



DETERRENTS

To Access To Pre-Trial Diversion
Services by Juvenile Offenders in
Zimbabwe: A Case Study of
Chitungwiza

James Dominic Shalom Sithole

Deterrents to Access to Pre-Trial Diversion Services by Juvenile Offenders in Zimbabwe: A Case Study of Chitungwiza

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DEDICATION

To my late parents, Mr. Misheck Sithole and Ivy Mapungwana- I share with you this piece of work; a culmination of a long dream for our most favoured family that time and opportunity could not deny.

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BOOK SYNOPSIS

The study aimed at critically examining the antecedent factors affecting access to Pre-Trial Diversion services by juvenile offenders from high-density suburbs in Zimbabwe. To this end, Chitungwiza District was selected as the study's location but targeting participants who were under Justice for Children organisation. The study's key objectives were: to profile the Pre-Trial Diversion programme as a tool to access restorative justice, assess the factors or barriers behind juvenile offenders' failure to access diversion services and finally, to suggest possible intervention measures to improve access to the aforementioned services. Thus, the restorative justice theory grounds the study as it advocates and sets parameters for the establishment of a child-friendly justice system. Again, the study adopted the qualitative research approach and more so, case study design informed the study. To this end, data were collected from participants using a combined set of data collection methods including documentary review, in-depth and key informant interviews coupled with Focus Group Discussions. Submissions from participants revealed that there are many diversion options provided for juvenile offenders and that most of these juveniles however, lacked the impetus to access diversion services due to a myriad of barriers. These factors generally include limited diversion options, resource constrains, shortage of skilled labour, knowledge, poor involvement of significant others, poor infrastructure, beliefs and perceptions about the causes of juvenile offending, lack of political will and the absence of the Child Justice Act. Cognisant of these barriers to this end, it was recommended that there is need to expedite the enactment of the Child-related Bills into law, increase awareness raising on children's rights, enhance capacity building among key stakeholders, coupled with decentralising the programme while increasing participation of parents or guardians in diversion processes.

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ACRONYMS

ACRWC	African Charter on the Rights and Welfare of Children
CPEA	Criminal Procedures and Evidence Act (Chapter 9:07)
GoZ	Government of Zimbabwe
ICCPR	International Covenant on Civil and Political Rights
JCT	Justice for Children Trust
JO	Juvenile Offender
JSC	Judicial Service Commission
LAD	Legal Aid Directorate
MACRO	Minimum Age of Criminal Responsibility
NGOs	Non-Governmental Organisation
PO	Probation Officer
PTD	Pre-Trial Diversion
UNCRC	United Nations Convention on the Rights of Children
UNICEF	United Nations Children's Fund
VFU	Victim Friendly Unit
ZNCWC	Zimbabwe National Council for the Welfare of Children

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 (JJDPDA) 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> <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> <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> <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.

CHAPTER 2: ANTECEDENT FACTORS AFFECTING JUVENILE OFFENDERS FROM ACCESSING PRE-TRIAL DIVERSION SERVICES: A REVIEW

The chapter seeks to critically review relevant literature in existence in the corpus of scholarship on the discourse of restorative juvenile justice with much accentuation or stress on the antecedent factors affecting juvenile offenders from accessing Pre-Trial Diversion services. The theoretical framework informing the study shall also be outlined in the chapter. Thereafter, an in-depth review of related literature is conducted at global, regional and national levels in respect to the objectives of the study. Thus, this literature review shall also orient the study to the current gaps in juvenile justice systems and this will then help to answer the study's research objectives. At the end, a chapter summary shall also be provided.

Owing to the anti-oppressive and child-rights sensitive nature of the study, the Restorative justice theory was adopted. The concept of restorative justice firstly appeared in written sources since the first half of the 19th century and it is deeply embedded in 'socio-criminology', 'moral' and 'intellectual' development research (Berg, 2012:14). The modern usage of the term was introduced by Albert Eglash in 1977. During the 1990s, the concept became highly popular, masking and surpassing other justice notions that were circulating in the 1970s and 1980s (Daly, 2013). However, Restorative Justice as a new paradigm or approach to juvenile justice was popularized by Zehr in the 1990s. It later became a globally recognized approach to justice in the 2000s when it appeared in the United Nations Economic and Social Council and the European Commission for the Efficiency of Justice Guidelines for a better implementation of the recommendation pertaining mediation in penal matters.

Restorative justice as presented by Wilson *et al*, (2017) cited in Mangwiwo and Chitereka (2021), is a theoretical framework that views crime as a gross disruption of people and relationships that in turn, creates a responsibility to make things right. According to Zehr (2002:114), this theory views the justice system as constituting of three fundamental pillars that are firstly, engagement, participation or involvement of an enlarged circle of parties who have a stake to the offence in question. The second pillar is harm and needs that must be balanced with obligations and the final pillar is 'obligations' that must emanate from the harm posed; that then implies responsibility and accountability for the harm caused. This theory's key tenets are reparation, rehabilitation, restoration, transformation, crime prevention, corrective justice, reintegration, healing, reconciliation and mediation (Martin, 2005:11). It also stresses on the significance of probation, supervision, referral and institutionalization in dealing with juveniles' cases as opposed to custodian sentence. Thus, the philosophical tenets of this theory are in tandem with the desired goals and objectives of competent social work practice in the context of juvenile justice. According to Martin (2005), this theory offers a more rehabilitative and reformatory approach to juvenile justice establishment and thus, it presents itself as a protection model that views children as physically and cognitively incapable of committing crimes; hence vulnerable. To this end, it best suits the study as it advocates for a distinctive or separate juvenile justice system that is moulded or tailor made to specifically meet children's diverse or unique needs from those of adults. This is precisely what Zimbabwe still lacks in terms of practice and partly in legal theory regardless of all the attempted efforts to develop a Child Justice Bill (among other proposed reforms) to establish a distinctive child justice system. More still, this theory allows a comprehensive conceptualization of the underlying factors influencing juveniles' accessibility to diversion services. These factors may span from politico-legal, region-cultural, socio-economic to geo-environmental (Kaime, 2009).

This theory also accounts for the needs that crimes create for the juvenile offenders as it also proposes alternatives to punishment; hence this renders it the most fitting theory for the study as it places children's welfare and responsibilities on a balanced position of eminence. In case of Chitungwiza District, the PTD Programme is one of such programmes that seeks to address juvenile crimes with recognition of their welfare and rights although its effectiveness has been questioned in various platforms. This owes to proliferating cases of juvenile offending and an increase in children's rights abrogation especially those who infringe the law in Zimbabwe, Chitungwiza district included. The study therefore seeks to explore such barriers to PTD accessibility. However, given the nature of the study, the key child rights concepts that include the child's best interest, right to life, development and survival non-discrimination and right to be heard in all juvenile justice processes are the primary considerations recognized by this theory (Bazemore and Schliff, 2005). Thus, although this theory is taken for granted in most children's cases, Wilson et al (2017) and Wong et al (2016) agree that it plays a pertinent role in mandating the state to protect vulnerable parties in the courts of justice since it is also rooted in the doctrine of *parens patriae*. The latter concept in the context of modern children's courts is when guardianship or custody of a juvenile is temporarily taken from the parents and that juvenile is placed under the care of social services or foster parents until the court determines what is in best interest of that juvenile.

The Pre-Trial Diversion Programme in its whole phenomenal sense, is when a juvenile offender is deviated from the formal court procedures; and this act is done before a juvenile goes through the formal court procedures to avoid retribution and unnecessary detention (Davis and Busby, 2006:102). McGregor (2010:31) concurs with Brink (2010:24) on the above provided conceptualisation, but Skelton and Tshehla (2008:52) add that after this process of diversion, these juvenile offenders are then referred to applicable reintegrative programmes. Whatever view suggested, all the above conceptual views still appear to relate to the process of diverting all young offenders from the harsh criminal justice

system. This PTD Programme thus, can also help in curbing recidivism, but it can solely be attained if juveniles could be successfully rehabilitated (Munzie, 2004). However, each and every country in the world seems to have different PTD options and versions coupled with legal frameworks informing the operationalization of such programmes depending on the context. Yet still, the overall objective of these PTD programmes as averred by Mangwiro and Chitereka (2021) is to establish restorative, preventive, rehabilitative, protective and reformatory justice for juvenile offenders who might have committed non-serious offenses (those attracting a sentence of less than a year).

In a bid to draw from the experiences of other countries and obtain a global view, and to offer a point of departure concerning Zimbabwe's available diversion services, this section considers the nature and scope of the PTD programmes in other countries. The countries discussed hereunder therefore, were chosen on the basis that they have been running diversion programmes for many years and more still, some were operationalized without a distinctive legal framework for diversion like Zimbabwe currently. In the USA as presented by Kleinhans (2013:112) and Walsh & Russell, (2010:222), there is the wilderness adventure programme that is a 21-day diversion programme developed in Minnesota, America, to assist juvenile offenders address issues that lead to their anti-social behaviour. Other diversion practices in the USA as supported by Van Ness et al (2001) include restorative justice programmes, where offenders are held responsible for the harm they have caused. These programmes do not vary much from those in Australia and South Africa. According to Thembo (2018) nonetheless, it is uncertain whether it is implemented in the same way and to what extent the resources differ between programmes in the different countries. More significant to note is that diversion schemes are presented by police, school and court programmes to juvenile offenders and thus, diversion is either partially or totally applied (Kratcoski or Edelbacher, 2009:211; Sibisi, 2020, Promise, 2023). When diversion is applied totally, the police seldom act and can solely give the juvenile a

warning. In partial diversion, the police refer the juvenile who have committed non-serious offenses to a programme and in the USA, the police are involved in managing diversion programmes (Samuels, 2015). This is similar to the situation in Hong Kong, China, where the police can refer young offenders to diversion services that they manage.

Since the 1980s and 1990s, Hong Kong, China has seen an improved focus on alternatives to the courts and new community-based diversion options in Hong Kong (Kleinhans; 2013; Wing Lo, Wong & Maxwell, and 2006:11). According to Maxwell and Hayes (2006) the Police Superintendents Discretion Scheme is utilized to divert juvenile offenders who might have committed non-serious offences away from the criminal justice system. Even though there seemed to be no restorative justice programmes, these juvenile offenders could be simply warned by police who were required to attend aftercare supervision. Police may also refer them to go for social support services and other therapeutic counselling sessions (Wing Lo *et al.*, 2006:11). Wong and Wing Lo (2010:8) however, aver that restorative justice was established to Hong Kong in 2002 and was taken as a way to divert young offenders away from the criminal justice system. Many issues were raised with regards to the implementation of the restorative justice approach, some within which were that restorative justice may be an enabling factor for increase in juvenile crime, and mediation could be influenced by political parties in Hong Kong (Karp and Breslin, 2001:249). This approach was practised and experimented with in schools and in some welfare organisations with young learners who had behavioural problems and with juveniles (Wong & Wing Lo, 2010:8, 11, 12). There was uncertainty concerning the implementation of restorative justice as an option of diversion in Hong Kong because it was an unfamiliar concept. However, Munzie (2004:112) other diversion options were practised that were effective in some ways, but they seemed to lack the restorative justice element. To this end, offenders were not encouraged to repair the harm they had caused and this might have contributed to juvenile re-offending and besides, Njungwe (2008) avers that there is no

legal framework for the practice of diversion, so restricting the chances for juvenile offenders to be diverted away from the criminal justice system.

Another good example is Australia where there has been a drastic increase in diverting drug-using offenders to therapeutic treatment. According to Clancey & Howard, (2006:377,378) drug courts have been put in place to deal specifically with cases of drug-using offenders on the principle that the law is seen as the therapeutic agent. In the eyes of Hammersley (2002:7), substance and drug abuse is considered to lead to criminal activities such as possession of illegal substances, theft, and violence due to the effect of the substance on the brain, by addressing the substance use, the criminal behaviour would then be reduced. Although most offenders passing through the criminal justice system hail from traditional communities in Australia, just a small number of juvenile offenders from these communities were in diversion schemes (Clancey & Howard, 2006:381). Restricted access to diversion services is likely to eventuate in fewer offenders having the chance to be rehabilitated, thus contributing to recidivism and so perpetuating the crime cycle. Clough, Lee and Conigrave (2008:437) elaborate that there are barriers to the implementation of diversion programmes in Australia.

In Hungary, there seem to be no formal system of diversion especially in Budapest but this seldom mean that diversion is not practiced. These diversion practices as put forward by Vandi (2007:37) involve the settling of none-serious cases that include parents, relatives, care-givers of victims and juvenile offenders in police stations, customary courts or even with community and religious leaders. Parental and family participation in diversion programmes is pertinent as it contributes to a more successful intervention. This contributes to reduction in recidivism. Hansen (2006:1) further asserts that because there is no separate legal system for juveniles in Hungary, restorative justice cannot be utilized frequently. The paucity of a legal system for juveniles

consequently results in many young offenders being excluded from the chances of being rehabilitated.

Studies in Singapore portray that there have been multiple attempts in recent years to address the plight of juvenile offenders outside the criminal justice system. According to Chen Zhang, Choo & Lim (2009:139). Various services, programmes coupled with juvenile homes in this vein, have been used in Singapore to rehabilitate young offenders. Someda (2009:82) supports that the rehabilitation of these juvenile offenders have largely contributed to the reduction of recidivism in Japan. Therefore, it is to the society's great advantage that young offenders be rehabilitated as it eventually curbed the problem of crime. Diversion programmes that are utilized in Singapore to rehabilitate juveniles and young offenders at risk of delinquency and those who have committed offences include guidance programmes, community service orders, weekend detention orders, periodic training orders and probation orders (Lawrence et al, 2009; Chen Zhang et al., 2009:139). Other diversion programmes to help juveniles and their families in Singapore include the Streetwise Programme, Youth Family Care Programme and School-Probation-Courts. These programmes are used within a legal framework, the Children and Young Persons Act (Chen Zhang et al., 2009:139). More to the list of programmes is the drug court that is run as a diversion option targeting non-violent drug abusers without serious anti-social tendencies in Japan (Someda, 2009:83). The aforementioned programmes are aimed at rehabilitation and involve the family in the intervention that is regarded as beneficial for the rehabilitation of these offenders. The focus on the rehabilitation of juvenile offenders follows research that indicated that punitive and retributive measures to address crime were unsuccessful.

Most African countries like Botswana, Malawi, Mozambique, Tanzania and Zambia with the coming of the UNCRC (1989), the Beijing Rules and the ACRWC (1999), have also made significant strides in establishing diversion programmes that seek to promote restorative and

rehabilitative juvenile justice (Moirira, 2013; Vengesai, 2014; Nyazema, 2018). However, in as much as these programmes seek to accomplish the same goal, they differ in structure, design and scope. Yet still, Zimbabwe's diversion programme seem to be more alike with that of South Africa particularly in design and scope. Some scholars like Sithole (2021) and Sithole (2023) even contend that Zimbabwe's juvenile justice system taps more from that of South Africa that is thought to be one of the African countries with a robust and distinctive juvenile justice system.

In this light, South Africa provides multiple diversion options and programmes at each diversion level. To this end, probation officers, diversion officers, prosecutors and magistrates must be fully informed about all the available options to ensure that any juvenile is referred to an option that is in their best interest and will be most beneficial for the rehabilitation and developmental needs associated with the juvenile's delinquency (O'Mahony *et al*, 2012:269). According to Nyazema (2018), South Africa's PTD programme differs from that of Zimbabwe in that, community service seems to practically apply not in Zimbabwe.

The PTD Programme evolved from the understanding that the viewpoint of cases that involved juvenile offenders was not sufficient enough, with large numbers of juveniles being prosecuted and incarcerated without cause (UNICEF, 2019; Bhaiseni, 2016). The PTD is provided for in Articles 37 and 40 of the UNCRC that stipulate that juveniles in conflict with the law should not be ruthlessly treated and should be provided with legal assistance. According to Mangwiro and Chitereka (2021) the Pre-trial diversion programmes comprise part of a restorative justice framework and PTD in Zimbabwe was established in 2009 when UNICEF and Save the Children firstly instituted a pilot project that was then formally adopted by the government in 2016 through the Ministry of Justice, Legal and Parliamentary Affairs. In May 2013 the government, through the support of partners such as Save the Children and UNICEF among others launched the PTD programme

aimed at exploring better ways of addressing cases of juvenile offending for minor crimes outside the formal justice system (Sloth-Nielsen and Mushohwe, 2020:15). It is a national programme that ensures all juveniles who commit non-serious offenses in both rural and urban areas have equal access to justice. Since 2016, a considerable number of juveniles in conflict with the law have been diverted from the formal criminal justice system and are supported in their rehabilitation (Mears *et al*, 2016:53).

The establishment of the PTD programme resulted in the development of various diversion options that were set to prevent juveniles from appearing before the formal justice system, that according to Reiss (1988) cited in JCT (2017) often resulted in the exposition of many juveniles to the influence of hard core criminals. The following diversion options are being implemented in the Zimbabwean pre-trial diversion programme: reparation, counselling, victim offender mediation, police cautions, family group conference and constructive use of leisure time (Vidjia, 2008). To this end, the first Diversion option is Reparation that refers to any form of suggested work or service for the benefit of the victim and it may also include reasonable compensation in cash or kind (Ministry of Justice, Legal and Parliamentary Affairs, 2013; JCT, 2017). The second Diversion option is counselling that is necessary depending on the nature of the offence and is facilitated by persons or professionals trained in this field. In this context, counselling focus on juveniles who have committed crimes and have behavioural, substance related and mental health-related problems and therefore need intensive therapeutic counselling (UNICEF, 2013; JCT, 2017). The third Diversion option accordingly, is Attendance at a particular institution for educational and vocational purposes and as such, vocational skills training and entrepreneurial programmes offer vocational training, such as business skills training, craftsmanship, entrepreneurial skills, computer skills, mentorship and small development and follow-up training (Wood, 2000:22; GoZ, 2019).

The fourth diversion option is Victim-Offender Mediation that involves meeting the young offender and the victim, with their significant others or close relatives (JCT, 2017). The Government of Zimbabwe (2019) identified Victim Offender Mediation as a restorative justice component. This option's intention according to Steyn (2010) is to facilitate the healing of social wounds to foster societal healing. Issues such as feelings, compensation, and apology performance are also involved in this option. The aim of victim offender mediation is to establish a platform for the victim and the offender to discuss the events surrounding the offence and the consequences for all parties, to develop a mutually beneficial agreement to remedy it through restitution efforts, community service programmes and compensation (Van der Merwe, 2013).

The fifth Diversion option is Constructive use of leisure time that is intended to occupy the leisure time of the juvenile to prevent him from indulging in crime through boredom. This may include activities such as sporting, church or youth groups coupled with training in areas such as horticulture, carpentry and hairdressing among others. The sixth Diversion option is Police cautions- In practice the police issue cautions in relatively non-serious cases. The seventh Diversion option is Family group conferencing and this is similar to victim offender mediation but is more holistic and will involve all persons such as local leaders, church leaders among others who have a stake in the matter. When employing family-based services as a diversion option, the juvenile is placed back with his or her family, with the condition that specific support services are provided to both the juvenile and family (JCT, 2017; Nyazema, 2018). This option is effective in mitigating recidivism with a variety of age groups, ranging from young offenders to adult offenders, and different levels of offenses from minor crimes to heinous felonies (Thembo, 2018).

The first key stakeholder is the police and he or she should utilize the power to arrest as a last resort (Steyn, 2010:64) and the arresting detail should consider diversion options before effecting an arrest depending

on the nature and seriousness of the offence. The juvenile should be assessed within the shortest period of time and in any event, within a week and if the police decide to arrest the child, minimum force should be used (Clancey and Howard, 2006). The police officer should also explain all the rights entitled to the juvenile in a language that he or she best comprehends and investigations should be completed urgently and promptly and notification of the arrest must be given to the diversion officer, giving all relevant details of the young person. Young offenders should not undergo identification parades or fingerprinting and where a young offender is incarcerated, the arresting detail and the officer in charge should ensure that the offender has proper food, medical treatment if required, adequate clothing, access to religious counsellors, his lawyer, parents, guardians and should be separated from adult offenders to avoid criminal contamination (Steyn, 2010:68). Where the police fail to determine whether the matter should go for diversion or not, they should prepare the docket that would be sent to the prosecutor, who upon receipt of the docket should refer the case to the diversion officer to make investigations.

Another stakeholder is the prosecutor who is a representative of the Prosecutor General's Office and has the power to decide whether to prosecute or not in any matter. Reservations are made about the desirability of the prosecutor to solely decide on the suitability of an offender for diversion in an impartial manner considering that the prosecutor represents the victim's rights and is in the business of bringing offenders to trial and seeking their conviction (Steyn, 2010). The result is that they may be fewer cases for diversion hence the small multidisciplinary committee to make the decision had to be constituted as the diversion committee.

There is also the Diversion Committee that consists of the Area Public Prosecutor, the Provincial or Resident Magistrate, Superintendent in charge of crime and in his/her absence a Commissioned Officer appointed by him/her to represent him for the Zimbabwe Republic

Police, preferably not in charge of a station, the District child welfare officer or a senior child welfare officer in his/her absence and the Diversion Officer. Where the committee acquiesces by majority that the young offender should be diverted, such decision should be implemented immediately by the Diversion Officer and all record of proceedings and decisions reached by the committee should be kept (Wood, 2003). Where a finding is made that the young offender is not suitable for diversion, the diversion officer should refer the case together with the assessment report to the public prosecutor who would deal with the case in a normal way. Where a matter is before a Magistrate who is of the opinion that the matter is eligible for diversion, he should request the public prosecutor to urgently consider the matter for diversion and refer the matter to the diversion officer for a report to be made. When a report is made, the diversion committee will also be called to handle the matter.

Among other key stakeholders in the juvenile justice system, it should be noted that social workers play a significant role in pursuing the course of restorative and rehabilitative justice for juvenile offenders. Some of their roles and responsibilities are outlined hereunder and they perform these roles in the jacket of either 'probation officer' or 'diversion officer'.

The diversion officer should immediately investigate the personal circumstances of the young person and his eligibility for diversion after notification from the police (Nyazema, 2018). Where the diversion officer is satisfied that a warning is necessary at this stage, he/she will refer the young offender to the police to be dealt with in terms of the police guidelines. Thembo (2018) contends that the diversion officer would produce a report that will be submitted to the Area Public Prosecutor for consideration and the report should contain the age of the offender, the socio- economic and demographic circumstances, the personal circumstances and contact details of relatives or guardians, the nature of crime committed, the circumstances surrounding such commission,

whether the young person admits his guilt, the justification for diversion and the recommended activity to that the young person will be subject. Social workers as Probation Officers also play a crucial role in diversion processes. They are employed in the Department of Social Welfare and their roles include assisting the Police to locate parents and caregivers to support the young person during questioning and to ensure that there is a safe place for the young to be released (Steyn, 2010:113). They also provide the technical support to the diversion officer to compile the assessment report coupled with supporting the Diversion Officer to identify suitable diversion options and support the young person to access any services identified (Nyazema, 2018). Bhaiseni (2016) also indicate that they assist young offenders through education, treatment and counselling to abandon anti-social behaviours and to ensure young persons on the diversion programme are duly enrolled on the relevant register by the relevant Child Protection Committee for supervision and monitoring. Again, they act as referral persons for young offenders who might have been referred to the formal justice systems so that proper support and documentation are prepared for the court, to walk the young person through the due process, in consultation with the diversion officer, where one is available (Wood, 2003:12). They also maintain a register for young persons who might have been put on the pre-trial diversion programme and to stand in for the diversion officer where the diversion officer is not available and offer secretarial services to the diversion committee when called upon to do so by the Office of the Public Prosecutor. If PTD programme is provided or ordered, the social worker bears the responsibility of selecting the most suitable or appropriate programme or setting, and assisting the juvenile to complete the suggested diversionary option or measure successfully.

Generally, there are various legal instruments that seek to inform, guide and promote child justice. In relation to diversion services however, the most significant legislative framework is the United Nations Convention on the Rights of the Child (UNCRC). The United Nations Convention on the Rights of the Child (UNCRC) provides the solid bedrock for juvenile

justice administration. Article 40 (1) – (4) of the UNCRC establishes a comprehensive framework within which states are mandated to design a child-friendly justice system. According to Desai (2020) the UNCRC covers a wide spectrum of yardsticks, guidelines and principles including non- discrimination, the child’s right to dignity and privacy, the need for juveniles to respect the fundamental rights of others, and the desirability of ensuring the juvenile’s reintegration and assuming a constructive role in society. This almost universally ratified Convention sets the much-needed framework for juvenile justice administration (Gabriel *et al.*, 2013:215). Specifically, articles 37 and 40 deals with the issue of juvenile offenders. Article 37 of the Convention on the Rights of the Child guarantees the juvenile offender the right to be protected against torture, inhuman or degrading treatment; capital punishment; and life imprisonment. It disqualifies unlawful arrest or arbitrary deprivation of liberty, and that imprisonment of young offenders should only be employed as a matter of last resort and for the shortest period of time possible (Bhabha, 2008). It also sets down conditions for the arrest, detention, and imprisonment of young offenders such as respect for the juvenile’s inherent dignity, separation from adult offenders while in custody, maintaining contact with family, access to legal assistance, access to court, and a quick trial.

The other legal framework is so called the Standard Minimum Rules for the Administration of Juvenile Justice or simply the Beijing Rules, were adopted by the UN General Assembly in 1985, and sets out minimum age for young offenders in juvenile justice administration by member states (Mititelu, 2015:151). These Rules are comprehensive and provide guarantees to the juvenile offender at all stages of the criminal justice process. The Beijing Rules also emphasises on the need for diverting young offenders from the formal criminal justice proceedings and the need to detain them only as a measure of last resort and for the shortest period of time possible. The Beijing Rules were a resolution of the general Assembly, so they did not have the binding legal force such as that of a Convention. Other significant laws in juvenile justice issues

include the United Nations Guidelines on the Prevention of Juvenile Delinquency (Riyadh Guidelines), United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), United Nations Basic Principles on the use of Restorative Justice Programmes in Criminal Matters, and the Guidelines for Action on Children in the Criminal Justice System (Goldson and Munzie, 2012:47).

In Zimbabwe, there are various pieces of legislation that inform juvenile justice administration. These include the Children's Act [Chapter 5:06], the Criminal Codification and Reform Act [Chapter 9:23] and the Criminal Procedure and Evidence Act [Chapter 9:07]. Zimbabwe ratified the Convention on the Rights of the Child (CRC) in 1990 and the African Charter on the Rights and Welfare of the Child (ACRWC) in 1999 and both treaties oblige the state to develop a juvenile justice system defined by the parameters set by these instruments (Madhuku, 2010). The Constitution of Zimbabwe Amendment (No. 20) Act 2013 (hereafter referred as the constitution) provides rights for all offenders alleged to have committed a crime including juveniles. Section 81 of the Constitution specifically deals with the rights of children offenders. It repeats Chapter 37 (b) and (c) verbatim by providing that juveniles below the age of 18 must not be detained except as a measure of last resort and if detained, must be kept therein for the shortest period of time and while there, must be treated in a manner, and kept in conditions that take into account their unique needs (Maronje, 2017). Shorter (2008), however, reveals that with regards to the shortest period of time mentioned above, the provision is rather vague, for it seems not to specify the exact length of this shortest period of time. Nevertheless, such clarification is provided for in terms of the Children's Act (Chapter 5:06). The same Section also provides for detaining children separately from persons above the age of 18. All the decisions made with regard to young persons in conflict with the law must take into consideration the best interests of the child.

Section 6, 7 and 8 of the Criminal Law Codification and Reform Act (Chapter 9:23). Pursuant to Article 17 (4) of the ACRWC, and Article 40 (3) (a) of the CRC, Egede (2007) attests that these sections set out a minimum age below that juveniles shall be presumed not to have the capacity to abrogate the penal law. In terms of Section 7, a juvenile who is of or above the age of seven years but under the age of fourteen years at the time of the conduct constituting any crime that he or she is alleged to have committed shall be presumed to be *doliincapax*; that is to lack the capacity to form the intention necessary to commit the crime; or where negligence is an element of the crime concerned, to lack the capacity to behave in the way that a reasonable adult would have behaved in the circumstances unless the contrary is proved beyond a reasonable doubt. The wording of this section denotes that the defence of infancy is rebuttable for young offenders of, or over the age of seven. The defence of *doliincapax* is not applicable for persons over the age of 14, in terms of Article 8 of the Criminal Law Codification and Reform Act. *Doliincapax* mirrors Article 17 paragraph 4 of the ACRWC and Article 40 paragraph 3 (a) of the CRC that states that there should be a minimum age below that children shall be presumed to not have the capacity to commit criminal offences.

Studies across continents indicate that there are a plethora of factors that militate against juvenile offenders' access to diversion services (Steyn, 2010:113; Mangwiro and Chitereka, 2021). As discussed hereunder, these factors have presented themselves as key barriers to diversion services accessibility and they often span from developmental (personal), socio-economic, politico-legal, religio-cultural, physical ones (Wood, 2003:114; UNICEF, 2020)

There are a plethora of factors that have impeded easy and equitable access to Pre-Trial Diversion services globally. Studies by Clancey and Howard (2006:381) show that in as much as countries like UK, Hungary, Australia and Japan are believed to have adequate resources, there is still limited access to diversion services by juvenile offenders due to

poor resource management, poor programme coordination and poor staffing that later result in poor programme implementation. However, studies in Africa as shown in Clough et al's studies (2008:437) have shown that there is no adequate resources to fund and manage the PTD programme and this has been worsened by lack of expertise to run the programme. Among these African countries, there is Zambia, Mozambique and Zimbabwe that have also critically recorded high levels of resource inadequacy and shortage of skilled labour (Muchinako *et al*, 2016; Dziro, 2015).

Limited diversion options coupled with poor referral systems have also seriously affected juvenile offenders' access to diversion services in many countries particularly in Africa. Suitable diversion options are not always available in all African communities and besides, there are often long durations between the committing of an offence and the referral of the offender to a diversion programme, that leads to clients' and their families' failure to understand the purpose of diversion (Wood, 2003:22). JCT (2017) also indicates that care-givers of children who are diverted are overwhelmed by many challenges they face in their communities that affects their motivation to become involved in diversion programmes. On the other hand, Craig *et al.* (2013) aver that diversion programmes are often implemented inappropriately; few diversion programmes are evaluated; the methods employed to evaluate diversion programmes are not of an acceptable quality; and diversion programmes are not enough to mitigate the re-offending of juvenile offenders (Steyn, 2005:64; Wood, 2003:1). Also, community service does not have a component in that the youth is confronted and required to take responsibility for their actions (Steyn, 2005:64).

Some studies also indicated that paucity of awareness or know-how on the side of prosecutors and probation officers (among other key stakeholders) with regards to the needs of juvenile offenders and yet these are the responsible professionals for deciding on the referral of these juvenile offenders in the context of the type of the available

diversion services and their intended objectives. Skelton (2002:496) points out, as family group conferencing is practised as diversion in South Africa; however, the new challenge is that few cases are referred for family group conferencing. On the other hand, it is difficult to work with juvenile offenders who have a poor relationship with their parents or in situations where parents encourage the offending behaviour of their children (Goldson *et al.*, 2002). Kleinhans (2013) the parenting styles or ways in that young offenders have been socialised by their families also influence their views about their offending behaviour that may be a stumbling block to intervention as that offender may not be willing to change. Zimbabwe has never been spared on this area of lack of technical training and knowledge among the stakeholders who work in juvenile justice system (Nyazema, 2018; Thembo. 2018; Vengesai, 2014). Other recent studies also reveal how Covid-19 lockdown restrictions have also worsened these juvenile offenders' access to diversion services especially victim-offender mediation among other services that required movement from one place to the other (UNICEF, 2020; JCT, 2021; Mangwiwo and Chitereka, 2021).

Lack of knowledge or awareness among the juveniles parents themselves their needs is another key factor that seem to militate against juvenile offenders' access to juvenile justice (Muridzo, 2018; Mangwiwo and Chitereka, 2021). In the context of pre-trial community service, Wood (2003:2) postulates that one of the benchmarks for one to access such service is that the young offender accepts accountability for the offence yet most juveniles seemed to lack legal guidance or knowledge that later affected them from accessing these diversion services. More still, Patel *et al.* (2007:1302) posits that this is challenging as many offenders are burdened with challenges such as family violence, substance use, financial problems in their households, and so on, that contribute to their behaviour and poor motivation. Thus, to Steyn (2010:101) lack of knowledge among the children with regards to the existence of the PTD and their general rights of children is also a key barrier to restorative justice. Juveniles in Zimbabwe in this context has

never been spared as shown in Nyazema's (2018) study and UNICEF's (2020) report. Therefore, this is precisely what affects these juveniles' preparedness to accept accountability for their actions, making it hard to modify their behaviour.

Furthermore, lack of involvement of the family is another key barrier that interferes with juveniles' access to family group conferencing in countries like South Africa (Amani *et al.*, 2018:483). Other local studies also show that parents were overburdened by competing priorities (job, caretaking responsibilities) and having to coordinate multiple probation-related appointments at various locations (Amani *et al.*, 2018). Studies by JCT (2017) also reveal that in Zimbabwe lack of parental support and involvement in children's matters is also affecting juvenile offenders' access to juvenile justice. This lack of support also manifest itself in unavailability of identity validation documents for children who might have conflicted with the law (Chereni, 2017; UNICEF, 2020). Indeed, young offenders on probation are not only expected to meet with probation officers but may also be expected to comply with as many as nine probationary requirements (Nemoyer *et al.*, 2014; JCT, 2017). Amani *et al.* (2018) also found that probation officers were aware that parents' competing responsibilities could often interfere with their ability to drive their child to probation and diversion meetings. They even acknowledged that non-compliance was often a result of parents being unable to provide transportation. However, instead of offering transportation support, they found that probation officers attempted to "remove structural barriers" by encouraging parents to seek transportation assistance from a family member or neighbour (Amani *et al.*, 2018:483). While probation officers were aware of and chronicling existing structural barriers, parents—not probation departments—bore the responsibility of finding solutions and eliminating barriers.

Juveniles who are cognitively underdeveloped (Granot, 2019) usually struggle with diversion programmes in most African countries like South Africa, Malawi and Zimbabwe. A challenge in previous diversion

programmes has had to work with young offenders of lesser intellectual abilities (Steyn (2010:145) and that is a risk factor that triggers delinquent behaviour among young offenders. Typically, juveniles do not have plenary legal capacity because of their age. This means that they cannot bring a case autonomously but can solely do so through a parent, guardian or other representatives. On the contrary, juveniles between the ages of 14 and 18 may have restricted legal capacity allowing them to address the court in certain types of cases in some countries in both Europe and Africa (UNICEF, 2020). For example, in USA and Australia, juveniles are permitted to initiate proceedings for a protection order when they are affected by domestic violence. Hungary allows juveniles above the age of 14 to take autonomous legal action to guard against their inherent rights, including in cases involving equal treatment; freedom of conscience; deprivation of liberty; and insult to their honour, integrity or human dignity (UNICEF, 2020).

More still, Singapore and some countries in Western Europe allow juveniles aged 15 and above to initiate litigation autonomously, without legal representation, in marital and family disputes. It is also highly common that young offenders with certain disabilities in particular are not given legal capacity law (Steyn, 2010). For example, in Armenian law, a juvenile with intellectual or psychosocial disabilities can be deprived of their legal capacity by a court decision. The court in this vein can then identify a guardian to make decisions on his or her behalf. This approach as presented by Wood (2003) can be sometimes termed 'substitute decision-making' and yet it is not always in conformity with Article 12 of the CRPD, that requires that juveniles with a disability must be guaranteed their right to legal capacity on an equal basis with others. Thus, Article 12(3) of the CRPD introduces the concept of collectively supported decision-making, that requires States to take appropriate measures to provide access by juvenile offenders particularly those with disabilities to the support they may require to fully exercise their legal rights. According to Maepa (2005:77) it is highly challenging for juvenile offenders to gain insight into the information shared and they struggle

with reading and writing in some of the activities required. These juveniles with behavioural and intellectual challenges especially in countries like Japan, Australia and many others in Southern Africa fought hard to access counselling services among others (UNICEF, 2020). To deal with such challenges, skilled and experienced staff would be needed to facilitate diversion programmes.

Hansen (2006:1) postulates that because there is no separate legal system for juveniles in Hungary among other countries in Asia and Western Europe, restorative justice cannot be used frequently. The lack of a legal system for juveniles results in many youth being excluded from the opportunity to be rehabilitated. However, there is no study that shows how COVID-19 has also impeded the implementation and enforcement of the PTD options in most of the communities where this programme is. In Zimbabwe on the other hand, Rugaranganda and Rugaranganda (2016) agree with JCT (2017) that lack of a separate juvenile justice system coupled with legal inconsistencies and absence of a robust legal framework that inform the implementation of the PTD programme is one of the key barriers to diversion service accessibility. Vengesai (2014) also argues that this lack of consistency in policy and legal frameworks to inform the operationalization of juvenile justice related programmes can be attributed to lack of political will in the context of alignment and harmonisation of these child protection laws.

Social norms coupled with religio-cultural beliefs highly seem not to recognize juveniles as rights-holders because of their age; and these have also interfered with these juveniles' capacity to access diversion services. More still, these beliefs have caused parents of these juvenile offenders to opt for religious means (exorcism included) to address delinquency in most African countries (Clough *et al.*, 2008:437, Mabvurira, 2016). This tendency thus, is also proliferated by discriminatory treatment of juveniles with disabilities due to their impairment. The barriers they face in accessing diversion services are similar to, but also partly unique from, those experienced by other juveniles with disabilities. Some of

these barriers are systemic and relate to paucity of coordination between different diversion services. To this end, cultural and perceptual barriers can also affect juvenile offenders particularly those with disabilities from accessing restorative justice. Such barriers according to UNICEF (2020) evolve from negative assumptions about their intellectual, psycho-social and physical capacities that the children themselves often internalize.

According to JCT (2021), the above highlighted barriers are often perpetuated by institutional, policy and legislative failure to challenge and revamp discrimination, stigma coupled with impunity. Thus, denying juvenile offenders (especially those with disabilities) their right to access restorative justice compounds the circumstantial challenges they face in their daily lives, exposing them to risks of ongoing exploitation and violence and further entrenching discrimination, impunity and poverty (UNICEF, 2020). The barriers they face in accessing justice are similar to, but also different from, those encountered by other children or by adults with disabilities.

Steyn (2010: 145) contends that some are physical barriers or infrastructural barriers that literally prevent children from accessing ombudsperson offices, mediation meeting rooms, court-rooms and lawyers' offices. As suggested by Thembo (2018) other barriers to diversion service are economic, such as transport costs to designated places for mediation and conferencing, while still others are procedural and arise as a result of the complexity and rigidity of many justice system processes. Studies that were conducted in relation to juvenile justice reveal that the juvenile offenders with disabilities must be provided with disability- and age-appropriate support to enable them to participate in all stages of any legal proceedings affecting them. Yet in practice, many of these juveniles do experience specific practical barriers that render justice procedures and processes less effective and child-sensitive for them than those juveniles without impairments. Other barriers can also relate to the type of procedural accommodations needed (Mangwiwo and Chitereka, 2021), but not always provided.

Juveniles with physical impairments may confront barriers in accessing court or police buildings that including stairs or narrow doors (UNICEF, 2020). Children with disabilities living in institutions may find it hard to attend hearings or meetings because of lack of permission or transport. However, there is no local, evidence-based and context-based research that has so far been carried to fully explore the underlying key barriers behind juvenile offenders' failure to access diversion services in Zimbabwe as many studies on barriers seemed to be more biased on the juvenile justice accessibility in the context of the formal criminal justice system as revealed in Mangwiro and Chitereka (2021) study. In this case, most researches on factors affecting access to PTD services have been carried outside Zimbabwe, hence a need to consider those factors affecting Zimbabwe in particular. More still, most of these studies as also shown in the preceding chapter predated the COVID-19 pandemic era, hence a need for a context based study that explores these barriers to PTD accessibility while establishing the extent to that juvenile offenders' plight has been worsened.

Various governments have made significant efforts to ensure full or plenary implementation of the UNCRC (1989) and the Beijing Declaration among other international legislative frameworks and guidelines that seek to promote a distinctive child-friendly, restorative and rehabilitative juvenile justice system (Bhaiseni, 2016). Among these states, there is Australia, Hungary, Japan, Singapore and Britain including other countries in the Western Europe. However, USA is one of the countries that has not yet the UNCRC although it has managed to establish a sound juvenile justice system. Furthermore, the aforementioned countries as averred by Wood (2003:20) have tried to allocate resources towards the implementation of diversion programmes across their respective jurisdictions coupled with the enhancement of capacity building and training of professionals who work in the juvenile justice systems. In Africa, the ACRWC has been ratified and enforced by

many governments including South Africa, Botswana, Malawi, Namibia and Zimbabwe. However, Vengesai (2014) avers that due to different socio-economic, politico-legal and geo-environmental contexts in that these countries thrive, the implementation of this Legislative framework has been impeded. Some of these factors include economic meltdown, lack of political will and epidemiological issues such as COVID-19-induced challenges.

In Zimbabwe, there are significant efforts to reform the current juvenile justice system and these reforms include the development of the Child Justice Bill that seeks to establish the separate juvenile justice system that is child-friendly. Again, there is also the Children's Act Amendment Bill that also seeks to deal with some legal inconsistencies contained in the children's Act among other laws. However, there has been a delayed enactment process although these two bills have been recently approved by the cabinet. The government of Zimbabwe has been since been trying to incorporate the probation and diversion officers and engage other key stakeholders like UNICEF and Save the Children in ensuring the implementation of the PTD programme. Other organisations such as CATCH, JCT, ZHRC and ZNCWC have also greatly contributed through their advocacy work towards the reduction of recidivism, child incarceration and promotion of rehabilitative and restorative justice services (Ruparanganda and Ruparanganda, 2016). However, regardless of these efforts, juvenile offenders still struggle to access diversion services and this is most probably because of the lack of evidence-based research on barriers to diversion service accessibility. Therefore, this scenario has consequently necessitated the need for the study.

The chapter has critically reviewed relevant literature on the discourse of juvenile justice accessibility with much emphasis or stress on the barriers inhibiting juvenile offenders from accessing diversion services. The theoretical framework informing the study has also been canvassed

in the chapter. This literature review has been done at global, regional and national levels in respect to the objectives of the study. To this end, this section has oriented the study to the current gaps in juvenile justice systems that would then help to answer the study's research objectives. However, the next chapter seeks to explore the methodological optics and paradigms informing the study.

CHAPTER 3: STUDY DESIGN AND METHODOLOGY

The previous chapter has delved into the relevant literature on the phenomenon under study. This chapter proceeds to provide an in-depth and clear discussion of the methodological procedures and process used to respond to the study's key aim and objectives. Ryan *et al* (2002) assert that research methodology relates to a process of intellectual discovery through the adoption of a procedural blueprint; and it is meant to boost people's understanding and knowledge of the world's social phenomena. The chapter thus, presents the concepts of research approach and design, study location, target population, sampling, data collection process and instruments used. The justification for the adopted methodology, rigorous ethical considerations in child-related researches coupled with the limitations of the study (including mitigation measures) shall all be established in the chapter.

As averred by Bryman and Bell (2012), a research approach establishes a framework for the collection of data, its analysis and finally, its interpretation and presentation. This data could have been drawn from a myriad of philosophical assumptions. Thus, the study has adopted qualitative approach as it helps one to fully explore the ascribed meaning given to any social problem or phenomenon. As the study seeks to explore the key underlying barriers behind juvenile offenders' failure to access PTD Programme and all the related services, the qualitative approach best suits the study in the context of quality assessment of issues and the provision of quality results. In the same vein, it follows that the interpretivist theoretical assumption therefore, has informed the study. This approach has also been adopted mainly because of its favourable characteristics. Key among these characteristics is that, it allows reflexivity by allowing the collection of data from participants within their natural setting (Creswell, 2014). As such, the researcher could easily assess the key barriers affecting these juveniles' access to PTD services. Again, besides being inductive in nature, this

approach establishes a holistic account of issues and thus, it allowed the researcher to develop a complex picture of the problem, report multiple perspectives, identify diverse factors interfering with juveniles' access to the PTD programme and finally, sketch the larger picture of the problem that emerged.

Research design entails the overall strategy that a researcher can select or choose to integrate the different components of the study in a logical and coherent manner and it constitutes the blueprint for the collection, measurement and analysis of data (Flick, 2011; Ritchie and Lewis, 2003). In this context, a research design presents itself as a comprehensive yet strategic framework for action whose protocol according to Creswell (2014) is iterative or cyclical in nature. Thus, it is usually intended to establish deeper or well-informed understanding of a given situation, starting with conceptualization and particularization of the problem while moving through several interventions and evaluations.

Creswell (2014) views case study as a qualitative research design that provides a framework for evaluation and analysis of complex issues; and it involves an up-close, in-depth and detailed examination of a particular case(s) within a real world context. Given the qualitative nature of the study therefore, a case study research design was consequently adopted. This design best suited the study because of its ability to draw together naturalistic, holistic, ethnographic, phenomenological, and biographic research methods in 'a palette of methods' (Merriam 2009:53; Ritchie and Lewis, 2003). As such, it allowed the researcher to explore in-depth, antecedent factors affecting juvenile offenders to access diversion services or a case of restorative justice within its practical real life context. More still, it provided the researcher with a level of flexibility by allowing greater spontaneity and adaptation of the interaction between the researcher and the study participants. Thus, the case study maintains deep connections to fundamental values and intentions, hence 'particularistic and heuristic' (Merriam, 2009:46; Flick, 2011). The latter attributes could not have been

easily and readily offered by other qualitative designs such as narrative and historical research designs coupled with grounded theory. To this end, it helped the researcher to best understand the phenomenon of restorative juvenile justice and finally respond to the study's objectives. On the same note, this design allowed research findings to emerge from the key themes inherent in the raw data of the study and finally provided a clear framework for investigating the phenomenon under study and prioritizing its exploration until a depth of understanding was achieved. Thus, Creswell (2009:183) supports that this in-depth understanding is accomplished through paying attention to every detail shared by study participants through the use of in-depth and key informant interviews and focus group discussions. However, this design has never gone without criticism from other researchers who question this design's lack of objectivity. Yet still, this criticism cannot disqualify this design's credibility and capacity in providing quality and aimed answers for the study. To this end, although juvenile justice is never an alien or new concept in social work practice, the key underlying barriers to PTD related services were supposed to be assessed and fully explained.

Chitungwiza, also nicknamed 'Chi-town' is a high-density dormitory town in Zimbabwe. It is believed to be approximately 30 kilometres (19 miles) of the Harare city centre. It falls under Harare province and was formed in 1978 from three townships that are Seke, Zengeza and St Marys. According to HDI Report (2018), as of February 2021, Chitungwiza had a total population of 340 000 people with almost 25% of this total population being children. The selection of the study location was triggered by the observation that besides Chitungwiza being the first target location where the preventive, rehabilitative and restorative PTD programme was launched, a huge number of juvenile offenders remain entangled in harsh criminal justice system while reports of recidivism, detention (that must be a last resort in legal sense) and juvenile(s) incarceration have seemed to reach intolerable proportions. However, given the researcher's limited time for the study

versus covid-19 restrictions, the researcher had to mainly focus on St Marys where juvenile offending was rife; and the researcher eventually used Justice for Children Trust that would then assist in the process of identifying the participants for the study.

Ritchie and Lewis (2003) define target population as a certain group of the population sharing similar characteristics and is usually identified as the intended or objective audience for research. In the context of the study, the researcher capitalized on Justice for Children Trust that was already on the ground working with juvenile offenders coupled with the DSD among other key stakeholders in Chitungwiza district. As such, juvenile offenders between the age of 14 and 18 years residing in St Marys, Chitungwiza District were primarily targeted. The reason why this age group or range was targeted is that, juveniles who fall under this category have no situational factors considered that give them an advantage in the juvenile justice system as provided in the Criminal Procedure and Evidence Act (Chapter 9:07) unlike those who are below the age of 14. More still, the above-mentioned child group had more exposure to the retributive, retrogressive and punitive justice system as many had experienced challenges in the process of accessing pre-trial diversion services.

Sampling is a process or technique of selecting a representative part of a population for the purpose of determining parameters or characteristics of the whole population (Creswell, 2014). Creswell (2009:152) supports the view that this is possible because trends and tendencies in the larger population can be discovered from individuals. In general research, these two elementary sampling methods are probability and non-probability sampling. The former seeks to test hypotheses, hence more applicable in quantitative studies. The latter however, is based on deliberate selection of participants who best suit the characteristics of the objective target population.

Thus, the emic nature of the study has invoked the adoption of non-probability sampling method. This method seldom emphasises on statistical or mathematical power but rather, on comprehensive and in-depth exploration of barriers to PTD programme accessibility among juvenile offenders. It is worth noting that, prior to the selection of a sample, the researcher firstly defined a sample frame and to achieve this, a flow population was utilized. Sample frame according to Bryman and Bell (2015) in corroboration with Flick (2011) is an act whereby samples can be generated by identifying people in a particular setting such as meetings, conferences or rallies. In the context of the study therefore, stakeholders' meetings on child protection in Chitungwiza Hall provided the researcher with the opportunity to draw samples that objectively suited the characteristics of the target population. During these meetings, children in diverse situations including those who once or who would be going through juvenile justice process would be present together with the organisations who work with them among other government stakeholders.

Thus, the researcher utilised purposive sampling to select participants for in-depth interviews and Focused Group Discussions (FGDs) and this was however achieved through the help of Justice for Children representatives (under whose charge these juveniles fell) and the consented parents and guardians present. Basing on Creswell's (2014) recommendation, the researcher maintained this position until the saturation point was recorded and eventually, 7 in-depth interviews were conducted. Among these 7 participants, for gender balance purposes, 2 were girl children and 5 were boys. Girl children occupied a limited space in the study as the highest number of cases for juvenile offenders are usually recorded among the male children. As for FGDs as highlighted above, nine (9) juvenile offenders were purposively selected and through this focus group discussion, the researcher sought to establish a more open and comparative assessment of their responses on the key barriers to PTD services accessibility.

For key informant interviews, the study also adopted purposive sampling. This latter sampling technique as asserted by Ritchie and Lewis (2003), is an informant selection tool mostly applicable in qualitative studies and implies judgementally subjective and deliberate choice of an informant on the basis of the qualities, expertise or experiences one possesses. As such, 5 key informants were selected from the Ministry of Justice, Legal and Parliamentary Affairs (diversion officer, magistrate), the Department of Social Development (DSD) (probation officer), the Victim Friendly Unit (police officer) and Justice for Children Trust (lawyer representing children's rights and welfare). Accordingly, these key informants were selected mainly for the researcher to tap into their lived yet rich work experiences and expertise on juvenile justice in relation to the current PTD programme. It is also important to note that throughout the whole sampling process, WHO covid-19 regulations (social distancing, sanitizing and masking) were firmly ensured.

Flick (2011) views sample size as the total number of subjects in a study. Thus, a total number of 21 participants was the study's sample size. As recommended by Creswell (2014), the researcher maintained a reasonably small size to allow rich and vivid exploration of the phenomenon under study that would later result in saturation. In the context of qualitative research, it is saturation that determines the sample size. Thus, the researcher realised that just after 7 participants had been interviewed, the information being provided by these participants was constantly and continuously similar. The researcher achieved this through 'contrast analysis' that as supported by Schutt (2006:349) entails the determination of nuanced differences to predict specific variations or similarities between participants' views; with the aim of ascertaining whether their views are reflected in the data or not. To this end, the sample size was made up of 7 participants for in-depth interviews, 5 key informants and 1 FGD that was made up of 9 participants. Nonetheless, the researcher recognized that similarities in their responses were most supposedly emanating from commonly

shared perceptual attitudes, opinions, lived experiences and views on juvenile justice accessibility.

Data collection is a methodological process of gathering and analysing specific information to proffer solutions to relevant research questions and evaluate results. This process to Flick (2011) is procedural throughout and validated standards and techniques are used.

The study adopted triangulation and as suggested by Creswell (2014) the latter method entails a process of validating the results of the study through the use of two or more methods. This allowed the researcher to check its reliability. Thus, the researcher used various methods to gather data and these included documentary review, interviews, observations and FGDs. The 'cross method' that is a once-off task (Patton, 2001) to this end, has been fully adopted by the researcher. This allowed the researcher not to ensure validation only, but more so, to deepen and widen his understanding while producing innovation in conceptual framing coupled with explanation of the richness and complexity of the phenomenon under study by studying it from more than one point. Therefore, the following section provide a justified overview of the specific data collection techniques used in the study.

Being one of the most effective techniques used in qualitative studies, in-depth interviews were used by the researcher to obtain subjective analysis of key barriers to PTD programme accessibility among juvenile offenders in Chitungwiza, Zimbabwe. While guided by the interview guide, the researcher managed to fully explore the beliefs, opinions, attitudes and lived experiences of the participants. To design the interview guide however, the researcher upheld Rubin and Babbie's (2011) recommendation that the researcher should consciously draft and ask questions in the same manner or sequence to maximize comparability of responses. This allowed the researcher to ensure that data are gathered from all participants on all relevant issues

surrounding the study. To this end, in-depth interviews were done with 12 participants including 7 juveniles and 5 key informants.

The use of in-depth interviews in the study is mainly based on the fact that, this technique allowed the collection of data from even some juveniles who could have found it difficult to write. Again, a high degree of flexibility provided by this technique helped the researcher to collect dynamic and comprehensive without circumscription that might not have been the case with close-ended questionnaire that limit participants' view and focus more on quantity. It is worth noting however that, the researcher ensured the use of vernacular language (Shona) among the participants and this helped in mitigating linguistical barriers that might have impeded the whole data collection process.

More still, these in-depth interviews were applied to the key informants. Flick (2011) reveals that key informant interviews are part and parcel of in-depth interviews. As such, key informants are key subjects whose position in the context of qualitative study, exposes them to various spheres of work that later expose them to expertise or credible know-how about other people, processes or events than any other lay person in the community. Thus, the selected key informants were five (5) inclusive of the VFU representative (police), probation officer, diversion officer and a lawyer from JCT coupled with the magistrate. As a result of these interviews, the researcher managed to obtain sound and well-informed information that richly responded to the study's key aim and objectives. However, emerging themes and questions during the interview process were closely converged within the subsets of the collected data.

Patton (2002:385) contends that a FGD is a form of an interview with a reasonable number of people (6-9) who cross-pollinate ideas over a phenomenon or problem. The researcher in this context, also used FGD to further triangulate and complement data. To ensure this, the

researcher took into cognisance Flick's (2011:192) caution that dominance by other participants should be prevented by the researcher through encouraging participants to be collectively involved; within which the researcher did. As such, through FGDs, the researcher managed to generate diversified discourse on PTD programme accessibility and the different experiences on juvenile justice issues. The researcher was also observing how interactions influenced other participants' views and ideas (Rubin and Babbie, 2011). This could not have been achieved by the use of solely, in-depth and key informant interviews. Thus, these participants as mentioned above, included the same participants that were part of the juvenile offenders to validate the obtained data and compare responses among the involved participants. The pre-designed FGDs in this context was used to guide the discussions and they lasted for 12 minutes. However, it should not be forgotten that, these interactions were guided by WHO covid-19 regulations.

As part of secondary data, document review was used by the researcher to obtain relevant information that provides insights into the phenomenon under study. As recommended by Bryman and Bell (2015), the researcher used reports, books and journals; including e-materials on various websites such as that of JCT, JCS and UNICEF among others. These secondary e-sources were of great importance in providing partial some information to the study's aim and objectives. Given this covid-19 issue, this method was also thought to be in tandem with the WHO covid-19 regulations that partly restrict physical visitation to agencies and places. This data collection tool also helped the researcher to serve time and unnecessary travelling costs to some of these agencies.

Data analysis entails the organisation of data into specific criteria and reduce it to a more manageable form. In the context of qualitative study, data analysis is therefore, a process of reducing huge chunk of data into smaller fragments and thus, it seeks to make sense out of the participants' views and opinions of situations, corresponding patterns,

themes, categories and regular similarities (Cohen *et al.*, 2007: 128). The study therefore, has adopted the thematic analysis as opposed to other qualitative data analysis tools that include content analysis, narrative analysis, discourse analysis and framework analysis. This was because the thematic analysis adequately suited the qualitative nature of the study. Another reason is that the study had embraced no pre-determined ideas or theories; and as such, it emphasises the significance of liberalizing the process of data analysis to allow themes to emerge as opposed to railroading preconceived themes (Saunders *et al.*, 2012). To this end, this data analysis process followed several stages.

The first stage during data analysis was familiarization with the data and at this stage, the researcher began to convert (from Shona to English) the recorded audios into texts (transcription). The researcher began to notice the general yet major themes popping out and these 'key theme-factors' were socio-economic, politico-legal, religio-cultural and physical factors. The researcher further went on to search for patterns and subthemes and these subthemes were assigned to codes according to the emerging elements the researcher found. This process according to Flick (2011) is data mapping and interpretation. Just after, these subthemes were subdivided and these were subdivisions of major themes that specifically focused on aspects that were relevant to the study. The researcher further reviewed potential subthemes and all the identified and categorized themes were then checked to determine if they fitted the data and to see whether the themes did exist in the data. Again, this was done to check whether there were any themes missing and finally, to dictate whether some themes could be removed. At last, themes were labelled and finalized and the researcher tried to align the themes with the study's research questions and/or objectives as recommended by Creswell (2014). For consistent flow of these themes and meaning, data were presented on the basis of this criteria. Thus, this enabled the researcher to come up with themes and sub themes that

represented the views of participants on key factors affecting access to diversion services. The table below summarises some of the issues highlighted by research subjects and more detail of these themes will be presented in chapter 4.

Table 1: Themes and sub-themes representing the views of participants

Major Theme(s)	Subtheme(s)	Issue(s) Raised
Socio-economic barriers	Limited diversion options and poor referral system	~ options available are not comprehensive enough and referral is not taken seriously
	Resource constraints and shortage of skilled labour	~ financial, material and human resources are very scarce that later affect implementation
	Lack of support and involvement of parents or guardians	~ parents and/or guardians often times, fail to avail themselves when needed during diversion processes
	Lack of knowledge about PTD and children's needs	~ there is lack of general awareness among children, parents and some professionals on children needs and the PTD programme
	COVID-19 restrictions and Regulations	~ lockdown measures affected travelling and many diversion arrangements
	Unavailability of identity validation documents	~ many children failed to avail birth certificates and IDs needed for other diversion processes
Politico-legal barriers	Lack of political will and the absence of the Child Justice Act	~ Approval (that took years) and enactment of the Child Justice Bill among other key bills due to lack of political will has been seriously delayed
Religio-cultural barriers	Beliefs, norms and perceptions about children and juvenile delinquency causation	~ Cultural values and religious belief systems have caused many juveniles to opt for other means outside the programme.
Physical barriers	Poor infrastructure	

Owing to the sensitive nature of child-related issues and concerns, a need for rigorous ethical consideration was closely upheld by the researcher. Ethics in relation to social work research to this end, entails the appropriateness of a researcher's behaviour in relation to the stipulated rights of the research subjects or those who are directly or indirectly affected by it (Sanders *et al.*, 2012). In this context, the researcher designed the study in an ethically sound and methodologically noble manner such that participants' rights, needs, preferences, desires and values were fully respected (Creswell, 2014). Therefore, the ethics that were observed by the researcher as proposed by many scholars in social research are discussed hereunder.

The researcher initially sought permission from the responsible authority that would influence the study process and, in this context, Justice for Children that was in charge of these juvenile offenders. Finally, the researcher was granted permission. However, since the parents and/or guardians (primary group of influence) of these juveniles were present, upon arrival, the researcher took the opportunity to brief them about the study purpose and objectives as he also sought their permission as advised by the JCT regardless of its secondary control (in the context of juvenile justice establishment) over these juveniles. Creswell (2014) supports that any research that is conducted in institutions just like in communities, demands one to seek permission from the authority of the people in charge under that the participants fall under.

The researcher sought consent from participants to ensure voluntary participation among these participants. This was ethically necessary as confirmed by Rubin and Babbie (2011) who assert that social work research often interferes with people's lives, disrupts their usual life activities and requires them to invest a vital portion of their time and energy. Deception of participants was totally overruled through the provision of written and pre-signed informed consent with clearly spelt out rights and other issues about the general well-being of participants

as supported by Creswell (2014). The parents and/or guardian of these juveniles' again, were made to sign these consent forms.

The researcher endeavoured to ensure the protection of the participants' personal identities and this according to Rubin and Bubbies (2011) suggests the desirable concern and professional responsibility in safeguarding their interests and well-being. Thus, the researcher ensured their right to privacy and power to decide as to what, who, when, how and where their information would be revealed. This was achieved through the adoption of anonymity by ensuring the exclusion of the participants' identifiers including names among others. Again, since the study directly converged both service users and providers, privacy and confidentiality became significant as the study was highly sensitive. As such, the researcher firmly guaranteed the participants that their identity would be concealed while their information would be shared and used solely for academic purposes. From this given position, it has become clear that privacy denoted the elements of personal lives while confidentiality implies 'how' the information should be handled. Therefore, on data analysis, only the position of key informants who are directly involved in the juvenile justice system were provided. Most importantly, the researcher was also guided by binding ethical principles, values and standards of the NASW code of ethics for professional practice (2008).

The researcher ensured safety of all the participants from any potential harm that might have been imposed by the study. This ethical principle is also termed 'protection from harm' (Flick, 2010) and as purported Saunders *et al.* (2012), this automatically becomes a keystone for sensitively child-related social researches. Safety of participants was therefore ensured through firm observation of covid-19 regulations: social distancing, masking and sanitization of all clients. Thus, measures were taken to ensure all participants were safe from any physical, emotional, psychological and social harm. These measures include the provision of adequate counselling among those who might have

reported or indicated any form of aversive experiences as a result of being involved in the study.

Since the researcher had firstly briefed the participants about the study's aim, objectives and implications of the study thereof, immediately after the completion of the data collection process, he did a review meeting with the participants for the purpose of debriefing.

Since feasibility is one of the considerably defining factor for any study to be carried, the researcher took it into cognisance. Rubin and Babbie (2011:141) accentuate that the scope, time required, costs, ethical considerations and the cooperation it requires are the common issues that determine the feasibility of any study. As such, the study was conducted in St Marys, Chitungwiza District that was within the reach of the researcher; hence data collection became easier in terms of transport costs among other expenses. Again, the availability of juvenile offenders and key stakeholders in juvenile justice processes and concerns made the study's key aim and objectives attainable without much difficulties. Most important to the study's success was the guidance and shared judgements from the supervisor whose experience in researches of this kind was vastly relevant.

The researcher encountered many challenges during the study. The first challenge was a delayed research approval from the Department of Social Development due to COVID-19 related fears and set restrictions by the government. However, to maintain progress, the researcher took advantage of Justice for Children Trust-initiated stakeholders' meetings to access the primary target population among other key participants in Chitungwiza District. Another challenge was the unavailability of some of the key informants (magistrate in particular) due to tight schedules at the offices. Nonetheless, the researcher later opted for a phone interview that fortunately succeeded. Another challenge was restricted time that had been allocated by the department to carry the study, but still, the researcher dealt with this challenge through the use of a reasonably

small size of participants and also by choosing a closer study location. Again, due to the sensitivity of the study topic, rigorous ethical concerns evolved and as a solution, the researcher had to abide by the NASW Code of Ethics (2008) and make use of these juveniles' consent, their parents' or guardians' consent coupled with permission from JCT (that was in legal charge of these children) among other ethical considerations such as confidentiality and safety from any form from harm.

The chapter has provided the methodological processes and procedures that informed and guided the study. These methodological concepts include research approach, research design, sampling method, and data collection procedures and data analysis technique. The ethical considerations underpinning the study coupled with its limitations have also been provided. More importantly, the justification for the adoption of the above given methodology has been clearly provided in the context of the study's aim and objectives. The next chapter therefore, will present and analyse the data collected from the field.

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 8th 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 in 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 ndaisatomboziwa 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 nguwa.

(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 vangu. 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.

CHAPTER 5: CONCLUSION AND FUTURE DIRECTION

Through data analysis and discussion, the preceding chapter has managed to establish the profile of the PTD Programme while highlighting the underlying systematic barriers affecting juvenile offenders' access to diversion services. Again, the suggested possible intervention measures from both the participants and key informants have also been established. This chapter, however, seeks to provide a summary of the findings, conclusions and recommendations. The chapter will also establish the study's implication to social work practice coupled with highlighting areas for future research. Finally, the chapter summary shall also be provided.

The study was aimed at exploring the key barriers inhibiting juvenile offenders from accessing the PTD Programme in Zimbabwe with particular focus on St Marys in Chitungwiza District. The study was prompted by the observation that many juvenile offenders still struggle to access the rehabilitative and restorative PTD programme regardless of the provisions made in both the UNCRC (1989), ACWRC (1999) and the Constitution of Zimbabwe Amendment (No.20) Act (2013) that guarantee these juvenile offenders' access to such programmes. Key objectives for the study include profiling the PTD programme, assessing the barriers behind these juvenile offenders' failure to access diversion services coupled with suggesting possible intervention measures to improve their access to the PTD programme. The significance of the study to social work fraternity, policy makers, CSOs, the academia and the community at large has been fully established. The restorative justice theory (Zehr, 2002) to this end, has informed the study. Methodologically, the study adopted the qualitative approach; and hence the case study was the study's research design. While using a sample size of 21 participants (8 juvenile offenders for in-depth interviews, 8 juveniles for FGDs and 5 key informants), the study has

managed to establish that failure to access the PTD programme owes to a plethora of factors that span from developmental (personal), socio-economic, politico-legal to religio-cultural ones; but all these factors are compounded by institutional incapacitation.

Nonetheless, submissions on the profile of the PTD programme from the previous chapter have indicated that there are various diversion options available in Chitungwiza District for juvenile offenders who might have committed non-serious offences including assault, public violence, and substance and drug abuse and food theft among others (Nyazema, 2018; Thembo, 2018). These options among others include reparation, counselling, victim-offender mediation and community service. On the same note, it has been established that the PTD programme operationalization and implementation is also informed by many legislative frameworks and instruments that encompass the UNCRC, ACRCW, Criminal Procedure and Evidence Act (Chapter 9:07), Criminal Law (Codification and Reform) Act (Chapter 9:23), Children's Act (Chapter 5:06) and the Constitution of Zimbabwe (2013). There are also different stakeholders or professionals who work hand in glove (at different level) towards the provision of diversion services. These stakeholders include the magistrate, prosecutors, police, diversion officers and probation officers. In Chitungwiza District, the PTD programme's implementation has since been financed by UNICEF and Save the Children among other organisations that also work with children in conflict with the law (at different levels) like Justice for Children Trust, CATCH and ZHRC.

Having profiled the available PTD Programme in Chitungwiza District, the study has also established key barriers affecting many juvenile offenders from accessing diversion services. From a socio-economic perspective, many barriers have been provided. These barriers include resource constraints, donor dependence and poor resource misallocation and mismanagement that has resulted in poor programme implementation and coordination,. Again, lack of knowledge and

awareness about the PTD programme and the rights of children in the context of juvenile justice is another barrier that inhibits juvenile offenders' access to rehabilitative PTD programme (Steyn, 2010:114). Other barriers to diversion service as also provided by participants are economic in nature and these included transport costs to designated places for mediation and conferencing, while still others are procedural and arise as a result of the complexity and rigidity of many PTD processes.

More still, the study has also established how difficult it was for juvenile offenders to gain insight into the information shared as they struggle with reading and writing in some of the activities required. Probation and diversion officers also reported how parents' competing responsibilities could often interfere with their ability to drive their children to probation and diversion meetings; hence lack of cooperation and support from parents and guardians is another key barrier to diversion service accessibility in Chitungwiza. They even acknowledged that non-compliance was often a result of parents being unable to provide transportation. However, instead of offering transportation support, they found that probation officers attempted to reduce structural barriers by encouraging parents to seek transportation assistance from a family member or neighbour.

Poor referral tendencies in the context of Family group conferencing resulted in few cases being referred for family group conferencing (Wood, 2009:112); and thus, this habit resulted in juvenile offenders' failure to access diversion services. This could be however due to a paucity of knowledge on the part of prosecutors and probation officers, who are responsible for deciding on the referral of these juvenile offenders in the context of the type of diversion programmes available and what the outcomes entail. On the other hand, the study has also registered how difficult it is to work with juvenile offenders who have a poor relationship with their parents or in situations where parents encourage the offending behaviour of their children.

There are also physical barriers that literally prevent children from accessing ombudsperson offices, mediation meeting rooms and court rooms in Chitungwiza District especially among children with physical disabilities. From a religio-cultural perspective, beliefs systems and norms also seem to militate against these juvenile offenders access to diversion services as they often do not recognize children as rights-holders because of their age among other reasons (UNICEF, 2020). These beliefs therefore have also caused parents of juvenile offenders to opt for religious means to address delinquency. Furthermore, the study has also indicated that lack of a separate juvenile justice system coupled with legal inconsistencies and absence of a robust legal framework that inform the implementation of the PTD programme is one of the key barriers to diversion service accessibility. This is revealed in the Children's Act that does not provide for the establishment of the PTD programme.

The study has also shown many measures and efforts the government has tried to put in place to promote juvenile offenders' access to diversion services. Key informants revealed that the government with the involvement of other key stakeholders have also made significant efforts to align and harmonise legal instruments through the Child Justice Bill development and Children's Act Amendment Bill proposition. The former bill seeks to inform and guide the implementation and establishment of a separate juvenile justice system. Again, the government of Zimbabwe is also trying to employ more social workers and psychologists among other key professionals to sooth the burden in juvenile justice processes. Capacity building and training of stakeholders on juvenile rights in Chitungwiza through the help of UNICEF, Save the Children and JCT is another effort so far made in pursuing juvenile justice. The study has established that there has been awareness raising on PTD programme and children's right to diversion and rehabilitation services in Chitungwiza although there are many factors that seem to impede all these efforts.

From all the provided discussions above, the following conclusions were established:

The failure to equitably and fairly access the PTD programme among juvenile offenders in Chitungwiza District as confirmed by the key informants, is deeply rooted in the absence of a distinctive legal framework that inform and guide the implementation of this programme. Unlike South Africa that has a Child Justice Act that governs and inform the administration of juvenile justice, Zimbabwe's PTD programme is informed by fragmented legal instruments that even conflict with each other. The Children's Act (Chapter 5:06) is a good example as it defines a child as any person below the age of 16 as opposed to the constitution of Zimbabwe that views a child as any person below the age of 18 years. Besides, it does not provide for the establishment of the PTD programme. More still, the provisions in the Criminal Procedure and Evidence Act (Chapter 9:07) also allow the administration of corporal punishment and this is also evident in the Children's Act. These legal inconsistencies and disharmonies as also advanced in the study present themselves as a threat to the promotion of rehabilitative and restorative justice in Zimbabwe. Thus, unless the currently proposed Child Justice Bill and the Children's Amendment Bill are timely enacted into law, most juvenile offenders will continue suffocating under the harsh and often retributive criminal justice systems. Failure by the government to adhere to the guidelines, standards and provisions of the UNCRC (1989), Beijing Rules (1985) and the ACRWC (1999) among others have also cost the process of rehabilitative and restorative justice establishment in Zimbabwe.

It can also be concluded from the study findings that, lack of parental involvement and participation have posed serious ramification on the establishment of restorative justice. Most parents and guardians of these juvenile offenders as highlighted in the study are failing to timely and responsibly meet the demands of diversion programmes in the context of victim-offender mediation, family conferencing activities and reparation due to competing commitments coupled with poverty.

Therefore, social workers involved in diversion process might need to responsibly help these juveniles as they are the legal custodians of these children. On the same note however, awareness raising in communities on juveniles' right to restorative justice and access to diversion services should be another key area of focus towards empowerment and enlightenment.

In as much as there are many factors militating against juveniles' access to the PTD programme, observations have been made that institutional incapacitation coupled with lack of human and material resources is another binding factor that may need urgent attention. Without action as shown by the participants, juvenile offenders may continue to experience incarceration and deprivation from their rights to welfare and protection from harsh criminal justice processes. It can also be drawn from the study that in as much as the PTD programme was put in place to curb recidivism, prevent juvenile offending and establish rehabilitative, reparatory and restorative justice, juvenile offending continues to worsen in many communities of Zimbabwe, with Chitungwiza included. This might be due to limited diversion options and poor programme coverage and implementation and lack of technical capacity on the side of professionals and thus, a need to allocate adequate resources towards the effective implementation of this programme and development of robust and sustainable monitoring and evaluation systems should be considered.

Covid-19, as revealed by participants, has also negatively impacted and worsened the plight of juveniles in conflict with law in many ways. Key among these effects is that, lockdown induced poverty has prompted many juveniles to engage in various crimes that include abrogation of movement restrictions in a bid to search for a living (or food). Some could just loiter around since they were no longer going to school. Yet still, many law enforcement agencies seem to be inadequately equipped in terms of how to handle juvenile crimes in way that does not harm or deprive them of their welfare and protection rights. Thus, the study

concludes that if covid-19 induced poverty and problems are not attended to through collaborative and collective efforts between the CSOs, the government and the community itself, juvenile delinquency might even become worse. As it worsens, cases of child incarceration may also abound given the unfavourable and undesirable nature of the current juvenile justice system. Therefore, the argument is that until all the discussed key barriers to juvenile justice are addressed, the realisation of juveniles' right to welfare and protection will be a mere dream.

The study has established that despite the availability of various diversion services offered under the PTD Programme for young offenders who might have committed non-serious offences, these offenders still find it difficult to access diversion services. The registered barriers include poverty, cognitive, behavioural and intellectual challenges, resource constraints, lack of support from parents, knowledge and technical capacity among stakeholders under the PTD programme, logistical constraints, huge caseloads and lack of human resources coupled with poor programme coordination and fragmentation of services during programme implementation among other barriers. To this end, it is against this background that the importance of the study in social work fraternity can never be underestimated. In the context of key values that inform and guide competent social work practice in juvenile justice processes, social workers as probation and diversion officers should seek and strive to fight social injustices prevailing against this vulnerable child group. On the same note, the NASW Code of Ethics (2008) provides that social work practitioners should always strive to uphold the values of service above self, social justice, human worth and dignity and the importance of human relationships in all settings. Work with juvenile offenders in relation to counselling (as one of the diversion services) requires social workers to possess competent skills in assessing, screening, writing, speaking and communication skills among others. As custodians of children in conflict with the law, social workers should be able to

competently converge various methods during practice and these methods include research, casework, group work coupled with community work. Convergence of these methods where necessary will help them to provide holistic and comprehensive intervention measures towards juvenile justice establishment. On the same note, the study also show the relationship between social workers and other stakeholders under the PTD programme, hence social workers also bear referral responsibility.

In the context of developmental social welfare, the study advances how juvenile offending should be prevented in the place. To this end, community-based measures in promoting health juvenile behaviours through the involvement of parents and guardian of these offenders have also proved productive in driving behaviour change and prevention of delinquency. The study also reveal a striking link between service users and their providers while highlighting ethical dilemmas that often arise during practice; as such, practitioners should understand the applicability of various ethical interventions that include utilitarian consequentialism, deontological approaches coupled with virtual theories. More still, since lack of knowledge is among the key barriers to diversion service accessibility, social workers are presented by the study as disseminators of information through awareness raising. Again, advocacy work is at the core of juvenile justice establishment among juvenile offenders. This is revealed by social workers' role in influencing the development of the Child Justice Bill that seek to establish a separate juvenile justice system. To this end, social workers assume preventive, rehabilitative, mitigatory and responsive roles in ensuring the full protection of vulnerable children while promoting their rights in all PTD processes.

Owing to the challenges being encountered in accessing the Pre-Trial Diversion programmes as highlighted above, the section hereunder provides recommendations that have been drawn and deduced by the researcher from the participants and key informants. To establish a

holistic and sustainable PTD programme that will comprehensively address the plight of most juvenile offenders, recommendations have been categorized into four sections. That is, these recommendations are suggestively and respectively directed to the Government, Civil Society Organisations, the Community and finally key tertiary institutions that offers Social Work related programmes including the University of Zimbabwe that is thought to be the exemplary figure in producing competent social work professionals in Zimbabwe.

Owing to the overseeing role assumed by the government in promoting the rights and protection of children, the following recommendations were made:

- The government should expedite the process of the harmonisation and alignment of laws coupled with the ratification of the currently developed Child Justice Bill to allow sustainable, robust, credible, child-friendly and effective implementation of the Pre-Trial Diversion Programme. This owes to the fact that, lack of a comprehensive legal framework for the aforementioned programme is one of the key underlying barriers to restorative juvenile justice in general and diversion services in particular.
- There is also need for capacity building through collaborative training among key stakeholders who work under the juvenile justice system to fully equip them with proper and adequate knowledge and expertise in handling juvenile offenders' cases. These stakeholders include the magistrates, prosecutors, police officers, diversion officers and probation officers. More training in assessing, screening and determining the most fitting course of action should be emphasised.
- In relation to resource and budget constraints confronting the PTD programme implementation, the government should allocate a separate budget and resources for the programme so as avoid overdependence on donor funding that may not be reliable and consistent. When it fails due to the current hostile economic climate,

the government should adopt a more multi-stakeholder approach to juvenile offending prevention, mitigation and treatment through collaboration, partnerships and networking with other key stakeholders (organisations).

- The government should also draw some lessons from the nature and scope of the juvenile justice system of her sister South Africa. In this context, owing to limited and rigid diversion options, many juvenile offenders could not access diversion services unlike in South Africa where these diversion options are tailor made to suit juveniles' diverse needs and conditions. The Wilderness Therapy is one good example that may help to address the condition of juvenile offenders with behavioural and intellectual challenges.
- The government should also employ adequate workers (probation, diversion officers and prosecutors) to ease the work load that may undermine the integrity of juvenile justice system; and later deter many juveniles from accessing the diversion services in the context of timeliness and quality.
- There is need for the government to comply and conform to the standards, guidelines and provisions of the UNCRC (1989) and the ACRWC (1999) in relation to juvenile justice establishment. This should be followed by the spreading of the PTD programme to various districts in Zimbabwe.

Given the instrumental role CSOs play in driving change through advocacy work and policy making, the following recommendations have made suggested:

- The CSOs should continue pushing the government to expedite the harmonisation, alignment and ratification of the Children's Act Amendment Bill and the Child Justice Bill respectively to allow the establishment of a separate yet child-friendly juvenile justice system.
- More partnerships and collaborations in all social processes that include social planning, advocacy, research and programming in relation to children's welfare and protection should be established

and strengthened. This concerns organisations that work with children at various levels and in different areas that encompass law (JCT, ZHRC), research and policy advocacy (ZNCWC, UNICEF, Save the Children) and rehabilitation (North Court, Leonard Cheshire among others).

- These organisations need to raise more awareness on children's rights in relation to juvenile justice and the responsibilities of the child through community-based approaches and systems. This will not only help in responding to juvenile crime but in preventing juvenile offending since knowledge is power.

Since the community presents itself as a macro picture of the family agency in socialization processes, it therefore plays a significant role in influencing the behaviour of juveniles and more so, in driving change. As such, below are the suggested recommendations:

1. There should be active child-centered and community-based sensitization groups and associations (or clubs) that represent the rights of juveniles in conflict with the law; by this, many juveniles will become their own agents in transforming their own life patterns thereby becoming responsible citizens.
2. Local leadership systems and community Child Care Workers (CCWs) should take the leading role in educating juveniles and families on the PTD programme and encourage families to have the impetus access it when problems that need such programmes arise.

Since colleges and universities are the key sources where most professionals (particularly social workers as probation and diversion officers) who work under the juvenile justice system are moulded and produced; the following recommendations becomes highly crucial:

There is need for tertiary education institutions to review, adjust and align their curriculum to be in tandem with the currently unfolding juvenile justice dynamics in the context of social work practice. Thus, students should be thoroughly exposed to legal theory and early child

development issues coupled with mental health education to comprehensively equip them for competent practice.

More still, on top of theory, colleges and universities should now shift towards more practical learning. In this context, social work should not be viewed through customary lenses but ‘practical realities’ that must be experienced every day. Thus, students during the course of their learning should at one time or the other, be exposed to juvenile justice court processes and PTD programme operationalization to familiarise them with the real world of work.

Given the issues established in the study, the following areas therefore need further research:

- The study has established that lack of knowledge among both juveniles and other stakeholders on juvenile offenders’ rights and legal considerations for them to access or qualify for diversion services is one of the critical barriers. It is therefore significant that a study should be carried out on juvenile offenders’ rights and on legal eligibility criteria used in juvenile justice processes for one to be better equipped for easy access to diversion services.
- The study has also revealed how covid-19 induced poverty has exacerbated juvenile offending and restrict physical interactions in many public offices. As such, there is need for further researches on the impact of covid-19 on diversion services delivery coupled with the effectiveness of the current PTD programme in meeting the needs of juvenile offenders during covid-19 pandemic times.
- The views on the effects of diversion programmes on female juvenile offenders should also be investigated since many researches have seemed to be more biased towards male offenders.

Submissions from the study have also revealed that there are very few centralised offices in Chitungwiza District that are specifically meant for the delivery of most of the diversion services such as victim-offender

mediation, counselling and reparation arrangements. Yet still, these offices are often incapacitated due to demand overload and there are about three diversion officers who are to handle multiple cases of these offenders. Hence, a study should be carried out on the nature of service provision within the issuing offices in this district. This will help determine the nature of the resources or technical constraints being confronted by the responsible offices.

Throughout the study, it was made clear that lack of support and/or cooperation of parents or guardians of most juveniles due to competing commitments as they struggle to make ends meet is another key barrier to diversion services accessibility. Cognizant of that, studies should be conducted on the effects of lack of participation and poverty on juvenile justice establishment or outcome. These studies nonetheless, should be underpinned by correlational designs to firmly establish the relationship between poverty and diversion service accessibility in the context of meeting travelling costs, deadlines and to pay reparations.

In the context of restorative justice, while given the tendency to lack the impetus in accessing diversion services among juvenile offenders, studies must be carried out on factors that determine the propensity for one to access the restorative diversion services.

The chapter has provided the summary of study findings specifically the major findings. Following the summary were study conclusions. Key among these conclusions is that there are several diversion options available in Chitungwiza District but due to constraining socio-economic, politico-legal, religio-cultural, developmental and physical barriers that are compounded by institutional incapacitation coupled with lack of a distinctive legal framework for PTD programme- have all prevented many juveniles from accessing diversion services. The chapter went on to establish the relevance of the study to social work as it argued poor access to diversion services deviates from social work values such as social justice, service above self and human worth and

dignity. Recommendations coupled with areas for further research were also provided for policy makers to promote equitable and easy access to diversion services.

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Synopsis

The study aimed at critically examining the antecedent factors affecting access to Pre-Trial Diversion services by juvenile offenders from high-density suburbs in Zimbabwe. To this end, Chitungwiza District was selected as the study's location but targeting participants who were under Justice for Children organisation. The study's key objectives were: to profile the Pre-Trial Diversion programme as a tool to access restorative justice, assess the factors or barriers behind juvenile offenders' failure to access diversion services and finally, to suggest possible intervention measures to improve access to the aforementioned services. Thus, the restorative justice theory grounds the study as it advocates and sets parameters for the establishment of a child-friendly justice system. Again, the study adopted the qualitative research approach and more so, case study design informed the study. To this end, data were collected from participants using a combined set of data collection methods including documentary review, in-depth and key informant interviews coupled with Focus Group Discussions. Submissions from participants revealed that there are many diversion options provided for juvenile offenders and that most of these juveniles however, lacked the impetus to access diversion services due to a myriad of barriers. These factors generally include limited diversion options, resource constrains, shortage of skilled labour, knowledge, poor involvement of significant others, poor infrastructure, beliefs and perceptions about the causes of juvenile offending, lack of political will and the absence of the Child Justice Act. Cognisant of these barriers to this end, it was recommended that there is need to expedite the enactment of the Child-related Bills into law, increase awareness raising on children's rights, enhance capacity building among key stakeholders, coupled with decentralising the programme while increasing participation of parents or guardians in diversion processes.

About the Author



James Dominic Shalom Sithole is a distinguished social work lecturer and licensed practitioner (registered with the Council of Social Workers). Among other notable certifications, he holds a Master of Science in Social Work (MSW) degree, a Bachelor of Social Work Honors' Degree and an Executive Certificate in Program and Project Monitoring & Evaluation, all from the University of Zimbabwe. His research interests encompass Forensic Social Work, Pretrial Diversion Issues & Restorative Juvenile Justice, Climate Change, Child Welfare Policy & Practice. His research are set to continue, as he is currently anticipating the pursuit of his PhD program with the University of KwaZulu Natal. Through his academic and professional endeavors, James continues to make significant contributions to the field of social work.