

CHAPTER 1: THE PHENOMENON OF JUVENILE OFFENDING: CONTEXTUAL ANALYSIS

Juvenile offending (delinquency) is seldom a new concept in this modernising world of chaotic politics, massive economic decline and absolute poverty. The said adverse socio-economic conditions among others, have compelled many juveniles to engage in both minor and heinous crimes that have consequently exposed them to the criminal justice systems (Munzie, 2004:114). Due to a sharp rise in juvenile delinquency, however, world nations have realised the need to shift from the juvenile justice systems that are passively retributive, curative and punitive to more preventive, reformatory, rehabilitative and restorative juvenile justice systems (UNICEF, 2019b). The Pre-trial Diversion (PTD) Programme to this end, is one good example of such child-friendly, child-sensitive and reformatory juvenile justice programmes. However, although this latter programme has popularly garnered praise across nations in promoting restorative justice for most juvenile offenders, it still remains undesirable that in practice, many juvenile offenders remain entangled in harsh criminal justice systems while incarcerated. The study from which this monograph sprang from, therefore, seeks to explore the antecedent factors or barriers affecting these juvenile offenders from accessing the PTD Programme. To this end, this chapter will firstly offer a general synopsis of the study. This shall then be chronologically followed by a proffering of the problem statement, justification of the study, definition of key terms couched in the study, overall aim of the study, research objectives and finally, chapter summary.

The evolution of PTD Programme as a tool to access and establish restorative justice among young offenders, is fraught with scholarly controversies. The general consensus among scholars however, denotes that its history can be traced from the 19th Century (Munzie, 2004). The initial or distinct juvenile justice system to this end, was introduced in

the United States in 1889 when the first juvenile court was set in Chicago. Thereafter, children's courts pervaded each and every jurisdiction of the US and Western Europe in the second half of the 20th Century (Nyazema, 2018). This was followed by Netherlands that introduced separate penal laws for juveniles in 1905. In 1908, Canada, England, Wales and Ireland enacted the Juvenile Delinquent Act and the Children's Act, following the establishment of children's courts in their respective jurisdictions (Hodges, 2011). Later in 1912, Belgium and France also introduced special courts for juveniles. Finally, around 1970, the United States of America established the PTD programme. This was followed by the subsequent development of the Juvenile Justice and Delinquent Prevention Act (JJDPa) that was to aid the Pre-Trial Diversion programme. However, regardless of these significant milestones in the criminal justice system to promote child-friendly justice, access to restorative juvenile justice among young offenders remains a disturbing matter. UNICEF Report (2022) reveals that huge numbers of juvenile offenders still find it difficult to access restorative justice with more than 25% in Europe, 76% in Asia and 82% of children in Africa struggling to access PTD services in a year. According to Munzie (2004) the imposition of punitive and retributive justice on 'law breakers' is as ancient as the emergence of civilization. Yet still, the need to adopt a distinct justice system that comprehensively considers the vulnerability and needs of children in all the interventions is nonetheless, a product of various developmental dynamics in the Western world.

To this end, the concept of a separate juvenile justice system and PTD is an 'alien ideology' that was transposed into Africa from the West (Mbambo, 2005). In this context, South Africa is one of the first African country to embrace this new child-friendly justice system in the early 1990s. That is when it established an institute that is often abbreviated as NICRO and it stands for the National Institute for Crime Prevention and the Re-integration of Offenders. This organisation eventually propelled the initial diversion initiative in South Africa around 1990s in KwaZulu-

Natal and the Western Cape. Later on, South Africa among other African countries, undertook a thorough revision of its child justice system as it proposed the Child Justice Bill that was later ratified into Law around 2008. This would then in the following years, influence Zimbabwe to reshape, adjust and develop its own juvenile justice system that was tailor-made to suit the needs of young offenders (Njungwe, 2008; Vengesai, 2014).

In relation to Zimbabwe, it should be noted that after colonisation, the inherited formal criminal justice system that was in place since the 1940s was fragmented along racial lines. More still, the justice system was discriminatory, punitive, retrogressive and unfavourably biased against the black children. Kaseke (1993:36) supports that the colonial regime appointed the first black probation officer in 1949 within which 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 increasing child advocacy and the need to adopt more reformatory juvenile justice system, Zimbabwe is among the countries that ratified the UNCRC (1989) and the ACRWC (1999) among other international guidelines to that it adheres. Regardless of the government's efforts to ratify and adopt these frameworks however, the current juvenile justice system still suffers from what Midgley (1975) in Sithole (2023) terms an '*identity crisis*'. This manifests in the establishment of this system as both, a semi-legal and semi-welfare institutions to promote child justice.

Nonetheless, with increasing call and need 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.

However, regardless of the availability of diversion options including reparation, counselling, victim-offender mediation among others, many juvenile offenders still find it difficult to access these diversion services and end up facing incarceration. Justice for Children (2021) and Sithole (2023) reveal shocking evidence that between the period January and February 2021, a total of thirty-seven (37) juvenile offenders were identified and received through a survey of three (3) prisons. Out of these offenders, almost 85% indicated that they had been seriously incarcerated from initial arrest in police cells. The report also asserts that twenty-nine (29) of these juvenile offenders were remanded and identified at various prisons: Bulawayo Remand- 13 juveniles, Mutare Remand- 3 juveniles, Chikurubi Prison- 1 juvenile and Harare Remand- 12 juveniles; and only two (2) of these cases were of juveniles who had already been given custodial sentences and were placed at Chinhoyi and Chikurubi prisons. Most pathetic is the fact that most of these children had committed minor crimes (loitering during lock down and food theft among others) that would not even attract the sentence of one year. Thus, they were eligible for diversion rather than detention that must be taken as the last resort according to the Criminal Procedure and Evidence Act (Chapter 9:07).

Besides Chitungwiza being one of the first districts where PTD programme was launched, a lot of children in Chitungwiza particularly St Marys where juvenile offending is rife, still find it difficult to access diversion services. This is probably because the options before the courts are limited to caution, reprimand, suspended and postponed sentence, supervision and institutionalization (Mangwiro and Chitereka, 2021).

More still, screening and assessment that must be conducted by special professionals including medical practitioners, social workers and psychologists are now being ritually taken for granted by magistrates among other court officials especially, the preparation of psychiatric and social inquiry (Sithole, 2023). 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, 2018). Worse still, Zimbabwe has a fragmented child justice system; 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 administration of juvenile justice in Zimbabwe.

Both the UNCRC (1989) and ACRWC (1999) mandate the government to put in place a separate juvenile justice system that is tailor made to address juvenile offenders' unique needs in a more holistic manner. The Pre-trial Diversion programme in this context, has been put in place to address all non-serious offenses attracting a sentence of less than a year among juvenile offenders in Zimbabwe. Regardless of the existence of this programme however, a large number of juvenile offenders who commit these non-serious offences continue being subjected to the harsh criminal justice system and incarcerated in adult prisons. In fact, UNICEF (2022) supports that, out of all juveniles who come into conflict with the law yearly, about 83% of them seem to face serious challenges in accessing the PTD programme in Zimbabwe. This state of affairs has been more pronounced in the COVID 19 era that saw many young offenders being detained. This detention habit, therefore, has made criminals out of juveniles who may not be criminals by treating them as if they were criminals. Thus, a thorough analysis of the current juvenile justice system in the context of restorative justice, clearly reveals a striking conflict between theory and practice. Having this 'accessibility

problem' in mind, the study therefore seeks to explore the underlying barriers to the PTD programme in relation to juvenile justice. This will then present a case for law reform before these juveniles are socially cast out of the sphere of humanity and totally forgotten.

The study explores the barriers inhibiting juvenile offenders from accessing the PTD programme in Zimbabwe with particular focus on Chitungwiza District to suggest possible intervention measures in the context of social work practice. It is clearly evident that Zimbabwe still has a deficiency of research on barriers to juvenile justice and within social work domain, little if any, has been done to fully pry the underlying factors behind juvenile offenders' failure to access PTD programme. A practical example is Nyazema's (2018) study that focused mainly on the efficacy of the PTD options in preventing juvenile delinquency. Secondly, there are Tembo's (2018) and Moira's (2017) studies that tended to be more biased towards juvenile justice administration with much focus on the policies and laws that apply in juvenile justice establishment. This situation thus, renders this research area on key barriers to 'PTD programme accessibility' partly grey; and hence under-researched. Nonetheless, in as much as one may argue that all the latter researches were carried in the same area of Chitungwiza District but still, they all predated the COVID-19 pandemic era that has witnessed a sharp rise in juvenile delinquency on the basis of lockdown measures abrogation. This has greatly resulted in many juveniles detained and incarcerated. More still, these studies failed to consider and fully unpack the underlying barriers inhibiting juvenile offenders from accessing PTD services. As a result, this deficiency and considerable scarcity of literature has defectively implicated and practically impeded well-informed and evidenced-based decision making in policy reform, institutional change and advocacy in macro-social work practice.

Having this in mind, the study will therefore broaden the so far existing knowledge base on the area of juvenile justice. The provided knowledge

will therefore help legislators among other policy makers to have a better appreciation of evidence-based research on juvenile justice in the context of reforms and the establishment of resilient and robust PTD Programme. Again, the study will influence the government to expedite the harmonisation, realignment and enactment of laws that seek to promote rehabilitative and restorative justice among juvenile offenders in Zimbabwe. More still, by providing sufficient knowledge on restorative juvenile justice, the study will enlighten and educate the key stakeholders who are in one way or the other, involved in the PTD programme on children's unique needs while shifting towards capacity building and effective diversion services delivery. These stakeholders among others, include the magistrates, prosecutors, lawyers, police officers, probation officers and diversion officers. This is therefore, inclusive of social workers who, in the context of juvenile justice system, can work as either probation or diversion officers. Moreover, the study will also inform the communities in Zimbabwe on their roles in fighting juvenile offending and on rehabilitating these young offenders under the PTD programme. The study thus, will eventually close the gap between service providers and users. Finally, the study will inform curriculum adjustment and change in tertiary institutions especially in the area of child welfare policy and practice coupled with social work and the law. The aim of the study is to explore antecedent factors affecting access to Pre-trial Diversion services by juvenile offenders from high-density suburbs in Zimbabwe: Case of Justice for Children, Chitungwiza District.

The specific objectives of the study are:

1. To profile the Pre-Trial Diversion programme in Zimbabwe as a tool to access restorative justice;
2. To assess the barriers preventing juvenile offenders from accessing Pre-Trial Diversion services in Zimbabwe;
3. To suggest possible intervention measures to improve these juveniles' access to Pre-Trial Diversion services in Zimbabwe.

The research questions informing the study are:

1. What is the profile of the Pre-Trial Diversion Programme as a tool to access restorative justice?
2. What are the barriers preventing juvenile offenders from accessing the Pre-Trial Diversion services in Zimbabwe?
3. What possible measures can be put in place to improve these juveniles' access to Pre-Trial Diversion services?

Definition Of Key Terms

<p>Pre-Trial Diversion Services: these are options or sub-programmes that are offered by the overall Pre-Trial Diversion programme including reparation, counselling, rehabilitation and vocational training, family group conferencing, police cautions, victim-offender mediation and community service among others (UNICEF, 2013).</p>

<p>Juvenile Offender: Is any child below the age of 18 years yet in clash with the penal laws; and accordingly, is a juvenile in need of diversion services (JCT, 2017).</p>

<p>A Child/Juvenile: in the context of the study is any human being below the age of 18 years as provided on section 81 the of Constitution of Zimbabwe,2013.</p>
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<p>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).</p>

<p>Restorative Justice: is a justice theory that emphasises on repairing the harm caused by a criminal behaviour through reparation, restitution and community service among others (UNICEF, 2013).</p>
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<p>Recidivism: refers to a person's relapse into criminal behaviour, often after the juvenile has undergone an intervention for a previous crime or after the juvenile has received some sanctions (Njungwe, 2008).</p>
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<p>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 (UNICEF, 2013).</p>

<p>Rehabilitation: it's a process of restoring an offender to his or her normal functioning that benefits the society through education and therapy (UNICEF, 2019b).</p>

<p>Social Work practice: is a 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 up with daily stressors in a health way; being guided by values of social justice and service above self among others (NASW, 2008).</p>

This monograph constitutes five chapters, that is, chapter one to chapter five in their chronological order. Chapter one focuses on the introduction and background to the study followed by chapter two that focuses on literature review and a theoretical framework informing the study. Accordingly, chapter three will provide the study methodology and paradigms. Just after chapter three is chapter four that focuses on data presentation, analysis and discussion. Finally, chapter five offers a summary of study findings, conclusions that were drawn from the findings of the study, recommendations, the study implications in relation to social work practice coupled with the areas for future studies.

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, study aim, objectives coupled with the definition of key terms have all been clearly presented. The following chapter therefore, shall provide a brief review (global, regional and national) of this research's related literature while being informed and guided by the study's key objectives.