

# **CHAPTER 1: THE CONTEXT OF RESTORATIVE JUSTICE AS A PIVOT OF SOCIAL WORK PRACTICE**

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Restorative justice is at the crux of social work practice. For decades, the instrumentality of professional social workers in ensuring the promotion of restorative justice among young offenders has been underestimated. Many of these social workers have been marginally involved or even excluded from the practical restorative justice processes. With emerging and skyrocketing cases of juvenile offending due to hostile socio-economic and geo-environmental climate among other factors, there has been a collective demand for the establishment of a restorative juvenile justice system that is reformatory, rehabilitative, child-friendly and child-needs and rights-sensitive in nature. To this end, the Pre-Trial Diversion Programme (PTD) has been proposed and put in place towards promoting young offenders' access to restorative justice across nations with Zimbabwe included. This programme is opposed to attributive, retrogressive, vindictive and punitive criminal justice system that exposes these offenders to unnecessary incarceration and prosecution. Despite the existence of this programme, many young offenders still remain entangled under harsh criminal juvenile justice system. This is possibly compounded by limited involvement of child-rights and needs-sensitized social workers during the implementation of these diversion programmes. This disturbing situation has eventually exposed many young offenders to incarcerations and inhumane treatment. It is against this background that the study seeks to critically explore the hurdles constraining effective and substantive participation of social workers in implementing the PTD programmes. To this end, the chapter will firstly provide a background to the study. Thereafter, the problem statement, justification of the study, definition of key terms, the study's overall aim, research objectives and questions and finally, monograph outline and chapter summary, will be furnished.

The PTD programme is underpinned by the ethos and normative principles of restorative justice encompassing rehabilitation, protection, reformation, correction, reparation and reintegration, among others. In this context, its main philosophical ideals and goal is to divert and protect young offenders from a retrogressive and harsh criminal justice system that exposes these children to unnecessary incarceration and prosecution (Wood, 2003:2; Justice for Children, 2017; UNICEF, 2022). Ideally, in the same light, trained professional social workers would be actively involved during the implementation of these diversion programmes for effective diversion outcomes. Active involvement of these child-needs and rights-sensitive professionals within the diversion committee appears highly pertinent (Koch and Wood, 2002; UNICEF, 2020). This is critically imperative as social workers have higher awareness and knowledge with regards to children's rights, protection and theoretical foundations of early childhood development. This is in relation to how these latter factors influence human behaviour and juvenile offending in particular as compared to their fellow professionals within the same system. The participation of social workers in promoting young offenders' access to restorative justice through effective implementation of the diversion programmes seems however, more controversial across nations.

There is a sharp conflict between the ideals of restorative justice and practice as many offenders find themselves grappling under the manacles of dehumanizing treatment, incarceration and detention. To this end, poor involvement of social workers and the ineffective implementation of these diversion programmes, has seen a significant number of young offenders struggling to access restorative justice. The UNICEF Report (2022) reveals that, more than 65% (Asia), 21% (Europe), 12% (United States of America) and 82% of young offenders in Africa could not access restorative justice owing to the fragmented and poor implementation of diversion programmes. Some sources attribute poor programme implementation due to Covid-19-related impact among

other socio-economic challenges (Zimbabwe National Council for the Welfare of Children, 2022; Sithole, 2023; Mangwiro and Chitereka, 2021). More disturbing however is the fact that, most of these offenders fell within the eligibility criteria of the diversion programmes. In this light, most of these young offenders continue being exposed to punitive and retrogressive criminal justice processes. Pathetically, the latter system to a larger extent, has a nostalgia of a biased and child-unfriendly colonial criminal justice.

However, it seems highly imperative at this juncture to provide a thorough exposition of the concept and evolution of restorative juvenile justice (PTD programme in particular). This critically helps in establishing a plausible rationale for a well-informed understanding of the phenomenon under study. That is, the evolution of PTD programme as a tool to ensure young offenders' access to restorative justice coupled with the functions of social workers within the juvenile justice system is fraught with varied scholarly controversies (Wood, 2003; Botha, 2007; Steyn, 2010). Despite the existing debates between Eurocentric and Afrocentric scholars regarding its evolution, both scholars consensually agree that, the evolution of the PTD programme dates back to the 19<sup>th</sup> Century (Munzie, 2004; Koch and Wood, 2003). It was during that time that, a preliminary and distinct juvenile justice system was established in the United States around 1889. This saw the first juvenile diversion court being set in Chicago.

Subsequently, in the second half of the 20<sup>th</sup> century, children's diversion courts permeated each and every jurisdiction of the US and Western Europe (Nyazema, 2018). Netherlands in 1905 followed suit and introduced distinct penal laws for young offenders. Thereafter, Canada, England, Wales and Ireland in 1908 indorsed the Juvenile Delinquent Act and the Children's Act. This followed a further establishments of young offenders' diversion courts in their respective dominions (Hodges, 2011; Steyn, 2010). Likewise, Belgium and France also

introduced special diversion courts for juveniles around 1912. Around 1970, the United States of America accordingly introduced the pre-trial diversion programmes; arrangements that were preceded by the consequent establishment of the Juvenile Justice and Delinquent Prevention Act (JJDPa). The latter Act in this light, was to aid the implementation of the Pre-Trial Diversion Programme.

The concept of a separate juvenile justice system and PTD to this end, is an exotic theoretical and practice domain that was transplanted into Africa from the West (Mbambo, 2005; Wood, 2003). More specifically, South Africa is one of the first African countries to embrace this new child-friendly justice system in the early 1990s. This consequently birthed the establishment of an institute; the National Institute for Crime Prevention and the Re-integration of Offenders (NICRO). It is this organization that further propelled the initiation of diversion programmes in South Africa around 1990s in KwaZulu-Natal and the Western Cape. These changes later saw South Africa among other African countries, undertaking a systematic revision and recalibration of their child justice system. This was followed by the proposition of the Child Justice Bill that was later ratified into Law around 2008. These developments in the following years, influenced Zimbabwe to refocus, remodel and establish its own juvenile justice system that was tailor-made to suit the needs of young offenders (Njungwe, 2008; Vengesai, 2014).

These adjustments however, seem to have a firm reference and base from Article 37 and 40 of the United Nations Convention on the Rights of the Child (1989) that provides for the need to establish a separate juvenile justice system that addresses the particular needs of the child. This too, is in harmony with many other international and regional treaties (African Charter on the Rights and Welfare of the Child, 1999) that were later harmonized with respective local legislative blueprints used by governments in handling children's matters in juvenile justice

processes. Unquestionably, Zimbabwe is among the countries that are the signatories of these key treaties. Regardless of the government's efforts to ratify and adopt these frameworks however, the current juvenile justice system still suffers from what Nyazema (2018) conceives as an '*identity crisis*'. This manifests in the establishment of this system as both, a semi-legal and semi-welfare institutions to promote child justice. This system was highly biased towards diversion of offenders from the minority white community. To enhance this system's operationalization, Kaseke (1993:36) reveals that, the colonial regime appointed the first black probation officer in 1949 to handle the plight of juvenile offenders. Prior to that, probation officers were secured from the United Kingdom due to lack of trained personnel in the country. This was a time after the Department of Social Development (DSD), formerly the Department of Social Welfare had been established in 1948 to deal with juvenile delinquency within particularly, the white settler community.

With the increasing demand and clarion call for reform towards restorative, reformatory and rehabilitative justice, in November 2009, the Ministry of Justice, Legal and Parliamentary Affairs of Zimbabwe hinted on the introduction of the PTD Programme. UNICEF and Save the Children were and are still the key stakeholders who work with the government towards the promotion of restorative justice in many communities in Zimbabwe. Initially, it began as a pilot project and later came into fruition in 2013. This programme's key aim is to deal away with the unnecessary prosecution and incarceration of juveniles who had flooded the prisons and deprived of their welfare rights. The PTD Programme targets juveniles who commit non-serious offenses that at law, may not invoke a sentence of more than twelve months. In the same context, it has been observed that the pre-trial diversion programme that principally establishes the basis for restorative justice falls under the Ministry of Justice, Legal and Parliamentary Affairs. Under this ministry social workers (also referred to as diversion officers) work directly with juvenile offenders but with the involvement of other professionals

within the diversion committee. It should be noted however that, probation officers (also social workers) under the Ministry of Public Service, Labour and Social Welfare also work with these children yet there is no clearly demarcated operational boundary between the professionals from two different ministries. Hence, this scenario might also have a firm bearing on the PTD programme implementation thereby affecting diversion processes and outcomes.

On the other hand, regardless of the availability of diversion options, many juvenile offenders still find it difficult to access these diversion services and end up facing incarceration. This options generally include reparation, counselling, group conferencing and victim-offender mediation among others. Appalling evidence presented by Justice for Children (2021) shows that, about thirty-seven (37) young offenders were identified and received through a survey of three (3) prisons. The same survey indicates that, twenty-nine (29) of these offenders had been remanded and identified at various prisons. That is, at Bulawayo Remand there were 13 juveniles, Mutare Remand, 3 juveniles; Chikurubi prison, 1 juvenile; and Harare Remand, 12 juveniles. More disturbing is the situation that, among these young offenders, merely two (2) had been given custodial sentences and were placed at Chinhoyi and Chikurubi Prisons. More so, almost sixty-eight percent (68%) of the offenders had been seriously incarcerated from initial arrest in police cells. Worse still, most of these juveniles had committed minor offenses (loitering during lock down and food theft among others) that would not even attract the sentence of more than twelve (12) months. To this end, these offenders could qualify for diversion rather than incarceration and detention that according to the Criminal Procedure and Evidence Act (Chapter 9:07) should be last resort.

Chitungwiza is one of the first districts where PTD programme was launched. Despite that fact, lots of children in Chitungwiza particularly in St Marys (where juvenile offending is rife) still find it difficult to

access restorative juvenile justice. On one hand, this is possibly because, the options before the courts are confined to caution, reprimand, suspended and postponed sentence, supervision and institutionalization (Mangwiro and Chitereka, 2021). On the other hand, many scholars attribute this problem to ineffective and poor diversion programme implementation that sidelines and ritually involve social workers in the diversion processes (Steyn, 2010; Sithole, 2021; Mangwiro and Chitereka, 2021). In the same vein, screening and assessment that must be primarily conducted by child-rights and needs sensitized professionals (social workers in particular) is now being ritually taken for granted by magistrates among other court officials. On the same note, committal to institutions for those who might have been caught with minor cases has become a common form of disposal yet institutions are not comprehensively equipped to make individualized responses meant to meet specific problems of juvenile offenders (UNICEF, 2020; Sithole, 2021). Other scholars support that, this scenario is compounded by the fact that, Zimbabwe has a fragmented child justice system (Mangwiro and Chitereka, 2021; Sithole, 2021). That is, there is no distinctive legal framework to inform the operationalization of the PTD Programme. Again, the absence of a distinct Child Justice Act for young offenders (although there is the currently proposed and approved Child Justice Bill among other legal reforms to settle the matter) is another factor that is affecting the implementation of this programme in Zimbabwe. It is against this background that, the study seeks to explore the constraining systematic factors impeding social workers' effective or active participation in implementing the PTD Programme in Zimbabwe.

By the very nature of their profession, social workers are highly trained and sensitized in early childhood development, human behaviour and children's needs and protection rights as stipulated in the Children's Amendment (No.8) Act (2023) and Section 81 of the Constitution ((No.20) Act of May 2013) among other international policy blueprints (UNCRC, 1989 and ACRWC, 1999). Thus, with increasing clarion call

and demand for the establishment of a distinct child-friendly and reformatory juvenile justice system (Article 37 and 40 of the UNCRC, 1989) in form of the PTD programme, the active involvement of social workers becomes unequivocally indispensable towards promoting these offenders' access to restorative justice. Nonetheless, the active and effective participation of these child-needs and rights-sensitized professionals is being ritually taken for granted; with most of the tasks they should assume overtaken by other professionals within the PTD Committee. These professionals particularly lawyers, magistrates, police officers, psychologists, sociologists, development studies-based professionals. Yet these professionals practically, appears to be less knowledgeable and partly insensitive to the actual children's unique needs, development concerns and protection aspects as compared to their counterparts (social workers). This scenario has consequently exposed most juveniles (almost 68%) in conflict with the law to continued yet unnecessary detention, incarceration and inhuman treatment (Justice for Children Trust and UNICEF, 2022). This situation presents itself as a tragic betrayal of these children's golden right to child-friendly, restorative justice, equal and fair treatment before the law enshrined in the aforementioned laws. Hence, the study seeks to explore the constraining factors impeding social workers' effective or active participation in implementing the PTD programme in Zimbabwe. Thereafter, well-informed and evidence-based measures (also presented in form of a model) that are meant to improve the effective participation of social workers in providing equitable access to restorative justice among young offenders in Zimbabwe are suggested and provided.

The study critically explores the hurdles constraining social workers' effective participation in implementing PTD programmes for young offenders in Zimbabwe. This is meant to establish the link between social work and restorative juvenile justice towards ensuring child-rights and needs-sensitive practice. Lucidly, it is evident that Zimbabwe still has a dearth of research on the concept of restorative juvenile justice in relation to social work practice. This is with particular reference to the



impeding factors behind ineffective implementation of the PTD programme. Within social work domain, very few researches have partly attempted to explore the effectiveness of this programme. A practical example is Nyazema's (2018) study only focused on the effectiveness of the PTD options in curbing recidivism. In the same light, there are Tembo's (2018) and Moira's (2017) studies that merely focused on how available laws and policies influence juvenile justice administration in Zimbabwe. This research gap thus, renders the study area on restorative justice and social work coupled with the hurdles impeding PTD programmes implementation somewhat or comparatively grey; and hence under-researched.

However, one might still argue that most of these latter researches were conducted in one and the same location of Chitungwiza including Sithole's (2021) study. Yet still, it can be closely noticed that the former researches predated the Covid-19 pandemic era that saw a keen rise in juvenile offending due to the impact of this pandemic. The latter study that was carried during the Covid-19 era only focused on antecedent factors inhibiting young offenders' access to pre-trial diversion services. This includes Mangwiro and Chitereka's (2021) study that tended to mainly focus on the general assessment of the juvenile justice system from a 'desk-review' point of view. Consequently, these studies do not account for the specific barriers impeding the implementation of the PTD Programmes from a social work perspective. Worse still, both studies could not provide a practical model or framework towards the enhancing and cementing the implementation of diversion programmes to improve offenders' access to restorative justice. Thus, this disturbing and considerable deficit of literature has seriously defected and negatively implicated evidenced-based and well-informed decision-making in programme remodelling, policy reform and advocacy coupled with institutional change in macro-social work practice. The study will significantly contribute towards a substantially broadened social work knowledge base particularly on restorative

juvenile justice and social work. It is this knowledge that will help in enlightening and educating all key stakeholders who work either directly or indirectly with young offenders on the ethos and pathos of restorative justice. These stakeholders mainly include professional social workers (probation and diversion officers) among other professionals (magistrates, prosecutors, police officers, lawyers) within the interdisciplinary framework. Eventually, this will promote and enhance a child-rights and needs-sensitive approach to juvenile justice administration for competent and effective practice. More so, the study will capacitate these stakeholders while ensuring active participation of social workers in diversion processes towards effective programme implementation for the betterment of these young offenders' plight. In the same context, the study will help in advocating for the professional recognition of social workers and the centrality of their participation in influencing young offenders' access to restorative justice. In terms of education, the study will influence and inform tertiary education institutions to adjust and review and refocus their curriculum with particular focus on social work and law (restorative justice) coupled with child welfare policy and practice.

At a technical and programming level, the study will inform the Government of Zimbabwe on the need to fully capacitate the Ministry of Justice, Legal and Parliamentary Affairs and the Department of Social Development through the allocation of adequate financial resources, recruitment of more diversion officers (social workers) proportional to the juvenile offending caseloads. In the same context, cooperation between these key ministries will be enhanced and strengthened. At a policy level, the study will also highlight the loop-holes within the juvenile justice system with particular reference to the pre-trial diversion programme. As a result, these pitfalls will inform policy and programme review, reform and further adjustments for effective programme implementation coupled with the establishment of a more resilient and

robust programme. This is particularly in relation to the expedition of the harmonization, realignment and enactment of policies and laws that seek to promote reformatory, rehabilitative, protective and restorative justice among juvenile offenders in Zimbabwe. Finally, the study will also help to inform communities on their contribution and role in preventing and responding to juvenile offending. Eventually, the gap between service users (young offenders) and providers (responsible stakeholders) will be bridged.

The main aim of the study is to establish a pathway to addressing the hurdles impeding effective participation of social workers in PTD Programme implementation in Zimbabwe: Case of St Marys, Chitungwiza. The specific objectives of the study are:

1. To explore the nature of Pre-Trial Diversion Programme as a strategy in ensuring young offenders' access to restorative justice in Zimbabwe;
2. To identify the hurdles impeding social workers' effective participation in implementing Pre-Trial Diversion Programme in Zimbabwe;
3. To suggest a model meant to enhance social workers' effective participation in promoting young offenders' access to restorative justice.

The key questions guiding the study are:

1. What is the nature of Pre-Trial Diversion Programme as a strategy in ensuring young offenders' access to restorative justice in Zimbabwe?
2. What are the hurdles impeding social workers' effective participation in implementing Pre-Trial Diversion Programme in Zimbabwe?
3. What model can be established to enhance social workers' effective participation in promoting young offenders' access to restorative justice?

### Definition of Key Terms

**Social Workers:** In the context of the study, refers to trained and registered professional social workers who have been involved in pre-trial diversion processes towards promoting young offenders' access to restorative justice. The straightforward phrase 'diversion officer' could not be used in this research topic (though emphasised in the study) for the sake of particularity and avoidance of confusion as police officers (under Victim-Friendly-Unit) also bear the same title (diversion officers).

**A Child/Juvenile:** any person or human being below the age of eighteen (18) years (Section 81 of the National Constitution of Zimbabwe Amendment (No.20) Act of May 2013).

**Young/Juvenile Offender:** Any person below the age of 18 years who is in conflict with the law; particularly, minor offenses in the context of the study (Wood, 2003; Steyn, 2010).

**Pre-Trial Diversion Programme:** a child-friendly and restorative programme comprised of options or sub-programmes that include reparation, counselling, rehabilitation and vocational training, family group conferencing, police cautions, victim-offender mediation and community service among others (Save the Children and UNICEF, 2013).

**Juvenile Justice System:** Legislative yardsticks and guidelines, norms, policies, procedural mechanisms and provisions, institutions and bodies specifically applicable to juvenile offenders who are at (or above) the minimum age of criminal responsibility (Fountain and Woolard, 2020).

**Social Work practice:** is an academic discipline and practice-based profession designed to enhance individuals' functioning through their knowledge of human behaviour and enhance people's full potential, and to allow them to cope with daily stressors in a health way; being guided by values of social justice and service above self among others (NASW, 2008; IFSW, 2014; Oko, 2008).

**Diversion:** The conditional channelling of juvenile offenders from the formal judicial proceedings towards a unique way of resolving the matter that enables many – possibly most – to be dealt with by non-judicial bodies, thereby curbing the negative effects of formal judicial proceedings and a criminal record, provided that children's rights and legal safeguards are fully respected (Save the Children and UNICEF, 2013; Wood, 2003).

This monograph comprises five chapters and they are all chronologically presented. Chapter one has mainly focused on the introduction and background to the study. The chapter, canvassed through a historical approach, has fully explored the evolution of

juvenile justice system and the diversion programme. The plight of young offenders and the circumstances surrounding ineffective implementation of PTD programme have also been established. This was done to provide a rationale for the study. Thereafter, the study delved into literature review (presented in Chapter 2). In the chapter, theoretical frameworks (restorative and welfare models) underpinning the study have been critically examined. This was followed by a thorough literature review informed by the aim and objectives of the study through a funnel approach (from international to local level). This greatly helped in establishing the research gap. Accordingly, Chapter three (3) was provided and the chapter mainly focused on the research methodology informing the study. The study thus, has been informed by qualitative research methodology. As such, it followed that, the research paradigm, design, sampling and data collection methods underpinning the study have therefore been informed by qualitative research. In the same chapter, research ethics have also been presented coupled with the limitations of the study as the researcher revealed how he addressed them. Chapter was proceeded by Chapter four (4) and the chapter has mainly focused on data presentation, analysis and discussion. Finally, there is chapter five that offered a summary of the study findings including conclusions that were drawn from the findings of the study. More so, the chapter has also provided the measures (recommendations) and proposed model coupled with the study implications in relation to social work practice. In the same context, the areas for future studies have also been presented.

The chapter has introduced the study to establish the research context. The background of the study (through the historical approach), problem statement, justification of the study, significance of the study, study aim, objectives coupled with the definition of key terms, have all be clearly presented.