record book. Such data include sex, age, type of offence, date

of committal of the offence, place of committal of the offence and a voluntary statement by the offender. However these statistics are not separated from those relating to adult offenders.

4.4.1.6 The Remand

Although the Criminal Procedure and Evidence Act provides for remand of juveniles in the custody of their parents or guardians, this is not always possible as highlighted by Fig.5 below:

Figure 4: Percentage Distribution of places where juveniles are remanded

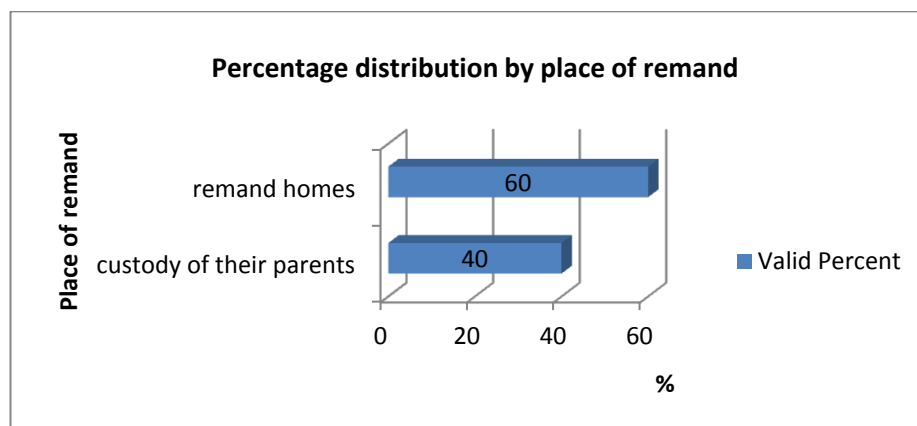


Fig.5 above shows that 60% percent of the juveniles are remanded is remand homes like in prison and other designated homes but normally children are supposed to be remanded out of custody, in the custody of their parents or guardian, unless that child is homeless. Only 40% of the police respondents highlighted that they release juveniles in the custody of their parents. This is due to the fact that some of the juveniles are of no fixed abode, and some parents are not willing to take them into their custody. Consequently, most remands have to be effected to the remand homes set up and they are so few and they end up being remanded with adults where they do not cater for juveniles. Overcrowding is the major problem. Whether remanded in or

out of custody, long delays have exacerbated the problem. Juvenile offenders spend long periods waiting the determination of their cases. All magistrates and prosecutors interviewed complained of the delay by social workers to compile the probation officers' report. Consequently, they quite often, in petty offenses, resorted to sentencing in their own discretion, without having had sight of the report. In serious cases long remands have been inevitable whilst waiting for the report. This is totally against the best interests of the child whose right to a speedy trial is paramount and it is inconsistent with the principles of juvenile justice.

The formalistic approach is thus failing to protect children's rights. The effects of delay have long been observed and criticized, how much more can be negative impact on a child. Even for juvenile offender, who has a whole life ahead of him, to have a criminal record can scar the rest of his life. If possible, there should be no trials for young offenders, serve for recidivists and those who commit serious crimes.

Figure 5: Police Opinion on the Current Juvenile Justice Delivery System

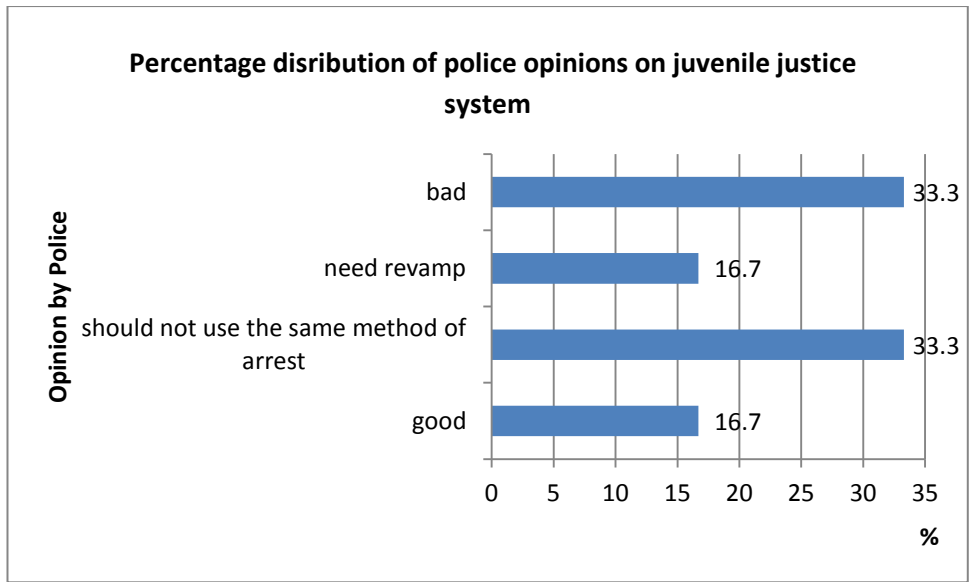


Fig. 6 above shows that 34% of the police respondents' criticized the current juvenile justice system in Zimbabwe saying that it is very bad whilst another 34% reiterated that there should be another different method of arrest of juvenile offenders. They should not be arrested the same way as adults. Only 17% of the respondents highlighted that the system was good as it deterred and removed criminal elements from the society.

4.4.2 RESULTS FROM COURTS

Figure 6: Percentage Distribution of Court Official respondents by Sex

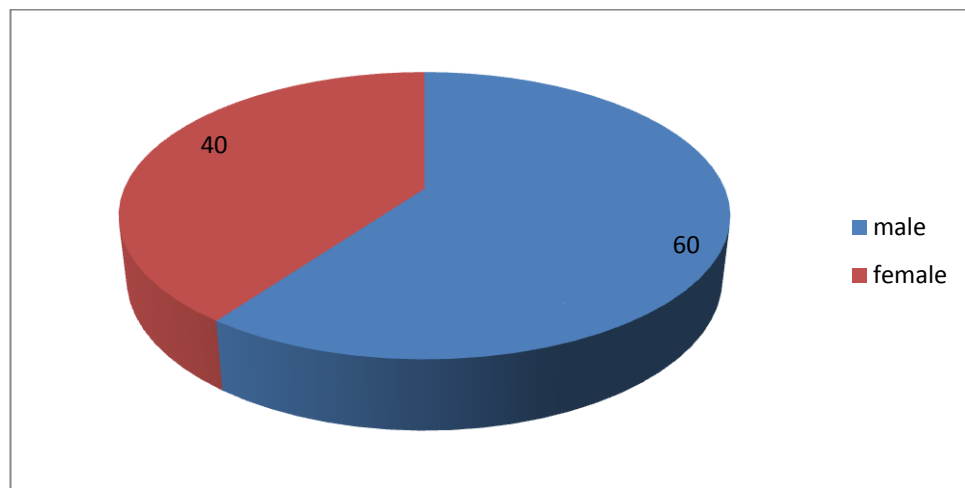
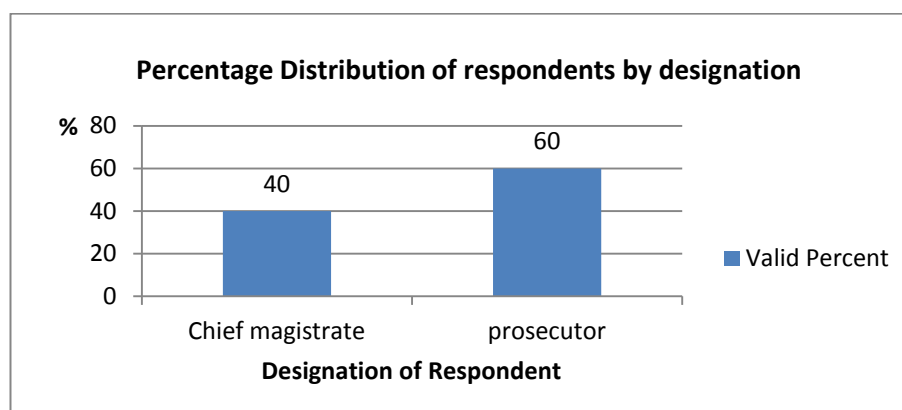


Fig.7 above shows that 60% of the court official respondents were males whilst 40% were females. This was due to fact that the sampling method was purposive where the Chief Magistrate used his own discretion to nominate respondents who participated in this study. They were of different designations as highlighted in the graph below:

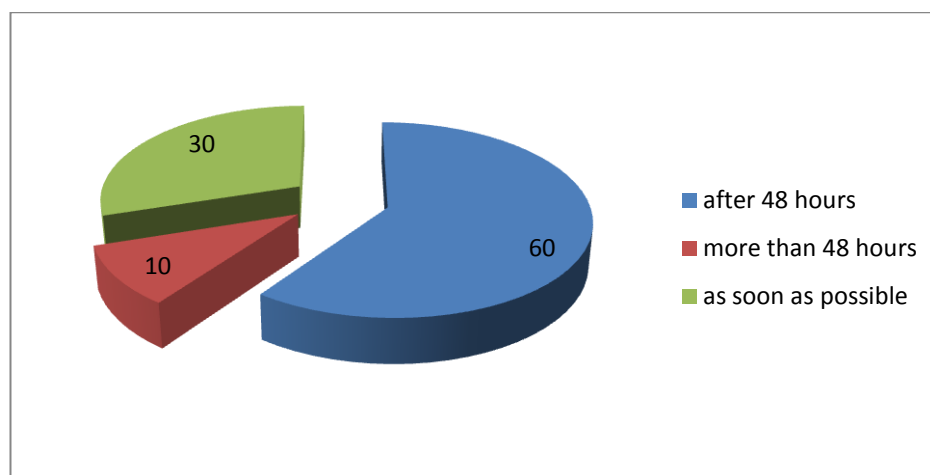
Figure 7: Designations of Court Officials



4.4.2.1 First Appearance and Plea

From the interviews, the courts raised a concern that children were being brought to court outside the 48 hours stipulated by the law. Fig.9 below highlights that 70% of the juveniles are brought after 48 hours.

Figure 8: Percentage Distribution of time taken to bring juveniles to court.



4.4.2.2 Procedure in the Courts

In terms of the procedure in the courts, at the commencement of the proceedings, the public prosecutor informs the young offender of the charges against him/her and asks him/her to plead. This occurs in the same way as the adult criminal trial. If the

juvenile is denying the charge, then he is placed on remand. In keeping with the principle of leniency towards juveniles, they are remanded in the custody of parents, guardians or probation officers. If such parent or guardian cannot be found, or is it is undesirable that he be remanded in their custody, the young person is send to a remand home. In such circumstances, if the child has turned 17 years of age, he may be remanded in the juvenile section of the prisons. It is important to note that contrary to the provisions of the legislation, juveniles are remanded together with adults in adult prison. This hence causes them to end up being hardened criminals. It is also important to note that the gravity and nature of the offence have no bearing on the decision to remand in the custody of parents or otherwise.

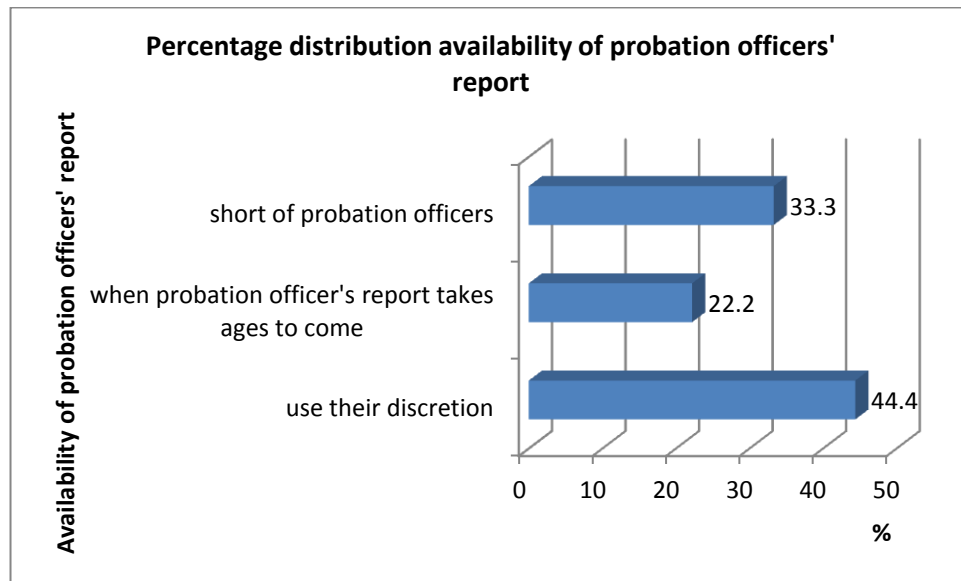
Where the juvenile offender is pleading guilty or is admitting the offense, the magistrate must be satisfied that the juvenile fully understands the essential elements of the charge before recording such a plea. If he is so satisfied, the magistrate should proceed to request the probation officer's report. The Clerk of court must then send copies of the relevant state papers, namely, the charge sheet, the state outline, and the statement of agreed facts to the probation officer. These will be of assistance to the probation officer in the preparation of the report. While the report is being compiled, the juvenile may be remanded in any of the different ways as discussed. The problem now is that because of the economic situation in Zimbabwe, most qualified personnel have migrated. Most of the probation officers have migrated as well and this has a great impact on the justice delivery system. Usually there are no available probation officers so in the end magistrates pass judgments without the probation officer's report.

Competence to prosecute is given by the Attorney General. Also a juvenile is entitled to legal representation but in most cases they are not represented.

4.4.2.3 Verdict and Sentence

After the magistrate has heard the evidence of the police and the witnesses, and has considered the facts of the charge against the child and the law relating to the charge, he or she gives the verdict. In doing so he/she must not take an armchair approach, but should take into cognizance the age of the accused plus the possibility of ‘boyish pranks’. If the verdict of guilty is given, he/she will ask the public prosecutor whether the child has a previous criminal record and if he has, as in the adult court, this will directly influence the magistrate in deciding on the type of sentence he/she will impose. It is at this stage that the probation officer’s report is requested, before delivery of sentence. In most cases the probation report is not made available due to shortages of probation officers. As indicated in Fig.10 below; 45% of the judicial officers highlighted that they use their own discretion when giving judgments as there are no probation officers. 33% of the respondents indicated that there is a shortage of probation officers.

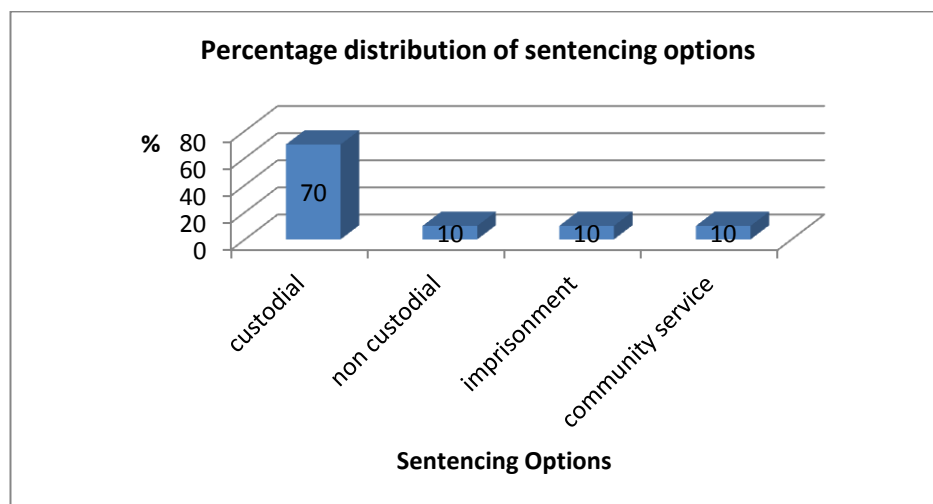
Figure 9: Percentage Distribution of availability of Probation officers' report before sentence



4.4.2.4 Sentencing Options by the Courts

Sentencing policies with regard to juveniles go beyond the absolute theory of punishment, which is retributive in nature as shown in Fig.11 below where 80% of the sentences imposed on juveniles are custodial. Non-custodial sentences only account for 20%.

Figure 10: Sentencing options by the courts



Children are treated the same way as adults. The theory of punishment requires that the offender should be punished in order to square off his debt to society and to mollify the injured party and other members of society. This theory thrives on the idea of just deserts and 'getting a taste of his/her own medicine'. On the other hand there are other alternatives of punishment, which translate into prevention, deterrence, both individual and general and reformation. Punishment as a preventative measure is justifiable primarily where the interests of society, as opposed to those of an individual are paramount, that is, when the offender is a danger to the society. However, in sentencing juveniles, the relative theories are more important, particularly the reformatory and deterrent aspects.

Magistrates were concerned that most of the children who commit crimes are orphans and vulnerable children. Some of the children are spoiled and when they don't get what they desire they commit crimes to get those things. Repeat offenders are a common occurrence. Some of the parents are just so bitter about the crimes their children have committed and they want to get rid of the children. Child headed families are very common. However, magistrates were advised that they exercise their discretion in some cases as well as addressing the root cause of their problems. All the court officials concurred that the current court system was unfriendly to juveniles.

Moreso, 90% respondents indicated that in most cases, a juvenile is not legally represented which usually compromises his or her argument. Juveniles cannot afford legal representation. This is shown in Table 8 below:

Table 8: Legal representation for Juveniles

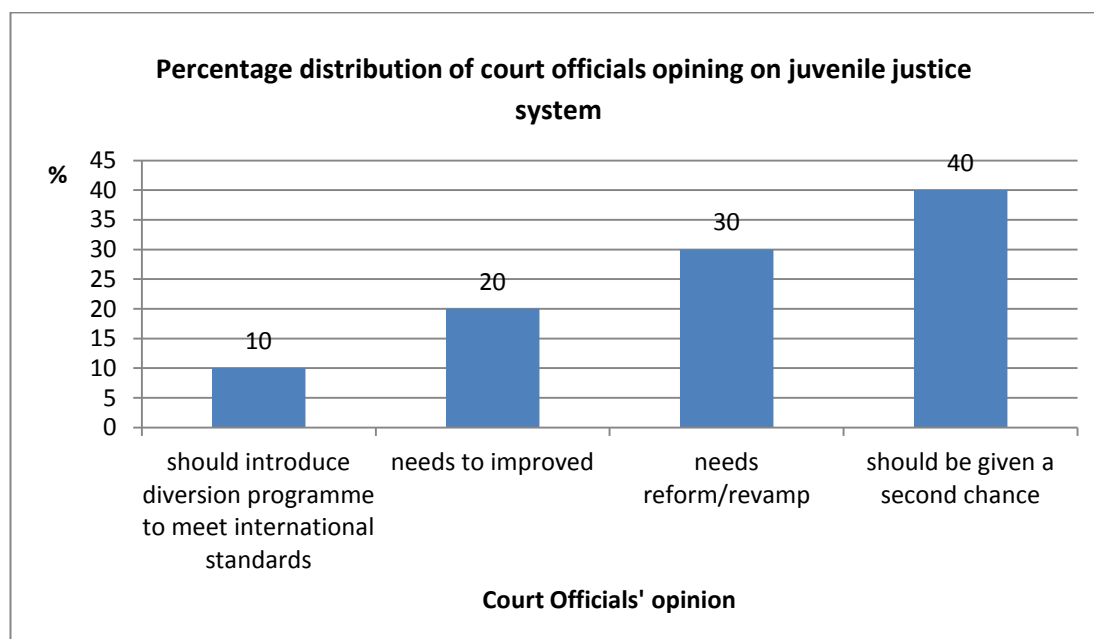
Access to Legal representation	Frequency	Percent	Valid Percent	Cumulative Percent
Access	1	10.0	10.0	10.0
No access	9	90.0	90.0	100.0
Total	10	100.0	100.0	

Most of the problems and issues raised by the magistrates were also raised by the prosecutors. Prosecutors advised that they do not fully exercise their powers in declining to prosecute cases involving juveniles in appropriate cases due to concerns that they may be accused of being corrupt.

4.4.2.5 Opinion of Court Officials on the Current Juvenile Justice System

As shown in Fig.12 below, 40% of the court officials highlighted that the current situation pertaining to juvenile justice in Zimbabwe is bad as children are getting criminal records at a very age thereby tarnishing their names for the rest of their lives. Hence the respondents advocated that children needed a second chance in life. 30% of the respondents indicated that the whole system needs a total revamp or improvement. 10% of the court officials advocated for a diversion programme which meet international standards.

Figure 11: Opinion of Court Officials on the current juvenile justice system



4.4.3 RESULTS FROM PRISONS

Figure 12: Percentage distribution of Prison respondents by sex

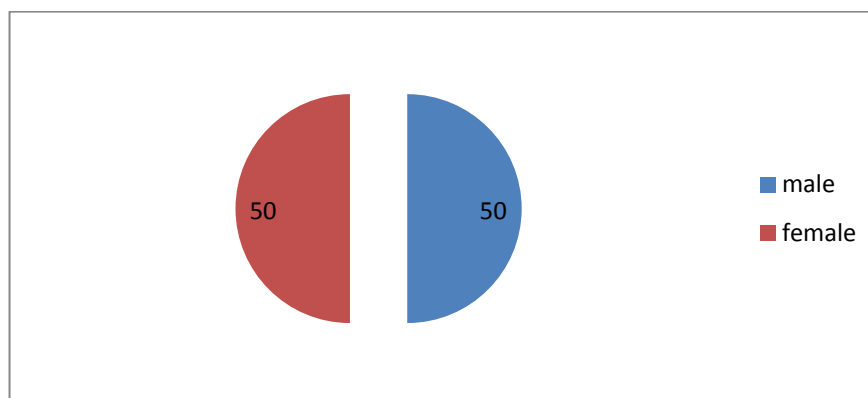
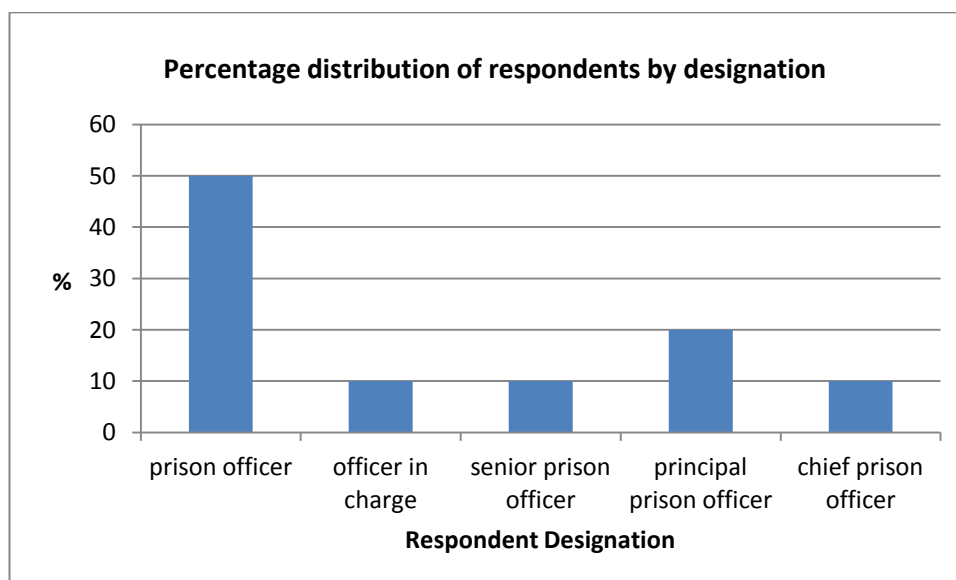


Fig.13 above shows that half of the respondents were males whilst the other half were females. This was due to fact that the sampling method was purposive where the Officer in charge used his own discretion to nominate respondents who

participated in this study. They were of different designations as highlighted in Fig.14 below:

Figure 13: Designations Prison Respondents



The following are the statistics of juveniles who are incarcerated in prisons in all provinces as at the end of March 2013:

Imprisoned Juvenile Offenders: Jan-March 2013

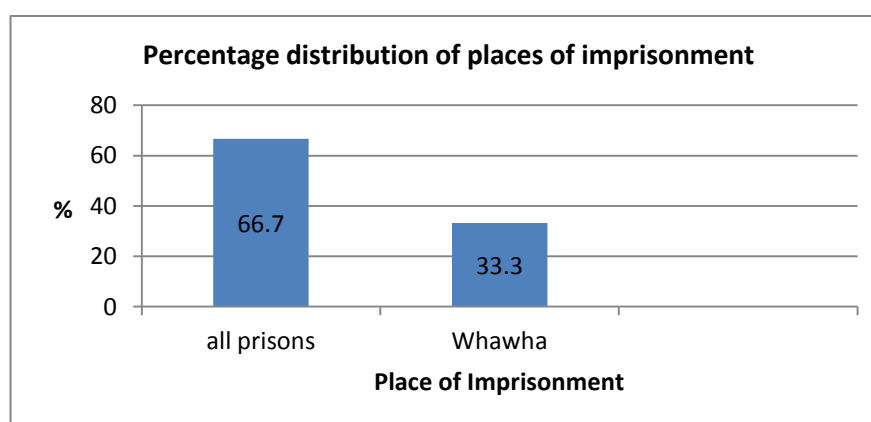
Province	No. of Juvenile Offenders
1. Bulawayo	42
2. Matabeleland South	39
3. Mashonaland Central	50
4. Harare	61
5. Mashonaland West	86
6. Matabeleland North	20
7. Mashonaland East	31

8. Midlands	71
9. Masvingo	52
10. Manicaland	91

Source: Zimbabwe Prison Service

Prison officials reiterated that although there is a juvenile prison specifically built for juveniles (Whawha Young Offenders Prison), juveniles were being incarcerated in almost all prisons, thereby mixing them with adult offenders. As shown in Fig.15 below, 67% of the Prison respondents indicated that juveniles were being kept in all prisons all over the country. Only 33% of the respondents indicated that there is a specific prison for juveniles, which is Whawha.

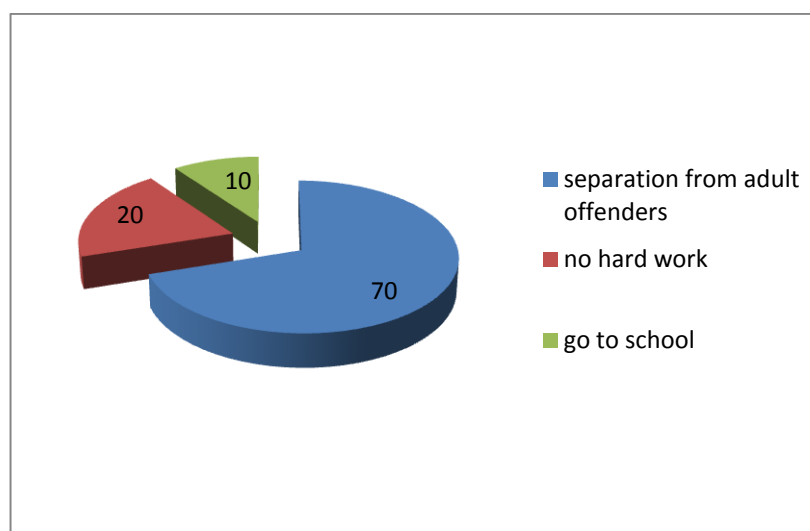
Figure 14: Places of imprisonment for juveniles



Whawha Young Offenders Prison was said to be very far and with problems of transport and fuel in the service, it was a challenge transporting juveniles to their designated prison. Moreso, some of the officials highlighted that it was a waste of resources transferring the juveniles when they were sentenced to serve short sentences like two or three months. They would rather have them serve their

sentence at the adult prison where they would make effort to separate the juvenile from adult offender by having him or her his own room, which in most cases does not happen because of shortage of space and overcrowding in prisons. Below are some of the special conditions for juveniles in prison, i.e. they are separated from adults, they go to school and they are not given any hard work.

Figure 15: Special conditions for juveniles in prison

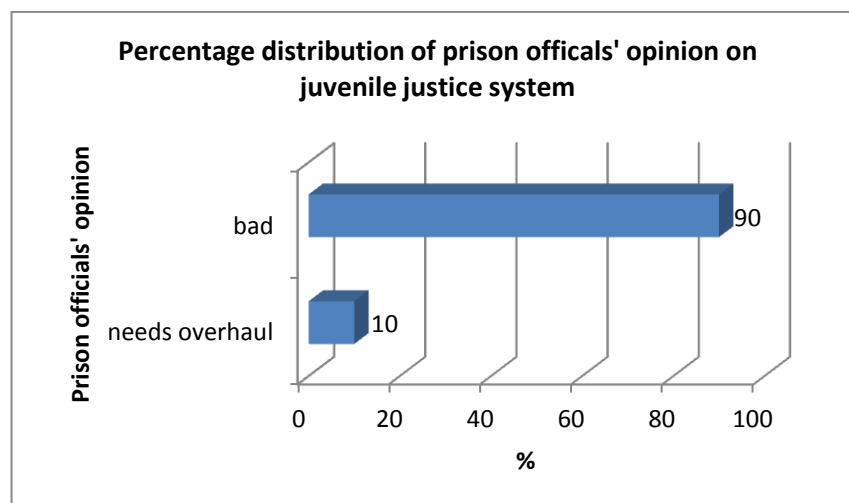


However, where custodial sentences are imposed the problems encountered are mostly those of overcrowding. The training institutions and probation homes are often stretched to their limits, being required at any given time to accommodate more juveniles than their holding capacity. Because of large numbers of juvenile offenders, there is no more individuality. There is no longer individualization of treatment in disposal methods and options are constrained by availability of facilities. This is obviously undesirable where the case does not warrant imprisonment and where the child needs institutional care in order to achieve his rehabilitation. The officials reiterated that incarceration of juveniles in police cells and prisons, apart from the

fact that these institutions are already overcrowded, may lead to worsening problems, e.g. emotional damage, contact with hardened offenders, and risk of contracting HIV virus if sexually assaulted while imprisoned.

As shown in Fig.17 below, 90% of the Prison respondents reported that the current juvenile justice delivery system in Zimbabwe is bad. 10% of the respondent indicated that the system needs a total overhaul. Their opinion was that children should never be incarcerated as the conditions in prisons are bad. There should be another system that diverts the juvenile away from the formal justice system and deal with children in the community, through community programmes such as victim offender mediation, compensation, among others.

Figure 16: Prison Officials Opinion of the current Juvenile Justice Delivery System.



4.4.4 RESULTS FROM SOCIAL WELFARE

Figure 17: Percentage distribution of Social Welfare respondents by sex

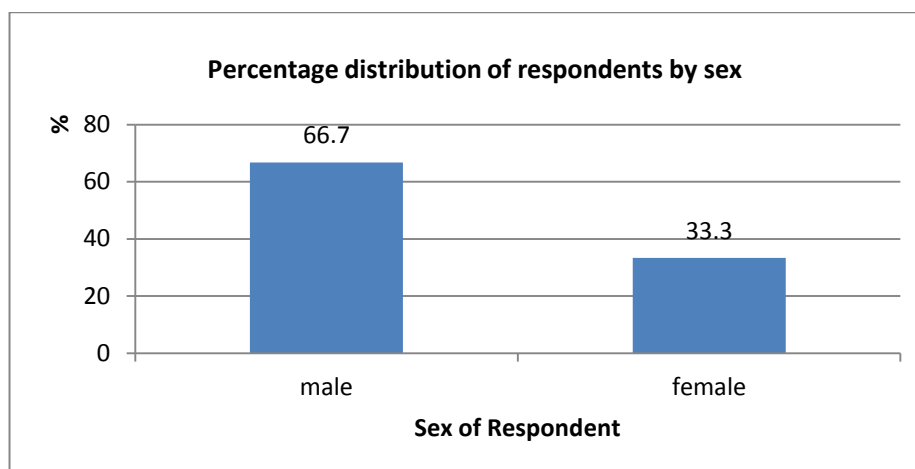
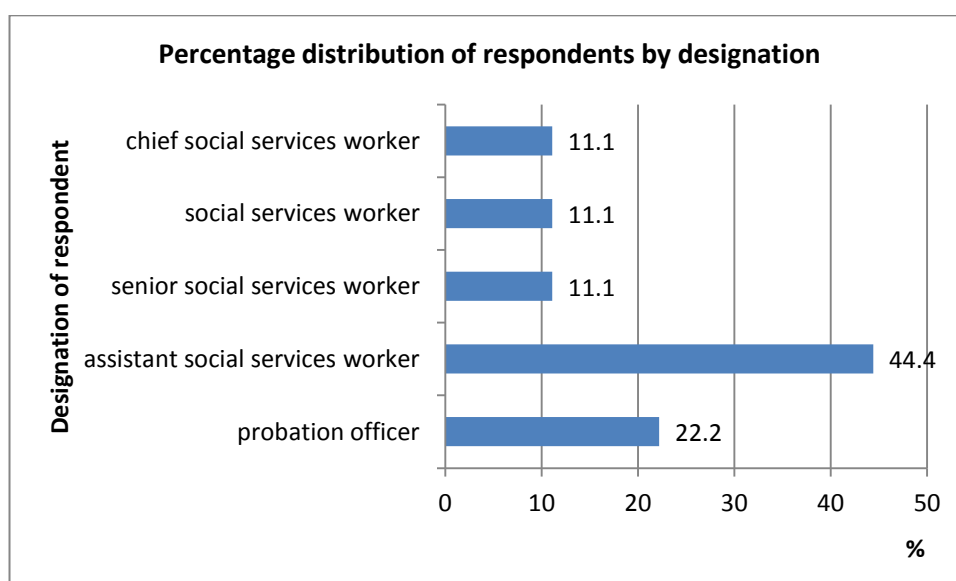


Fig.18 above shows that the 67% of the social welfare respondents were males, while as the remaining 33 % were females. This was due to fact that the sampling method was purposive where the Director, Social Services Department used his own discretion to nominate respondents who participated in this study. They were of different designations as highlighted in the graph below:

Figure 18: Designations of Social Welfare Respondents



The Department of Social Services houses probation officers who are mandated in terms of Section 46 of the Children’s Act to deal with cases of juveniles in conflict with the law by compiling probation officers reports which they submit to the court before it makes a ruling. Their roles are indicated in Fig.20 below.

Figure 19: Role of Social Workers

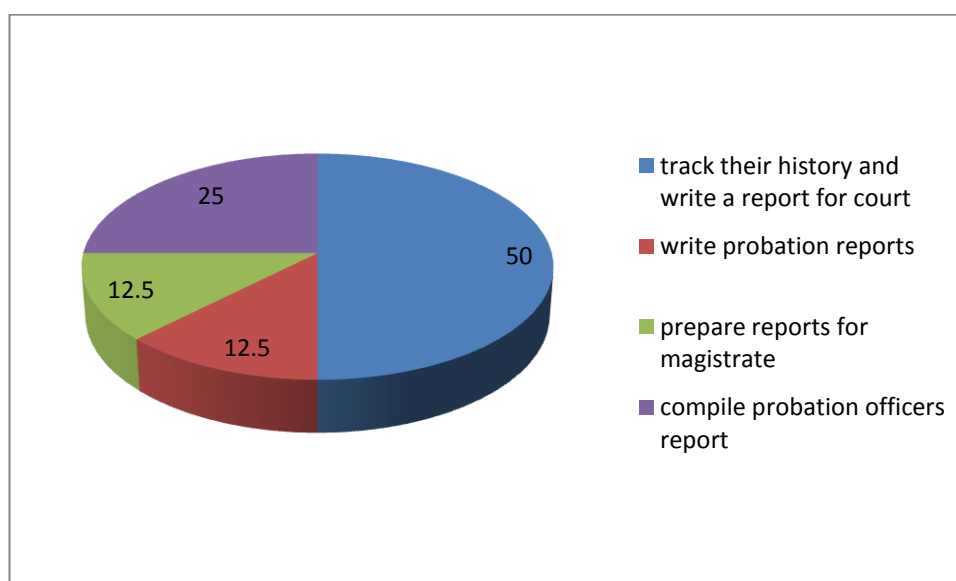


Fig.20 above highlights the different roles that social workers have in the handling of juvenile offenders. 50% of the respondents were familiar with the tracking of the child’s history and the preparation of reports for courts. The rest of the roles highlighted fall under the compilation of probation officers reports.

The department highlighted that they are unable to fully perform this mandate as they are short staffed. As a department, Social Welfare is badly structured and understaffed. A social worker is involved in dealing with a lot of matters like dealing with refugees, welfare organizations, crèches, street kids, juvenile offending and other child welfare matters in that area. Thus probation work is only one part of the

numerous duties of a social worker in an area, which is too big to be handled by one person. This quite obviously raises problems of delay, incomplete and scant investigations in all instances and particularly in probation work. As highlighted in the discussion above, brain-drain has not left the social work field alone. Some of the support services they provide are indicated in Fig.21 below:

Figure 20: Support Services provided

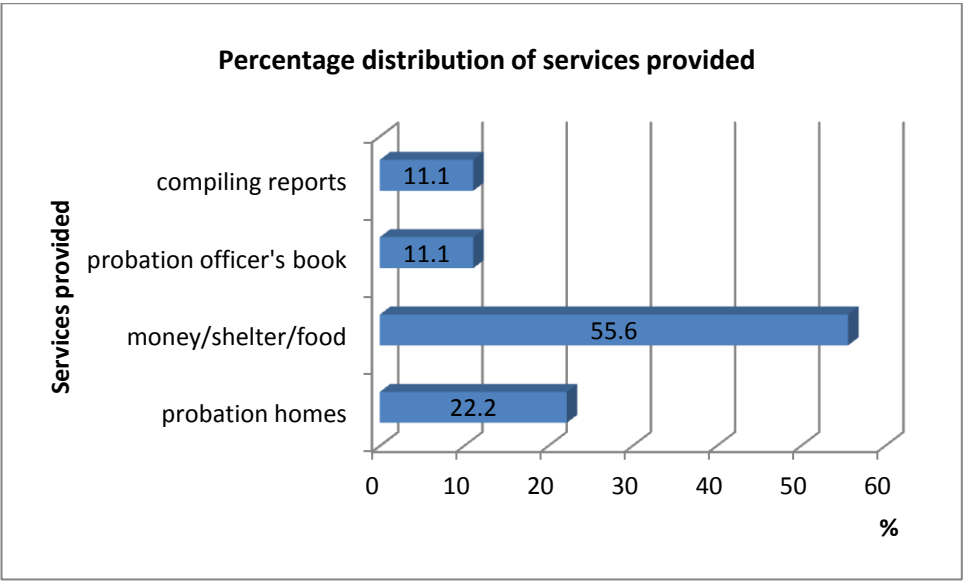


Table 9: Social welfare opinion on the pertaining juvenile justice delivery system

Opinion pertaining to juvenile justice	Frequency	Percent	Valid Percent	Cumulative Percent
no transport	1	11.1	16.7	16.7
they should be lenient	1	11.1	16.7	33.3
should be rehabilitated	1	11.1	16.7	50.0
should be given second chance	1	11.1	16.7	66.7
training	1	11.1	16.7	83.3
shortage of staff	1	11.1	16.7	100.0
Total	6	66.7	100.0	
Missing System	3	33.3		
Total	9	100.0		

In Table 9 above, 17% of the respondents highlighted that transport was a constraint to make these probationary and supervisory visits and to interview the offender and his/her family. Because there is no ready access to transportation, delays are exacerbated and they are unable to submit their reports to court as indicated in Table

10 below, where 68% of the respondents highlighted that they are unable to submit reports to courts.

Table 10: Submission of a probation report before sentence

Submission of probation report to court	Frequency	Percent	Valid Percent	Cumulative Percent
yes	3	33.3	33.3	33.3
no	6	66.7	66.7	100.0
Total	9	100.0	100.0	

As a result relations between the police, courts and probation officers are strained. The police and the courts think delays are unnecessary and could be minimized. Probation officers, on the other hand, feel that the courts disregard their reports as lenient, preferring to apply their just deserts theories whilst the police disregard the role of social welfare in effective remand. They feel that it is counterproductive to imprison juvenile and makes a mockery of their efforts to make them better members of society. Probation officers are supposed to come up with background checks for the young offender so that they make recommendations to the magistrate which would inform his/her ruling. In most cases these reports are not complied as the department is under staffed and magistrates make rulings without this report, which is to the detriment of the young offender.

Seventeen percent of the interviewed participants in Table 9 above reiterated that professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. It is necessary to provide personnel with the necessary qualifications to enable them to properly fulfill their functions. A minimum qualification in law, social work, psychology, criminology and other behavioral sciences would be necessary. It has been observed that both social welfare and legal personnel have professional training in the sense of having a degree qualification but they lack special training in dealing with juveniles. There has been no in-service training or refresher courses. Prosecutors need this especially since mostly the job becomes one of ensuring a conviction rather than making sure that justice is done.

Most of the participants criticized the present criminal justice system. Some of the disadvantages of the current system include the following:

- Incarceration juveniles and other young persons' even for short periods usually results in them acquiring criminal skills. They said that criminals who are more hardened teach young offenders more advanced skills to be used as criminal.
- A previous conviction acquired at an early age will affect the young offender negatively for the rest of his/her life. In Zimbabwe's Public Service, the biggest employer in the country, they don't employ persons with previous convictions, which transcends negatively for someone who committed an offence at an early age.
- Police records do not protect the identity of the juvenile

- There is lack of separate, specific juvenile facilities in most prisons. This is especially a problem when a juvenile is on remand and he/she may end up being abused by adults.
- The courts are imposing and threatening on juveniles. Most of the time the juvenile gets intimidated and overwhelmed by their imposing nature.

4.5 CHAPTER SUMMARY

This Chapter has highlighted the research findings from various stakeholders who include the police, the judiciary, prisons and social welfare. Generally the disposition of cases involving juveniles at all the stages is not satisfactory. All the participants advocated for the need for change in the way juveniles who have come in conflict with the law are dealt with. They advocated for a more humane, rehabilitative way of dealing with juvenile offenders, taking into consideration that they need a second chance in life.

The next chapter will proffer the recommendations and conclusion.

CHAPTER 5

5.0 SUMMARY, CONCLUSIONS AND ECOMMENDATIONS

5.1 INTRODUCTION AND SUMMARY OF RESEARCH FINDINGS

As highlighted in the research findings, the disposition of juvenile offender cases is not satisfactory. All the participants advocated for the need for change in the way juveniles who have come in conflict with the law are dealt with. They advocated for a more humane, rehabilitative way of dealing with juvenile offenders, taking into consideration that they need a second chance in life. At all the stages of the formal justice system highlighted in Chapter 4, the treatment of juveniles is not at par with, international standards. The process of going through the formal criminal justice system can be deeply disturbing for juveniles.

The CRC and other key international rules and guidelines which provide for the framework for the proper administration of juvenile justice state that every effort should be made to keep young people out of the system and to make use of alternatives wherever possible. Once a young person has been branded has been branded a criminal by going through the formal justice system, they are more likely to remain criminals. Juveniles who are diverted away from the criminal justice system have a lower re-offending rate, and this is particularly the case with first time offenders.¹³

There is need for reform in order to transform the juvenile court from a retributive institution to a productive one. Although social work has been given a role in the

¹³ Justice (2000)

disposition process it does so within the parameters defined for it by criminal law and consequently it is handicapped in its ability to promote the well being of the offender.

5.2 RECOMMENDATIONS

5.2.1 Re-definition of Criminal Behaviour

The starting point in the realization of welfare objectives is a re-definition of what constitutes criminal behavior. It must be pointed out that in Zimbabwe there has been a wholesome transference of definitions of criminal behavior from Western institutions. Consequently such definitions have very little relevance to the cultural, political and economic situation in Zimbabwe. It is in this context that a call is made to decriminalize acts currently defined as criminal or illegal in order to divert juveniles away from criminal courts. Deviant behavior of children within a defined age group should be seen as a manifestation of behavioral problems and such children need to be helped to work themselves out of the behavioral problems.

5.2.2 Review the Age of Criminal Responsibility

The determination of the age of criminal responsibility needs to be examined to ensure that it is in harmony with the cultural, social and economic circumstances. In some cultures, children mature quickly than in other cultures. West (1967:1980) observes that 'the development of moral ideology is not an exclusively individual phenomenon, it may be speeded or retarded according to the attitude of the culture in which the child lives, the social class he belongs to and the disciplinary techniques to which he may be directed'. Given the circumstances of Zimbabwe and a deprivation

for the majority of its people, it is advisable to put the age of criminal responsibility at no lower than 15 years and thus ensure that the child has matured enough to be held responsible for his actions.

5.2.3 Pre-Trial Diversion

It has been also suggested that another way of avoiding the negative impact of a court appearance is to use the diversionary technique, which allows for the diversion of juveniles away from the crime and the criminal courts. This is a form of community participation in the control and treatment of deviant behavior. The United Nations (1986:7), putting a case for diversion pointed out that it ‘serves to hinder the negative impacts of subsequent proceedings in a juvenile justice administration, for example, the stigma of conviction and sentence and having a criminal record’. Midgey (1975) argues that there is a stigma associated with a court appearance and suggests that young offenders should be dealt with extra judiciary. It is therefore necessary to provide remedial and preventative services in the community.

5.2.3.1 What is diversion?

Diversion is the channeling of cases away from the formal justice system to extra-judicial programmes or solutions. It can take place before an arrest; or can be initiated before a matter goes to court, or before a matter is set down for trial. The intention is to find a non-court way of supporting a young person to take responsibility for their behavior and promote more pro-social, socially acceptable forms of behavior. The programme aims at providing children with the opportunity to take responsibility for their antisocial behavior, whilst also addressing the other

social, family and community factors that are contributing to their behavior, subsequently reducing reoffending.

As Muntingh & Shapiro (eds) (1994) point out, diversion can be described as the channeling of prima facie cases from the formal criminal justice system, on certain conditions, to extra judicial programmes, at the discretion of the prosecution. Diversionary options in no way intend to make offenders less accountable or responsible for their actions, but rather to provide offenders with the opportunity to rethink their lives without getting a criminal record. In principle, a case is eligible for diversion when it is not in the best interests of the offender, the victim, the criminal justice or society that he/she should be prosecuted or convicted. The primary aims of diversion can be identified as follows;

- a) To make offenders responsible and accountable for their actions
- b) To provide an opportunity for reparation
- c) To identify underlying problems motivating offending behavior through personalized services
- d) To prevent offenders from receiving a criminal record and being labeled as criminals as this, may become a self-fulfilling prophecy
- e) To open up the judicial process for educational and rehabilitative procedures to come into action to the benefit of all parties concerned
- f) To lessen the caseload on the formal judicial system

Diversion can take place at any point in the criminal justice system where this may be appropriate. For example, these points can be identified as follows;

- Prior to any offending behavior, through educational and other informative means to make juveniles aware of the criminal justice system, social expectations, etc
- When the offender first comes to the notice of the police and before any charges are made (warned and cautioned)
- After being charged, but prior to any court appearance (i.e. discretion on the part of the police or prosecution to drop the charge in favor of some diversionary programme. This is the most desirable one because there is no criminal record.
- As a sentence of the court e.g. community service

The Pre-trial diversion option is in no way intended to make offenders less accountable or responsible for their actions, but rather to provide offenders with the opportunity to rethink their lives without getting a criminal record. In principle, a case is eligible for diversion when it is not in the best interests of the offender, the victim, the criminal justice or society that he/she should be prosecuted or convicted. It is also another way of avoiding the negative impact of a court appearance by using the diversionary technique, which allows for the diversion of juveniles away from the crime and the criminal courts. This is a form of community participation in the control and treatment of deviant behavior. It 'serves to hinder the negative impacts of subsequent proceedings in a juvenile justice administration, for example, the stigma of conviction and sentence and having a criminal record'. There is a stigma associated with a court appearance; hence young offenders should be dealt with extra

judiciary. It is therefore necessary to provide remedial and preventative services in the community for the offender.

The issue of children in conflict with the law has become a growing problem, mainly as a result of rapid urbanization and social-economic challenges. As an increasing number of juveniles are processed through the formal judicial system, it becomes necessary to divert them away from this system and try as far as possible to keep juveniles in the community. This is necessary for a number of reasons which are listed below;

- Children in conflict with the law are amongst the most vulnerable. Often they are victims of harsh socio-economic circumstances, abuse, violence or neglect, which propel them into deviant actions. Incarceration will not help them to develop better ways of coping with their circumstances, but will simply reinforce their alienation from the wider community.
- Most of the offences committed by juveniles are minor, for example shoplifting or vandalism. While these should be taken seriously, juveniles are at an impressionable age and may be influenced to act more responsibly through strategies other than the punitive and retributive strategies. Adolescence typically undergoes a rebellious and defiant period while still maturing. Most will 'outgrow' their deviance and assume more responsible roles as they become older. Overreacting to juvenile delinquency may therefore be counterproductive and reinforce deviant tendencies.

- Incarceration of juveniles in police cells and prisons, apart from the fact that these institutions are already overcrowded, may lead to worsening problems, e.g. emotional damage, contact with hardened offenders, and risk of contracting HIV virus if sexually assaulted while imprisoned.

Children and young people are not born bad, but all fowl of the law as a result of difficult circumstances as discussed above. The courts are overloaded with juveniles charged with minor offences related to being homeless or crimes that are adolescent reactions to difficult socio-economic, family circumstances and the need for survival. Most young offenders grow out of deviant behavior and crime as they become mature and responsible. They need encouragement and help to become law abiding. It is now recognized that this is best achieved by shifting away from punitive and retributive practices towards rehabilitative, educative and restorative options.

5.2.3.2 Activities

The Diversion Programme includes activities such as:

- (i) **Reparation:** This refers to community service or work or service for the benefit of the victim. It may also include reasonable compensation in cash or kind or an apology to the victim.
- (ii) **Counseling:** This may be necessary depending on the nature of the offence and will be facilitated by persons duly trained in this field.
- (iii) **Attendance at a particular institution for educational or vocational purposes:** This could be full time or part time, depending on the circumstances. This activity may be desirable where the young

person would benefit from attendance. This should not be recommended where it will result in family separation.

- (iv) **Victim-Offender Mediation:** This involves a meeting between the offender and the victim, together with relatives and other important adults. The intention is to facilitate the healing of wounds and to encourage societal healing. Issues such as feelings, compensation, apology, performance of community service or work that benefits the victim etc will be discussed. Such mediations are to be handled by properly trained social workers.
- (v) **Constructive use of leisure time:** This is intended to provide appropriate activities to occupy the leisure time of the young person in order to prevent him from engaging in crime motivated by boredom or lack of appropriate supervision. This may include activities such as sport, church or youth groups, and training programmes. There may also be need for caregivers to seek support from the family network. Activities are not to be selected as a form of punishment and should be identified and agreed to by the young person.
- (vi) **Police Cautions:** Matters can be referred back to the Police for a Formal Caution, in line with the Guidelines for Police Cautions.
- (vii) **Family Group Conferencing:** This is similar to Victim-Offender Mediation but is more comprehensive and will include all relevant persons, including local leaders, church leaders and others who have a stake in the matter. This option may be particularly beneficial in

victimless crimes or where the victim is corporate (such as graffiti, vandalism of public property etc).

5.2.3.3 Why is diversion important?

It is generally accepted that most children and young people are influenced by external factors when they start showing delinquent or criminal behavior. These influences include peer pressure, lack of guidance, inadequate parental control, poverty, responses to abuse or violence, neglect or rejection and alcohol or drug abuse. The criminal justice system deals with the offending behavior, but not underlying causes of the behavior. As a result, it does little to prevent reoffending, does not fully rehabilitate the child or young person or help them reintegrate into their community.

Possible benefits of diversion are highlighted in Table 11 below:

Table 11: Benefits for Diversion

Diversion is:	
✓ A way to make offenders responsible for and accountable for their actions;	Because it involves apologies, admissions and the performance of reparative or restorative behaviours
✓ An opportunity for repatriation;	Many complainants or survivors feel sidelined by the formal justice system, which does not take their views or wishes into account. Unless there is a risk to their safety, they also don't benefit directly from an offender going to prison, nor does this repair the harm caused (for example, in a case of

	theft). Diversion processes can address this.
✓ To prevent young offenders from receiving a criminal record early in their lives and being labeled as criminals as this may become a self-fulfilling prophecy;	<p>Most children and young people grow out of their negative behaviours. Labelling them as a ‘bad child’ or giving them a permanent criminal record can be stigmatising and encourage them to live up to the negative expectations that society will have of them. Diversion offers children and young people a ‘second chance.’</p> <p>There is ample evidence globally to show that their experiences in trial and detention generally harden young people. This may result in making the child more of a criminal, rather than correcting their bad behaviour.</p>
✓ To open the judicial process for educational and rehabilitative procedures to come into play for the benefit of all parties affected by the offence;	Many delinquent behaviours are linked to the child’s social or economic environment. If this is rectified, the delinquent behaviour will also disappear. To this end, it is important to find the community-based, child-focussed activities that a child normally needs to grow and develop.
✓ To some extent, to lessen the caseload on the formal justice system.	Processing children
Diversion is not:	
▪ A soft option	In fact, taking responsibility for our behaviour is often more

	difficult than passively accepting and seeing through a punishment.
▪ More likely to increase young offending	By addressing the underlying factors that encourage the delinquent behaviour, diversion can actually reduce reoffending.
▪ A solution to all delinquent behaviours	There is still an imperative to deal with serious and violent offenders. In these cases, referral to the formal system is appropriate, so long as this system continues to honour the rights of the young person to safety, dignity etc.

However, young offenders are still entitled to due process.

The Pre-trial diversion Programme should apply only to those who unequivocally accept responsibility and who are prepared to be diverted. Because diversion is about helping young people to take responsibility for their behavior, it must be entered into voluntarily. Young people who deny their guilt are entitled to due process, including having their matters heard in court.

The implementation of the programme should be guided by principles in Table 14 below:

Table 14: Diversion Guiding Principles

1. The best interests of the young person are to be the paramount consideration	Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences
---	--

	<p>are the reasons for a separate juvenile justice system and require a different treatment for children.</p> <p>In practice, the protection of the best interests of the child means, for instance:</p> <ul style="list-style-type: none"> • that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders • priority should be given to respecting the child's rights when determining the best solution or response
<p>2. Detention is to be used as a last resort, and for the shortest possible period of time</p>	<p>Detention should be reserved for exceptional cases only – most of which would not be suitable for diversion. Every young person who is alleged to have committed a minor or non-violent offence should NOT be detained.</p> <p>Instead, the diversion programme requires the support of well-trained probation service to promote measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.</p> <p>The following circumstances are not to be used to justify the detention of a young person:</p> <ul style="list-style-type: none"> • The young person's caregiver is unavailable or unwilling to present himself/herself at the station.

	<p>If this is the case, the matter should be referred to the Department of Social Services</p> <ul style="list-style-type: none"> • A diversion officer is unavailable or unable to attend to the young person at the station or to locate suitable alternative accommodation. If this is the case, the matter should be referred to the District Social Services Officer. • The Police, Diversion Officer or Area Prosecutor are concerned that the young person will not present himself for the diversion process. In such a case, other conditions should be put in place to safeguard the young person's attendance and availability at a later stage. • The young person cannot afford police bail. Bail should always be set at a level that is within the immediate means of the young person and if the young person cannot afford monetary bail, other conditions should be put in place to safeguard the young person's attendance and availability at a later stage.
<p>3. To the greatest extent possible, a young person's contact with the formal justice system is to be</p>	<p>Diversion is intended to minimize contact with the formal system. In practice, this means that children who are eligible for diversion should:</p> <ul style="list-style-type: none"> • Not spend time in a police station (or at least only the minimum required period of time)

<p>minimized</p>	<ul style="list-style-type: none"> • Not go to court (or at least only the minimum number of times required) • Should spend as little time as possible in government officials' offices, rather, supervision and support services should be provided at their home or in their community • Detention facilities are to be avoided to the greatest extent possible. <p>Detention should be for the shortest possible period. The young person should not spend more than 12 hours in police custody prior to being seen by the Diversion Officer and not more than 48 hours before his matter is brought before the Diversion Committee. To the extent possible and as outlined above, any young person who is eligible for diversion must not be detained in a police cell, but in alternative accommodation.</p> <p>No child under the age of seven years is to be incarcerated at any time.</p>
<p>4. The young person's right to protection from abuse, exploitation and violence is to be respected at all times, including protection from unlawful corporal</p>	<p>The intention of diversion is to help the child to take responsibility for their behavior, rather than have the matter dealt with in a punitive manner. In practice this means that:</p> <ul style="list-style-type: none"> • Police should not use force on a child • Corporal punishment is only permissible if court ordered and based on a conviction – convictions are avoided in diversion cases

<p>punishment as a response to alleged criminal behavior</p>	<ul style="list-style-type: none"> • No child is to experience violence whilst in custody or by a justice official <p>Use of pre-trial detention as a punishment violates the presumption of innocence and must not occur.</p>
<p>5. All children are to be separated from alleged and convicted adult offenders throughout their contact with the justice system</p>	<p>It is well documented that detaining a child in the same place as adults has many negative repercussions:</p> <ul style="list-style-type: none"> • Children are more likely to experience violence or abuse at the hands of adult prisoners • Children learn new (and often more effective!) criminal behaviors from adult prisoners <p>The possibility of detention is often a deterrent for young people. If they experience detention, it loses some of its deterrent effects.</p>
<p>6. A young person's right to due process is to be respected at all times</p>	<p>Diversion is not intended to replace due process. Certain procedures must still be followed:</p> <ul style="list-style-type: none"> • Young people who want to have their matter contested in court are entitled to do so • Young people must be given legal assistance and understand their legal rights
<p>7. No young person is to be penalized for capacity constraints that exist in the system, which are beyond his control</p>	<p>Many capacity constraints continue to hamper the efforts of the justice system actors, including lack of transport, financial resources and training. These should not be used to punish or disadvantage a young person (who has no control over the system, resource allocation – indeed, they cannot even vote).</p> <p>In practice, for example:</p>

	<ul style="list-style-type: none"> • No young person to be detained because the probation officer is not available or does not have a car to find their young person's family • No young person to be required to pay a monetary bail because the probation officer or police do not have resources to conduct adequate supervision
8. Boys and girls are to be treated differently, where necessary, to ensure maximum benefit from their participation in the diversion process.	For example, alleged girl offenders should be addressed by female police officers and other justice professionals, where possible, and must only be placed in detention if their separation from boys and men is secured.

5.2.4 International Guidelines

When children are alleged to have infringed penal law, or are accused of or recognized as having infringed penal law, the importance of diversion (i.e., dealing with them outside the formal justice system) is clearly highlighted in international guidelines. Article 40.3 (c) of the CRC calls for, “whenever appropriate and desirable, measures for dealing with such children without resort to judicial proceedings, provided that human rights and legal standards are fully respected”. A more elaborate discussion of the importance of diversion is found in section 11 of the Beijing Rules, which state:

- Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority.
- The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.
- Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.
- In order to facilitate the discretionary disposition of juvenile cases, efforts should be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation.

5.2.5 Case Study: Diversion in South Africa

Diversionary programmes for juvenile offenders in South Africa have been promoted by organizations such as the National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO). As noted by NICRO;

‘Diversion appears to be one field in which rapid responses can be gained to make the criminal justice system more humane and empowering’ (Muntingh and Shapiro supra).

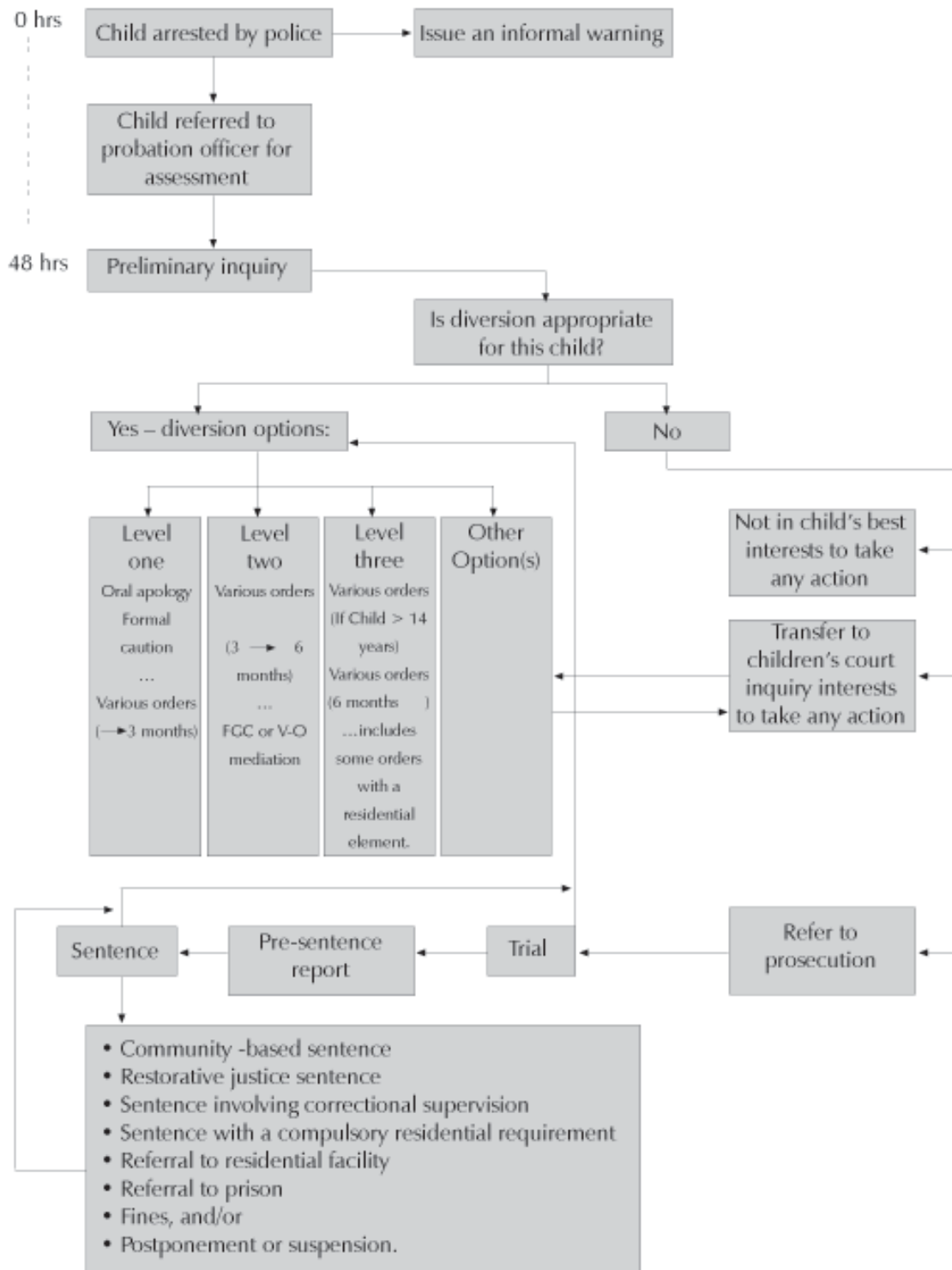
Diversion in South Africa started as an informal process, drawing on the discretion of the prosecutor. Now the procedures are formally defined by law. Diversion in

South Africa is in terms of Chapter 8 of the Child Justice Act No. 75 of 2008 which started being implemented in 2010. The Act establishes a criminal justice system for children in conflict with the law and entrenches the notion of restorative justice in the criminal justice system for children in conflict with the law. The Act is in line with basic human rights principles of the Constitution of the Republic of South Africa, which is the supreme law of the land.

Diversion under Chapter 8 of the Act entails that a criminal case against a child is temporarily withdrawn in order to deal with the child outside the criminal justice system. The main aim of diversion is to make sure that a child does not have a criminal record at an early age. Diversion in South Africa is a specific needs based programme with conditions to change behaviour and to get a child out of the criminal justice system. However, the child still appears in a preliminary inquiry where all stakeholders sit and a magistrate gives a diversion order, or he/she appears in court for trial where a diversion sentence maybe given and a case is temporarily withdrawn pending completion of the diversion order. A probation officer reports back to court on progress in terms of compliance or non-compliance of the diversion order. Diversion is therefore part of restorative justice where the relationship with the victim, community or state is restored. Diversion also promotes the well-being and dignity of the child. NICRO offers three diversionary options, viz;

- a) Pre-trial community service
- b) Victim offender mediation
- c) Youth offender programme

Figure 21: Diversion in South Africa: Summary: *Source: (Justice: 2004)*



5.3 DIVERSION OPPORTUNITY FOR ZIMBABWE

The following Table highlights various stages where diversion can take place as well as typical experience of the young offender at different levels of the criminal justice:

Table 12 Stages where diversion can take place

Event	Response	Comments
Child commits offence	Police apprehend child	Police are not trained in juvenile justice principles. Police noted that a majority of offences are minor, property offences (theft, break and enter, truancy or disobedience) and most commonly committed by children living and/or working on the streets. Police estimated about 80-90% of cases were minor offences, although also concerned that rape was on the rise (both in terms of alleged child offenders and child survivors).
	Police may use discretion and issue caution and release child.	A caution may be issued, subject to the individual discretion of the officer (there are no specific guidelines for this). This is generally only done if the victim is willing to have the matter dealt with in this manner.
	If discretion used, child is released	OPPORTUNITY FOR DIVERSION
	Police may arrest child	This is the most common response to juvenile offending.
Police arrest child	Child is brought to police station	Police stations are not equipped with child friendly spaces. Children are detained in cells and interviewed in the same rooms used for adults.
	Child is detained in cells until parents or guardian arrive	Police stations in the areas visited reported that they did not have separate cells for juveniles and adults. They also reported that this can take some time as they often have difficulty locating parents and do not have the resources to go looking for parents.
	Child is interviewed	Police not trained in child-friendly interview techniques. They also

		face difficulties finding appropriate adults to sit in on interviews as parents/family can be difficult to locate, or are often reluctant to come to the station. Probation officers are scarce.
	Child may be released on bail or own recognizance	This is the preferred option for minor offences. The greatest barrier is when the family is not willing to accept the child to return home and they rely on social services to find an alternative.
	Child may be detained for up to 48 hours pending court	This is common for serious offences, or when no suitable accommodation can be found for the juvenile. Juveniles are detained in the same cells as adults.
Child is charged	Public prosecutor may choose to decline prosecution	This option is rarely utilized, largely due to concerns that they may be accused of corruption if perceived to be unduly lenient. There are no standard guidelines for public prosecutors regarding the decision to decline prosecution. This provision is a key entry point for diversion.
	If prosecution is declined, child is released	OPPORTUNITY FOR DIVERSION
	If decision is made to proceed, child is taken to court	
Child brought before the court	If minor offence, matter is brought before juvenile court	All magistrates' courts can be juvenile courts. Magistrates have not been trained in dealing with juvenile cases.
	If serious offence, matter is brought before regional court	This court is presided over by the Regional Magistrate. These magistrates have not been trained in dealing with juvenile cases.
	Child is not represented unless child can afford private lawyer	There is a legal aid division within the Ministry of Justice and Legal Affairs, however most legal aid services are centered in Harare. A Bulawayo Division has just been established (5 lawyers), however does not have any office equipment or

		transport.
	Probation officer presents background information	There is a shortage of probation officers in the districts. This is further compounded by a high rate of turnover. This is believed to be due to the more attractive remuneration packages offered by the non-government and private sectors (both in Zimbabwe and abroad). Delays in the delivery of this information can contribute to lengthy detention periods.
	Child is asked to enter a plea	Some magistrates are of the view that children plead guilty because they are fearful of the outcome and want the matter finalized quickly, in the hope of leniency.
	If child pleads not guilty, matter is set down for trial	Legislation governing the conduct of trials does not yet cater for child friendly courts for alleged child offenders.
	Court proceeds in manner similar to adult proceedings	Court is not conducted in a child-friendly manner.
	If found not guilty, child is released	OPPORTUNITY TO EXIT THE SYSTEM
Child found guilty or pleads guilty	If found guilty, matter proceeds to sentencing	
	Prior to sentencing, probation officer submits report, including mitigating circumstances	This does not happen in a timely manner as there are insufficient probation officers. There are plans to address this through extending the responsibility to all qualified social workers.
	Public prosecutor makes sentencing recommendation	It is common for prosecutors to ask for a 'short, sharp sentence.' In addition, the lack of representation for children is resulting in many children receiving maximum sentences.
	Child may be offered community based sentence	OPPORTUNITY TO EXIT THE SYSTEM

	Child may be receive custodial sentence	
Child is committed to custodial sentence	Child is detained at an approved institution	Children can be detained in jails or a probation hostel.
	Matter may be reviewed upon recommendation from probation officer	OPPORTUNITY TO EXIT THE SYSTEM
	Child is released upon completion of sentence	OPPORTUNITY TO EXIT THE SYSTEM

Zimbabwe should seriously consider planning for a **Diversion Pilot Project** that needs to take off the ground. Taking into consideration the issues and concerns discussed above, it is imperative that anyone planning a diversion pilot project understands and adopts the following principles:

- Access to the formal system remains and option before, during and after the process of diversion.
- Any ruling/ hearings/decisions emerging from the system of diversion must conform with international and national human rights standards.
- No pressure must be put on young people to admit guilt in order to get them to participate in the diversion process
- Serious crimes such as rape and murder must be dealt with in accordance with formal procedures

Phases of the Diversion Project

Phase 1: Research and situation Analysis

- Identify areas where the project can be piloted either at provincial or district level.
- Undertake an analysis of legislation relevant to the diversion project. Is new legislation needed, or could provisions within existing legislation be used to support the project?
- Ensure there is a process of consultation involving especially children but also key actors within the criminal justice system, as well as community groups, etc.

Phase 2: Drafting a diversion proposal

- Prepare a short proposal outlining the aims and benefits of the project. Outline roles of all stakeholders that deal with children.
- Outline reasons which particular provinces or districts were chosen for the pilot project.
- Highlight the current system dealing with children in conflict with the law. If it's a formal system, explain that the aim of the project is to keep children within the community, and close to their family.

Phase 3: Involving stakeholders

- Obtain clearance from the highest level of authority responsible for dealing with children's affairs in the country: request permission to do a pilot project

and seek the support of national and local structures and the involvement of representatives from different ministries in designing the programme.

- Host seminar with the Government to launch the project and to identify core members of the group who will be responsible for designing detailed plans for the project.

Phase 4: Implementation

- Get approval for implementation of the project from the highest level of Government.
- Provide training at all levels and involve all in awareness raising programmes, including publication and distribution of poster, leaflets and guidelines.

Once the necessary groundwork has been done and permission obtained, work can start on setting up a diversion process. This recipe for non-state organizations can even work for the Government as well if its spearheading its own pilot project. The only difference is that Government would seek approval for different systems such as the Cabinet or Parliament.

5.4 CONCLUSION

In a nutshell, the disposition of cases involving juveniles and young offenders in Zimbabwe is unsatisfactory as discussed in this study. A number of juveniles are being unnecessarily prosecuted and incarcerated. This has resulted in a lot of problems which include that juveniles are being exposed to the influence of hard core criminals. The process of arrest, trial and sentencing has been shown to be an

immensely frightening and damaging for a child. International rules and guidelines have been shown to promote and outline alternatives to intimidating formal court procedures, including the use of diversion explained above. Sentencing options in the CPEA and the Children's Act have been applauded as semi-diversional but still they will have criminal records which will mark the rest of their lives. A range of non-custodial sentences that can be applied to children who come into conflict with the law have been outlined and include community service orders, attendance centre orders among others. The main objective of this study has been to fully divert juveniles and young offenders from the criminal justice system by introducing a diversion programme for young offenders as discussed.

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Legislation

African Charter on the Rights and Welfare of the Child (ACRWC)

Children's Act [Chapter 5:06]

Criminal Law (Codification and Reform) Act [Chapter 9:23]

Criminal Procedure and Evidence Act [Chapter 9:07]

United Nations Convention on the Rights of the Child (UNCRC)

United Nations Guidelines for the Protection of Juvenile Delinquency 'Riyadh Guidelines' (1990)

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (1990)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice 'Beijing Rules' (1985)

Appendices

APPENDIX 1: THE RESEARCH QUESTIONNAIRE LETTER

Dear Respondent

Thank you very much for accepting to complete this questionnaire. My name is Kudzai Jiri, a Masters in Public Policy and Governance (MPPG) student with Africa University. As part of the requirements of the Masters programme, I am carrying out a research study entitled: **JUVENILE JUSTICE IN ZIMBABWE: THE NEED FOR POLICY REFORM.**

Respondents to this questionnaire have been purposively selected and you have been selected through this method. You are therefore requested to complete the attached questionnaire and return it to the undersigned by 28th March 2013. Please note that you are not required to write your name anywhere on this questionnaire and do not hesitate to contact me should you need any clarification regarding completing this questionnaire. Also take note that your responses remain confidential and will only be used for the purpose of this dissertation. You are therefore encouraged to honestly answer all questions without seeking other people's opinions as there is no right or wrong answer.

Please contact the undersigned when you have completed the questionnaire or should you need further assistance on the following contact details:

Email address: k.jiri@hotmail.com

Mobile: 0774391586

Thank you for your assistance.

Yours sincerely

Kudzai Jiri

(MPPG Student)

APPENDIX 2: POLICE QUESTIONNAIRE

RESEARCH TOPIC: JUVENILE JUSTICE IN ZIMBABWE: THE NEED FOR POLICY REFORM.

Section A: Personal Details of Respondent (Please tick the applicable)

1. Sex: (a) female ☐

(b) Male ☐

2. Age: (a) 20-30years ☐

(b) 31-40years ☐

3. What is your designation?

.....

4. Department/ Ministry where you work

.....

SECTION B: TREATMENT OF JUVENILES AT DIFFERENT LEVELS

Investigation

5. Is there a particular or specific method of investigation followed when investigating juvenile cases?

.....

6. The investigation process requires confidentiality, individuality to cases involving child offenders. Can this be developed in a single sitting or single interview?

.....

7. Is there any specific unit that only deals with juvenile suspect cases?

.....

Arrest

8. On average, how many juveniles do you arrest per day?

.....

9. What pieces of legislation do you (police) use in arresting juveniles?

.....

10. What is the process of arrest of juvenile offenders?

.....

11. If a juvenile commits a crime viewed as an adult crime like rape and murder, are they arrested just like adults?

.....

12. Are there instances where juvenile offenders are warned and cautioned? Do they give the statement alone or in the presence of their guardian or parents?

.....

Crime

13. Do you have a crime record book where basic information about the juvenile offender is recorded?

.....

14. What kind of information do you usually record e.g. sex, age, type of offence,
date of committal of offence, place of committal of offence etc?

.....

15. For the juveniles who are in police custody, when are they likely to be
arraigned before the courts?

.....

16. Generally, which crimes are committed by juveniles?

.....

17. Where are juveniles remanded and for how long?

.....

18. What is your opinion on the pertaining juvenile justice delivery system in
Zimbabwe?

.....

APPENDIX 3: COURTS QUESTIONNAIRE

RESEARCH TOPIC: JUVENILE JUSTICE IN ZIMBABWE: THE NEED FOR POLICY REFORM.

Section A: Personal Details of Respondent (Please tick the applicable)

1. Sex: (a) female ☐

(b) Male ☐

2. Age: (a) 20-30years ☐

(b) 31-40years ☐

3. What is your designation?

.....

4. Department/ Ministry where you work

.....

SECTION B: TREATMENT OF JUVENILES AT DIFFERENT LEVELS

5. What are the procedures followed when a juvenile is brought to trial/ court?

.....

6. Are juveniles always tried in a separate court?

.....

7. Do juveniles always have access to Legal representation?

.....

8. What are the sentencing options available to juveniles?

.....

9. How often do you pass a custodial sentence or a corporal punishment sentence?

.....

10. Is the issue of criminal capacity considered paramount to children below the age of seven years?

.....

11. Is the court environment friendly to juvenile offenders? Give an explanation.

.....

12. The Children's Act spells out that a child be brought to court '*as soon as possible*'. From your previous experiences, how soon are juveniles often brought to court?

.....

13. How often do you pass sentence without the probation officer's report?

.....

14. What is your opinion on the pertaining juvenile justice delivery system in Zimbabwe?

.....

APPENDIX 4: PRISON QUESTIONNAIRE:

RESEARCH TOPIC: JUVENILE JUSTICE IN ZIMBABWE: THE NEED FOR POLICY REFORM.

Section A: Personal Details of Respondent (Please tick the applicable)

1. Sex: (a) female ☐
(b) Male ☐
2. Age: (a) 20-30years ☐
(b) 31-40years ☐

3. What is your designation?

.....

4. Department/ Ministry where you work

.....

SECTION B: TREATMENT OF JUVENILES AT DIFFERENT LEVELS

5. How many child offenders are in your prisons?

.....

6. What special conditions exist for child offenders?

.....

7. What is your opinion on the pertaining juvenile justice delivery system in Zimbabwe?

.....

APPENDIX 5: SOCIAL WELFARE QUESTIONNAIRE

RESEARCH TOPIC: JUVENILE JUSTICE IN ZIMBABWE: THE NEED FOR POLICY REFORM.

Section A: Personal Details of Respondent (Please tick the applicable)

1. Sex: (a) female ☐

(b) Male ☐

2. Age: (a) 20-30years ☐

(b) 31-40years ☐

3. What is your designation?

.....

4. Department/ Ministry where you work

.....

SECTION B: TREATMENT OF JUVENILES AT DIFFERENT LEVELS

5. What is your role in the handling of children who are in conflict with the law?

.....

6. Who usually refer juvenile offenders to social welfare?

.....

7. What kind of support services do you offer to juveniles referred to your offices?

.....

8. What are the procedures followed when a juvenile offender is referred to social welfare?

.....

9. Do probation officers have any idea about children's rights?

.....

10. Is it always the case that you submit a probation report before sentence is given in juvenile courts?

.....

11. Does the data you collect form the core investigation of the probation officer in terms of the juvenile offender?

.....

12. Does the probation officer give recommendations to the magistrate presiding over a juvenile court, upon his or her findings?

.....

13. What is your opinion on the pertaining juvenile justice delivery system in Zimbabwe?

.....