

## **CHAPTER 4: DATA AND EVIDENCE**

---

The preceding chapter has delved into the methodological procedures and process that underpinned the study. The chapter however, seeks to present, interpret, analyse and discuss the study's major findings in line with its key objectives. Since the study sought to explore the key barriers affecting equitable access to Pre-Trial Diversion services among juvenile offenders in Zimbabwe, an explorative case study was therefore used. Being underpinned by its qualitative attributes therefore, in-depth and key informant interviews coupled with Focus Group Discussions were used to collect information from the participants. Thus, the study's key objectives to be addressed are firstly, profiling the PTD Programme and secondly, to assess the key barriers preventing juvenile offenders' access to PTD services. Finally, the suggested possible intervention measures that is the study's last objective shall also be addressed in the chapter in a bid to curb these barriers and improve these children's access to PTD services. As noted by the interpretivist perspective to this end, participants' words were presented in the way they delivered their opinions concerning the phenomena under scrutiny. Thus, the researcher presented quotations of verbatim in vernacular language that in this context is Shona language (that were later translated into English but bearing the same meaning) except for key informants' response.

Upon data analysis, themes emerged on the profile of the PTD Programme. Through literature review, it has been shown that various PTD programmes have been put in place towards the promotion of restorative juvenile justice across Africa among other continental regions. However, submissions made by participants pointed to context-specific nature and scope of the PTD programme.

Submissions from participants pointed out that the PTD programme constitutes many options or services with the main objective of diverting

juvenile offenders from the formal criminal justice system. A 17-year-old juvenile interviewee stated that:

*Pane maOptions akawanda dzinoshandiswa kugadzirisa nyaya dzedu isusu vana vanenge vadarika mutemo. Handinyatsoziva hangu dzese sezvo vachishandisa nzira dzakasiyana siyana zvichienderana nemhosva yaunenge wapara. Asi, ndinoziva kuti pane 7 kusanganisira Reparation, Counselling, mediation, conferencing nema Police Cautions.*

(There are several options used by authorities in dealing with our cases as juvenile offenders. I don't really remember all since one is referred to an option depending on the form or type of the offence one might have committed. But I still remember 7 options including reparation, counselling, mediation, and conferencing and police cautions).

One of the key informant interviewee further added to the above sentiments that:

Practically, I can confirm that there are 7 diversion options that encompass reparation, counselling, vocational and entrepreneurial programmes, victim-offender mediation, family group conferencing, police cautions and constructive use of leisure time. However, there is also the 8<sup>th</sup> one that is community service but this one does not usually apply in Zimbabwe.

The above finding clearly denotes that Zimbabwe has made significant efforts in establishing a separate child-friendly programme meant to ensure juvenile offenders' access to diversion services that are a symbolism of restorative juvenile justice. Nyazema (2018) agrees with JCT (2017) as shown through literature review that these diversion options are key in pursuing the realisation of children's rights to protection from retributive and harsh criminal justice system. However, Zimbabwe's PTD programme seems partly limited in scope as compared to that of South Africa and Singapore that include community service (Chen Zhang et al, 2009:139). More still, USA also seems to have a more comprehensive PTD programme that includes Wilderness Adventure that is a 21 day diversion process meant to deal with more challenging behavioural and addictive offenses unlike Zimbabwe (Ellis, 2005:378). From the perspective of the restorative justice theory however, the existing diversion options or services in Zimbabwe still prove to be in tandem with the key aspirations of restorative justice that according to

Zehr (2002) are reintegration, rehabilitation, reformation and reconciliation. This is so only if they can be practically operationalized with proper targeting practices.

Focusing on the PTD profile, submissions made by both the participants and the key informant interviewees showed that the PTD programme has a specific target group and for one to be eligible for diversion services, he or she was to suit a certain criteria. A 15 year old juvenile interviewee stated that:

*Haaaa mukoma pakaipa, programme iyi mahwani chaiyo. Haungopindika kana usiri pasi pemakore 21; kwete izvozvobedzi, kana ukaramba mhosva yako uye wakambopara imwe mhosva wobva watongoziva kuti mahwani atanga manje, unenge wakutomirira zvekumatare nekungoendeswa kunonzi kuHwahwa prison kana mhosva yako iri hombe."*

(It's not easy brother, this programme is something else. You don't just qualify for it if not less than 21 years; and besides, if you deny the responsibility and if it is not your first time offence, you should then forget about diversion but real trial under the formal criminal justice system where it might then be determined that you go to Hwahwa prison).

To further confirm and cement the above response, one of the key informants added that:

This programme particularly covers children who are 21 years old and below and these children must have committed non-serious offences that do not attract a sentence of more than 12 months. For example, these cases may include shop lifting and theft, truancy, bullying, public fighting, loitering and drug and substance abuse. Again, the juvenile offender must not have been repeated the offence or denied responsibility of the crime. So, all I am saying is that, besides being willing to undertake the diversion activities, if the offender denies responsibility then, that juvenile would be entitled to due process.

Following the latter provided information by both the juvenile and key informant interviewees, it can be noted that the eligibility criteria and target group for the PTD programme in Zimbabwe does tally with that of Australia, South Africa and the USA. This is supported by Clancey and Howard (2006:377) who aver that for one to qualify for diversion programmes in Australia and South Africa, he or she must be a juvenile

with a non-serious offence and besides, must be a first time offender who is ready to undergo diversion processes. However, in terms of age group targeted, there is a disparity between Zimbabwe and other countries like Singapore, Hong Kong and Australia itself as these countries mainly consider children below the age of 18 (Ellis, 2005:378). Nonetheless, besides a slight difference in terms of age groups, an undisputable fact is that all diversion programmes do acknowledge children's unique needs that should be addressed in a more child-friendly manner as emphasised by the restorative justice theory. This becomes so provided these needs are recognized in practice. Thus, Zimbabwe by pegging the target age limit at 21 years unlike other countries, seems to be a mile ahead in realising the need to prevent criminal records among persons that may later interfere with their future progress in the context of participation in formal and public spheres where one may not be embraced if he or she bears a criminal record.

The information provided by the participants particularly the key informants shows that the PTD programme functionality and operationalization is driven by many stakeholders and/or professionals who work under this programme. These stakeholders include the police, diversion officers, probation officers, public prosecutors and the magistrate. To this end, below is what one of the key informants had to say:

What I can generally say is that we work as a team including the magistrate, public prosecutor, police officer, diversion officer and possibly with family members of the juvenile offender. But, all these professionals or stakeholders can meet under one umbrella organ that we call the Diversion Committee. However, in this process, each and every stakeholder has his or her own area or parameter within which he or she is confined.

This provided information on the profile of the PTD programme indicates that for this programme implementation to be successful, many professionals from different fields of specialization are involved. According to Steyn (2010:114) these stakeholders work hand in glove

towards the establishment of restorative juvenile justice and they often include police officers, residing magistrate, area public prosecutor and the diversion officers. Their roles may range from arresting and cautioning (for police officers), assessment and report writing to inform the diversion committee on the circumstances of the juvenile and recommendation for diversion (for diversion officers) to making final decisions regarding the plight of the juvenile while informed by diversion officers' report (for prosecutors and magistrates) (JCT, 2017; Nyazema, 2018). However, Vengesai (2014) argues that there is also a probation officer who, although he or she may occupy an important position in PTD processes, they usually work play key roles under the formal juvenile justice system as compared to diversion officers who seem to be more inclined to PTD processes. Nonetheless, studies conducted outside in Budapest, Hungary, indicates that unlike Zimbabwe where there are formal professionals who work under the PTD programme, there is no formal diversion hence, parents, relatives, care givers, religious leaders and community leaders are involved (Vandi, 2007:37). This has also been the same case with South Africa where involvement of care givers and community leaders occupy a central position in diversion processes (Kratcoski and Edelbacher, 2009:211). This approach has greatly proved effective in preventing recidivism unlike in Zimbabwe where recidivism is high due to probably, lack of a community-based and collective engagement and involvement of the significant others who have great influence in socializing juveniles. To this end, Zehr's (2002:114) averment from a restorative justice theoretical perspective, seems to hold more water as he states that: "restorative juvenile justice can only be achieved through a plenary or collective involvement of an enlarged circle of parties who have a stake to the offence in question".

As part of its profile, the PTD programme as reported by the key informant interviewees is also governed by many legal frameworks. These legal parameters range from international and regional to national ones; and they are meant to inform and guide the establishment of

restorative juvenile justice coupled with the general delivery of diversion services to juveniles. In this context, there is no a specific piece of legal framework that solely meant to address the plight of children in conflict with the law. To confirm this, below is what one of the key informants had to say:

Yaaah, what I can tell you young man is that, the PTD programme in Zimbabwe is dependent upon various legal frameworks and instruments. Internationally, the UNCRC (1989) and the Beijing Rules (1985) among others are the key ones. Regionally, we have the ACRWC (1999) and nationally, the national Constitution of Zimbabwe of 2013, the Children's Act, Criminal Procedure and Evidence Act and the Criminal Law (Codification and Reform) Act) are the most central legal instruments that inform the PTD programme. So, as you can see, we currently don't have a separate legal framework for the juvenile justice system; it remains fragmented and that's how I can put it. But, there are some efforts to develop a Child Justice Bill that will then inform and guide the establishment of a separate juvenile justice system.

The provided information shows that the PTD programme is informed by many legislative instruments. In the context of Zimbabwe, having been ratified the UNCRC and the ACRWC, the government has made significant strides in domesticating the provisions of these frameworks towards the promotion of juvenile's access to diversion services in particular and restorative justice in general (Ruparanganda and Ruparanganda, 2016; Nyazema, 2018). Zimbabwe to this end, has no specific legal framework that is meant to address specifically the plight of juvenile offenders as one can witness in South Africa and Singapore where there are a separate piece of legislative frameworks: Child Justice Act of 2008 and the Children's Young Persons Act respectively in place to inform diversion (Chen Zhang *et al.*, 2009:139; Steyn, 2010:112). However, some studies that were conducted outside Zimbabwe reveal that there are some countries who have significant efforts in promoting restorative justice and curb recidivism without a separate legal framework to inform juvenile justice system like Hong Kong and Budapest in Hungary (Wong Lo *et al.*, 2010:8). However, this seldom suffice to approve the absence of such a framework. To this end, one may notice how the need to establish a separate or distinctive legal

framework to inform juvenile justice systems becomes key in promoting restorative justice and boost juveniles' access to diversion services. The restorative justice theory as put forward by Martin (2005:11) there is always need to develop child-friendly juvenile justice systems that are built upon the doctrine of *parens patriae* and grounded on the legal principles of children's best interest, non-discrimination, right to participation and being heard coupled with right from detention and any inhuman treatment. These latter principles are evidently provided in most of the legal frameworks provided above including in the current Child Justice Bill that is to be enacted soon.

In the process of profiling the PTD programme, participants revealed that for the PTD to be operational, there many organisations that are in partnership with the Ministry of Justice (since this programme is under this ministry); and these organisations are channelling resources towards its implementation. Some of these organisations are working in collaboration and in partnership with the ministry at different level towards the promotion of access to PTD services. To support this, below is what one of the key informants remarked:

The key partners to this programme in the context of funding and resource allocation are mainly, UNICEF and Save the Children. These two organisation have been consistently allocating resources towards the successful and effective implementation of this programme in various districts. While working with the ministry at different level, CATCH, JCT, Legal Aid Directorate, Leonard Cheshire, ZHRC, government ministries like that of Education, Home Affairs and the Department of Social Development (DSD) among other rehabilitation institutions, are the other key players in promoting access to diversion services.

From the above provided information it can be noted that PTD programme taps its funding and resources from some partners in a bid to allow a successful and effective implementation of this programme. UNICEF (2019) asserts that in as much as the PTD programme may seem productive addressing juvenile offenders' access to diversion services, adequate resource allocation should be ensured. Looking at South

Africa, diversion programmes are implemented and also supported by the National Institute for Crime Prevention and Re-integration of offenders (NICRO) that was formed in 1990 (Steyn, 2010:113). To this end, CSOs can play a critical role towards the implementation of the programme since the government may face resource constraints; hence CSOs always spearheaded policy advocacy work and champion child rights promotion.

Themes emerged from the findings and submissions made by the interviewed participants on antecedent factors behind juvenile offenders' failure to access PTD services. To this end, the themes that emerged included socio-economic, politico-legal, physical and religio-cultural factors and from these themes, subthemes also emerged during data interpretation and analysis. Below is a full package of these identified key actors.

Upon interviewing the participants, it was unearthed that behind juvenile offenders' failure to easily and equitably access Pre-Trial Diversion services were some politico-legal factors. Politico-legal factors in this context, were barriers that compound both political and legal factors as indicated hereunder.

Through literature review, studies that were conducted outside proved that access to pre-trial diversion services among juvenile offenders is deeply rooted in the fragmentation of the juvenile justice system that is caused by inconsistencies and disharmonies among various legislative instruments that govern and inform juvenile justice. This was revealed by Chen Zhang *et al.* (2009:139) who alluded that lack of policy consistency and a distinctive legal framework in many countries including Singapore, Hong Kong, Hungary and Japan including those in some parts of Africa has heavily impeded children's access to restorative justice and rehabilitation services. Lack of this distinctive legal framework in most countries has been aggravated by lack of political will that in Rugaranganda and Rugaranganda's (2016) words manifests



in a delayed stance in harmonising, aligning and enactment of key children-related Laws and Bills respectively. Zimbabwe in this regard, has never been spared. To confirm this, below is what one of the key informant interviewees had to say:

What we lack as a country is most probably lack of political will that must be demonstrated through expediting the harmonisation and enactment of laws with the constitution. Yes, efforts have been made by the government (with the hand of other stakeholders) to develop the Child Justice Bill that should then provide for the establishment of a separate juvenile justice system and to inform the operationalization of the PTD. Another good example is the current Children Amendment Bill that seeks to align the definition of the child and address other gaps in the Children's Act (Chapter 5:06) that took time before approved. To this end, it has been long before these important Bills are enacted into law until now. That delayed stance is a big blow to the efficacy of the PTD in promoting restorative and rehabilitative justice among young offenders.

To further augment the above sentiments, another key informant interviewee added that:

Currently, the PTD implementation and operationalization merely depends on gathering various legislative instruments including the Constitution itself, the Children's Act, The Criminal Procedure and Evidence Act, the Criminal (Codification and Reform) Act and the ACRWC and the UNCRC. So, as you can see, our juvenile justice system suffers from identity crisis; it remains fragmented.

As provided above, lack of separate legal framework that inform the PTD has greatly affected juvenile offenders' access to PTD services. From a perspective of a restorative justice theory, Zehr (2002:112) avers that restorative justice can only be a practical reality if children's needs are also considered in law by establishing a separate legislative framework that govern the juvenile justice system administration process. Nyazema (2018) revealed that Zimbabwe's PTD programme has a nostalgia of South Africa yet Zimbabwe has not yet fully managed to put in place a distinctive legal framework that inform the PTD. South Africa enacted the Child Justice Bill in 2008 like USA that put in place the Children and Young Persons Act; and these countries have made significant progress towards plenary realisation of juveniles' right to

restorative justice and access to PTD services (Hansen, 2006:1). It can therefore be deduced that, as long as Zimbabwe does not urgently consider the need to urgently enact the Child Justice Bill like the aforementioned countries, it will continue to witness a rise in cases of children incarceration, abuse and deprivation of their rights to welfare and protection.

Upon data analysis, themes emerged on context-specific socio-economic barriers to PTD service accessibility among juvenile offenders. As shown below, the information was provided by participants through both seven (7) in-depth juvenile interviewees, 1 FGD (made up of 9 participants) coupled with six (5) key informant interviewees.

Submissions made by participants indicated that lack of a robust and comprehensive referral system and limited diversion options is another binding factor constraining juvenile offenders' access to PTD services. Below is what one of the female juvenile offender (17 years old) expressed:

*Zve PTD zvinonetsa, unoona mwana achinzi ngaende kwaCounsellor kana kuVocational training iye aine mamwe problems akaita seMemory Loss Kana Addiction iri serious pasina kumboongororwawo kwaana chiremba kana maPsychiatrists."*

"PTD issue is something else. You find a child being referred to a counsellor or for vocational training yet having many other disorders like memory loss or serious addiction that may require extra attention and special diagnosis from medical doctors or psychiatrists".

To cement the above expressed view, here is what one of the key informant interviewees reveals:

Young man, we truly have a serious challenge with our PTD programme. Currently, some children who come have proved to have many other underlying mental, intellectual challenges, traumatic and behavioural disorders that require special diagnosis from specialized professionals. Yet, in most cases, all these juveniles may be attended by one stakeholder like the probation or diversion officers for counselling among other things. Many have further failed to access diversion services due to some options that haven't yet been practically implemented based on other reasons; hence, the PTD programme has limited options.

From the above finding it can be closely observed that lack of a comprehensive referral system and PTD options have also impeded juvenile offenders' access to PTD services in Zimbabwe. This is evident in the way some of the children with some underlying mental or behavioural disorders may end up treated the same way like those without. Thus, lack of a clear referral pathway coupled with the dormant state of community service in Zimbabwe have betrayed the aspirations of the restorative justice theory. According to this theory as attested by Zehr (2002), a strait-jacket or one-size-fits-all approach to juvenile justice administration is an anathema to practice, hence unique and context-based options with holistic referral systems should be ensured and enhanced. Studies conducted in USA as shown by Wood (2003:01) reveals that PTD nature and scope is diversely and comprehensively structured in a way that can also address serious addictive and behavioural disorders: Wilderness Adventure is a good example. In south Africa, community service is playing a key role in addressing 'more serious' yet minor offences and these offences may include those that are prompted by general aggression (Steyn, 2010:54). Limited PTD options also manifests in criterion used for selection that have discriminated many offenders, leaving them exposed to the formal criminal justice system. As supported by Wood (2003:02), criteria used like that of accepting responsibility first, seems incompatible as many offenders are burdened with challenges such as family violence, substance abuse, financial problems in their households that contribute to their behaviour and motivation. Therefore, limited options and the lack of engagement of other professionals outside the Juvenile justice system such as doctors, psychiatrists and psychologists is a key hindering factor to PTD services accessibility.

Participants indicated that budget constraints have seriously impeded the PTD programme's implementation thereby hindering juvenile offenders' access to diversion services. This problem is also

compounded by the shortage of skilled professionals who are competent and proficient enough to deal and handle juveniles' cases. This was confirmed by one of the in-depth juvenile interviewees who revealed that:

*Chinonetsa inyaya yemari dzema transport, pamwe pachu munenge makutonzi endai kuno printer madocuments anenge achidiwa for diversion process kune dzimwe nzoimbo zvoichinzi hapana maprinting papers akakwana nemishina yacho. Dzimwe nguwa tinonoona diversion officer kana probation officer mumwe chete achifanira kubatsira zimumutsetse revana vanenge vapara mhosva.*

(The problem is transport costs since many times we are instructed to seek for printing assistance from other places owing to the unavailability of printing papers and machines. Sometimes we find that there will be only one diversion or probation office to address cases of many children who could have conflicted with the law).

One of the key informant interviewees however, further revealed another underlying factor that rather manifests in the form of resource constraints. In his words, he said:

Honestly yes, we cannot deny that we are having a challenge in terms of resources since the past two decades, but before we can just jump into resources issue, the question we may need to ask ourselves is how we have been using the little we have. The answer may be clear and simple: some resources somewhere and somehow are being misused by those who are both at the top and within the implementation structure. Embezzlement of funds and gross financial mismanagement have affected the PTD effectiveness in addressing the plight of juvenile offenders. It's never a surprise then, that this problem has resulted is incapacitation and reduction in employment opportunities for most probation and diversion officers. Only few can be seen struggling with piles of caseloads, you see now?

From the expressed concerns above, it can be noticed that access to PTD services by juvenile offenders has also been affected by resource constraints in terms of funds, shortage of printing papers and machines and transport or logistical costs among other expenses. The provided findings unlike other researches in Hungary, Japan and Hong Kong among other African countries, also presented a 'chain of causation' and that is, misuse of funds or resources coupled with corruption has led to

incapacitation. It is therefore this incapacitation that has further resulted in poor service delivery. In the same context, as shown through literature review, resource limitation and brain drain in most African and Asian countries including Malawi and Zimbabwe (Dziro, 2015; Muchinako et al, 2016) and Japan and Hong Kong respectively, has greatly affected the coordination and implementation of this Programme. However, Lee and Conigrave (2008:437) agrees with UNICEF (2020) that, budget misallocation, misuse of funds and lack of prioritization is a key underlying factor behind resource constraints that has affected juveniles' access to PTD services. The latter averment largely speaks to what the researcher got from the participants. JCT (2021) on the other hand, in the context of Zimbabwe, further accentuates that the budget that is allocated towards juvenile justice in general and PTD in particular may not be sufficient enough to ensure effective implementation and coordination of the programme. To this end, when the programme is poorly implemented, delivery of services is therefore compromised; and this may finally affect many juvenile offenders from accessing these diversion services. From a restorative justice perspective therefore, one may observe how reintegration, rehabilitation and restoration of these offenders may not be easily achieved unless adequate budget and resources are channelled towards the programme.

Findings from participants also showed that lack of support and poor involvement, engagement and participation of parents/guardians or significant others is another factor that has seriously hindered these children's access to diversion services. To confirm this, below is what one of the male juvenile interviewees (16 years) said:

*Zvinonetsa ndezvekuti nguva zhinji vabereki vedu vanenge vasipo patinenge tichifanira kuita zvemaConferencing or mediation zvacho. Vanokundikana kubata mazuva akatarwa nekuda kwekuti vanenge vakabatika nezvimwewo, pamwe vatobuda muguta kunotsvaga zvekuti tararama."*

(The problem most times is the absence of our parents when we might have referred to conferencing or mediation. They fail to catch up with deadlines due

to other pressing commitments and sometimes, they might have gone outside the city fending for us to live)

Another juvenile during Focused Group Discussions revealed that:

*Vamwe vedu tiri nherera, tinogara naana nedzimweho hama naana gogo. Saka havatombodi zvekunzwa tunyaya nyaya uye vanotokuudza kuti handina nguva yekutambisa. Zvinobva zvatiomera kuwana rubetsero kuPTD programme.*

(Some of us we are orphans, we stay with other relatives and our grandmothers. They don't even want to hear any bad story and they can even tell you that they don't have time to waste. This prevents us from getting help from the PTD programme).

To further support the above expressed sentiments, one of the key informant interviewees said:

Most diversion activities and processes have failed due to lack of parental cooperation. They seem to care not; they often trivialize their children's acts. They can't even meet deadlines and attend the determined options. That's a serious problem.

As provided above, lack of support and involvement of parents among the significant others is also another key factor behind juveniles' failure to access PTD services. Studies conducted in Budapest, Hungary reveal that parental support and participation is key in ensuring juveniles' access to restorative justice. In this context, although there is no formal diversion in Budapest, parents, care givers, religious leaders, and other community leaders are collectively engaged though depending with the nature of the case and age (Vandi, 2007:37). For years, Hungary has successfully managed to not only divert cases but prevent juvenile offending than many other countries (*ibid*). From this position, one may clearly observe that access to diversion services is strongly dependent upon parental support and involvement of care givers and significant others regardless of the availability other professionals like social workers. To this end, it can be noted that in Zimbabwe, many juvenile offenders due to orphanhood and pressing commitments confronting their parents and guardians, many children may face serious challenges

in trying to access the programme especially if the child is referred to family group conferencing, reparation or mediation. Thus, most juveniles, after they could have failed to get assistance from the programme, they might end up re-offending or referred to the formal criminal justice system (Nyazema, 2018). This situation from the lenses of the restorative justice theory betrays the aspirations of restorative justice in the context of reconciliation, reintegration, reformation and restoration. Yet all this can only be established through collective participation of all stakeholders who have a say to the stake in question (Zehr, 2002).

Participants also revealed that lack of knowledge among both community members, families and individuals including the key stakeholders working under the PTD is another major barrier affecting access to PTD service by most juvenile offenders. To substantiate this claim, below is what one of the in-depth juvenile interviewees had to say:

*Haaaaa, kana ndirini ndaisatomboziva nezvePTD programme, ndakatozoizivawo musi wandakakoromora mhosva. Uye zvekuti kune kodzero dzevana vanenge vadarika mutemo ndezvimwewo izvo. Unozviudza ani izvizvo. Ukatabatwa unogona kutombopihwa tuma cuts or mbama chaidzo nevanhu kana mapurisa chaiwo.*

(Hah, as for me I wasn't aware of the PTD programme, I only came to know about its existence the day I infringed the law. Again, the fact that offenders have rights is something else. Who can tell you all that! When caught you can even get beaten or slapped by the general populace or the police officer him/herself).

A key informant interviewee also supported that"

The other challenge is; most families trivialize the PTD. Some don't even know what it is. Worse still, some of the staff seem not to understand some of the needs of these juveniles in relation to legal provisions that govern all diversion processes or conduct with children. That too has compromised the quality of services being delivered.

From the provided findings above, it can be noted that ignorance and lack of appreciation about the PTD programme among juveniles themselves and the community at large has grossly militated against

these juveniles' access to diversion services. In general principle, this is so because none can go for something he or she may not be aware of its existence or availability. Studies conducted outside Zimbabwe as demonstrated through literature review, have proved that access to diversion in countries like Singapore, Hong Kong, Japan and Hungary has been highly impeded by lack knowledge about the programme (Steyn, 2010:101). More so, participants have also confirmed how some professionals fail to respect the rights and understand the needs of these juveniles. During assessment and screening phase in particular, it has been noted by Vengesai (2014) and Nyazema (2018) that if the responsible professional does not understand the needs of these children then, diversion process may be interrupted. Some children to this end, might be having underlying intellectual, cognitive and other mental challenges that may accordingly require critical competent skills during assessment. In this context, failure to assess the juvenile well may compromise the credibility and quality of the information to be provided in the probation or diversion officer's report that would inform the magistrate under the diversion committee to determine the final decision. Therefore, since social workers (as diversion or probation officers) from the perspective of a restorative justice theory, are the custodians of this special group (juvenile offenders), they need to ensure that they possess credible legal and children welfare knowledge to fully establish effective diversion.

Covid-19 lockdown and restrictions is also among the key factors that have hindered the access to diversion services among juveniles. Findings from participants suggest that covid-19 posed a double blow to the implementation of the PTD programme; hence it has affected most of the juvenile offenders' access to diversion services. During focus group discussions, below is what juveniles lamented:

*Haaa neCovid yakazouya iyi, hataiboumirwa kufamba. Kuti ufambe uchienda kupi zvako paidiwa tsamba. Kuti tsamba yacho uiwane pasina waunonyatsoziva kana mubereki anonyatsotsanangura ma1.*



(Hah, with this covid-19 we were not allowed to travel. For one to travel to whatever place a letter was required. Yet one couldn't access that letter without someone you know and without your parents with satisfactorily justifiable reason: Participant, 2).

To support the above view, another participant had this to say:

*PaLockdown yemakutanga iya mapurisa aifamba. No gathering was required. Things were hard. Parents were busy searching for our food. ZveReparation izvo zvaive zvimwewo, mari inenge yawanikwa yaitove yechikafu. Zvekuuya kumaFamily Conferencing kana mediation haaa kwaiva kutopedza nguva.*

(During the first lockdown the police were patrolling. No gathering was required. Things were hard. Parents were busy searching for food. Reparation was something else since every coin was for food. Coming for Family conferencing or mediation was just but waste of time: Participant, 7)

To further support the above expressed sentiments, one of the key informant interviewees submitted that:

Honestly speaking, covid-19 worsened everything. Look at how hard it is to bring people for family conferencing or mediation. Imagine a situation where you have set a deadline for these diversion activities only to hear that the parents and the juvenile couldn't make it due to transport constraints. Think about a situation where a parent should pay for the damage caused by his or her child to another family or someone, and yet that parent might be struggling with even putting food for the child with the offence in question. Covid-19 truly has affected us all.

Submissions made above therefore as shown through literature review, only came to worsen already existing problems in a couple of ways. JCT (2021) agrees with UNICEF (2020) that covid-19 has posed radical impacts on the administration of juvenile justice and reduction of juvenile offending. Lockdown restrictions and regulations in place have rendered the applicability of some of the PTD options null and void. Since most researches as shown through literatures review, did not consider the current state of the PTD in addressing the plight of juvenile offenders, the study has exposed many the challenges that covid-19 has brought. In this regard, travel bans coupled with regulated movements where letters were required have affected juvenile offenders' access to

diversion. More still, covid-19 affected these juveniles' access to family conferencing and mediation due to the fact that some of the offices or venues used were not conducive enough to be used for diversion processes or activities since they seemed poorly ventilated, small and squalid.

Thus, fear to conduct the virus could not be overruled in this context. Considering the pressure and lockdown-induced poverty, many parents could not prioritize attendance for diversion activities as they were busy running to and fro, making the ends meet. This scenario therefore, betrays the golden aspirations of restorative justice that advocate for juvenile offenders' full rehabilitation, restoration, reformation and reintegration into the community through the collective effort of all stakeholders (parents included) who have a bearing to the stake in question. Therefore, it was observed that unless and until context-specific and other new methods and approaches during covid-19 are not adopted, children will continue struggling to access diversion services.

Participants revealed that unavailability of birth certificates complicated the whole process from apprehension by the police up to the time they would need referral to any diversion activity or process. This is so because birth certificate is key for identity validation and age determination. Following this factor, below is what one of the participants during Focused Group Discussions expressed:

*Zvinonetsa kuwana rubatsiro rwakakwana kuPTD programme kana usina birth certificates rinoratidza zita nemakore ako chaiwo. Saka vanwe vedu tinenge tisitorina mabirth certificates acho.*

(It is hard to get help under PTD programme if one has no birth certificates that proves the true identity and age. So, most of us we won't be having these birth certificates) (Participants 3).

Another participant complimented by expressing that:

*Ini ndakatomborambirwa makore angu nekuda kwebody yangu yakakura iyi. Saka pamwe unogona kuzopedzisira waendeswa kumatare uko or kusagamuchirwa in some vocational or rehabilitation centres that require birth certificates."*

(Personally was once doubted when I mentioned my age due to my big body. So, sometimes you may end up going through the formal trial or denied access

to some vocational or rehabilitation centres that require birth certificates".  
(Participants 6).

From the above expressed concerns, it can be observed that unavailability of birth certificates have serious bearing on juvenile offenders' access to diversion access. These identity cards are important in determining age and validating the juveniles' real identity. These findings oppose the studies conducted by UNICEF (2020) and JCT (2021) and Mangwiro and Chitereka (2021) on juvenile justice that attribute failure to access restorative justice by juvenile offenders to incapacitation of most of the vocational or rehabilitation centres due to resource constrains. Therefore, age determination and confirmation of the child's identity can only be ascertained and ensured if the juvenile does possess the needed credential identity cards. From the lenses of the restorative justice theory, juveniles' failure to access diversion services on the basis of lack of access to identity cards presents itself as a tragic betrayal of their right to restorative justice and rehabilitation services (Zehr, 2002). Thus, unless and until these juveniles continue to dispossess these identity cards, they will still continue to struggle to access diversion services.

Upon interviewing the participants, it was also reported that there are other physical factors that often interfere with juvenile offenders' access to diversion services as shown hereunder.

Participants revealed that infrastructure also inhibited them from easily and equitably access diversion services and this extends to the nature and condition of the courts or rooms used for diversion activities or processes. To support this, here is what one of the in-depth juvenile interviewees had to say:

*Haaa, tumaRoom twacho twunoshandiswa ma1. Vamwe vedu tinenge tinema Asthma. Mhupo haitombopindi. Just imagine mauya kuMediation of Conferencing services makatsikirirana nenguwa yeCovid iyi.*

(Hah, rooms used are something else. Someone of us we have asthmas. No good ventilation. Just imagine if you have come for mediation and

conferencing services in such poorly ventilated rooms in COVID-19 times like these.)

One of the key informant interviews also highlighted that:

As of now we are still facing a challenge in terms of infrastructure, there are very few offices or courts for these juveniles in particular. More still, children with disabilities especially physical disabilities may not easily step into these offices. Again, we are facing challenges in terms of finding conducive rooms for family group conferencing and mediation among others.

The submitted findings above confirm the studies conducted done by Clough *et al.* (2008:437) and Steyn (2010:145) who revealed that poor ventilation, poor infrastructure, Ombudsperson offices coupled with scarcity of offices designated for juveniles in particular is posing serious impact on juvenile offender's access to diversion services. This was in relation to Asian countries and some countries in Southern Africa. To this end, scarcity and lack of an inclusive and child-friendly infrastructure when considering even the issue of disability, serves to show the PTD programme's placed infrastructure as a threat to the realisation of juveniles' right to restorative justice. However, infrastructural condition has been further worsened by covid-19 as indicated by the participants above and as such, the study reveals another dimension that other researches failed to pin-point most probably because they predated the covid-19 era. Therefore, as long as the currently existing infrastructure does not undergo significant renovations and adjustments, all efforts by the government and the CSOs will remain futile. More still, the attainment of the aspirations and goals of restorative justice will remain a mere dream.

There were also other religio-cultural factors that had a bearing on juvenile offenders' access to diversion services. These factors in this context involved value and belief systems that shaped the perceptions families and the community at large had about juvenile offending. Below is that key factor that researcher discovered during interviewees with participants.

Submissions made by participants also showed that perceptions on the causes of juvenile offending by the community or family members had a strong bearing on juveniles' access to PTD programme. Evil spirits are always thought to be influencing anti-social behaviours among juveniles and as such, PTD programme may not be the proper way to address them but exorcism rather. To support this, below is what some of the participants revealed during FGDs:

*ZvePTD kunenge kuri kupedza time, zvimwe zvinhu zvinenge zvine mamhepo anotoda prophet or vanoshandira.*

(PTD is waste of time, some things have demonic influences behind that need to consult prophets or any person who helps using other spiritual means) (Participant 5).

Then, another participant also supported the above view saying:

*As for me, my grandmother had opposed the idea yekuenda for PTD programme vachiti zvinoda kunobvunzira nekushandirwa kumasowe nekuti hunhu hwangu hwakafanana nehwababa vanga. Vaibawo vasati vafa.*

(As for me, my grandmother had initially opposed the idea of going for diversion programme saying there was need to inquire and get spiritual assistance from Masowe shrines since my behaviour was thought to be an inherited character from my late father." (Participant 4).

From the above presented findings, it can be observed that religious and cultural values and beliefs influence access to diversion services through shaping peoples' construction of the world and influencing the meaning to social phenomena. The study's findings in this context, confirms studies done by Clough *et al.* (2008:437) who shows how children in Hong Kong, China have been deterred by perceptions that the society bears about the causes of juvenile offending. UNICEF (2020) also supported through literature review that in most African countries culture and religion have most often presented children not as rights holders; most of these juveniles are often referred to spiritual or traditional helpers or consultants for exorcism (Mabvurira, 2016). This eventually estrange these juveniles from accessing diversion services. This scenario is antithetical to the goals and principles of restorative justice theory particularly, rehabilitation and reformation. However, studies in Europe and Australia presented a different scenario; culture

and religion has not greater impact on juveniles' access to diversion maybe due to civilization and better awareness on children's rights.

Having discovered many barriers hindering juvenile offenders' equitable access to PTD services, submissions were made by the participants pertaining to the possible measures that can be put in place to improve PTD service accessibility among juvenile offenders. From those submissions the following interventions were drawn:

#### 4.3.1 Expediting the process of harmonisation and enactment of Bills into Law.

Participants especially the key informants reveal that as long as legal instruments and bills that interfere with juvenile justice administration are not harmonised or aligned and enacted into law respectively, then realisation of juveniles' right to restorative justice, general welfare and protection from the harsh criminal justice system will remain a motion that is next to impossible. Thus, as a suggested intervention measure, hereunder is what one of the key informant interviewee hinted on:

This is the time the government needs to expedite the alignment or harmonisation and enactment of laws and Bills into law and by the latter, I refer particularly to the Children Amendment Bill and the Child Justice Bill that should be enacted into law in as soon as possible. This bill is urgently necessary for providing an allowance towards the establishment of a separate child-friendly juvenile justice system with a sound legislative framework that would soundly inform diversion processes.

As recommended above, Rugaranganda and Rugaranganda (2016) confirms with the CSOs Report (2019) that in as much as the government has made significant efforts in developing the Child Justice Bill, that should not be the end; an extra mile should be taken towards its enactment into law for effective and efficient administration of restorative juvenile justice.

Upon discovering that incapacitation and lack of know-how on child-related concerns and needs is among the key constraining factors hindering access to diversion services, a need for technical capacity

building and training of key stakeholders was finally suggested by the participants. Failure to do this, as remarked by some participants would be tantamount to denial of their right to protection and welfare. Below is what one of the female juvenile revealed:

*Haaaaa vahanzvadzi, mukaona mabatirwe anoitwa vana mumaoko evanhu ivava, kusanganisira mapurisa acho uye language yevanonzi maDiversion Officers ummmmm, you can't even believe they are really professionals who understand our needs and respect our rights. Vanotoda more training chaiyo, I guess.*

(Hah brother, if you would observe how children are ill-treated in the hands of these people including the police officers; and even the language used by some these so-called diversion officers, ummmmm, you can't even believe they are really professionals who understand our needs and respect our rights. They still need more training I guess.)

To further cement the above expressed position, one of the key informant interviewee supported by recommending that:

In my respectful opinion, I suggest key stakeholders such as the police, probation and diversion officers, prosecutors and even magistrate themselves should be exposed to more training on child protection laws and welfare issues respectively. This training should also aim at equipping them with sound knowledge on children's special needs because juvenile offenders sometimes also include those with mental and extreme behavioural disorders that might require special referral attention. By this, capacity to handle juvenile cases in a more child-friendly and sound manner will be built and ensured.

The suggested recommendation that has just posed above confirms Amani *et al.*'s (2018) averment that if technical capacity and training among key professionals who work under the juvenile justice system is not ensured, children in conflict with the law may continue suffocating while facing all forms of abuses and deprivations throughout the diversion processes. Therefore, a need to ensure these stakeholders get sufficient training on the area of child protection laws and welfare to boost their access to PTD services.

It had been registered that lack of parental participation and involvement in diversion processes was one of the key factors affecting

juvenile offenders' access to PTD services and as such, participants later suggested that there is need to engage or involve the parents or significant others in diversion processes. This would then help to ensure progress. To substantiate this suggestion, one of the juveniles during Focused Group Discussions recommended that:

Tinoziva hedu zvinenge zvisiri nyore kuti vabereki vedu vapinde mumadhiri edu but kana zvatoipa vanofanira kuzvizivawo kuitira kuti tichengeteke. Manje kazhinji kacho vabereki vedu havatomboziviswi, povho kana mapurisa vanogona kungokuita kanyama kanyama kana wawanikidzwa uchiita chimwe chinhu. Uyezve, vabereki vedu vanofanira kungewo variko kuma mediation and conferences ediversion kwatinoendeswa kana kuti tinoramba tiri munjodzi.

(We know that it won't be easy for our parents to be involved into our issues but their involvement in serious times is important for our protection sake. Yet many times our parents, our parents are not even notified, the general public and police can just pounce and deal with you in as soon as they find you doing something wrong. Again, our parents should be involved during mediation and conferences where we are often referred to, or we continue suffering)

To further confirm and support the above sentiments, one of the key informants also recommended that:

It should be known that most of these juvenile offenders are orphans and they often come from extended families and as such, they may fail to access diversion services if their significant others are not involved. Therefore, there is need to engage and involve them in all diversion processes.

From the above recommendation, it can be deduced that involvement of parents and/or significant others throughout diversion processes should be secured or ensured to establish access to PTD services without prejudices, discrimination and stigma as also by (Steyn, 2010:12).

Submissions made by participants had indicated that budget constraints and lack of knowledge among juveniles themselves, their families and the community at large, are other factors impeding juvenile offenders access to PTD Services. As a recommendation, one of the juvenile interviewee suggested that:



*Zvinoda kuti vanhu vazhinji vadzidziswe nezve PTD programme nekuti vazhinji vedu tinozoviva nezvayo kana tasungwa. Zvekare, hurumende inofanira kuwedzerawo zvikwanisiro kuprogramme iyi.*

(It requires that most of the people should be enlightened about the PTD programme; because most of us only came to know about it after abrogating the law. Again, the government should secure sufficient budget towards this programme.)

One of the key informant interviewees also supported that:

Adequate budget should be ensured and secured towards effective implementation of this programme so as equip the workers with needed resources like stationary, printing machines, files, logistical coverage, allowances and even some charges for referrals. Awareness raising should be carried in communities to enlighten the general populace, families and individuals about the existence and availability of the PTD programme.

Securing sufficient budget towards an effective implementation of this programme as suggested above by the participants may greatly help towards increasing access to PTD services amongst the juvenile offenders. Steyn (2010:122) confirms that failure to allocate proper budget by the government towards logistical costs among other expenses may hinder juveniles' access to this programme. Yet still, donor overdependence may also have strong bearing on diversion performance, hence should be avoided. However, to UNICEF (2019), resource allocation can only be a solution if it is underpinned and informed by sustainable M&E systems and the enhancement of transparent, accountable and consistent use of funds. More so, Save the Children (2019) also supported the need to establish a community-based approach in raising awareness; and that is, the community itself should take a front role through the use of CCWs among other local leadership systems.

After it was discovered that access to diversion services was also hindered by lack of referral pathways and systems coupled with limited options for PTD in communities due to centralisation issues; participants collectively agreed on the suggestion that there is need for PTD programme expansion to other communities and strengthening of the

programme's referral systems. Below is what the participants finally suggested as measures for improvement:

*Iyo programme yacho ngaiswevozve kumaCommunities ese kwete kuti yongovanikwa paOne place. Zvekare, ngapavewo nenzira dzekubatsira vamwe vana vanenge vaine maMental challenges and intellectual disorders" (participant 3, FGDs).*

(The programme should also spread to other communities than centralised. Again, there should be a referral pathway meant for those with mental and intellectual disorders).

To further support the above suggestion, one of the key informant interviewees attests that:

Referral system for juvenile offenders with behavioural and intellectual challenges should be developed, strengthened and ensured through a collaborative effort between the stakeholders in the juvenile justice system and those in the clinical and psychiatric setting for effective screening and assessment. I also further suggest that since Chitungwiza is very big, there might be a need to further expand and spread the programme to other communities for easy access and cut costs. All I'm saying young man is simple: decentralisation is the only way out.

As suggested above, a need to strengthen and expand the PTD programme will not only help in boosting easy access to diversion services, but to allow effective coordination and implementation of the programme. Thembo (2018) hinted that, as long as centralisation and lack of a robust referral system still shadows the PTD programme, then realisation of juveniles' access to it will always remain a mere dream. Thus, community-based approach to diversion service delivery should be promoted if these children are to fully enjoy their rights to protection and welfare in the context of restorative justice and rehabilitation.

The chapter was aimed at the presentation, analysis and discussion of the study's key findings from the participants and key informants who were interviewed and Focus Group Discussions that were conducted. The findings have shown the profile of the PTD Programme and indicated the experiences of juvenile offenders particularly on the factors behind juvenile offenders' failure to equitably and fairly access PTD services. Submissions from the study therefore provided that these

factors encompassed but not confined to institutional incapacitation, lack of knowledge, lack of cooperation or involvement of parents or guardians, lack of a separate legal framework to guide and inform the PTD programme coupled with other developmental factors among others. Failure to access these PTD services is equivalent to denying their right to protection and welfare. Thus, as remedies to these challenges, suggestions were made that the government should allocate adequate resources towards the implementation of the PTD programme, ensure capacity building among key stakeholders, expedite the harmonisation and alignment of laws, engage the parents in diversion processes and raise awareness among the community members and families about the PTD programme and children's rights. The following chapter however, will provide the study's summary, conclusion, areas for further research, implications for social work practice and general recommendations.