

CHAPTER 5: THE PRE-TRIAL DIVERSION PROGRAMME AS STRATEGY FOR RESTORATIVE JUSTICE PROMOTION: REFLECTIONS AND THE FUTURE

The preceding chapter (through data analysis and discussion) has managed to provide the nature of PTD Programme as a restorative, rehabilitative, transformative and child-sensitive justice promotion tool. It also established the key hurdles constraining social workers' participation in implementing this programme. In the same context, the possible intervention measures (from both the participants and key informants) have also been provided. The chapter nonetheless, endeavours to establish a summary of the study's key findings, conclusions and recommendations for improvement. In the same light, the chapter also unravels the implication of the study to social work practice as it also spotlights critical areas for future study. Lastly, the summary of the chapter shall also be given.

As the study's first objective, the study has managed to establish the nature of PTD Programme as a tool for restorative justice promotion. That is, the previous chapter has provided that, there are about eight options or alternatives within or under the PTD programme. These diversion options generally include counselling, reparation, victim-offender mediation, group conferencing, community service, vocational training, police cautions and use of leisure time. Collectively, these diversion alternatives seek to address the plight of young offenders who could or might have committed non-serious or minor crimes: theft, public fighting, bullying and malicious damage of property and unlawful entry among others (Justice for Children, 2017; Steyn, 2010; UNICEF, 2013; Nyazema, 2018). These are offenses that may not attract the sentence of more than twelve (12) months. In terms of eligibility criteria, only those below twenty-one (21) years, first time offenders and those willing to take responsibility among other above mentioned-conditions

qualify for this programme. It was also established that, this programme's operationalization process firmly depends on various laws including the UNCRC, ACRWC, Children's Amendment (No.08) Act of 2013, Criminal Law (Codification and Reform) Act (currently the Patriotic Act), the Criminal Procedure and Evidence Act and the Constitution of Zimbabwe Amendment (No.20) Act of May 2013. In terms of its resource support base (technically, financially and materially), the programme is supported by the government of Zimbabwe with much support from both international (UNICEF and Save the Children) and local agencies (Justice for Children, ZHRC and CATCH). In the same light, there are many stakeholders from different fields who work hand in glove to implement this programme and they include the Police (diversion officer from the VFU), social worker (diversion officer), diversion committee members (magistrates, prosecutors) and parents or significant others among others (psychologists and medical doctors where necessary).

Being the study's second objective (as shown in the previous chapter), it was also provided the underlying impeding factors behind social workers' ineffective participation in implementing the PTD programme in Zimbabwe. Among these hurdles is lack of a distinct legislative framework to guide and inform the operationalization of the PTD programme as it merely borrows and leans on fragmented international, regional and local laws mentioned above. Hence, this demoralises, confuse, overwhelms, disempowers and weakens professionals in the processes of discharging their duties. This gap however could be addressed by the current Child Justice Bill if it be enacted into law. Other barriers to effective social workers' participation included dominance by other professionals especially those within the diversion committee coupled with lack of professional recognition. In the same context, social workers have also been affected by huge caseloads due to brain drain (social workers' mass exodus in particular) compounded by acute resource constraints (material, financial, technical) and donor overdependence syndrome. This situation impedes the programme's

smooth coordination, programming, planning and implementation. More so, the existence of ineffective referral systems or pathways, erratic support, limited diversion options and lack of collective and full cooperation by significant others of guardians are also among the key factors impeding social workers' effective participation in PTD programme implementation process.

Finally, in line with the study's last objective, it was also demonstrated through submissions made by the participants that, besides the efforts so far made by the government in collaboration with the key stakeholders, these initiatives may not be enough to effectively address the challenges faced by the PTD programme. This is in as far as its implementation and the participation of social workers is concerned. Among the proposed possible measures for improved better outcomes, the need to expedite the development and enactment of the Child Justice Bill was highly emphasised. This law will provide a normative standard for the programme's implementation process while it also empowers social workers to participate effectively in diversion or juvenile justice process. Again, it was also suggested that, there is need to for increased awareness on restorative justice and advocacy for professional recognition of social work. More so, it was submitted that, there is need to for development of a robust and sustainable referral system coupled with expanded and decentralisation of the PTD Programme. Also, increased participation and involvement of significant others, increased task force and adequate allocation of resources would also greatly help in improving the effective participation of social workers and consequently, this could enhance the implementation of the PTD programme in a more productive manner.

The overall analysis from the above discussions have therefore led to the key conclusion(s) that:

Failure by most young offenders to equitably access restorative juvenile justice in Chitungwiza District is due to lack of social workers' active and full involvement or participation in the PTD programme

implementation process. Social workers' effective participation in PTD implementation process in this light, is highly paramount. That is if the goals of this programme are to be fully met. This is so because these professionals, as compared to their professional counterparts, are highly sensitized on children's unique welfare and protection needs as emphasised by the restorative justice and welfarist approaches. Thus, failure to place these professionals at the position of eminence from the very first steps of the diversion process (assessment and social inquiry writing), is a direct blow to the realization of young offenders' access to such needed diversion services. To this end, ritual involvement of social workers in the PTD programme implementation process could be one of the deeply-rooted hidden causes of recidivism, worsening juvenile re-offending, continuous incarceration, dehumanization and unnecessary prosecution of these young offenders.

Absence of a robust and legislative framework is also the 'mother cause' of all other preceding challenges identified. This is because, it is law that sets the logic, mode, parameter, normative standard and boundaries within that every duty, activity, role and responsibility is executed. So, failure by the Government of Zimbabwe (GoZ) to expedite and implement the Child Justice Bill is a serious insult and back-push of what the programme could be capable of accomplishing in juveniles' lives. This is pertaining to the participation of social workers in PTD programme implementation process and ensured young offenders' access to restorative juvenile justice (in the form of diversion services). Therefore, the GoZ should see it that, just like her own neighbour, South Africa, there is a robust and distinct legislative framework specifically meant to inform the juvenile justice administration processes. More dependence on fragmented laws cannot be sustainable and feasible given that, some of these laws are even partly inherently flawed. For instance, the Criminal Procedure and Evidence Act (Chapter 9:07) still provides for the administration of corporal punishment although the currently approved Children's Amendment Act closes that gap. In the

same light, there is a disharmony with regards to the age of criminal responsibility while international law (depending with country or region though) pegs around 12 and 14 years, Zimbabwe still upholds age seven (7 years) as the age of criminal responsibility. Though there are efforts to harmonize it in the current Child Justice Bill, this gap still creates confusion and thus, negatively influence how social workers participate and how these offenders are treated in the process.

Prioritisation of the child protection sector has been taken for granted in terms of budget and resource allocation as much hope and anticipation to donor funding. That is, as long as there remains lack of commitment, mismanagement, misallocation and misappropriation of resources in whatever form, most juveniles might continue experiencing restorative justice in theory and not in reality. This is so because, effective coordination, facilitation and implementation of the diversion programme is fully hinged on adequate resource allocation. The government in this light, assumes the principal role as other stakeholders should only come to complement. If that would be ensured, the plight of young offenders could be improved as social workers would also effectively participate in the programme's implementation process. Thus, sufficient resource allocation towards this programme would automatically translate into a half-done task and this should be followed by proper management of such resources within the context of accountability and transparency for better and improved outcomes.

Restorative juvenile justice is at the crux of social work practice; that is, full and well-informed understanding of juvenile justice issues nourishes social workers' professional practice in terms of competence. As provided in the study, juvenile justice is a highly technical and ambiguous concept or system that often takes diverse yet interrelated forms and faces over time, context and age among other dimensions. In other words, there is a close nexus between social work and restorative juvenile justice. Therefore, social workers' participation throughout the

diversion process is key for more positive outcomes. This link can be traced and noticed at different levels of operation. That is, ethically, social workers are mandated to defend and champion children's rights; be their custodians who should at all levels seek to promote social justice and protection of all vulnerable groups (particularly children in need of care). This is appreciated in the Children's Amendment Act of 2023 and NASW Code of Ethics (2017) among others. In the same context, at micro level, social workers can effectively contribute towards restoration of individual offenders through education and therapeutic provision (educative or informational and therapeutic counselling).

The importance of the study in social work fraternity can also be evident in the key values (human worthy and dignity, importance of human relationship, social justice and service) that underpin competent social work practice in juvenile justice processes (NASW, 2017; Oko, 2008). That is, social workers (probation and diversion officers) should fight to address social injustices prevailing against this vulnerable group. Work with juvenile offenders in relation to diversion thus, requires social workers to possess competent skills in assessing, screening, writing, speaking and communication skills among others. In this context, social workers possess credible know-how on child development and behaviour and these are very critical when it comes to the determination of the juveniles' social condition. This is in terms of unearthing the hidden causes of crime, effects and modelling of a holistic and sustainable interventions. Other professionals may not be that competent to this end. At a mezzo level, social workers are accustomed to the multi-disciplinary or multi-stakeholder framework (that emphasises eclecticism and diversity), hence they easily work other groups or sets of experts or professionals (medical doctors, psychologists, psychiatrists) for holistic outcomes. At macro level, social workers can contribute towards policy lobbying, review and reform; that is, at a policy level. Therefore, neglecting or trivializing their

participation could be highly defective and disheartening in the process of promoting juveniles' access to restorative juvenile justice.

From the lenses of developmental social welfare, the study advances how the principle of collective participation of all key stakeholders should be ensured towards the prevention of juvenile offending in the first place. That is, community-based and participatory measures in promoting resilient and healthy behaviours among the juveniles should be enhanced. This can be done through the active involvement or participation of significant others (parents or guardian of these offenders). Consequently, this could result in improved behaviour change and prevention of juvenile offending. The study also unravels a striking nexus between service users and their providers while highlighting ethical dilemmas (clashes) that often arise during practice. As such, NASW Code of Ethics (2008) concurs with Oko (2008) that, there is need for social workers to understand the utility of various ethical interventions encompassing utilitarian consequentialism, deontological approaches and virtue theories. Therefore, social workers undertake preventive, rehabilitative, mitigatory and responsive roles or functions in promoting the vulnerable children's full protection while promoting their protection needs and rights in diversion processes.

Having fully unpacked and established the underlying hurdles constraining social workers' participation in implementing the PTD Programme, the section hereunder provides the recommendations. The latter were deduced and drawn by the researcher from the participants. Thus, to provide a robust, sustainable, context-based and comprehensive diversion model, these recommendations have been categorized into four (4) parts: Government, Civil Society Organizations (CSOs), the Community and finally key tertiary institutions that offer Social Work-related programmes. The latter mainly pertains to particularly, the University of Zimbabwe that logically should be an exemplary and

leading figure in producing competent social work professionals in Zimbabwe and beyond.

Being the overseeing custodian of the child protection sector, it is suggestively recommended that:

- The GoZ should develop and put in place a distinct legislative framework that inform and guide juvenile justice administration (the PTD Programme included). This will help in setting the normative standard for a separate juvenile justice and empower social workers to execute their work effectively. To achieve this, there is need to expedite the alignment and enactment of child-related laws particularly the Child Justice Bill.
- There is need for capacity-building of all key stakeholders working under the PTD programme on child protection and welfare needs coupled with the concept restorative justice and its processes. This will enhance competence for improved and effective implementation of the PTD programme. Among the stakeholders to be capacitated are: magistrates, prosecutors, police officers (VFU members), social work (diversion officers and probation officers).
- To combat the problem of resource constrains, the GoZ should seek to adequately resource the child protection sector in terms of budget (financial), human (skilled labour) and physical (infrastructure) resources. This will aid, capacitate and enhance smooth, efficient and effective coordination and implementation of the programme. To achieve this, the government should capitalise on strengthening the multi-sectorial and multi-stakeholder approach.
- The GoZ should also decentralise and expand the PTD programme in terms of diversion options and alternatives (possibly suggest Adventure and Family therapy). This will help to fully and holistically address diverse and various forms of offenses committed by young offenders including those driven by drug and substance abuse among other behavioural and intellectual challenges.

- As a signatory to the international body of statutes, the government should also seek to comply and conform to the standards, guidelines and provisions of the UNCRC (1989) and the ACRWC (1999). This is with particular reference to children in need of care, in as far as their protection needs are concerned. To achieve this, the above recommendations should be firstly considered and implemented.

Given the role played by the CSOs in complementing the government's efforts (at technical, programming and policy levels), it can be suggested that:

- The CSOs should continuously pushing for the expedition of the harmonisation, alignment and ratification process of particularly, the Child Justice Bill. This will help in the establishment of a child-friendly, reformatory, protective, rehabilitative and restorative juvenile justice system.
- For holistic intervention, there is need for more strengthened partnerships and collaborations in all social processes (social planning, advocacy, research and programming). This in particular, relates to all organizations or agencies that work with children in conflict with the law at various levels and in different areas. These areas may encompass law (JCT, ZHRC), research and policy advocacy (ZNCWC, UNICEF, Save the Children) and rehabilitation (North Court, Leonard Cheshire among others); but all depending with circumstances prevailing on ground.
- There is also need for more awareness raising on children's rights, needs and protection issues particularly pertaining to juvenile justice and children's responsibilities. This can be done through participatory and community-based approaches. This will not only contribute towards responding to juvenile crime but more importantly, in preventing juvenile offending since knowledge is power.

In logic, the community presents itself as a macro picture of the family agency in socialization processes, hence the role of community social workers in behaviour modification and change cannot be underestimated. As such, it is recommended that:

- There is need for active participatory child-centred and community-based sensitization groups and associations (or clubs) that represent the protection needs and welfare rights of juvenile offenders. In this light, many will be their own agents in transforming their own life patterns thereby becoming responsible citizens.
- There is need for collective and full participation of the local leadership systems and community Child Care Workers (CCWs) among other stakeholders in educating juveniles (within their family units) on the PTD programme and encourage families to have the impetus access it when problems that need such programmes arise.

Tertiary academic institutions (colleges and universities in particular) are the key capital human development centres where most professionals (social workers in this context) who work under the juvenile justice system are moulded and produced. For competent practice thus, it can be suggested that:

- There is need for social work curricula development through constant and evidence-based curriculum reviews, adjustments and alignment. These curricula should be in conformity with the currently unfolding shifts within the juvenile justice systems. That is, students should be thoroughly exposed to legal theory (policies and laws) coupled with early child development and behavioural issues (mental health education included) to comprehensively and fully equip them for competent practice.
- On top of theory, colleges and universities should now shift towards more practical and on-site learning. That is, social work should not be viewed through customary lenses but 'practical realities' that must be experienced every day. In this light, students during the course of their learning should at one time or the other, be exposed

to juvenile justice court processes and or invite (for public lectures) those in the field to familiarize students with the realities obtaining on the ground.

Given the issues clearly established in the study, the following three (3) areas have been suggested for further research in the future:

The study has established that, dominance by other professionals coupled with poor recognition of social workers under the PTD Programme is one of the impeding factors behind their ineffective participation in this programme's implementation process. As such, there is need (in the future) for a study on perceptions and attitudes of stakeholders or professionals within the diversion committee (magistrates and prosecutors in particular) on the centrality or contribution of social work in promoting restorative juvenile justice. This is critical because little so far is fully known on this area.

There is also a need for a study in the future around the lived experiences of young offenders who went (are still going) through the diversion processes to establish their plight and the efficacy of the programme in addressing their needs. This is pertinently urgent as the study mainly focused on how limited social workers' participation has exposed them to criminal extra-judicial abuse, incarceration and dehumanization. Exposition of such experiences will help to determine their state of urgency and expedited Child Justice Bill enactment process. Since the study adopted purely a qualitative methodology and only focused on one District out of probably over fifty-six (56) in that this programme should be operational, generalization of findings may not sufficient enough in terms of coverage. Hence, it is suggested that, there be a study particularly maybe in form of a survey (if resources and time permit) to ascertain the set of factors impinging PTD programme's implementation in Zimbabwe. This will help in fully informing well-informed policy or programme reform and strategic planning for improved programme outcomes in the future.

Given the complex nature of hurdles impeding social workers’ effective participation in implementing the PTD programme, below is a sustainably sophisticated yet clear model (informed by well-informed and evidence-based findings) that seek to fully address the identified loop-holes or limitations for improved programme’s outcomes.

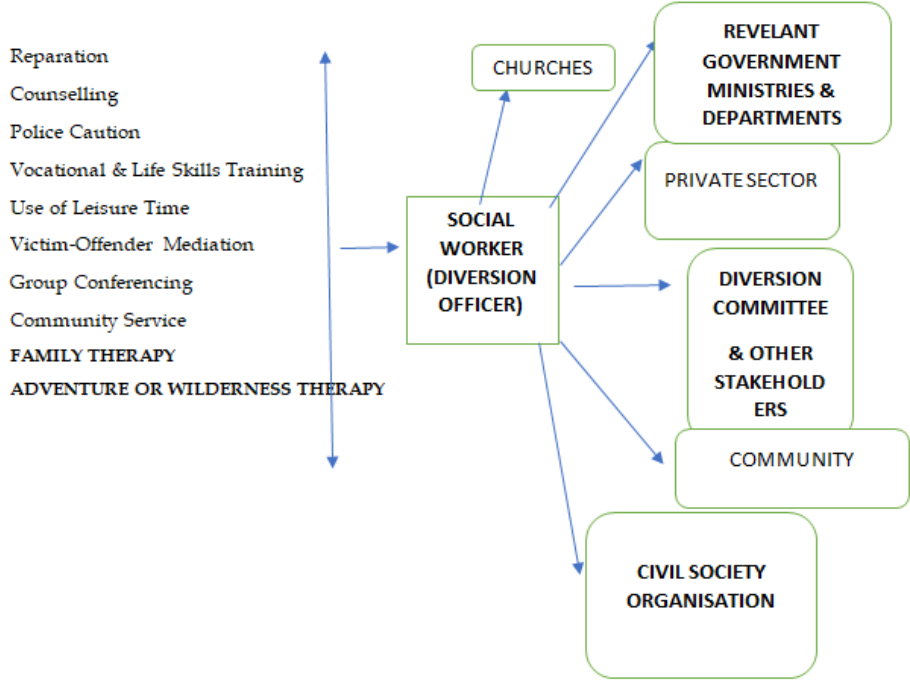


Figure 5.1: Integrated Social Work Participatory Model for PTD Programme

The above provided model’s key thrust is to promote, ensure and enhance social workers’ effective participation in PTD Programme implementation process. This is critically essential for improved and sustainable child-friendly, restorative and protective justice outcomes. Taking it from the left section (where the list of diversion options or alternatives are given), it can however be clearly noticed that, the last two emboldened additional options (family and adventure therapies) have been suggested. This could be a significant milestone in expanding

the programme to cover other maladaptive behaviours and offenses that are rooted in drug and substance abuse. Adventure therapy in this context, might be the most effective one as it helps in instilling the sense of responsibility in young offenders. Hence, both preventive and responsive or interventionist in nature. The argument here is, if Zimbabwe adopted all other options from other countries (South Africa in particular) and modelled them within her context, can this latter option help not in Zimbabwe? This question demands attention as adventure therapy similarly addresses the same behaviours (drug abuse and all-related behaviours) not being fully dealt with by the existing options. A pilot study in this light, might be a good starting point to ascertain a substantial position. In the same light, this model also proposes Family therapy as an additional diversion alternative. This is key as it places the family (a critical socialization agency) in influencing juveniles' behaviour change and sound up-bringing. That is, some offenses can best be dealt with within the family set-up with active and full participation of the significant others within the family system (in collaboration with the peer, church and local leadership systems). This firmly tallies with the philosophical underpinnings of the person-in-environment perspective that also built on the ethos of the welfarist and restorative justice approaches. These ethos and pathos include positive socialization, behavioural reformation, protective correction, responsibility and rehabilitation among others.

In this context, social workers as shown in the above model, should assume the position of eminence throughout or in all diversion options (as listed highlighted in the above model) and processes (from assessment to diversion case review and closure). That is what the concept of "integrated social work" in integrated social work participatory model entails. The enhancement of their effective participation is pertinent as it determines the flow of the diversion process and outcome. That is, since they possess extra expertise and credible knowledge with regards to children's developmental unique

protection needs and welfare rights. As such, sidelining them (social workers) will invoke negative ramifications on diversion process and the outcomes aimed by the programme. In the same context, by the nature of their profession, social workers bear ethical responsibility to champion and defend the rights and ensure the protection of all vulnerable groups (children in need of care included) without any bias or expectation of reward in return unlike their professional counterparts (medical doctors, lawyers and psychologists among others). Thus, service above self, respect of human worthy and dignity coupled with respect of human relationships and competence are central values that inform their professional work (NASW Code of Ethics, 2008; Oko, 2008).

As indicated in the above model, one can also note that, there is much stress or demonstration on the need for a more strengthened multi-disciplinary or multi-stakeholder framework. Within this framework, social workers should accordingly assume the facilitatory or coordinating role for effective and smooth flow of the diversion processes. However, it should be noted that, in this process, the emboldened stakeholders (as indicated in the model above) play a more important role than others, hence, social workers should be aware of such power dynamics for effective execution of their duties. These stakeholders include the diversion committee and the CSOs among others from relevant government ministries and departments (health, education and social development in particular). This does not suffice to underscore the contribution of other stakeholders including the private sector, the church and the community at large.

As highlighted in the above model, social workers' participation with much awareness and appreciation of this multi-stakeholder or multi-sectorial framework can positively contribute towards the effective implementation of the PTD programme at mainly two operational levels. The first one is resource mobilisation and technical capacity building. The second one is programming and policy reform levels. This

is key especially in such a hostile socio-economic and political climate where the government is grappling under acute resource and budget constraints. Hence, engaging and collaborating with the CSOs (with NGOs and local agencies included) helps in sustaining support from them for effective implementation of the programme. In this process, social workers should have a competent skill-set of expertise from networking, proficient speaking and competent writing skills, team-building skills and emotional intelligence and/or self-awareness among others. More importantly, this network system might contribute towards referral pathway strengthening coupled with avoidance of conflict of interest and duplication of services among other benefits. Therefore, this model provides a normative guideline and parameter within that social workers' participation can be ensured in PTD implementation process in a more integrated and participatory manner.

The chapter has established the summary of the study's key findings, followed by main conclusions. Key among these conclusions is that, social workers' effective and substantive participation in PTD implementation process is hindered by underlying legislative gaps and socio-economic challenges compounded by the lack of political will and lack of prioritisation among others. All these factors have impeded young offenders' access to restorative justice in Zimbabwe. The chapter also provided the implications for social work as it presents that, lack of social workers' full and active participation and poor access to restorative justice is a deviation from the provisions of the international, regional and even supreme law of the land pertaining children's protection needs and welfare rights. Key recommendations coupled with the areas for further research were also given to inform effective and strategic policy or programme reform and implementation.