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# THE PRETRIAL DIVERSION PROGRAMME AND ITS IMPACT IN THE JUVENILE JUSTICE SYSTEM IN ZIMBABWE: HARARE PROVINCE, ZIMBABWE

BY

LARISA WINEFRIDA CHIKANYA

A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTERS IN HUMAN RIGHTS PEACE AND DEVELOPMENT IN THE COLLEGE OF BUSINESS, PEACE, LEADERSHIP AND GOVERNANCE

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## Abstract

Children in conflict with the law deserve to be protected from formal criminal justice system because of the negative effects attached to it. Worldwide States have been moving from the traditional criminal system for juveniles moving to restorative justice which is more positive and rehabilitative in nature. Before the Government of Zimbabwe launched the Pre-Trial Diversion Programme in May 2013 there was no separate justice system for children in conflict with the law and adults, they were all treated in the same manner. The programme is aimed at finding ways of diverting cases committed by children under the age of 18 years and other crimes not considered to be serious from the formal criminal justice system. Therefore this study explores the Pretrial Diversion Programme and its impact in the juvenile justice system in Harare. The theoretical framework which guided this study was the labelling theory and the welfare model. This theory believes that the use non-custodial sentences for children in conflict with the law makes them better citizens yield better results. It views incarceration as inappropriate for children as it results in stigmatization and labelling which will affect the child's self-perception and future opportunities. In addition, the literature review also discussed the welfare model which suggests that juvenile offenders should be treated in a peculiar way which is different from the way adult offenders are treated. Purposive was used to recruit fifteen (15) participants from key government ministries, Civil Society Organizations, Prison Services and other individuals working with children in conflict with the law. The findings from the study show that the Pretrial Diversion Programme has been an effective alternative rehabilitation mechanism in ensuring that children in conflict with the law are not incarcerated especially in areas where it is being implemented. It was also noted that the programme decongest and improve efficiency of the court system, allows children in conflict with the law a second chance, avoid a criminal record and for them to be rehabilitated and contribute meaningfully to the society. The findings from the study also showed that in as much as the Pretrial Diversion Programme is a great initiative however, it has inadequate funding allocation which has led to limited personnel and low coverage in terms of outreach to other areas in the country where it has not been implemented. This has therefore affected its activities leading to children in conflict with the law in these areas face incarceration. The research concluded that the Pretrial Diversion programme has been effective in keeping children away from judicial proceedings however; there is need for a clearly articulated and documented modus operandi of the programme and a multisectoral approach in its implementation to improve its coverage and efficiency. Finally, it is suggested that more research be done on the Pretrial Diversion Programme to increase knowledge regarding implementation.



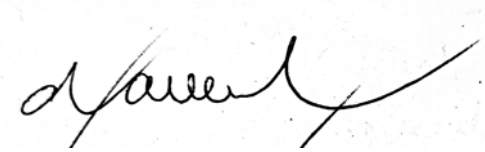
**Key Words**: Pretrial Diversion Programme, juvenile offenders, children in conflict with the law, juvenile justice

## Declaration

I declare that this dissertation is my original work except where sources have been cited and acknowledged. The work has never been, nor will it ever be submitted to another university for the award of a degree

Larisa Winefrida Chikanya 26 Mar. 2020

Student's Full Name Student's Signature (Date)



Mr Chupicai Manuel

26 Mar. 2020

Main Supervisor's Full Name Main Supervisor's Signature (Date)

## Copyright

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## Dedication

This work is dedicated to all the children who are or have been in conflict with the law in Zimbabwe.

## List of Acronyms and Abbreviations

| | |
|---|---|
| ACRWC | African Charter of the Right and Welfare of the Child |
| ACPF | African Child Policy Forum |
| AU | African Union |
| CATCH | Care at the Core of Humanity |
| JCT | Justice for Children's Trust |
| MoJLPA | Ministry of Justice Legal and Parliamentary Affairs |
| MoLSW | Ministry of Labour and Social Welfare |
| PTD | Pretrial Diversion Programme |
| POS | Prison Outreach Support |
| UNCRC | United Nations Convention on the Right of the Child |
| UNICEF | United Nations Children's Fund |
| ZPCS | Zimbabwe Prisons and Correctional Services |
| ZLHR | Zimbabwe Lawyers for Human Rights |

## Definition of key terms

**Child** refers to any male or female person under the age of 18 years (New Zimbabwe Constitution, Amendment No. 20 of 2013).

**Diversion**- Gildenhuys (2002) defines diversion as an option available to prevent children and youths from being drawn deeper into the criminal justice system.

**Juvenile delinquency**- is a pattern of antisocial behaviour displayed by people younger than 18 years that would be regarded as being of a criminal nature if committed by adults (Barker, 2003).

**Juvenile offenders**- Barker (2003) defines juvenile offenders as young people, usually under the age of legal responsibility (age 18 in most countries), who have been convicted of legal violations.

## Table of Contents

## List of Tables

## List of Appendices

# CHAPTER 1 INTRODUCTION

## 1.1 Introduction

Delinquency and criminal behaviour is common among young children as they negotiate the evolution from childhood to adulthood in a progressively multifaceted world. Children in conflict with the law who get into the juvenile justice system have high rates of distressing experiences (Alvi, 2012). In relation to the above point, Ruparanganda and Ruparanganda (2016) are of the view that the most of the children who are involved in the juvenile justice system experience abuse, neglect, dysfunctional home environments, poverty, school-related problems and exposure to delinquent peers and community. Juvenile offenders are therefore more likely to become career criminals once they enter the juvenile justice system (Farrington, Loeber and Howell, 2012). This is because judicial proceedings and incarceration make the child susceptible to abuse, exposure to hard core criminals and limits his or her chances of future employment. However, in many countries the systems are gradually moving from being retributive and punitive to becoming rehabilitative including Zimbabwe. The traditional criminal justice system is not effective in reducing or managing crime because it focuses more on punishing the child rather than the underlying cause of committing the crime (Cooper, 2013).

Adding on, research also shows the traditional approach to delinquency and the criminal justice system are nonproductive and in some instances can even create more problems than they resolve (National Research Council, 2012). In response, the juvenile justice systems worldwide have begun exploring rehabilitation alternatives to the punitive system

in some juvenile matters (National Center for Mental Health and Juvenile Justice, 2016). Some of the rehabilitation alternatives are known as diversion programs, under which restorative justice diversion programs emerged from. The intention is to complete a nontraditional alternative mechanism instead of arbitration and most importantly to divert the juvenile offender away from the criminal justice system which usually treats them as adults (Bergseth and Bouffard 2012).

## 1.2 Background to the Study

There are a number of scholarly and institutional definitions of a justice systems and in this study, UNICEF (2013) defines a justice system as that which is child friendly, guarantees the respect and the active implementation of all children's rights at the highest attainable level and gives due consideration to the child's level of maturity and understanding the circumstances of the case. Adding on, Article 40, 3(b) of the United Nations Convention on the Rights of the Child (UNCRC) states that wherever appropriate and desirable, measures for dealing with children States should employ mechanisms which do not involve formal judicial proceedings (UNCRC, 1989). The concept of restorative justice aims to divert juveniles from the formal justice system and to integrate elements of rehabilitation to ensure that they become responsible citizens (Ruparanganda and Ruparanganda, 2016). Leonard and Kenny (2011) concur that diversion is an alternative rehabilitation mechanism which avoids stigmatization, saves the child from being involved in the harsh process of judicial proceedings and is also cost effective. The goal of this restorative justice ideology is to ensure the victim is also involved in the process to repair the harm and is satisfied with the outcome (Leonard and Kenny, 2011). It is also aims to make sure the offender comprehends how their actions would have

affected other people and for him or her to take responsibility for those effects (Leonard and Kenny, 2011). Diversionary measures can commence at any stage: including at the time of arrest or immediately before the foreseen court hearing either as a commonly applicable measure or on the decision of the police, prosecutor, and court or similar organization or group (Dearing, Whitted and Delovega, 2013).

In recent times, many States have now started embracing some degree of a rehabilitative methodology in the administration of juvenile justice through the alternative rehabilitation mechanisms (Wilson and Hoge, 2013). One popular form is diversion, usually it is set aside for children in conflict with the law regarded as lower risk lower-risk. Normally, with this type of diversion (which is usually community based) it works as follows: following initial contact with the police, the child is diverted from the formal criminal justice system with no further police or judicial processing (Wilson and Hoge, 2013). Formal diversion programs, on the other hand like the Pretrial Diversion in Zimbabwe require some conditions on the part of the child in question which typically includes an admission of guilt, the availability of a birth certificate or participation in the offense and an agreement to participate in programming if deemed suitable (Wilson and Hoge, 2013).

A number of African countries which have ratified the United Nations Convention on the Right of the Child and the African Charter on the Rights and Welfare of the Child, these have provided a chance for the re-examining of child laws, mostly laws concerning child care and child protection (Vengesai, 2014). Therefore, child law reforms have been instituted in countries such as Ghana, Kenya, Namibia, South Africa, Tanzania, Uganda and Zimbabwe (Zimbabwe Lawyers for Human Rights, 2013). In Kenya there is a Child Rights Act of 2002 which outlaws any form of imprisonment for children (African Union

Report, 2016). Diversion programmes have also been operationalized in countries such as Namibia, Zambia and South Africa. The South African system is regarded as possibly the most progressive of all, mainly because its Child Justice Act of 2008 devotes an all-encompassing chapter on the issue of diversion (ZLHR, 2013). This is something that Zimbabwe is currently trying to do with the Child Justice Bill (yet to be passed into an Act) it will have an explicit provision on the Pretrial Diversion Programme.

### 1.3 The Pretrial Diversion Programme in Zimbabwe

Owing to its obligations under Article 40 of the UNCRC, Section 81 of the Constitution and sections 28 and 29 of the Children's Act, the government of Zimbabwe, with the support from UNICEF and Save the Children launched the pilot programme of the Pre-Trial Diversion in May 2013 (ZLHR, 2013). The programme is aimed at finding ways of diverting cases of crime committed by children under the age of 18 years which are not considered to be serious in the formal criminal justice system (ZLHR, 2013). The pilot programme was first rolled out in Harare, Gweru, Chitungwiza, Murehwa and Bulawayo, and then in 2016 it was fully adopted into the juvenile justice system and rolled out in other districts (Ministry of Justice Legal and Parliamentary Affairs, 2019).

The PTD seeks to make juveniles responsible and accountable for their actions, and to provide an opportunity for reparation and prevent young offenders from receiving a criminal record early in their lives (MoJLPA, 2013). This programme considers charges of treason, murder and rape as serious crimes (ZLHR, 2013). Hence, children charged with such offences are not eligible for diversion, children eligible for diversion are those who would have committed crimes such as theft, assault, malicious damage to property

and possession of drugs. The Pretrial Diversion Programme for juveniles ensures that offenders receive rehabilitative, educative and restorative sustenance through training so as to reintegrate them into society without the stigma of a criminal record (Justice for Children, 2012).

The Pretrial Diversion Programme in Zimbabwe works as illustrated below as provided for in the Criminal Procedure and Evidence Act, 2004. When a young offender is already appearing in Court and it comes to the attention of the Attorney General (AG) or his representative that the young offender meets the requirements for diversion in terms of national and international law, charges will be withdrawn before plea and the matter will be referred to the Pretrial Diversion officer (ZLHR, 2013). Section 351 of the Criminal Procedure and Evidence Act provides for the principle to which children in conflict with the law ought to be dealt with and that such children may be committed to a training institute or a reform school and not incarceration (ZLHR, 2013).

### 1.4 Statement of the Problem

The level of crime in Zimbabwe has been rampant particularly involving children under the age of 18 years puts them at a great risk of becoming involved in the formal criminal justice system. According to Refworld (2017) 0.7% of juveniles are incarcerated in Zimbabwe's prisons. Despite some success in the reduction of crime among children in conflict with the law by means of rehabilitation, these children often find it difficult to live their lives in harmony especially because of the way the world is changing therefore, they are sometimes drawn to deviate due to circumstances which enable them to enter into a life of crime (Muntigh and Shapiro, 1997). The Constitution of Zimbabwe condemns

the imprisonment of children except as a measure of last resort and for a short period, however children in Zimbabwe are still facing incarceration and going through criminal proceedings like adults. The major concern over this is that the formal justice system is punitive in nature and it exposes these young offenders to hardened criminals as they are usually detained together with adults and experience prison life at an early age. More so, when they face incarceration they are highly likely to commit to a life of crime when they become adults. The adoption of the Pretrial Diversion Programme by the Government of Zimbabwe was a stepping stone in ensuring that juvenile offenders receive treatment which has their best interests at heart. To date statistics from the National Prosecuting Authority show that since adoption of PTD 4 000 children have been diverted successfully (Matiashe, 2019). Hence, there is a great need for the Pretrial Diversion Programme to prevail in the juvenile justice system so as to protect and promote the rights of children.

### 1.5 Purpose of the study

The purpose of this study is to gain insight into the Pretrial Diversion Programme and the extent to which it has had an impact on the juvenile justice system in Zimbabwe.

### 1.6 Research objectives

The objectives of this research are to:

1. Examine the role of the Pretrial Diversion Programme in the juvenile justice system in Zimbabwe.
2. Explore perceptions of the various stakeholders in the juvenile justice system towards the Pretrial Diversion Programme.

3. Assess the impact of the Pretrial Diversion Programme in the juvenile justice system.

## 1.7 Research Questions

1. What is the role of the Pretrial Diversion Programme in the juvenile justice system in Zimbabwe?
2. What are the perceptions of the various stakeholders in the juvenile justice system towards the Pretrial Diversion Programme?
3. To what extent has the Pretrial Diversion Programme has had an impact on the juvenile system in Zimbabwe?

## 1.8 Assumptions

The researcher was under the assumption that formal court proceedings were not conducive for children in conflict with the law hence making it difficult for the children to cope. Another assumption was that the Pretrial Diversion Programme was the cornerstone of juvenile justice and a necessity. The researcher assumed that access to interview people working with children in conflict with the law and those implementing the Pretrial Diversion Programme was going to be easy and the participants were going to the interview questions in an honest and sincere manner.

## 1.9 Significance of the study

This study was informed by the need to understand the Pretrial Diversion Programme, legislative frameworks that govern it and the impact of the Pretrial Diversion Programme

in the juvenile justice system in Zimbabwe and also to provide concrete recommendations to improve the Pretrial Diversion Programme. It was undertaken in the context of a country emerging from over a decade of socio-economic collapse, aspects of which had negatively affected the justice delivery system and neglected the essence of a separate juvenile justice system.

The researcher decided to undertake a study to analyze the Pretrial Diversion Programme a somewhat under researched area in Zimbabwe so as to assess its impact in the juvenile justice system in Zimbabwe.

### 1.10 Delimitation of the study

The focus of this study was on the effectiveness of the Pretrial Diversion Programme among juvenile offenders. This study therefore contains an analysis of the implementation of the Pretrial Diversion Programme in Harare. The study was delimited to focus on the Pretrial Diversion Programme. The study strategically focused on Harare Province because it encompasses juvenile offenders of all classes. The concept of restorative justice was adopted only after independence in Zimbabwe; therefore, the focus was on the juvenile justice post-independent Zimbabwe.

### 1.11 Limitation of the study

There are a number of limitations of the study which were experienced during the research period. Firstly, due to the small size of the sample there was risk of generalization of the findings. Nevertheless, despite of the small sample size, the objectives of the study were still achieved by means of the deep and detailed explanations and thoughts of the

participants. Another limitation to this research was that due to the principle of safeguarding children, confidentiality and do no harm the researcher could not interview children who had undergone diversion hence, she decided to focus the research on people working directly with children in conflict with the law who had a deeper understanding of the PTD. The other limitation of the study was that some of the institutions targeted by the researcher either refused to participate or did not respond to the researcher's request to get information them. The researcher then looked for other individuals working with children in conflict with the law.

# 2. CHAPTER 2 REVIEW OF RELATED LITERATURE

## 2.1 Introduction

This section reviews literature on the diversion of juveniles in the justice system. The theoretical framework guiding the study consists of the Labelling Theory and the Welfare Model both support the concept of restorative justice which promotes the rehabilitation of juvenile offenders and not their incarceration. This chapter also encompasses the analysis of the legal frameworks regulate juvenile justice internationally, regionally and in Zimbabwe placing emphasis on the diversion of children in conflict with the law.

## 2.2 Reviewed Literature

The concept of restorative justice is originated on the theoretical principles of fixing the harm and restitution in a collective restorative manner and empowers the victim (Zehr, 2015). The theorists of restorative justice argue that crimes are offences against individual and community relationships as opposed to offences committed against the State. It implies those most affected by the crime, such as the victim, family members, and community stakeholders are included in developing appropriate outcomes to correct the harm (Wachtel, O' Connell and Wachtel, 2010).

A comprehensive assumption of restorative justice ideology is that individuals alter their behavior based on the social ties they form (Wachtel et al., 2010). To change negative behaviour of the juvenile offender, restorative justice is premised on the view that children should be approached from a place of caring. People are motivated to act in the same way as those in their support networks. If social support originates from a deviant setting, then

that child will be more inclined to act in a deviant manner and embrace the label of deviant. Similarly, a child with a positive support system is more probable to behave in socially suitable ways (Wachtel et al., 2010). Restorative justice ideology focuses on three principles which are harm, wrongs which result in obligations and encourages participation (Zehr, 2002). More so, restorative justice makes sure juvenile offenders are held responsible to the people they would have harmed, the process is collaborative, and offenders are offered the chance to repair the harm they would have instigated (Clark-Hill, 2014).

The concept of restorative justice initiated the coming in of other concepts which focus on the rehabilitation of an offender such as the Welfare Model. The Welfare model postulates that children in conflict with the law should be treated in a unique way totally different from the way adult offenders are treated (Ntuli, 2017). It is also termed the protection model because of its leaning towards to protection of the innocent and vulnerable child. (Vengesai, 2014). Children in conflict with the law according to this model should be developed in a way that they become responsible adults instead of being subject to criminal punishment (Odhiambo, 2005). Schissel (1993) is of the view that the welfare model puts more emphasis on the vulnerability and on the other hand it supports the reduction of punishment. In terms of this model the court has to be a prime protector of the child because the he or she is both mentally and physically immature. It is because of this immaturity that children should not be considered as rational and self-determining (Odhiambo (2005).

Adding on to the above point, this implies that children must be treated separately from the adults through a different justice system which takes into account their needs**.** Children

found in conflict with the law, with regards to this model, are supposed to be cultivated in a manner in which they will become responsible adults in the future in place of being subjected to criminal punishment (Odhiambo, 2005). The welfare model also stresses on the vulnerability of children, reduction of punishment or alternatives to punishment (Vengesai, 2014). Schissel (1993) is of the view that the welfare model is well established in the doctrine of "*parens patriae",* which when translated to English law means that the State has an obligation to protect vulnerable parties in the courts of justice thereby encompassing children who form part of this group of vulnerable parties.

It can be argued that it is this model that informed juvenile law reform in Western Europe and elsewhere as time passed by (Ntuli, 2017). The concept of the best interest of the child is evident in the welfare model and should be reflected in all decisions relating to children. This principle is what established the foundation of the UNCRC, the ACRWC and all the relevant international statutes that serve to promote and uphold the rights of the children, Odhiambo, 2005).

Furthermore, the model visualizes a children's court which deals with juvenile delinquency in a way that reforms and rehabilitates children in conflict with the law instead of punishing them (Bruinsma and Weisburd, 2014). Hence, in terms of the welfare model rehabilitation of the juvenile offender as opposed to their punishment is vital and should be practiced. The welfarist model highlights the use of experts who work with child such as social workers have an enhanced role in the juvenile courts as they are usually equipped to deal with children in such circumstances (Odhiambo, 2005). These experts will assist the judge of the juvenile court in the consideration of the specific needs of the child offender and in determining the best treatment appropriate for the child (Vengesai,

2014). This is a reflection of how cases in the Pretrial Diversion Programme are handled to ensure that the children get the best rehabilitation mechanism which is suitable for them.

In support of the above point, Vengesai (2014) goes further to state that the influence of the welfarist model can also be traced in the wording of the provisions of the Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child and other statutes which seek to promote the rights of children in conflict with the law. Case in point, the preambles of the UNCRC and the ACRWC refer to the physical and mental immaturity of children and the necessity to treat them in a unique way.

Nevertheless, critiques of the welfare model postulate that the model is grants wide discretion to juvenile court judges and in many cases it could lead to a departure by these judges from the established principles of due process, thus leading to arbitrariness (Chihambakwe, 2013). In short, the welfare model does not guarantee that children in conflict with the law will be provided with due process safeguard mechanisms such as legal representation, therefore could lead to discriminatory treatment (Ntuli, 2017).

In blatant contrast to the concept of restorative justice, children are perceived as mature, rational, self-determining, fully accountable for their actions and thus answerable before the law under the justice theory (Vengesai, 2014). The primary aim of this theory is retribution instead of rehabilitation. The theory does not differentiate between children and adults when it comes to their treatment in formal criminal justice proceedings. This argument was used in the Bulger case when two 10 year old boys brutally murdered a 2 year old boy in England in 1993. (Roberts, 2014). The British courts tried them like adults because of the manner in which they had thought out and executed the murder and they were given a minimum sentence of 8 years. The principle of doli incapax was disregarded

(Xenos, 2012. However, this move was contested years later in by the European Court of Human Rights (ECHR) which believed that the children were treated unfairly by being tired publicly in clear violation of Article 6 of the European Convention on Human Rights (Xenos, 2012). It is quite dissimilar from the idea that children are "immature" and "innocent" under the welfare model (Odhiambo, 2005). Any justice system modelled in terms of this theory exposes the young children in conflict with the law to the danger of adversarial criminal proceedings. The justice theory places much emphasis on the weight of the offence instead of the circumstances of the child in conflict with the law (Odhiambo, 2005). A good illustration of a functioning justice model is the Scandinavian countries where there are no special courts for young people in conflict with the law they are dealt with in formal criminal courts (Vengesai, 2014). Nevertheless, most cases involving children in conflict with the law in these countries have led to less punitive sentences as likened to those involving adult offenders (Odhiambo, 2005). The justice model runs contradictory to the actuality that in nearly all countries, there are special institutions, procedures and laws that relate to the distinct treatment between adult and child offenders (Vengesai, 2014). By ignoring the boundaries that separate child and adult offenders, the theory promotes the adultification of the juvenile justice systems.

## 2.3 Theoretical Framework

### 2.3.1 The Labelling Theory

Tannenbaum has been considered as the first labelling theorist with his main concept being what he terms the 'dramatization of evil'. He states that if an individual is labelled as being a criminal then he or she inevitably turns into one (Essays, 2018). Erwin Lemert

then took a step and came up with the "societal Reaction" concept which is now being looked upon as the forerunner of the labelling theory in the present day (Hess, 2004). He is of the view that an individual experiences deviance in two phases which are: primary deviance and secondary deviance (Essays, 2018). According to Lemert (1951) the primary deviance phase begins with the criminal act, then the individual who would have committed the criminal act is then labelled criminal but has to accept the label. If the he or she then sees themselves as a criminal that is when the secondary phase starts. Therefore, whether or not a person views himself or herself as a criminal is what sets apart between the primary and secondary deviant phases (Hess, 2004). In addition to the above, Hess (2004) further explains that when individuals are labelled as criminals, those close to them may treat them as criminals. This may increase the possibility of the labelled individual finding difficulty associating with non-criminals, therefore leading them to create relationships with others who are also labelled as criminals in order to fit in and belong. Hess (2004) goes on further to state that, it is crucial to distinguish between primary deviance and secondary deviance. He additionally elaborates that primary deviance is the first criminal act while secondary deviance is the accepting the criminal label, consequently leading to the individual committing other crimes. The secondary deviance phase typically commences when an individual has accepted the criminal label (Hess, 2004). They then agree to take themselves as a criminal and use it to counter society's reaction to the first criminal act, they can do this by associating with others who are regarded as criminals or by other means (Essays, 2018).

The Labelling Theory states that labelling an individual with a certain undesirable terminology could lead to that individual displaying the adverse behaviour (Becker, 1963).

Joubert, Joubert and Moves (2009) assert that irrespective of what other abilities an individual has, the criminal label will have a strong impact on the minds of other people. Becker cited in Joubert, Joubert and Moves (2009) postulates that when an individual has been labelled a criminal, the chances of them becoming a law-abiding citizen become narrow. Adding on, Ntuli (2017) opines that the labelling theory is a demonstration that continued criminal behaviour is then not an issue of choice, but happens because an individual's choice has been restricted by the society. Becker (1963) refer to labelling as a reason of crime because the society views the actions of the offender as abnormal and this coerces the offender to continues leading a life of crime. The labelling theorists further assert that criminal behaviour is a product that is generated by society hence, whether a juvenile offender is labelled as criminal hinges on the responses of other people to the act of crime, and not the activity (Joubert, Joubert and Moves. 2009).

Therefore, in line with the above, the processing children in conflict with the law through the formal criminal justice system can have detrimental effects as a result of stigmatizing and incarcerating them for crimes which can be handled outside the formal system (Center on Juvenile and Criminal Justice, 2016). Some labelling theorists argue that the consequences of criminal charges, court appearance could lead to unemployment in adult life and augmented criminality (Sweeten, 2006). In other words, judicial proceedings tend to have detrimental consequences on a child's life likelihoods and contribute to reoffending (McAra and McVie, 2007).

More so, Ntuli (2017) affirms that overly relying on pressing criminal charges and the formal courts can cause labelling and stigmatization of children incarcerated for somewhat petty crimes. Instead of discouraging crime formal criminal proceedings create room for

labelling and this can significantly increase the probability of future offending for especially in the case of petty, first-time offenders (Sweeten, 2006). Thus, the labelling theory sustains the notion that it is probable to prevent criminal behaviour through limited shaming that leads to the attachment of labels to individuals (Ntuli, 2017).

In this context, the labelling theory also puts great importance on the rehabilitation of offenders by the means of reconstructing their label through alternative rehabilitation mechanisms which are non-custodial (Ntuli, 2017). These include but are not limited to the following: mediation and reconciliation of victim and offender, restitution, reparation, and diversion (Lawson and Heaton, 1999). Diversion is an interesting non-custodial alternative rehabilitation mechanism which is reduces labels and stigmatization as compared to formal court involvement (Beck, 2006). It is believed that diversion reduces recidivism rates and provides children in conflict with the law with services that they cannot receive in the formal justice system (Beck, 2006). The influence of the labelling theory has been evident in instances such as the formation of a separate vocabulary for the child and adult courts (Ntuli, 2017).

### 2.4 Critique of the labelling theory

In view of the above, the labelling theory has received some condemnation by scholars such as Lawson and Heaton (1999) who mainly critique the labelling theorists for not bearing in mind the structure and society in its entirety. The above mentioned scholars believe that the labelling theorists are driven to concentrate on the everyday activities of people and the social order therefore they do not take into consideration the structural conditions, which include inequality and poverty where the criminal activities take place

(Ntuli, 2017). Regoli, Hewitt and Delisi (2008) state that there are two strong arguments against the labelling theory, the first one is that the labelling theory is too plain to argue that a negative label is the cause of crime. They argue that despite the fact that official labels play a role in prospective disruptive behaviour, there is not sufficient evidence to show what the actual effects of labelling are (Ntuli, 2017). The labelling theory thus puts much emphasis on the importance of the power of formal interfaces, like those between a child in conflict with the law and the court (Ntuli, 2017).

## 2.5 Relevance of the Theoretical Framework to the study

Universally, the formal justice system aims to prevent and reduce crime rates and its sustained existing system of incarceration does not adequately meet this aim (Bruinsma and Weisburd, 2014). The conventional punitive justice system promotes and continues the advancement of frustration and violence such that it is to a certain extent responsible for producing life time offenders especially when it comes to children (Alexander, 2012). The label that comes with imprisonment is a major downside that reduces the efficiency of diversion (Williams and McShane, 2014). Hence, the coming in of the restorative justice has seen changes in the juvenile justice systems because of the rehabilitative nature of this concept. Rehabilitating children in conflict with the law through diversion adopting the Welfare model potentially reduces the possibility of re-offending, teaches them accountability and responsibility for the criminals acts they would have committed (Wilson and Hoge, 2013).

## 2.6 The administration of Juvenile Justice in International Law

Zimbabwe's international and regional commitment to put into practice the Pretrial Diversion Programme was based on two instruments which it ratified, namely: the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). Being a dualist State Zimbabwe has to domesticate these two instruments in its national laws so as to meet the standards in these instruments. However, with regards to the Pretrial Diversion Programme there is no law which precisely regulates it therefore a bunch of instruments are being used until the Child Justice Act has which is currently a Bill has been passed into law. The instruments being used to administer the PTD Programme are the Constitution of Zimbabwe (2013), the Criminal Procedure and Evidence Act (Chapter 9:07) (2004), and the Children's Act (Chapter 5:06) (2001). Below is a detailed account of the law administering juvenile justice internationally, regionally and nationally in Zimbabwe.

### 2.6.1 The International Convention on Civil and Political Rights (ICCPR)

Although not a children's treaty in its entirety, the ICCPR, adopted in1966 integrated certain aspects of juvenile justice intended at providing differential protection for young offenders under Article 14 (ICCPR, 1966). The treaty prohibited capital punishment to anyone under the age of 18 years who would have been convicted of any offence (ICCPR, 1966). It also provides for the separation of young people from adults in prisons, as well as the dealing with cases involving young children promptly (Vengesai, 2014). It also provided that young person in conflict with the law must be treated in a manner that pays due regard to their circumstances as children. Lastly, the ICCPR provides that trial

processes for children should take into account must into the desire to promote their rehabilitation (Vengesai, 2014).

### 2.6.2 The United Nations Convention on the Right of the Child (UNCRC)

The United Nations Convention on the Rights of the Child of 1989 is one of the most recognized and ratified treaties universally. This Convention provides the essential context for the administration of juvenile justice in the world. Articles 37 and 40 specially address matters relating to children in conflict with the law (Ntuli, 2017). Article 37 of the Convention on the Right of the Child provides that children in conflict with the law have the right to be sheltered from torture, inhuman or degrading treatment, capital punishment and life imprisonment all these speak to the core principles of the Convention (UNCRC, 1989).

More so, it prohibits any unlawful arrests and deprivation of liberty, it also states that incarceration of children in conflict with the law should only be used as a last measure and should be for a very short period (Hammarberg, 2009). Article 40 of the UNCRC is very particular when it comes to the treatment of children in conflict with the law with regards to all the criminal proceedings processes which the child might be involved in (Vengesai, 2014). Vengesai (2014) further claims that Article 40 also obligates States to provide alternative mechanisms to deal with children in conflict with the law without resorting to formal judicial proceedings. Chihambakwe (2013) notes that States have the responsibility as the duty bearers to establish and uphold unique juvenile justice mechanisms for children in conflict with the law with an intentional emphasis on positive

discipline and corrective punishment which include but not limited to institutional care for rehabilitation.

### 2.6.3 Standard Minimum Rules for the Administration of Juvenile Justice

The Standard Minimum Rules for the Administration of Juvenile Justice also known as the Beijing Rules, were embraced by the United Nations General Assembly in 1985 (Jousten, 2016). They set out minimum standards for children in conflict with the law in the management of juvenile justice by State parties. The Beijing Rules are all-inclusive and provide securities to children in conflict with the law at all stages of the criminal justice proceedings (Njungwe, 2008). The Beijing Rules stress on the need for the diversion of children in conflict with the law from the formal criminal justice system and the need to imprison them only as a last resort and for the shortest period possible (Vengesai, 2014). It provides that there should be alternatives to institutional care for children in conflict with the law such as close supervision, placement with a family or in an educational home (United Nations, 1985). Additionally, it places of emphasis on the need to separate adults from children and the creation of children detention centers as this reduces the risk children from being subjected to abuse, violence exploitation by adult criminals (Joutsen, 2016). It will also prevent adult criminals from recruiting or compelling children to commit criminal activities for them when they finish serving their sentence (Redo, 2012). However, it is important to note that the Beijing Rules were merely a resolution of the UN General Assembly, hence they in actual fact do not have a binding legal force similar to that of a Convention (Guerra, 2005). This is because the Beijing Rules are what is known as “soft law” instruments, this means that they provide flexible guidance for reforms which take into account legal systems and structures that provide

how the criminal justice systems should be like (Klabbers, 1996). These standards and norms provide flexible guidance for reform that accounts for differences in legal traditions, systems and structures whilst providing a collective vision of how criminal justice systems should be structured (Klabbers, 1996).

### 2.6.4 United Nations Guidelines for the Prevention of Juvenile Delinquency

These guidelines were adopted just after one year the UN Convention on the Rights of the Child (UNCRC) was adopted, and are considered to be supplementary to the UNCRC (Detrick, 1999). The Riyadh Guidelines were developed after some of the drafters of the Beijing Rules realized that prevention was a significant component of juvenile justice therefore the General Assembly adopted resolution 40/35, which drew consideration to the need for standards and norms on the prevention of juvenile delinquency (UNICEF, 2012). This is the reason why the guidelines work hand in glove with the Beijing Rules and other international legal standards for the protection of the child in overall (Joutsen, 2016). The Riyadh Guidelines take into consideration the dangers caused by the severe socio-economic challenges a lot of children are exposed to which render them a social risk (Worldwatch Institute, 2005)

The Riyadh Guidelines cover the role of different segments in the prevention of juvenile delinquency (Doek, 2008). The Riyadh Guidelines strengthen the significance of the reduction of juvenile delinquency focusing on reducing crime, the necessity of executing the guidelines according using a child-centered approach, and the collective responsibility for children's well-being from the earliest ages onward (Doek, 2008). The Riyadh Guidelines make provision on measures necessary to prevent children from committing

crimes. It puts emphasis on the prevention of juvenile delinquency which is a central part of crime prevention (Joutsen, 2016). The guidelines also provide that these prevention policies should facilitate the successful socialization and integration of all children, in precisely through the family, the community, peers, schools, vocational training and work, not forgetting voluntary organizations (Redo, 2012). This means that besides the above the prevention programmes should particularly concentrate on supporting vulnerable families as well as the involvement of schools in teaching straightforward values including information about rights and responsibilities of children and extending special care and attention to young people in danger (Redo, 2012).

### 2.6.5 United Nations Rules for the Protection of Juveniles Deprived of Liberty

The Havana Rules established after the realization that no matter the adoption of various instruments children would inevitably face incarceration. The Havana Rules encourage the use of alternative measures to incarceration and ensure that when children in conflict with the law are incarcerated their fundamental rights are upheld and protected at all times. The Havana Rules provide the definition of a juvenile in Rule 11 as any individual under the age of 18 years (Havana Rules, 1990). It also defines deprivation of liberty as any form of detention or imprisonment or the placement of an individual in a public or private custodial setting, from which this individual is not allowed to leave at will, by order of any judicial, administrative or other public authority (Havana Rules, 1990). The Havana Rules are meant to counter the harmful effects of deprivation of liberty by making sure that children's rights are respected (Joutsen, 2003). The Rules set out a number of basic principles that closely track those of the Standard Minimum Rules for the Treatment of Prisoners for instance with regards to pre-trial detention, admission to juvenile facilities,

classification, the physical environment and accommodation, education, vocational training and work. Nonetheless should also take into consideration juveniles meaning that deprivation of liberty of juveniles should be a measure of last resort and for the shortest period (this is enshrined in the Rules 1, 2 and 17).

### 2.6.6 The Committee on the Rights of the Child

The Committee on the Rights of the Child (CRC) is the body of 18 Independent experts which monitors execution of the Convention on the Rights of the Child by State parties who ratified the Convention. It also monitors implementation of two Optional Protocols to the Convention, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography. The Committee according to its mandate under Article 44 of the UNCRC has developed substantial jurisprudence by means of the examination of State party Reports, thematic discussions as well as General Comments. (Murray, 2004) States parties are mandated to submit regular reports to the Committee on how the rights are being implemented in their respective countries. State parties are obligated to report at the outset two years after acceding to the Convention and then after every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of what are known as concluding observations.

The last consideration of the report by Zimbabwe was done in July 2015 wherein the Committee commended Zimbabwe on establishing the Pretrial Diversion and also the inclusion of a Constitutional guarantee that children will not be incarcerated except as a last resort. However there are several concerns raised by the Committee which include

that the criminal responsibility which is currently 7 years of age was very low and needed to be aligned with that of international standard which is 12 years and above (UN Committee Report, 2015). It was then recommended that Zimbabwe raise the minimum age of criminal responsibility in accordance with international standards. The Child justice Bill has addressed this and the age of criminal capacity was raised to 12 years.

The Committee also highlighted that there was lack of a clear legal prohibition of life imprisonment without the possibility of release and the indeterminate sentencing of children in conflict with the law (UN Committee Report, 2015). The recommendation following the concern was that Zimbabwe had to align its existing laws with the Constitution and make certain that children in conflict with the law are not sentenced to life imprisonment or to unspecified sentences It also stressed on the inadequacy of budgetary allocations which help to ensure the operation of programmes to support juvenile justice and access to legal aid services by children in conflict with the law (UN Committee Report, 2015). In relation to the above concern Zimbabwe was then recommended to implement an all-inclusive policy for juvenile justice grounded on restorative practices while guided by the principle of best interest of the child. This recommendation resulted in the establishment of the Child Justice Bill of 2019 which is yet to be passed into law. The Committee raised concern over the absence of independent mechanism (such as a National Human Rights Institution) which monitors places where children are detained and which receives complaints, in a child-sensitive manner with regards to ill-treatment and torture (UN Committee Report, 2015). It then gave a recommendation for Zimbabwe to make sure that such a mechanism was established so that it monitors places where children in conflict with the law are detained. In response to

this the Zimbabwe Human Rights Commission has been visiting and monitoring places where children in conflict with the law are detained.

In the light of its general comment No. 10 (2007) on children's rights in juvenile justice, the Committee urged the Zimbabwe to bring its juvenile justice system fully into line with the Convention and other relevant standards. Last but not least Zimbabwe was urged to continue implementing the Pretrial Diversion Programme and making sure that children in conflict with the law have access to non-custodial alternative rehabilitation mechanisms to such a probation, mediation, counselling or community service, and that detention is used as a last resort. However, the latter has proved impossible as a lot of children across the country are facing incarceration.

## 2.7 The administration of Juvenile Justice in the African Union

### 2.7.1 The African Charter on the Rights and Welfare of the African Child

The Declaration on the Rights and Welfare of the African Child in 1990 which was facilitated by the Organization of African Unity opened a pathway for the ultimate signing of the African Charter on the Rights and Welfare of the Child. In the ACRWC the African States declared their obligation to taking all the suitable measures to safeguard the rights of children (Vengesai, 2014). In the ACRWC issues to deal with the management of juvenile justice are provided for in Article 17 (Ruparanganda and Ruparanganda, 2016). It emphasizes on the exceptional conduct for children in conflict with the law, not excluding the respect for the children's dignity and their fundamental rights (Odhiambo, 2005). With regards to the ACRWC State parties have a responsibility to make sure that

incarcerated children are kept separate from individuals above the age of 18 and must not be exposed to torture, inhuman and degrading treatment (ACRWC, 1990).

### 2.7.2 The African Committee of Experts on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (ACRWC) has a monitoring body, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), has been fostering the development of children's access to justice in numerous ways. One example includes the compilation of a Continental Report on the impact of armed conflict on children. The report criticizes the impunity that perpetrators frequently enjoy among other things. In particular, the report puts emphasis on the dangers of sexual violence, abuse and exploitation of children, which is increasing disturbingly in the context of conflicts and crises (Sloth- Nielson, 2013). The ACERWC has called for strong commitment from State parties to establish operational and functional mechanisms to address the negative bearing of conflict and crises on children and the provision of care and protection of children affected by armed conflict (ACERWC, 2016). The report was supplemented with an inclusive recommendations which sought to address the specific vulnerabilities children in armed conflict face in accessing justice for rights violations. The ACRWC provided a communications mechanism, and seven communications submitted to the Committee were finalized (African Child Policy Forum 2018). Among them was one against the Government of Malawi regarding the upper age for constitutional protections for children in conflict with the law which was set at 16, instead of 18 years as provided for in the Charter (Sloth- Nielson and Mwambane, 2013). This led to a friendly settlement between the claimants and the Government of Malawi and also

led to an amendment of the Constitution of Malawi in February 2017 aligning its definition of a child in line with the African Charter (ACPF, 2018).

Adding on, there have been communications over the concern on the treatment of children in conflict with the law, one of the communications was brought by Ahmed Bassioun against the government of the Arab Republic of Egypt (ACERWC, 2018). The complainants alleged that Ahmed Bassiouny, who was 15 years at the time of arrest, was detained unlawfully and underwent torture as well as ill-treatment in correctional facilities (Campistol, Hope, Collion and Aebi, 2017). However, the communication was confirmed as inadmissible by the Committee because that the complainants had not exhausted local courts. There are a lot of cases similar to be above which have been bought to the Committee and have been declared inadmissible because local mechanisms would not have been exhausted (ACPF, 2018). The opportunity for further communications relevant to the field of access to justice for children in conflict with the law remains a possibly valuable preference as long as local remedies are exhausted (ACPF, 2018). The Committee also has a mandate to conduct investigative missions. The investigative mission to the Great Lakes region in Tanzania to study the position of children with albinism in temporary holding facilities led to several recommendations concerned with access to justice for affected children (ACERWC, 2018).

In the reports submitted by Zimbabwe to the Committee showed that the legal aid system for juveniles was quite weak, lacking the necessary resources and personnel (ACERWC, 2018). According to the ACPF, (2018) ever since 1996 the Legal Aid Directorate has been functioning alone operating in Harare until 2011 when it opened an office in Bulawayo. On the other hand, there have been efforts have been made by some Civil

Society Organizations (CSOs) to provide legal services to children in conflict with the law (ACERW, 2018) Important to note is the work of CSOs like Justice for Children's Trust, Legal Resources Foundation (LRF), Care at the Centre of Humanity (CATCH), and Zimbabwe Lawyers for Human Rights (ZLHR), which have been providing legal aid and legal representation for children in conflict with the law and also advocating for the protection of their rights and welfare (Sloth- Nielson and Mushohwe, 2018).

## 2.8 The administration of Juvenile Justice in Zimbabwe

### 2.8.1 The Constitution of Zimbabwe 2013

The Constitution of Zimbabwe is the supreme law of the land therefore its provisions can override any law in Zimbabwe, therefore there is need to align the Constitution to meet regional and international standards. It has a provision specifically deals with the rights of children in conflict with the law namely Section 81 (1) states that:

> Every child that is to say every boy and girl under the age of eighteen years, has the right not to be detained except as a measure of last resort and, if detained; to be detained for the shortest appropriate period; to be kept separately from detained persons over the age of eighteen years; and to be treated in a manner, and kept in conditions, that take account of the child's age (Constitution of Zimbabwe, 2013)

It repeats exactly the provisions in Article 37 of the UNCRC by providing that children who are under the age of 18 years must not be incarcerated with the exception of it being a measure of last alternative and it goes on to say that if they are incarcerated, they should be kept there for a short period (Vengesai, 2014), however, not also specifying or defining what constitutes a 'short period. ' Section 81 further provides that if these children are incarcerated they have to be treated properly, and detained in conditions that take into account the child's age (Vengesai, 2014). It is interesting to note that it mentions nothing

about Pretrial Diversion, instead it goes on to provide that if these children are incarcerated they must be separated from adults (anyone above the age of 18). This is in violation the UNCRC which obligates States to make decisions which must take into consideration the principle of "best interests of the child" at all times in any case concerning children.

### 2.8.2 The Criminal Procedure and Evidence Act 2004 (Chapter 9:07)

According to the Criminal Procedure and Evidence Act (2004), the Prosecutor General or his representative has the power to decline prosecuting any matter if it satisfies the following conditions: accused is below the age of 21 years, accused has, sincerely acknowledge the crime committed, and that the crime committed does not typically attract a prison sentence of more than 12 months (Vengesai, 2014). Nevertheless, it should be noted that in terms of this Act it is not specified as Pretrial Diversion Programme. On the other hand, the criminal justice system in Zimbabwe in some cases subjects juveniles to incarceration, some of them are remanded in prisons thereby exposing them to adverse exposure to hard core criminals and can be easily exploited. Therefore, as noted above there is need for the juvenile justice system in Zimbabwe to have the "best interest of the child" at its core and be aligned to regional and international statutes.

### 2.8.3 The Children's Act (Chapter 5:06)

The Children's Act (Chapter 5:06) was adopted in 2001 in order to domesticate the various international standards for the treatment and safeguarding of children in Zimbabwe. It substituted the Children's Protection and Adoption Act (Chapter 5:06). This Act includes the following: the provision of care and protection for all children in Zimbabwe and the

establishment of a children's court and the registration of institutions responsible for the reception and custody of children (Ruparanganda and Ruparanganda, 2016). The Children's Act does not provide for pre-trial diversion even though Zimbabwe is a party to the UNCRC. Bhaiseni (2016) argues that the pre-trial diversion is provided for in article 40 of the UNCRC, which states that, wherever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected therefore because Zimbabwe is a signatory to that Convention it should align this Act to the UNCRC. Justice for Children (2012) is of the view that pre-trial diversion seeks to make young offenders responsible and accountable for their actions. It also affords an opportunity for reparations, identify underlying problems motivating offending behavior through personalized services, and prevent offenders from receiving a criminal record as well as being labeled as criminals. Therefore all this should be institutionalized in the Act so that children's' rights in Zimbabwe are promoted and upheld.

### 2.9 Child Justice Bill 2019

Currently, there is not no separate piece of legislation to deal with children in conflict with the law. It is important to note that these laws apply to both adults and children offenders therefore, the criminal justice system does not adequately cater for the needs of children in conflict with the law. In relation to the above point MoJLPA (2019) states that presently there is disintegration in the juvenile justice system which is controlled by varied pieces of legislations including the abovementioned. As mentioned at the beginning of this chapter Zimbabwe currently has a criminal justice system for children is dispersed across

various legal instruments that include the Constitution, Children's Act (Chapter 5:06) and Criminal Procedure and Evidence Act (Chapter 9:07).

The need for a criminal justice system for children which is separate from adults was a necessity as children were being treated like adults and their rights were not being protected. So the coming in of the Bill was to establish a different criminal justice system for children who are in conflict with the law, so that due safeguards would be accorded to children by the Constitution are observed. These include all procedural and substantive issues attendant to a child alleged to have committed a criminal offence. The Bill attempts to give priority to the principle of the best interests of the child, consolidating existing protections, and creating new ones. It also addresses some of the recommendations made by the Committee on the Right of the Child in 2015.

The Bill creates Child Justice Courts which are dissimilar from Children's Courts created by the Children's Act, with specialized personnel (Matiashe, 2019). However, the Child Justice Bill does not specify whether the Courts will try treason, murder and rape leaving room for these cases to be tried in formal criminal courts which are not conducive for children (Nyarota, 2019). The Bill also provides for the Pretrial Diversion Programme, it stipulates the diversionary options that will divert the child away from formal criminal proceedings and how they are to be used appropriately (Justice for Children (JCT), 2019). Presently, according to Mahanya (2019) only probation officers carry out assessments in non-diverted cases, and diversion officers only deal with children diverted from the criminal justice system, the roles of the probation officer and the diversion officer are conflated. There is need for their roles to be clearly defined and articulated. The Bill also addresses the issue of the age of criminal capacity, it raises the age from seven years to

twelve years (Matiashe, 2019). It states how children between the ages of twelve to fourteen presumed to lack criminal capacity shall be assessed by a diversion officer, a probation officer or anyone qualified appointed by the child justice court child justice (Nyarota, 2019). However it does not address the process of determining criminal capacity for children presumed to lack criminal capacity therefore, such children will end up being incarcerated.

The United Nations Convention on the Rights of the Child (UNCRC) notes that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest possible time (UNCRC, 1989). The Child Justice Bill allows for imprisonment of a child for up to 15 years, which is too much and does not take their age, immaturity and vulnerability into account (JCT, 2019). It should be noted that trial for a child who would have committed treason, murder and theft may take up to two years and this could affect the child's psychological well-being. This can

The Havana rules state that children in conflict with the law who are deprived of liberty should be separated from adults meaning that offenders should not be placed in an adult prison or other facility for adults (Havana Rules, 1990). The imprisonment of children together with adults has an effect on their basic security, welfare and their ability to remain free of crime in the future (JCT, 2019). This will prove difficult in Zimbabwe because the country only has one juvenile prison in Gweru Whawha Young Offender Prison. One prison cannot accommodate children across the country, hence rehabilitation juvenile detention centers should be constructed to accommodate them.

The Child Justice Bill also provides for age estimation by probation officers or diversion officers, taking into account an array of factors, including an estimation of age by a medical practitioner (JCT, 2019). This takes away the importance of the medical age estimation creating the risk of room manipulation, corruption and falsification.

## 2.10 Summary

Due to the economic constraints in Zimbabwe many young people have turned to crime as a source of living. The most prevalent form of crime being theft. Diversion is a very important rehabilitative mechanism in juvenile justice this is because it has the best interest of the child at heart especially when it is implemented appropriately. The juvenile justice in Zimbabwe has taken a turn from the punitive system to a rehabilitative system and the implementation of the Pretrial Diversion Programme has been the stepping stone to ensure the protection of the rights of the children. Most of the law and policy for juvenile justice and administration in Zimbabwe is rooted from fragmented legislations and however, all of them fall short to articulate the effective juvenile justice system in the country and the directives to which it should follow concerning the arrangements and actions for appropriate implementation. It is therefore vital for the government to finalize the Child Justice Bill which is yet to be passes into law. It is important for children to have laws specific to them to protect their rights and the coming in of the Child Justice Bill will ensure that as it also incorporates the PTD Programme.

# CHAPTER 3 METHODOLOGY

## 3.1 Introduction

This chapter presents the methodology which was applied in the research study. The focus of the study was to analyze the Pretrial Diversion Programme and its impact in the juvenile justice system in Zimbabwe. The research methodology discusses the research design, the population under study and the sampling procedures. The research instruments used, the data collection plan and the analysis plan are highlighted in this chapter. The research methodology used is described in terms of the sections discussed below.

## 3.2 Research design

This study used the qualitative methodology in which a variety of qualitative multi-methods were used to interpret, understand, explain and bring meaning to attitudes, perceptions and behaviour. The targeted participants (Lawyers, Social workers, Diversion officers, Programme Officers) had the requisite knowledge and relevant experience about the Pretrial Diversion Programme in Zimbabwe. Qualitative methodology was thought to be the best in drawing the participant‘s perceptions, feelings, attitudes, opinions, interactions, behaviours, actions. The study also included the analysis of the domestic legal statutes that relate to the subject matter as well as the writings of various authors on the subject of Pretrial Diversion and juvenile delinquency. The generation of data was done using different methods which include in-depth-face-to-face interviews, and documentary analysis.

### 3.3 Population and Sampling

All things in any field of inquiry constitute a universe or target population (Kothari, 2004). The study population consisted of diversion officers working in the Pretrial Diversion department at the Ministry of Justice, Legal and Parliamentary Affairs (MoJLPA), social workers from the Ministry of Labour and Social Welfare (MoLSW), social workers and lawyers from Core at the Care of Humanity (CATCH), director and programmes officer from Prison Outreach Support programmes officer.

The sample size for this study was 15. The sampling technique used in this study was purposive sampling which involves deliberate selection of particular elements of a group of people to constitute a sample which represents the population (Durkheim, 2006). The sample specifically targeted participants so as to narrow down the area of coverage.

Purposive sampling was used because it targets a particular group of people and specifically excludes certain types of people because their presence might confuse research findings. This sampling technique aimed to learn the insights of all the participants to be involved. The use of the purposive sampling technique in this study ensured that the impact of the Pretrial Diversion Programme in the juvenile justice in Zimbabwe was tested with research participants of different ages, gender and experiences of working in the system under the study. The study objective focused on the analysis of perceptions of the impact of the Pretrial Diversion Programme in the juvenile justice system with regards to the protection of juvenile offenders from the criminal justice system. The primacy for the research was on attaining a sample size that guaranteed a diversity and depth of experiences.

### 3.4 Data Collection Instruments

Data collection in qualitative studies can be done through social interaction with participants, field studies, participant observation, and semi-structured interviews and unstructured interviews (Marie 2010). For data collection in this study ethical procedures were adhered to, and therefore permission to conduct any form of data collection was sought from the participants and relevant institutions. Data was primarily generated through in depth face to face interviews and document analysis. The study focused on the analysis on the Pretrial Diversion Programme and its impact in the juvenile justice system in Zimbabwe: Harare Metropolitan Province. The researcher conducted in-depth face to face interviews, went through documentary analysis of the legal instruments regulating the Pretrial Diversion Programme in Zimbabwe and case law involving juveniles in Zimbabwe.

#### 3.4.1 In depth Interviews

In depth interviews are personal and unstructured interviews, their aim is to identify participants' emotions, feelings, and opinions regarding a certain research focus. Some of the verbal accounts given by participants were audio taped and notes were taken during the completion of all the interviews. The qualitative data generated from this study was subject to individual analysis and this ensured a richer and fuller understanding of the participants' individual meanings.

The interviews were conducted at ideal venues, in a conducive environment taking into cognizance of their schedules of other business and their emotions. The researcher conducted interviews from the 22$^{nd}$ of January 2020 to the 13$^{th}$ of February 2020. Firstly,

the researcher went to Save the Children to leave letter to get permission to conduct interviews but was told to go to the Pretrial Diversion Department and there was no one to assist her. The researcher went to the Ministry of Labour and Social Welfare to get permission to conduct interviews, was granted permission and interviewed the participants. The researcher went to the Ministry of Justice Legal and Parliamentary Affairs left the request letter to conduct interviews and was advised to call after a week. The researcher made a follow up a week later and was told that the letter was still awaiting approval and had to come back after two weeks. She made another follow up then was told the letter had been sent to the Pretrial Diversion Department but the department had not returned it so she had to wait. The researcher then made a follow up to the Pretrial Diversion but was told that the letter had not reached the department so she had to wait for a week for feedback. The researcher also sent letters in the form of emails to the directors of CATCH and POS respectively who both responded and gave the researcher permission to conduct the interviews at their organizations. The researcher also went to Justice for Children's Trust where she left the letter to conduct research and was told to come back after two days as the letter had to be approved by the organization's director. The researcher returned but was told to come back again and when next she went back she was able to conduct the interviews. Lastly, the researcher went to the Zimbabwe Prisons and Correctional Services where she managed to conduct interviews without any challenges. After the researcher finished conducting the interviews the AUREC approval letter was stamped as a sign of approval from the organization or institution except from CATCH and POS were they had sent approval letters.

The questions were prepared for the researcher to guide the interview towards the satisfaction of research objectives, but additional questions were also made during the interviews through probing. The interview is one of the major sources of data collection. In this study, open ended questions were used in the interviews with the participants. Participants from Ministry of Labour and Social Welfare, Prison Fellowship Zimbabwe, Care at the Core of Humanity, Zimbabwe Prisons and Correctional Services, Justice for Children and Pretrial Diversion department were interviewed informally. These participants were targeted because of the need to probe their practice in recognizing policy requirements and the general functions of the Pretrial Diversion Programme in Zimbabwe. Each of the categories of the participants that were selected in this study were people with applied experience with issues relating to children in conflict with the law.

### 3.4.2 Document Analysis

Secondary data was sought from institutions and organizations working with children in conflict with the law. Document analysis was used to support the in-depth face to face interview method which was the main data collection tool. The documents that were analyzed were the Criminal Procedure and Evidence Act, the Children's Act and the Constitution of Zimbabwe and case law of rulings on juveniles in Zimbabwe. It was imperative for the researcher to analyze the contents of these documents so as to verify the information obtained using other methods of data collection. These documents gave the researcher insights into the aims and objectives of the establishment of the Pretrial Diversion Programme. The analysis of the documents bulleted above also assisted the researcher to compare data generated through the in depth face to face interviews and with information found in these documents.

### 3.5 Data Triangulation

The researcher used triangulation on data that had been generated from individual face to face interviews and document analysis conducted during the research period. The researcher took the initiative to review other documents which she was referred to by participants during the interviews, these documents provided more light on the Pretrial Diversion Programme in question. The researcher interviewed participants with different educational backgrounds and disciplines but also who work with children in conflict with the law.

### 3.6 Data Collection Procedures

Approval to undertake the research study by the researcher was granted by the Africa University Research and Ethics Committee. In as far as recruitment of the key informants was concerned; the researcher got permission from all the institutions where research was to be conducted except from Save the Children where approval had not been granted at the time the researcher compiled this study. When granted permission, the researcher conducted interviews with the specific members of staff in these institutions. As part of the research process, the researcher used one data collecting instrument which was relevant to the qualitative research approach. The instrument was an in-depth face to face interview guide for the participants working with children in conflict with the law. The interview guide was in both English and Shona, they also had an option to choose the language which they were comfortable with. During the interviews an audio tape recorder was used in some interviews (only to those who had consented to being recorded) to record the interview sessions and the verbatim data is was transcribed during data analysis.

Consent forms made available to ensure that participants voluntarily take part in the study by consenting for themselves.

The researcher ensured that the interviews lasted for not more than an hour. They were also conducted in a private room located at each of the organizations and other locations convenient for the participants. The interviews were held on dates and time which suited the participants.

### 3.7 Analysis and Organization of Data

In this study, the data was analyzed by means of a thematic analysis process. First, it was identified, recurring themes within qualitative data collected where then highlighted in the research report. The analysis was done as highlighted in the steps below:

Phase 1: Familiarizing with raw data

The process of analysis starts during collection when the researcher shall take down vital notes and confer meaning to them. It is in this phase that the researcher repeatedly read and reread all the data collected comprising of notes taken in the field and audio recordings from interviews. All the recorded data was transcribed was put into words

Phase 2: Generation of codes

This phase involved the generation of codes through identifying features of data which appeared interesting to the researcher. This process was done physically and codes were set depending on the data collected.

Phase 3: Generation of themes

This phase involved the generation of themes from the coded data. These themes were abstracted with answers were repeated. These themes were produced from the several responses in the form of words, explanations and experiences on one answer that was given by respondents.

Phase 4: Reviewing the themes

In this phase the researcher refined the themes by going through them, getting rid of other themes that did not have sufficient data backing them, separated other themes that sounded hard, and going on with themes which the researcher perceived as in working order for the study.

Phase 5: Conceptualizing and attaching names to the themes

The phase involved additional fine-tuning of themes, the themes were defined by means of assigning names. Therefore, for each group of participants, the study came up with themes that related to each group.

Phase 6: Report writing

This last phase included the writing a compilation of the themes. These themes were supported by evidence from participants in the form of quoted responses on participants' lived experiences. In addition, the themes were also linked with theoretical framework and arguments from literature review. It is in this phase that the researcher was able to argue, deduce gaps, ask questions as well as proffer recommendations.

The thematic analysis method was used because it enhances the analysis of acquired data in conjunction with the objectives of the study. Data collection was done through social

interaction with the participants in order to gain an in-depth understanding of the Pretrial Diversion Programme and its impact on the juvenile justice system in Zimbabwe.

The individual face to face interviews were first transcribed to provide a complete record of the interview discussion. The researcher then analyzed content from interview discussions looking for trends and patterns which were recurring within various responses from participants who were interviewed. Scholars such as Lungwangwa (1995) are of the belief that, raw qualitative data from interviews, field notes from the interview discussions and content analysis should be exposed to the constant comparative analysis technique so that they grasp the most considerable themes of the topic under study.

In this study, the researcher collected documents related to the PTD these include the Criminal Procedure and Evidence Act. According to Gay (1996) cited in Chihambakwe (2016), observation is often supplemented by the collection of relevant documents (such as minutes of meetings and memoranda) and in-depth interviews.

### 3.8 Ethical Considerations

The researcher ensured that she conducted her professional work with integrity and in such a way as to not jeopardize future research, the credibility and reliability of other researchers or the ability of others to publish and promote the findings of their research. The researcher also did the best to her ability to respect the rights and dignity of all those who took part in or affected by the research.

Accordingly, the researcher made sure that she safeguarded anonymity by providing the participants with pseudonyms. The participants have the right to anonymity, therefore, the

researcher assured them that the information collected would remain confidential and their personal information would not be disclosed.

In relation to the above point, after documenting all the data from the recordings and notes the researcher will erase to ensure confidentiality after finalizing the study. Additionally, the researcher sought informed consent of all those who agreed to participate in the study. When it comes to research all researchers have to make sure that no harm befalls the participants involved and they are safeguarded at all times. In this research the researcher took all measures necessary to ensure that no harm befell them.

### 3.9 Summary

This chapter presents a discussion on the methodology adopted in the execution of this study and provided a detailed description of the methodology that was followed. The discussion covered the research design, the purposive sampling technique, the data collection process, and the data analysis processes. It also covered the ethical issues associated with the nature of the study considered in executed.

# 4. CHAPTER 4 DATA PRESENTATION, ANALYSIS AND INTERPRETATION

## 4.1 Introduction

This chapter presents data collected through in-depth interviews and key informant interviews. The research set out to analyze the Pretrial Diversion Programme and its impact on the juvenile justice system in Zimbabwe. The views of the participants and data collected from interviews and documentary analysis are central to this chapter. Presentations of the findings of this chapter are based on answers expanded from the research questions introduced in chapter one. The content of the in-depth face to face interviews, information from the pertinent documents was analyzed in order to obtain comprehensive data analysis.

## 4.2 Data Presentation and Analysis

The findings of this research were presented and discussed according to the research methods used. The research methods used were the in-depth face to face interviews, observations and analysis of relevant documents namely: Criminal Procedure and Evidence Act (Chapter 9:07) (1997), and the Zimbabwe Constitution (2013) and some case law of juveniles in Zimbabwe.

## 4.3 Findings from the interviews

The following were the research questions as indicated under chapter one that were directed to the participants. The questions were not demonstrated in a direct manner as given above since the interviews were not formally structured. Responses from the participants in this study were consolidated by the researcher and presented below.

### 4.3.1 The role of the Pretrial Diversion Programme

The Pretrial Diversion Programme was a model adopted in Zimbabwe as a way to transform the criminal justice system which treated children as adults. This was evidenced by the manner in which children were arrested, tried in courts and incarcerated whether in juvenile prisons, detention centers or along with adults. An official from Prison Support Outreach remarked that:

> Many crimes committed by children are usually committed as a form of excitement and in some cases accidentally, therefore there is need to talk to the child and understand the reason behind their action. Incarceration damages children, they become exposed to hardened criminals it should not be even considered in any case. In depth Interview- 29 January 2020

An official from the Ministry of Justice, Legal and Parliamentary Affairs under the Pretrial Diversion Programme explained in detail what the programme is about and how it works as detailed below:

> Pretrial Diversion is basically an extra judicial programme specifically under the age of 18 years who have committed a non-serious offense. A non-serious offence is an offence which attracts less than 12 months whether you know that this case goes to the formal criminal justice system. So for one to be eligible for Pretrial Diversion, the you offender should be accepting the of the alleged offence without being intimidated and then from there the child must be under the age of 18 and a birth certificate is a requirement for this offender in order to be diverted so that we get the age of a young offender.
>
> The Pretrial Diversion aims to rehabilitate and restore young offenders that is we are trying to move from the punitive justice system towards rehabilitative and educating system. So how it works in Zimbabwe is that when we receive a case we have what are called diversionary options. The diversion officer then does a background check, character, education if they go to school he or she assesses the academic performance and general assessments of the child's behaviour, relationships with other people in his or her family, peer and community.
>
> The diversion officer then goes on to assess the case report of the child in question to assess the nature of the crime and whether or not the child is a criminal. He or she then compiles a report which is then presented to the Pretrial Diversion

> committee. The PTD committee comprises of the resident magistrate who is the chairman of the committee, public prosecutor, police commanding officer, diversion officers and the probation officers.
>
> The committee then assesses the report and discuss it then passes the diversionary option which they deem suitable for the child. These diversionary options include, counselling, victim offender mediation, community service, reparations, constructive use of leisure time, family group conferencing.
>
> Similarly, if a young offender has been arrested by the police and he or she meets the requirements for diversion in terms of PTD guidelines, the police will caution the child as stipulated in the PTD guidelines. Pre-trial diversion is not only necessarily meant to divert juvenile offenders from the criminal justice proceedings, but it also safeguards them from the terrible conditions that characterizes prisons in Zimbabwe. In depth interview- 13 February 2020

One of the roles of the Pretrial Diversion is to keep children in conflict with the law from incarceration and divert them from the criminal justice system which tends create labels and exposes them to a form of living which is not conducive for children. According to the Labelling Theory, Tannenbaum (1938) states that the society has contrary views regarding the children who are involved in criminal activities, hence this motivates them to lead a life of crime. Consequently, children will exhibit problem behaviours because of the labels given to them by society and family members, and this interferes with their rehabilitation process.

Participants in this study seemed to agree that the role of the PTD programme also includes rehabilitation of the juvenile offenders and offering them a second chance with no criminal record. If a child who has gone through the diversion process commits another crime years after they will be regarded as a first time offender. A legal officer from Justice for Children's Trust had this to say:

> The Pretrial Diversion Programme ensures that children do not get a criminal record, it is like being offered a chance to start over on a clean slate. The thing with criminal records is they can affect your life in ways you cannot imagine, in

> Zimbabwe and other developing countries reintegration of ex-offenders is hard and employability is even harder. So diverting children protects them and offers them a chance to make better choices. In depth Interview-10 February 2020.

A researcher from Care at the Core of Humanity stated that:

> The Pretrial Diversion is a replica model from South Africa which seeks to give children a second chance and tries to protect their future by making sure that they are not exposed to the formal criminal justice system to the police when they commit offences. The whole point is that when a child in conflict with the law and it's a trivial offence they are warned, cautioned and also for the child to accept the responsibility of the crime committed.

The participants also indicated that the PTD's other role is to decongest courts because usually cases of petty crimes are the ones which clog the courts hence the coming in of the programme meant that such cases would be dealt out of criminal courts. A legal officer from Justice for Children stated that:

> Cases such as petty theft and malicious damage to property are the crimes commonly committed by children and these cases usually jam the courts which leads to a lot of back log on cases. Hence the coming in of the Pretrial Diversion Programme helped now the courts have improved in their speed to process cases. (In depth interview- 10 February 2020).

From the above the researcher noted that the role of the Pretrial Diversion Programme is quite broad because it covers different aspects within the juvenile justice system. It is aligned with two of the core principle of the United Nations Convention on the Right of the Child namely the "best interest of the child principle" and life, survival and development principle. Both these principles impose on the State an obligation to ensure the children's development. Recognition of these principles conveys that these rights are unique to children, considering that there is a key distinction between children and adults which is that: children go through a speedy and vulnerable process of development therefore their rights should be protected at all costs.

### 4.3.2 Perceptions of Stakeholders on Pretrial Diversion Programme

There was general consensus among the participants on how they viewed the Pretrial Diversion with regards to the juvenile justice system in Zimbabwe. An official from the Ministry of Labour and Social Welfare went on to say that:

> The Pretrial Diversion Programme is exactly what Zimbabwe needs right now, seeing that crime among children has become rampant mainly because of the financial turmoil the country is going through. If it is cascaded to all the provinces there will be a great change in the juvenile system and in the country as well. (In depth Interview- 22 January 2020).

They all perceived the PTD as a step in the right direction in terms of standards of the United Nations Convention on the Right of the Child and the Beijing Rules which Zimbabwe is party to. The participants pointed out that the Pretrial Diversion Programme enables the juvenile offender to accept his or her responsibility of the crime committed which is regarded as the first step for the juvenile going under diversion. Accepting responsibility of the crime is the first step in the PTD, it shows remorse on the part of the offender and will sometimes make victim- offender mediations easy. According to Davis and Busby (2006), the aim of diversion is to encourage children in conflict with the law to accept responsibility for the crime they would have committed. Skelton and Tshehla (2008) concur, adding that diversion teaches children in conflict with the law to circumvent conflicting with the law again.

More so, some of the participants felt that the PTD is more offender centered and neglects the victim thus there is no balanced justice in such circumstances. Hence, some victim-offender mediations will not bring closure to the victim and this can make the victim vengeful thereby making victim- offender mediation difficult because the former might feel as if the offender has not been punished therefore no justice would have taken place.

Therefore, there is need to balance between the both the offender and the offended so that the latter does not feel like the former is being favoured or is receiving special treatment. One participant an official from the Ministry of Labour and Social Welfare alleged that:

> In some communities the Pretrial Diversion Programme was not accepted at first because they thought that it was not fair for the offender not to be punished, while others thought it was a form of corruption. (In depth Interview- 22 January 2020).

There were mixed perceptions among the participants when it came to the issue of whether or not children who would have committed crimes such as rape and murder should be encompassed in the Pretrial Diversion Programme. Out of the fifteen participants only two of them suggested that there was need for such children to be diverted from the criminal justice considering that they are children and usually when such crimes are committed their criminal intent would be questionable. While another participant an official from Prison Support Outreach indicated that:

> Children should be treated as children despite of the crime committed, why should there be a classification of crime? This is what we call 'hypocrisy of justice.' The PTD should also encompass children who would have committed what are regarded as 'heinous' crimes as well. Prison is no place for children they do not belong there. The Constitution of Zimbabwe states that children should be incarcerated as a last resort, this is wrong they should not be put in prison. Then there is the issue of birth certificates, if a child does not have one they cannot be diverted as their age cannot be determined. So this means more children will face incarceration because many of them do not have them. (In depth Interview- 29 January 2020).

A programmes officer from Prison Support Outreach concurred with the above point stating that:

> A child is not mature enough to spend time in prison, ask yourself this if the child is incarcerated is he or she going to remain a child? No! So for that reason the Pretrial Diversion Programme should involve any child in conflict with the law regardless of the crime committed. You grow more in prison than when you are

> outside. A child is a child hence he or she should be treated as one. Differentiating the nature of their crimes is a form of labelling which causes stigmatization and can lead to a life of crime because the child will now be regarding themselves as a criminal as a result of what society labels them as. (In depth Interview- 29 January 2020)

On the issue of birth certificates, one diversion officer mentioned that it was a requirement for a child to go through diversion. The Child Justice Bill has a provision which states that a diversion or probation officer can use their discretion to determine the child's age, it does not mention any medical examination such as dental age assessment to determine the child's age. It could be argued that such tests are done when to suit the needs of the prosecutors especially when the child in question is supposed to be incarcerated. Medical examinations should be made available for every child regardless of the nature of the crime committed.

On the other hand, two participants highlighted that the categorization of crimes is necessary since crimes such as rape and murder leave a lasting impression on the victim and even on the offender, as it is something which they will have to deal with for the rest of their lives. Thus, there is need for the juvenile offenders to be institutionalized because the PTD is not well equipped to deal with juvenile who would have committed crimes of that nature. Two participants from CATCH and Justice for Children's Trust had this to say respectively:

> The PTD cannot be extended to juveniles who would have committed crimes such as armed robbery, rape or murder because in the eyes of the victim no justice would have been served, it is something that our society will never accept. Imagine another child killing your own child, then he or she is not arrested, you get to see him or her and be reminded of what happened all in the name of human rights? I don't think it would work. (In depth Interview- 3 February 2020).

> I think the programme should just stick to diverting children who would have committed petty offences from the criminal justice system. Those who would have

> committed serious crimes should be placed in rehabilitation institutions with a boarding school set up where they go through rehabilitation. When they are ready they get reintegrated back into the society. This is because diverting these children has its own implications which we might not be able to deal with. In depth interview- 10 February 2020).

Most of the research participants acknowledged that the Pretrial Diversion Programme can in some cases cause the juvenile offender to reoffend because some children might take advantage of the fact that instead of being 'punished' they are cautioned and made to go through counselling and other necessary processes. With regards to the above point a programmes officer from CATCH stated that:

> But at the same time some children end up committing offences again because they feel that they are protected by the PTD Programme, they are not really exposed to courts so they don't get to comprehend the circumstances of their action so they end up reoffending again. (In depth Interview- 3 February 2020).

The Pretrial Diversion Programme despite being a foreign concept has been relevant in shaping juvenile justice in Zimbabwe, it has set precedence for restorative justice to prevail where children in conflict with the law are concerned. Participants were in agreement that the PTD is very much relevant to the juvenile justice system in Zimbabwe and that if it is cascaded to other provinces it will be perfected overtime. A research from CATCH alleged that:

> The Pretrial Diversion is actually the pinnacle of juvenile justice in Zimbabwe. If you actually want to achieve restorative justice it is the best programme. It gives an opportunity to investigate why a child committed an offence and you can also address the 'whys' so that you end up limiting crime commission in the future. In depth Interview- 3 February 2020

A legal officer from Justice for Children's Trust highlighted that:

> The Pretrial Diversion Programme is very relevant to the juvenile justice system in Zimbabwe because children are given a second chance in life.

> Usually children do not commit offences because they want to do to themselves, from our own perspectives it is because of their backgrounds. You realize that a child staying in a one roomed house with both parents sleeping in there will eventually commit rape because he occasionally see his parent engaging in sexual intercourse.
>
> So I actually believe that the Pretrial Diversion Programme is relevant because children would not have committed these offenses willingly but they are forced by the circumstances they would be in. even vulnerable children like orphans commit theft because maybe they are hungry, they are staying with their step mother who is abusing them. They run away and end up stealing other people's food or clothing so that they can fend for themselves. So it's not like they would have committed premeditated offenses but it's because of the circumstances they are in. In depth Interview- 10 February 2020

An official from the Ministry of Labour and Social Welfare said that:

> The Pretrial Diversion Programme is relevant mainly because it has brought changes within the juvenile justice system. The programme is moving away from the programme being under the discretion of the Public Prosecutor and the police to being part of the juvenile justice system. In depth interview- 22 January 2020

To add on to the above an official from the Zimbabwe Prisons and Correctional Services said that

> "The PTD is relevant to Zimbabwe's juvenile justice system because it is keeping children out of prison and this reduces the overcrowding and shortages of food in prisons." In depth interview- 11 February 2020

Some of the participants highlighted that the there is need for the Zimbabwe Republic Police (ZRP) as law enforcement agents to be sensitized and trained on how to deal with children in conflict with the law with regards to the Pretrial Diversion Programme. This is because some of the cases especially those which qualify for diversion end up going through the judicial proceedings yet they should actually be dealt with by means of diverting the child and not through the courts. This also means that there should be clear guidelines and responsibilities for every stakeholder involved in the diversion process. Some of the participants also stressed that there are no designated rooms for the diversion

process at all ZRP stations, and this poses a challenge in upholding privacy and confidentiality.

An official from Prison Support Outreach said that:

> The police should be trained on the PTD at every station so that even any officer on duty can be able to handle cases which need to be diverted. (In depth Interview, 29 January 2020).

During the research there was also an issue raised with regards to a challenge of misreporting the ages of children which prejudiced juveniles who are entitled to special care by the police. This is as a result of the child not having a birth certificate or national identification which shows his age, consequently the child ends up being treated as an adult.

### 4.3.3 Impact of the Pretrial Diversion Programme on the juvenile system

Before the Pretrial Diversion Programme was adopted it was rolled out as a pilot study and because it brought results there was need for it to be adopted mainly to protect the rights of children. Since its adoption the PTD has had a tremendous effect on the juvenile justice system in Zimbabwe this is because it has become the core objective and has been made a well-established practice since its adoption. Its impact on the juvenile justice system has been evidenced by the decrease of the number of cases in the courts since law enforcement is no longer resorting to judicial proceedings in cases involving petty crimes committed by children. This also includes the increase in the number of diverted children since its adoption by the government of Zimbabwe in 2016. An official from the Ministry of Justice, Legal and Parliamentary Affairs (PTD Department) said:

> Statistics show that since 2016 there has been an increase in the number of children diverted from the criminal justice system, however in other areas especially where the PTD Programme has not been rolled out children are still facing incarceration. In other cases their age is not known because they won't be having any birth registration documents so it poses a challenge. Getting a medical examination is not an option because there is no provision for that and in most cases the children will be coming from poor backgrounds, they cannot afford it. In depth Interview, 11 February 2020.

According to some of the participants the PTD has helped the police to improve their conduct when handling cases of children in conflict with the law. Some police officers are no longer treating children in conflict with the law as criminals but rather as a group in need of care and protection. There has also been a change of heart amongst police officers dealing with children in that they no longer see these children as criminals. This is an improvement as opposed to how they were not using a human rights based approach before the coming in of the Pretrial Diversion Programme. Hence, the coming of the PTD sensitized them to upgrade their conduct towards children in conflict with the law. One participant, a researcher from CATCH stated that:

> The conduct between children in conflict with the law and the police has improved immensely since the introduction of the Pretrial Diversion in areas such as Bulawayo where police brutality was very common. In provinces such as Bindura there are next to none juvenile offenders who get incarcerated because the police were sensitized. In depth Interview, 3 February 2020.

There seemed to be consensus among the participants that the Pretrial Diversion is not known by the community and this has led to incarceration of some children in conflict with the law. In different ways they highlighted that this is an elitist initiative a "top down" approach was used, awareness on the programme was not done nationwide, it was limited to areas where it was rolled out. A report by the MoJLPA (2019) also highlights that access to diversion is unevenly disseminated in rural areas since the programme was rolled out to 22 districts in the whole country. It is important that information about the PTD be

disseminated to the communities in every province, this is imperative because the communities are an important key stakeholder in the PTD process and their buy-in is crucial. Therefore, whether or not the PTD is being implemented in an area; sensitization and awareness should take place, this will help in ensuring that cases which qualify for diversion are handled correctly and children do not go through judicial proceedings.

In relation to the above findings, the participants also highlighted that the issue of coverage is as a result of budgetary constraints on the part of the Ministry of Justice, Legal and Parliamentary Affairs. They indicated that the PTD department has no specific allocation for its activities hence low number of personnel and this has led to low coverage in terms of implementation of the programme. A programmes officer CATCH went on to say that:

> There is no specific funding and no resource mobilization strategy for the Pretrial Diversion Programme so it cannot be implemented fully without a budget. There is need for a budgetary allocation specifically for the Pretrial Diversion department for it to fully function. In depth Interview- 3 February 2020).

Furthermore, one of the participants highlighted that while the PTD programme has been effective in the Juvenile Justice System there has been a gap in its regulation. There is need for a law which strictly addresses the Programme to ensure that it is implemented appropriately and within the confines of the law. A legal officer from Justice for Children's Trust stated that:

> The Pretrial Diversion Programme is using a bunch of laws and is not provisioned precisely and intentionally in any law, therefore we use the Pretrial Diversion guidelines which people might not understand. Hence, the coming in of the Child Justice Act will validate and complement the guidelines that we use when diverting children. In depth interview- 13 February 2020)

In agreement with the above an official from the Ministry of Labour and Social Welfare said that:

> "The Pretrial Diversion is provided for in the child justice Bill and we will be able to run away for the programme being regulated by laws such as the Criminal Procedure and Evidence Act." In depth Interview- 22 January 2020.

Also in agreement was an official from the MoJLPA who stated that:

> The PTD programme is not regulated by any specific law, right now we are using the PTD Guidelines which only the technical people can interpret. If we are to give any person they will not be able to understand it so an Act is essential. In depth Interview- 13 February 2020

### 4.4 Findings from the documentary analysis

The concept of the need for separate juvenile justice system for children in conflict with the law was developed into International Human Rights Law (IHRL) through a sequence of Conventions both regionally and internationally (Vengesai, 2014). These include the Beijing Rules of 1985, the United Nations Convention on the Rights of the Child of 1989, the African Charter on the Rights and Welfare of the Child of 1990, to mention a few. All of these conventions reveal a considerable influence of the welfare model by way of taking on the idea of that children are weak, immature and defenseless, so they have to be treated in a different way from adults particularly in circumstances when they are accused, or found guilty of interfere with law (Vengesai, 2014).

The researcher analyzed the above mentioned legal frameworks and they revealed that there are several contradictions between theory and practice with respect to diversion. While doing document analysis the researcher also had to bear in mind that these laws were established before the concept of the Pretrial Diversion was introduced in Zimbabwe. The researcher also analyzed statistics of the Pretrial Diversion Annual Report of 2019 compiled by one of the organizations part of the sample. However, the researcher could

not include the information from the report as it was given in confidence. The researcher also looked at case law of juveniles relating it to the fragmented pieces of legislation regulating the Pretrial Diversion Programme as well as the UNCRC and the ACRWC.

The constitution of Zimbabwe states in Section 81 which specially deals with the rights of `children in conflict with the law. It provides that children under the age of 18 must not be detained except as a measure of last resort and for a short period, but also does not stipulate what constitutes a short period. Despite such a provision by the supreme law of the country children in conflict with the law are facing incarceration especially in areas

The Criminal Procedure and Evidence Act (Chapter 9:07) empowers the Prosecutor General or his representative to decline to prosecute in any matter and also empowers the court to commit a child to an institution or refer to the children's court for purposes of sentencing which presents myriad challenges. The Prosecutor General can also give consent for a child between the ages of seven and fourteen for prosecution as in the Eva 1967. Adding on, many juvenile cases have been dealt with as if they are were adults. For example the case of the S v Mtetwa (2015), the accused, aged 17, was convicted of 8 counts of unlawful entry into premises as defined in s 131 (1) of the Criminal Law (Codification and Reform Act (Chapter 9:23) (State vs Mtetwa, 2015). In addition he was also convicted of 8 counts of s 113 (1) (a) of the same Act which provision relates to theft. For purposes of sentencing, the counts for both unlawful entry and those for theft were paired alongside into eight counts. Count 1 and 2, 7 and 8, 9 and 10, 13 and 14 lastly 15 and 16 the accused was sentenced to 24,12, 12, and 24, 12 and 36 months imprisonment respectively which basically amounts to 9 years (S v Mtetwa, 2015). It can be argued that

the convictions were proper, the sentence induces a profound sense of shock for one so young.

Clearly the sentence was focused on the need to protect the public from a perceived criminal and irredeemable young offender. The court did not perceive the risks of imprisoning such a child for a long period of time, as the courts always emphasize children should not be sacrificed for the sake of convenience (S v Mtetwa, 2015). Constitution of Zimbabwe takes on the principle that children in conflict with the law should be held for the shortest possible time and only as a last resort (Constitution of Zimbabwe, 2013). This is responsibility that is found in international law in Article 37 (b) of the United Nations Convention on the Rights of the Child (UNCRC, 1989). Additionally, in terms of Article 40(1) the treatment of a child should take into account the child's age and seek to uphold reintegration in society (UNCRC, 1989). Sentencing a 17 year old for 9 year is contradictory to the Constitution and the abovementioned legal instruments imperative especially because the accused had not committed any violent offences like robbery, murder, or rape (S v Mtetwa, 2015). Constitution of Zimbabwe also puts importance on the principle of best interests of the child in matters involving children at all times. Evidently the magistrate residing on this case did not take into consideration these provisions in the Constitution which give emphasis to the obligation to respect and protect the rights of children under the age of 18 (S v Mtetwa, 2015).

The Children's Act (Chapter 5:06) was adopted in 2001 so as to domesticate the various international legal instruments on child rights in Zimbabwe with regards to their care and protection. It replaced the Children's Protection and Adoption Act (Chapter 5:06). This Act's focus includes the provision of care and protection to all children in Zimbabwe and

also the forming of children's court and registration of the institutions for the reception and custody of children (Vengesai, 2014). In light of the above point, it is important to note that children in conflict with the law are treated differently by the courts. For instance in the case of S v Ncube (2011) was 18 years old when he was convicted of the rape of a 12 year old. However, at the time he committed the offence he was 16 years old. Despite the fact that he did not deny the crime the case stretched until he had turned 18 years (S v Ncuber 2011). He was then treated as an adult for the purpose of sentence, it can be noted that the court withheld matter so that the accused would turn 18 years so that he could get a stiffer penalty (S v Ncube, 2011. Such conduct by the court was disappointing and discredited the administration of justice.

It can be noted that regardless of the availability of statutes to regulate the juvenile justice system, the challenge has been that those responsible have not been providing the protections stated in the above provisions. Therefore, some children have had to go through trial and incarceration even though the Article 40 of the UNCRC states that:

> States shall seek to promote the establishment of measures for dealing with children in conflict with the law without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected (UNCRC, 1989).

In cases such as the S v Ncube and Ors (2014) where the court dealt with juvenile cases, the court noted that officer of the law who deal with children in conflict with the law should always remember that they are a vulnerable group and should be treated according to the domestic and international standards. They must seek guidance from the Article 40 and 17 of the UNCRC and the ACRWC respectively which highlight the administration and standards to be met by juvenile justice systems established by State parties.

While on the other hand, Zimbabwe can be commended for adopting the Pretrial Diversion Programme as obligated under the United Nations Convention on the Right of the Child and the African Charter on the Right and Welfare of the Child. Nevertheless, it is quite unfortunate that there are still other juvenile offenders who have not been able to escape the formal criminal justice proceedings especially the children who commit "serious crimes" as the programme does not include them. The processes of trial, sentencing and detention of children in conflict with the law have not been uncommon in Zimbabwe they remain in theory even after the implementation of such a remarkable alternative rehabilitation mechanism.

## 4.5 Discussion and Interpretation

This section focuses on the recurring themes which emerged from the results of the research, the themes will be discussed, analyzed and their link to the literature review will also be highlighted. Themes that emerged from data collected during the study were divided into two categories namely positive aspects and negative aspects of the Pretrial Diversion. The themes that emerged from the data collected were: reduction of costs and improved efficiency of the juvenile justice system, reduction of labels and stigma associated with a criminal record and rehabilitation of children in conflict with the law, inadequate funding allocated towards the PTD which has led to low coverage of the PTD programme and limited personnel and unbalanced victim offender mediations. This themes shall be discussed and linked to the theoretical framework in the section below.

### 4.5.1 Reduction of costs and improvement of efficiency

The research revealed that the Pretrial Diversion Programme helps to reducing system costs and decongests the justice system. Scott and Steinberg (2009) are of the view that the costs of diversion programmes are a lesser amount than the costs of imprisonment. According to the National Juvenile Justice Network (2010) diversion programs over the years have been reducing the justice system's ineffectiveness this includes the decrease of the number of cases formally dealt with and shrinking the number of juvenile offenders who are sent to prison. To support this view statistics from the National Prosecuting Authority Report (2015) the Department of Pretrial Diversion Programme received a total of six hundred and ninety one cases. The department productively concluded five hundred and fourteen cases of children who had been in conflict with the law. Adding on, out of these cases four hundred and twenty-six were then successfully diverted (National Prosecuting Authority Report, 2015). It is worth mentioning that out of the concluded cases only 17% of juvenile offenders were referred for prosecution. It could be argued that this is a clear indication that the PTD is effective in keeping juvenile offenders away from the criminal justice system through efforts to reform them (National Prosecuting Authority Report, 2015). In the period from 2016 to 2019, there have been 2 729 children in conflict with the law who have been diverted, interestingly 82% were boys while 18 % were girls (MoJLPA, 2019).

### 4.5.2 Reduction of labels and stigma associated with a criminal record

During the research study participants indicated that the Pretrial Diversion Programme is a rehabilitation mechanism which diverts them from judicial proceedings therefore

children in conflict with the law end up not getting a criminal record and labels associated with it. Davis and Busby (2006) assert that Pretrial Diversion programmes limit the stigmatization of imprisonment and reduces the burden of too many cases on the criminal justice system. The evasion of formal proceedings is vital because of challenges and difficulties children in conflict with the law may come across after getting a criminal record. Skowyra, Coccoza and Shufelt (2010) concur with the above stating that diversion is means for juvenile offenders to evade the consequences associated with a criminal court record and this includes the negative impact that such a record has on employment in the child's future.

The reduction of labeling effects was acknowledged by the participants in the study as a key element at the heart of Pretrial Diversion Programme. This view is supported by the Labeling theory which argues that when a child is identified as a criminal, a negative label is then attached to him or her both by himself or herself and by the society and this causes stigma and negative self-perceptions (Petrosino, Petrosino and Guckenburg, 2010). More so, Mccord, Widom and Crowell (2001) in support of the above point postulate that from the labelling perspective, a deviant living does not emanate directly from the first act of criminal behavior, but rather from the deviant label given by society and the way the child reacts to this label.

Adding on, Schur (1973) another labelling theorist claims that labelling results in what he calls a "self-fulfilling prophecy" that creates a higher potential for future crime. The stigma associated with labelling stirs up practices which could lead to exclusion from relationships with others and from appropriate opportunities (Bernburg, 2009). Thus, Link

and Phelan (2001) opine that the stigma of formally processing children in conflict with the law as a criminal offender tends to "stick" to the person.

### 4.5.3 Rehabilitation of children in conflict with the law

The data gathered from the participants showed the Pretrial Diversion Programme encourages children in conflict with the law to become constructive citizens who contribute to society through rehabilitation. This is supported by Someda (2009) who believes that the rehabilitation through diversion of juvenile offenders contributes to the reduction of recidivism or reoffending. Therefore, it is in the best interests of society that offenders be rehabilitated as it addressed the problem of crime. Rehabilitation in the Pretrial Diversion Programme in Zimbabwe involves the activities such as case conferences, family group conferencing, victim offender mediation and vocational training, which are regarded as beneficial for the rehabilitation of offenders. Davis and Busby (2006) state that diversion programmes are specifically intended to influence children in conflict with the law to become productive citizens who contribute to society. The abovementioned scholars continue to opine that diversion promotes dignity and well-being, as well as assist such children in seeing themselves as individuals who can contribute meaningfully to society.

Furthermore, in general rehabilitation is also regarded as a more human rights based approach rather than a punitive response to child offending. McGregor (2010) maintains that diversion is not a soft option, even though it moves away from the punitive approach. The aim is to change the behaviour of the child, and in this way reduce crime. Adding on to the above point, the concept of rehabilitation stems from the discipline of restorative justice where the Welfare model of justice emanated from. The Welfare model is the

starting point for arguing that children in conflict with the law are vulnerable and as such, they deserve special protection (Odhiambo, 2005). Such special protection can only be granted by the State by way of establishing a separate criminal justice system for them which will offer them rehabilitation mechanisms different from the ones accorded to adult offenders. In terms of this model, the judiciary must be granted powers to extend protection measures for children in conflict with the law (Schissel, 1993). This is supported by a provision in the Beijing Rules which state that:

> "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. 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 decisions to refer a case shall be subject to review by a competent authority, upon application." (Beijing Rules, 1990)

These protections include counselling, cautioning and institutionalization in foster homes or halfway homes as opposed to custodial sentences or any other such treatment as would be considered inappropriate for the enhancing the rights of the child (Vengesai, 2014).

### 4.5.4 Inadequate funding

Participants in the study also revealed that there is inadequate funding for the Pretrial diversion programme and this has affected the implementation of the programme. Lack of funding has let to conduct follow-ups on cases dealt with under PTD was also stumbling block to the programme. Clough, Lee and Conigrave (2008) opine that if there is a lack of adequate resources in any diversion programme this can result in limited personnel and implementation of the programme will not be effective. The provision of sustainable funding is a standard which must be met as it influences the level of effectiveness which can be achieved by the diversion programme (UNICEF, 2017).

Identifying and successfully tapping into both short and long term revenue streams therefore is important. To support this point one participant recommended that the implementers of the Pretrial Diversion Programme should come up with resource mobilization strategies which will keep it afloat so that it will not die a natural death. This can be a challenge however, as there is usually no single, clear funding stream available for diversion programme in many countries (UNICEF, 2017). This is because governments usually operate within very limited financial budgets, the private sector, civil society organizations' assistance is limited, and international support is not guaranteed, therefore lack of funding significantly constrain the scope of the diversion programmes (Rutere and Kiura, 2009). Inadequate funding of the Pretrial Diversion Programme led to low coverage of the programme, hence, it has not been cascaded to other parts of the country. This has various implications on the Programme and the juvenile justice system in general, it also puts pressure on the implementers to come up with ways to fund the programme and implement in efficiency nationwide. If the programme is cascaded to other areas less children will go through the formal court proceedings.

In Kenya there was also the same challenge where there was little money and in some cases no money available when it was needed, this meant that diversion had to be delayed and in other instances the children in conflict with the law to be held in un-conducive facilities for long (UNICEF, 2017). Diversion is both a time and money consuming activity. Beginning from the moment when a child gets into conflict with the law or needs welfare assistance, human resource and money become a necessity (Rutere and Kiura, 2009). Processing the case, travelling (in the case of environment assessment and

repatriation), providing basic needs like food costs both time and money (Rutere and Kiura, 2009).

### 4.5.5 Unbalanced victim offender mediations

Victim offender mediation is a process whereby the victim and the offender are brought together to discuss the impact of the crime on their lives with the assistance of a mediator (Skelton and Batley, 2006). According to the participants the strengths of victim offender mediation are that the perceptions of the victim and offender are changed, and both victim and offender in some cases benefit from the programme. Participants highlighted that the victim is able to tell the offender how he or she has been affected by the crime. However, the challenge is that these mediations are centered more on the offender than the victim and this can lead to latent conflict and a perception that the offender is getting an easy way out. Therefore, there is need for diversion officers have clear guidelines to manage victim offender mediations, and do the preparations properly, so as to not cause more harm.

Another point is that participants indicated that in some cases the victims may be unwilling to participate in the meditation which will lead to the issue being unresolved and no closure for both victims and this can create tension and conflict between the two parties or their families. In addition to the above, Choi and Severson (2009) point out that if victim offender mediations are not correctly implemented, secondary victimization can happen and in this way contribute to the negative views about diversion, making people less willing to participate.

## 4.6 Summary

The chapter presented and analyzed data for this study: an analysis of the pretrial diversion and its impact on the juvenile system in Zimbabwe. The researcher made use of thematic cluster of information organized in line with the participants' views and was then utilized to ensure effective presentation, discussion and analysis of all the data collected. The chapter also discussed the developments of presented data in relation with other relevant information used in the section on related literature review.

# CHAPTER 5 SUMMARY, CONCLUSION AND RECOMMENDATIONS

## 5.1 Introduction

This Chapter provides the summary and conclusions for this research based on a reflection of the discussions from the previous chapters. It will also provide implications of this study and as well as suggest areas for further research with regards to this study area.

## 5.2 Discussion

Globally the concept of juvenile justice has evolved from to prison sentences, to criminal court, to children's court and then diversion. The study has shown that the concepts that have prompted the development of diversion programs for juvenile offenders is the labelling theory. It argues that juvenile offender who commit minor offenses become habitual offenders because they are singled out for negative recognition thus creating and reinforcing the offender's and society's view that he or she is a criminal.

Adding on, in Zimbabwe the Pretrial Diversion Programme started as a pilot project in towns and cities cities, Harare, Bulawayo, Chitungwiza, Murehwa and Gweru, and was later extended to other provinces even though it has not reached some areas. It was put in place to divert children from the formal justice system which had been treating children in conflict with the law as adults. The researcher notes that the reason behind the motivation of the adoption of the PTD is the explanation that children deserve special treatment in the criminal justice system when they come in conflict with the law. The study shows that there is need to separate children from adults with regards to the justice system and in that regard, it is important to note that children do not commit crimes in the

same measure as adults and imprisonment of children adversely affects the best interest of the child.

Further, universally it is not accepted that juvenile offender should be subjected to the harshest penalties and thrown to prison together with hardened criminals and this position is supported by the Zimbabwean Constitution of 2013 which provides for separate detention of children and adults. The study also shows that the PTD Programme was designed to avoid the negative labels and stigma that accompany formal case processing which ends up affecting relationships, future employment and education opportunities of the child in question. The study noted that the PTD Programme needs to be cascaded down to all parts of the country to ensure its effectiveness and that it meets its goal and objectives in the juvenile justice system. However, that can only be possible if specific budgetary allocations are made to the department of the Pretrial Diversion by the Treasury and if the department and Ministry of Justice, Legal and Parliamentary Affairs come up with a sustainable resource mobilization strategy which will keep the programme running.

## 5.3 Conclusion

In summary, the aim of this study was to analyze the pretrial diversion programme and its impact on the juvenile justice system. The preparation of this research involved a systematic review of the literature related to diversion programmes namely the Labelling theory and the Welfare model. It also analyzed of the legal frameworks regulating the Pretrial Diversion Programme. The study used purposive sampling to Thematic data analysis was used by the researcher to analyze the data, by using transcribe data and the field notes which helped the researcher to capture the richness of the data as well as the

research context. The researcher used in-depth interviews and document analysis linking with theoretical perspectives, as well as analyzing legal frameworks regulating the Pretrial Diversion Programme further deepened understanding of the programme.

The findings revealed that when more children are diverted from the formal criminal justice system, and if non-custodial sentences are prioritized prisons will be depopulated. It also showed that the PTD programme helps in decongesting courts and rehabilitate children without causing traumatization like incarceration. Findings from the research also showed that the effectiveness of the programme has been impeded by the lack of funding and resources to roll the programme out nationwide, therefore there is limited personnel and lack awareness with regards to the PTD in some communities. The research notes that while ensuring access to the Pretrial Diversion Programme to children in conflict with the law a multi-disciplinary approach is required which involves the Ministry of Justice, Legal and Parliamentary Affairs, Mistry of Labour and Social Welfare, Zimbabwe Republic Police, Zimbabwe Prisons and Correctional Services, lawyers, social workers, paralegals, Civil Society Organizations, communities, parents and children themselves. All these key stakeholder must function together to ensure that a child's best interest is considered first and fore most because each of them have a role to play in the diversion process.

The researcher believes that the PTD Programme is a good start to practically move towards the restorative justice, many children have been diverted and this has improved the functionality of the juvenile justice system in Zimbabwe. However, such child related initiatives have in the past failed to take into consideration views and opinions of children in the juvenile justice system and the PTD was no exception. Therefore, it would have made a great difference if children had been consulted that before the Pretrial Diversion

Program was set out to ensure that children gave their views and opinions about what was encompassed in the PTD guidelines. This was important because the children's opinions and views would have been considered and anything emanating from them would be in the best interests. The involvement of children would also have contributed to awareness about the programme in communities and maybe in funding opportunities to keep the programme afloat.

## 5.4 Implications

The findings form the study showed that the Pretrial Diversion Programme is an alternative rehabilitation which helps to avoid initial or continued formal processing of children in conflict with the law in the juvenile justice system. While it is recognized that some children commit serious offenses and need to be confined within a secure setting, the findings have shown that children in conflict with the law who would have committed relatively minor criminal activities can be successfully rehabilitated and reintegrated in the community. This implies that if the Pretrial Diversion Programme continues to be implemented fewer children will be incarcerated and will be influenced to become responsible citizens. The success and effectiveness of this programme may mean that in the future diversion programmes for children who commit crimes such as rape, murder and robbery can be established and implemented and the justice system in Zimbabwe will not incarcerate children in conflict with the law.

## 5.5 Recommendations

The Government of Zimbabwe has made a great effort towards the improvement of the juvenile justice system in the country. Findings from the research have showed the Pretrial

Diversion Programme has been successful in diverting children in conflict with the law from the criminal justice system. There are still some gaps in the programme which need to be improved to achieve its goal and objectives. The following were recommended by the participants:

- The Child Justice Bill should have clear operational guidelines with the modus operandi of the Pretrial Diversion programme. It should contain the structure with roles and responsibilities of stakeholders clearly defined. This should also include the conditions and responsibilities the child going through diversion, the repercussions for failure to meet the terms and the principles that will define successful accomplishment and departure from the programme.
- A monitoring committee should be established to constantly monitor the Pretrial Diversion Programme.
- A resource mobilization strategy should be put in place for the Pretrial Diversion Programme.
- Since there is lack of knowledge about the Pretrial Diversion Programme and its benefits there is need for the duty bearers to raise awareness so that children in conflict with the law eligible for diversion will not go through the judicial proceedings.
- The Zimbabwe Republic Police officers should be provided training on the Pretrial Diversion Programme so that they are better prepared to deal with cases needing diversion.
- There is need for a multisectoral approach in the oversight of the Pretrial Diversion programme so that it is not implemented in isolation.

- Guidelines should be put in place for the diversionary option of victim offender mediation which ensure that the mediations are balanced and they should also be monitored.

### 5.6 Suggestions for further research

Considering the lack of research regarding the Pretrial Diversion Programme and its benefits, the following suggestions for future research are proffered:

- Why the Pretrial Diversion Programme is no suitable for juvenile offenders who would have committed serious crimes.
- There is need for research which focuses on the views of the children who have gone through the diversion process in Zimbabwe.

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**Appendix 1: Consent Form**

My name is Larisa W Chikanya, I am a Master's student at Africa University. You are being asked to participate in a research study entitled: **The Pretrial Diversion Programme and its impact in the Juvenile Justice system in Zimbabwe.** You were identified as a possible participant in this research because you work with children in conflict with the law.

If you agree to be a participant in this research, I would ask you to complete an interview with me. This research has no foreseeable risks to you. The benefit of participation is that I will be able to get the thoughts and impressions of individuals like you who have personally been involved with the Pretrial Diversion Programme.

The records of this research will be kept private. In any sort of report I might publish, I will not include any information that will make it possible to identify a participant. Research records will be kept in a locked file, and shall be destroyed after it has been analyzed.

Your participation is voluntary. If you choose not to participate, it will not affect your current or future relations with the diversion program or any other entity or organization. There is no penalty or loss of benefits for not participating.

If you have any questions, you may contact me at 0713044652 or by e-mail at chikanyal@africau.edu.

**Statement of consent**

I have read the above information. At this time, I have no questions or I have received answers to the questions I asked. I consent to participate in this research.

Name of Participant (Print) _____

Signature of Participant _____ _____

Date

Name of Person Obtaining Consent (Print) _____

Signature of Person Obtaining Consent _____ _____

Date

**Appendix 2: Interview guide for Key Informants**

1. I understand you work with children in conflict with the law, what services do you offer to them?
2. What is Pretrial Diversion and how does it work in Zimbabwe?
3. Do you think the Pretrial Diversion Programme has been effective in the protection of juvenile offenders from the criminal justice system in Zimbabwe?
4. Do you think the Pretrial Diversion is relevant to juvenile justice system in Zimbabwe?
5. What have been the changes in the juvenile justice system since the adoption of the Pretrial Diversion Programme? Give a reason for your answer
6. Do you think the Pretrial Diversion Programme has been effective in achieving its goal and objectives? Give a reason for your answer
7. Are there any recommendations that you would like to proffer to the government with regards to the Pretrial Diversion Programme?

Thank you very much for taking time out to participate in this research study.

**Table 1- Budget**

| Activity | Cost |
|---|---|
| Transport to the interview venues | ZWL 500 |
| Printing of data collection tools | ZWL 300 |
| Communication: Airtime | ZWL 500 |
| Binding of final research document | ZWL 700 |
| TOTAL | ZWL 2 000 |

**Table 2- Time Frame**

| | |
|---|---|
| Data collection | Mid-January -February |
| Data analysis | February - March |
| First draft submission | March |
| Second Draft submission | April |
| Third draft submission | April |

## Approval Letters

AFRICA UNIVERSITY
(United Methodist-Related Institution)
INVESTING IN AFRICA'S FUTURE

# AFRICA UNIVERSITY RESEARCH ETHICS COMMITTEE (AUREC)

P.O. Box 1320 Mutare, Zimbabwe, Off Nyanga Road, Old Mutare-Tel (+263-20) 60075/60026/61611 Fax: (+263 20) 61785 website: www.africau.edu

Ref: AU1297/19

8 January, 2020

Larisa W. Chikanya
C/O CBPLG
Africa University
Box 1320
**Mutare**

**RE:** **AN ANALYSIS OF PRE-TRIAL DIVERSION PROGRAMME AND ITS IMPACT ON RECIDIVISM AMONG JUVENILE OFFENDERS IN HARARE FROM 2016 -2019**

Thank you for the above titled proposal that you submitted to the Africa University Research Ethics Committee for review. Please be advised that AUREC has reviewed and approved your application to conduct the above research.

AFRICA UNIVERSITY
RESEARCH ETHICS COMMITTEE (AUREC)
08 JAN 2020
APPROVED
P.O. BOX 1320, MUTARE, ZIMBABWE

The approval is based on the following.

a) Research proposal
b) Questionnaires
c) Informed consent form

- **APPROVAL NUMBER** AUREC1297/19

This number should be used on all correspondences, consent forms, and appropriate documents.

- **AUREC MEETING DATE** NA
- **APPROVAL DATE** January 8, 2020
- **EXPIRATION DATE** January 8, 2021
- **TYPE OF MEETING** Expedited

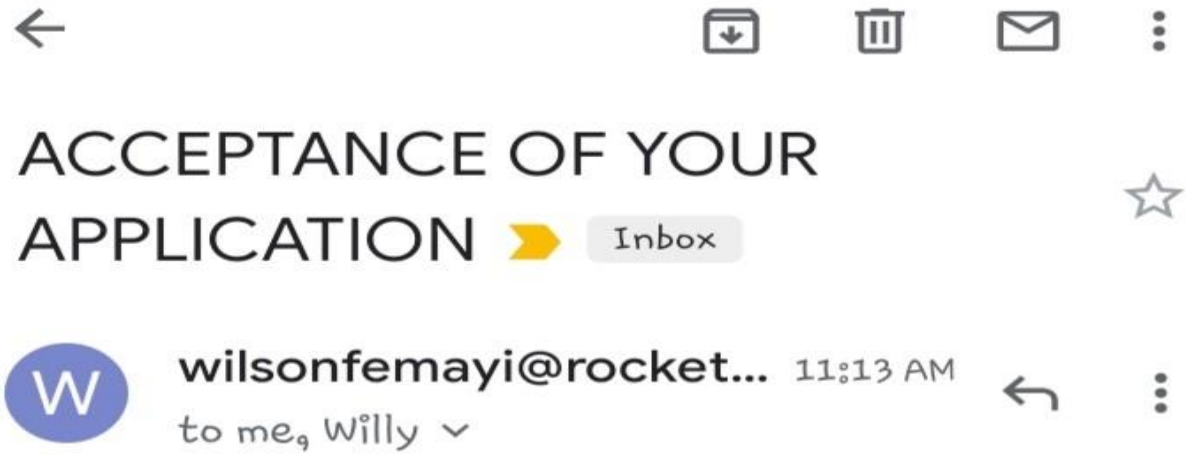
After the expiration date this research may only continue upon renewal. For purposes of renewal, a progress report on a standard AUREC form should be submitted a month before expiration date.

- **SERIOUS ADVERSE EVENTS** All serious problems having to do with subject safety must be reported to AUREC within 3 working days on standard AUREC form.
- **MODIFICATIONS** Prior AUREC approval is required before implementing any changes in the proposal (including changes in the consent documents)
- **TERMINATION OF STUDY** Upon termination of the study a report has to be submitted to AUREC.

**Yours Faithfully**

MARY CHINZOU – A/AUREC ADMINISTRATOR
FOR CHAIRPERSON, AFRICA UNIVERSITY RESEARCH ETHICS COMMITTEE

JUSTICE FOR CHILDREN
66 Blakeway Drive,
Belvedere, Harare
Cell: 0772 560 163/4,
Whatsapp: 0785 832 399
Tel: +263 - 4 - 778474, 741781



# ACCEPTANCE OF YOUR APPLICATION

Inbox

**wilsonfemayi@rocket...** 11:13 AM

to me, Willy

Dear Larisa

Your letter dated 23 January

May you please be advised that your application has been granted so you advise when you would like to conduct the interviews.

Yours sincerely

Rev W. Femayi
EXECUTIVE DIRECTOR
PRISON OUTREACH SUPPORT.

AFRICA UNIVERSITY
(A United Methodist-Related Institution)
INVESTING IN AFRICA'S FUTURE

# AFRICA UNIVERSITY RESEARCH ETHICS COMMITTEE (AUREC)

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**Yours Faithfully**

MARY CHINZOU – A/AUREC ADMINISTRATOR
FOR CHAIRPERSON, **AFRICA UNIVERSITY RESEARCH ETHICS COMMITTEE**

Ministry of Justice, Legal And Parliamentary Affairs
13 FEB 2020

INFORMATION & RECORDS OFFICE
PRISONS & CORRECTIONAL NAT. HQ
11 FEB 2020
P. BAG 7718, CAUSEWAY
ZIMBABWE

Drear Larisa

Your application to conduct the proposed interview research is approved, however I am not in a position to set up appointments on your behalf. I suggest you visit our office Kind regards

## Plagiarism Results