



REFORMATIONS IN ZIMBABWE'S JUVENILE JUSTICE SYSTEM

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ABSTRACT

Children in conflict with the law are often stigmatized and shunned by society as they are perceived as a threat to society. Historically, Zimbabwe's juvenile justice system has been retributive and focused on punishing the juvenile offender. As a result, it has been criticised from a number of viewpoints, including the need to ensure maximum protection of children. This study sought to examine recent reforms in Zimbabwe's juvenile justice system. In addition, it explores the role social work practice play in relation to the reforms. The article is based on a desk review of existing literature on juvenile crime in the country. Findings reflect that Zimbabwe's juvenile justice system is transforming from being retributive towards a reformatory and rehabilitative system. This process is marked by introduction of new legislative instruments and policies which provide for the rights of children in conflict with the law, specifically the right to free legal representation and participation in judicial proceedings. Also, the instruments abolish the death penalty for convicted child offenders. The Constitution of Zimbabwe Amendment (No. 20) Act 2013 is one such instrument. Social work practice continues to play a pivotal role that centers on preventing recidivism and providing remedial and preventive services. Despite these reforms, gaps remain in the current system. For example, children continue to spend prolonged periods of time in adult prisons while they await repatriation to institutions due to resource constraints. Key recommendations include expanding the Pre-trial Diversion Programme to all the provinces as it has yielded results that benefit the child as well introduction of alternatives of institutionalisation.

KEY TERMS: delinquency, juvenile justice system, pre-trial diversion, diversion officer, probation officer

INTRODUCTION

Juvenile crime has been a problem since time immemorial. Hamilton (2011) defines a juvenile juvenile as a child or young person who, under respective legal systems, may be dealt with for an offence in a manner which is different from an adult. Juvenile justice refers to a system of laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically applicable to children in conflict with the law (Kaseke, 1993; United Nations Office on Drug and Crime, 2006). Juvenile justice addresses the situation of children who are alleged as, accused of, or recognized as having infringed the penal law. Juvenile crime is a common problem throughout the world.

Delinquency and criminal behaviour is common among young children as they negotiate the transition from childhood to adulthood in an increasingly complex world. Being in contact with the law may trigger traumatic experiences for adults let alone children, hence the need for social work interventions to assist such children. Youth who enter the juvenile justice system have high rates of traumatic experiences and face a higher risk of mental health problems than those in the general population. The majority of children who are involved in the juvenile justice system have experienced abuse and neglect, dysfunctional home environments, destructive and inconsistent parenting practices, poverty, school-related problems and exposure to delinquent peers and community and societal problems.

This paper discusses the recent reforms in the juvenile justice system in Zimbabwe and elaborates on the role of social work practice in the field of juvenile justice. The study draws on a desk review of existing literature on the reforms in Zimbabwe's juvenile justice system. The paper focuses on the following: juvenile crime in Zimbabwe, the legal framework for juvenile justices, reforms in Zimbabwe's juvenile justice system, challenges, the role of social work practice and give conclusion and recommendations.

JUVENILE CRIME IN ZIMBABWE

In Zimbabwe, generally there is a dearth of statistics on juvenile crime. However, anecdotal data available gives a snapshot of the magnitude of juvenile crime. Statistical evidence reflect that juvenile crime is a problem that is escalating in the country. In 2013 an average of 263 children were arrested monthly in the three main cities of Harare, Bulawayo and Mutare (UNICEF, 2013). The number of juveniles incarcerated is also increasing. In 2002 UNICEF Zimbabwe reported that there were a total of 234 children incarcerated. This number did not include children in remand homes and correctional centres (UNICEF, 2002). In Zimbabwe children are incarcerated for crimes such as theft, rape, malicious damage to property, assault and murder. The Zimbabwe Prison and Correctional Services 2010/2011 report as noted in the National Legal Strategy for Children states that there are around 300 children in prison at any given time. A considerable portion of these children were not represented by a lawyer or supported by a probation officer during their trial. Moreover, their cases have yet to be reviewed since the time of detention (National Legal Strategy for Children, 2012). The National Legal Assistance Strategy for Children notes that 62% of children who were placed in institutions as a result of getting in conflict with the law did not have a valid court order. A court order to commit a child is a legal document that formalises the placement a child into an institution. It is illegal for a child to stay or to continue to stay in an institution without a valid court order.

Thus, children continue to be deprived of their liberty prior to trial, which is in violation with the right to liberty as deprivation of liberty should be employed as a measure of last resort. UNICEF Zimbabwe 2013 Annual Report highlights that around 57% of detained children remain in remand for up to two years. Arguably, these statistics are only a tip of an iceberg as there is no study that has been conducted on a national level to determine the magnitude of juvenile crime in Zimbabwe.

LEGAL FRAMEWORK FOR JUVENILE JUSTICE

International and regional framework

The rights of children in conflict with the law are stipulated in international human rights instruments. International law has paid special attention to issues concerning management of cases of juveniles in conflict with the law. There are a number of international instruments which guide the delivery of juvenile justice and these include the United Nations Convention on the Rights of the Child (UNCRC), United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 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 Programs in Criminal Matters, and the Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines). The United Nations Convention on the Rights of the Child (UNCRC) forms the bedrock for administration of juvenile justice. Article 40 (1) – (4) of the UNCRC provide a comprehensive framework within which states are obliged to design a

juvenile justice system. The UNCRC covers a wide spectrum of guidelines and principles such as non-discrimination, the child's right to dignity and privacy, the need for children to respect the fundamental rights of others, and the desirability of promoting the child's reintegration and assuming a constructive role in society. The UNCRC supports equal treatment for children in conflict with the law including non-discrimination on the basis of sex or race. The UNCRC promotes the establishment of a separate criminal justice system for children in conflict with the law, establishing minimum age of criminal capacity and the need for creating alternatives to institutional care in a manner appropriate to the child's wellbeing and that are proportionate both to the child's circumstances and the offence. The wide range of issues and rights contained in the UNCRC safeguard children in conflict with the law from being treated as little adults and subjected to severe punishments. The UNCRC also recognises that every child is an individual and should be treated and managed as such within the criminal justice system. The African Charter on the Rights and Welfare of the Child is the regional instrument that guides administration of juvenile justice and its provisions are similar to that of the CRC in that they both promote the creation of a separate justice system for juveniles and the system to be guided by the principles of participation, non-discrimination, the best interest of the child and promoting the survival and development of children.

Zimbabwe legal framework

In Zimbabwe, there are various pieces of legislation which inform juvenile justice. 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. The Constitution of Zimbabwe Amendment (No. 20) Act 2013 (hereafter referred as the constitution) provides rights for people alleged to have committed a crime including juveniles. Section 31 of the constitution provides for legal aid in civil and criminal cases to the indigent within the limits of the resources available. Article 48(c) (ii) abolishes death sentence for persons below the age of 21. This is in sync with the UNCRC Committee on the Rights of the Child's recommendation to Zimbabwe in response to the State Party Report of 1995 which recommended Zimbabwe to create a clear legal prohibition of capital punishment. The constitution provides for the participation of children in judicial proceedings. Furthermore, it emphasises that the best interest of the child takes precedence in all matters that affect the child. In Zimbabwe, a child under seven years cannot be subjected to legal proceedings as they are presumed incapable of committing a criminal offence. Children between the ages of seven years but below 14 years can be charged with a criminal offence but there is need to seek authority to prosecute from the Attorney General's office. Those aged 14 to 17 can be prosecuted. When a juvenile is alleged to have committed an offence, the law requires that the matter be referred to a probation officer, who upon systematic investigation, prepares a social inquiry report highlighting the socio-economic circumstances of the juvenile (Kaseke, 1993). This flows from the fact that children are vulnerable due to their age and mental immaturity. Social inquiry reports are critical in explaining the special circumstances of the juvenile. Hence the courts should seriously consider probation officer's recommendations in disposing cases of juveniles.

However, these legal instruments do not provide guidelines for the rehabilitation of children in conflict with the law neither do they put measures to prevent juvenile crime or recidivism.

THE ROLE OF SOCIAL WORK PRACTICE

Social workers are involved in three spheres in the juvenile justice system that is the primary, secondary and tertiary levels (UNICEF, 2013). The first sphere that is the primary prevention is concerned with strategies that address the root cause of juvenile crime thereby creating a protective environment for all children (UNICEF, 2013). This sphere focuses on preventing juvenile crime through creating a protective environment in which children are not exposed to crime and are not pushed into criminal activity. The primary sphere is a fundamental element in social work practice. There is need for provision of holistic social protection system to tackle the socio-economic factors such as poverty that work against the welfare of children pushing them into engaging in criminal activities.

Secondary prevention strategies target children considered to be at high risk of getting in conflict with the law, in order to remove the propensity for committing offences (UNICEF, 2013). Social workers address risk factors that make children susceptible to crime such as dysfunctional home environments and inconsistent parenting, abuse and neglect, and community and societal problems. In addition, social workers can be involved in training good parenting skills through parenting clubs which enables children to be raised in a stable family environment where they are accorded adequate care and guidance necessary for their optimal physical and psycho-social development.

The last sphere in which social workers are involved is the tertiary sphere. Tertiary prevention aims at preventing re-offending by children already in conflict with the law and involves programmes that offer

rehabilitation of the child offender. Social workers act as rehabilitation officers in juvenile incarceration institutions such as young offender's prisons, probation hostels and training institutions. In this regard, the core role of the social worker is to facilitate rehabilitation of the child offender in order to prevent recidivism that is the tendency to relapse into criminal behavior. Counseling and other rehabilitative mechanism become indispensable to social work practice.

As already hinted at, the traditional role of probation officers is to prepare a social enquiry report on the child's circumstances. A role provided for under the Children's Act (Chapter 5:01) These reports typically provide background information on the child-family situation, health, education, special problems and strengths to help determine the most appropriate course of action regarding that particular child and the offence. Social workers should provide support during custodial sentences linking the child to other resource systems and ensure that the child is rehabilitated.

Further, they provide support consistent with the child's needs which includes ensuring that the child furthers education whilst incarcerated. Social workers should prepare the child for release, facilitate family reunification and offer post release support such as counseling to help the child re-adjust to the home environment.

CURRENT REFORMS IN THE JUVENILE JUSTICE SYSTEM

In recent years, there have been changes in the juvenile justice system. The system is increasingly becoming child-friendly through incorporating elements of restorative justice. The system is gradually moving from being retributive and punitive to becoming rehabilitative. A child-friendly justice system guarantees the respect and the effective implementation of all children's rights at the highest attainable level and gives due consideration to the child's level of maturity and understanding the circumstances of the case (UNICEF, 2013).

The fact that children are vulnerable due to their very ages and mental immaturity requires more elaboration. There is need to provide legal assistance in cases where children have allegedly committed a crime. Zimbabwe has developed a National Legal Assistance Strategy for Children (2012-2015) to assist children who come in contact with the law through the provision of free legal assistance and section 31 of the constitution provides for the right to legal aid to the indigent. The National Legal Assistance Strategy is being spearheaded by the Legal Aid Directorate, a department in the Ministry of Legal and Parliamentary Affairs. The strategy aims at reaching all children in contact with the justice system through provision of free legal assistance. However, this government department is failing to provide timely and quality legal assistance to children in contact with the law due to insufficient resources. UNICEF (2012) notes that there are only 20 legal aid lawyers in the country serving both adult and child clients and they are based in urban areas hence could not provide universal reach.

The provision of legal services was incorporated in the National Action Plan for Orphans and Vulnerable Children II (2012-2015) under the pillar of Access to Basic Services. This resulted in the development of the Access to Justice for Children Programme in which the legal aid directorate in partnership with Legal Resources Foundation, a civil society organisation are mandated to provide free legal assistance to children in contact with the law. The programme incorporates the justice/welfare model in assisting juvenile offenders through provision of specialist legal and psychosocial support services. Lawyers provide legal assistance while social workers give psychosocial support services for children who come in contact with the law. This is a crucial component of their work that has been incorporated to assist the juvenile in a holistic manner because the child receives both legal assistance and psychosocial support.

The juvenile justice system in Zimbabwe has incorporated elements of restorative justice. UNICEF (2013) defines restorative justice refers as any process in which the victim and the offender and where appropriate other individuals or community members affected by the crime participate actively in the resolution of matters arising from the crime. Article 40, 3(b) of the CRC states that wherever appropriate and desirable, measures for dealing with such children (in conflict with the law) without resorting to judicial proceedings should be employed. Restorative justice diverts juveniles from the formal justice system and incorporates elements of rehabilitation. The Beijing Rules further state that the police, the prosecution or other agencies dealing with the juvenile cases shall be empowered to dispose of such cases at their discretion, without recourse to formal hearing. Different types of diversion exist. They include diversion from arrest, from prosecution and from being incarcerated.

Diversion avoids stigmatisation, serves the child from being involved in the rigorous process of judicial proceedings and is also cost effective. Diversionary measures come into play at any stage: that is, at the time of arrest or immediately before the foreseen court hearing either as a generally applicable measure or on the decision of the police, prosecutor, court or similar body (Dearing et al, 2013).

Diversion is not a new phenomenon in Zimbabwe. The Prosecutor General or his representative has the power in terms of Section 9 of the Criminal Procedure and Evidence Act (*Chapter 9:07*) to decline to prosecute any matter if it satisfies the following conditions: accused is below the age of 21 years, accused has, without any doubt, admitted to the crime committed, and that the crime committed would not usually attract a jail sentence of more than 12 months. Zimbabwe is currently implementing a pilot project on Pre-trial diversion which serves to divert children who commit non-serious offences from the formal justice system. Pre-trial diversion came into

existence in 2009 after the Government of Zimbabwe accepted the implementation of a pilot programme for persons below the age of 21 (Ministry of Justice, 2013). The programme seeks to make young persons responsible and accountable for their actions, and to provide an opportunity for reparation and prevent young offenders from receiving a criminal record early in their lives (Ministry of Justice, 2013). The Programme is guided by a set of principles which include the best interest of the child to be the paramount interest, detention to be used as a measure of last resort and for the shortest possible period of time, minimize the child's contact with formal justice system, protection from abuse, exploitation and violence is to be respected all times, all children are to be separated from alleged and convicted adult offenders throughout contact with the justice system and boys and girls are to be treated differently, where necessary, to ensure maximum benefit from their participation in the diversion process (Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe, 2012). UNICEF (2013) reports that through the pre-trial diversion programme launched in 2013 for children in conflict with the law, 77% of referred children had their cases diverted from the criminal justice system. Pre-trial diversion is peculiar because it focuses largely on children and has incorporated rehabilitative components such as counselling, victim-offender mediation and constructive use of leisure time to prevent recidivism. This has shaped a new field of social work where specialist social workers work as diversion officers who deal solely with children in conflict with the law and related aspects (Pre-trial Diversion Guidelines, 2012).

Corporal punishment remains a topical issue in Zimbabwe. A number of legislative instruments in Zimbabwe allow for use of moderate corporal punishment as a measure to instil discipline at home, at school and in the juvenile justice system. The Criminal Law (Codification and Reform Act 2004, The Education Act 2004, The Criminal Procedure and Evidence Act 2004 and The Children's Act 2002 are examples of legislation that allow for corporal punishment in the country. Corporal punishment is considered as cruel, torture and inhuman treatment and as such unacceptable in a civilized society. The UNCRC is against any form of corporal punishment and article 37 of the same instrument specifies that no child shall be subjected to torture, cruel, inhuman or degrading treatment or punishment and that neither the death penalty nor life imprisonment without possibility of release should be imposed upon persons under the age of 18 years. Corporal punishment in Zimbabwe was discriminatory because it was inflicted only on male juveniles and girls were spared from the cane. The United Nations Committee on the Rights of the Child recommended Zimbabwe in response to the state party report of 1995 to adopt appropriate legislative measures to forbid whipping of male juveniles (Committee on the Rights of the Child, Concluding Observations on the Initial Report submitted on 23 May 1996). The general public exhibit mixed feelings on this judgement as some applauded it as ending the inhuman treatment whilst others raised the outcry that it was a form of child discipline and if outlawed children will develop unruly behaviours. It has been difficult to outlaw corporal punishment at home, school and even in the juvenile justice system because of the cultural forces which condone the use of the whip as a disciplinary technique.

CURRENT REFORMS RELEVANT TO SOCIAL WORK PRACTICE

A number of reforms have been instituted in the social work profession. These include the birth of diversion officers in the Ministry of Justice Legal and Parliamentary Affairs and creation of department of child welfare service in the Ministry of Labor and Social Services. NAP II Strategy has also incorporated social work professionals in selected legal aid organization for integrated approach in handling and processing of juvenile delinquency cases.

The Ministry of Labor and Social Services launched the department of Child Welfare Service in 2014. The department houses probation officers whose key role as stipulate in the Children's Act is to provide child welfare services to children in conflict with the law. The new approach ensures specialization by social workers in child welfare issues and is expected to bring enhanced functioning for the benefit of children. The Ministry of Justice Legal and Parliamentary Affairs has also incorporated diversion officers to cater for the socio-demographic needs and processes of juvenile delinquents. Diversion officers are social workers who are deemed to play facilitation role in pre-trial diversion process (Pre-Trial Diversion Guideline 2012).

The social work profession has seen the incorporation of case management system a product of NAP 11. The approach seeks to employ extensive community involvement in administration and management of child welfare case. Its benefits have spilled to the juvenile justice system as re-integration and rehabilitation of juvenile have made use of the already.

Challenges encountered

Children are kept in remand prison for prolonged periods of time. During their jail time, children are susceptible to abuse and being corrupted by hard core criminals. A remand prison is a place where alleged offenders are detained awaiting trial of their cases. Kaseke (1993) noted that juveniles continue to be kept in remand prisons as well as the convicted juveniles were kept in the remand prison with had core criminals while awaiting repatriation to probation hostels and training institutions. In the current turbulent economic environment that is highly volatile, government line departments such as the Zimbabwe Prisons and Correctional Services and the Department of

Child Welfare and Protection Services are struggling to ferry convicted juveniles in time. This defies the constitutional provision article 81 (i) and 8 (i) (i) that detention of children should be taken as a measure of last resort and if detained kept for the shortest period of time as children continue to be kept in remand prison for a long time.

The pre-trial diversion is a noble programme that has been successful in diverting juveniles who commit non serious offences from the rigors of the formal justice system as UNICEF (2013) reports that through the pre-trial diversion programme launched in 2013 for children in conflict with the law, 77% of children of referred children had their cases diverted from the criminal justice system. However, the programme is still in the pilot phase. Only juveniles in Harare, Bulawayo and Gweru are benefiting from the programme thereby prejudicing other children in small towns and remote areas who commit non-serious offences and if convicted they have to live with a criminal record, a stamp that affects their well-being for the rest of their lives. It is therefore recommended that the pilot phase ends in 2016 to nationalize the programme in order to achieve a universal reach.

Social workers work as diversion officers. They divert first time juvenile offenders who commit trivial cases from the rigors of the criminal justice system. Social workers are important in the process of diverting juveniles in conflict with the law and offer counselling and other necessary support services to address the presenting problem and the root cause of delinquency. This is an important function of social workers as they aim to rehabilitate the juvenile offender through counselling, victim-offender mediation and encouraging juveniles to use their leisure time constructively. However, the profession should extend the programmes to the community.

CONCLUSION AND RECOMMENDATIONS

Zimbabwe's juvenile justice system is currently implementing reforms as evidenced by the institution of new programs and policies such as the National Legal Assistance Strategy for Children (2012-2015) and implementation of a pilot program of the Pre-trial Diversion Programme. The social work profession has also revolutionised to having a separate department for child welfare in the Ministry of Labour and Social Welfare. This is where the probation officer's role is housed. However, mired of challenges continue to be faced and these are linked to resource constraints and the lack of a comprehensive policy that covers juvenile delinquency cases.

In light of the above discussion, a number of recommendations can be drawn. The pre-trial diversion system has proved to be an effective system in the management of juvenile delinquency cases. This paper calls for the expansion of the pre-trial diversion program to all parts of the country including rural areas. This will go a long way to redress the current urban bias on the restorative approach of the juvenile justice system.

Also, there is need to device mechanisms for effective partnerships between government, the private sector and civil society to strengthen the juvenile justice system. This will ensure efficiency with a specific focus on reducing continued violation of children's rights such as long detention.

The current juvenile justice system is premised on fragmented pieces of legislation. There is need to draft a comprehensive legislative instrument and or policy that specifically caters for the juvenile justice system. This will improve understanding among professionals and enhanced efficiency in dealing with cases of juvenile delinquency.

There is need for increased research in the field of juvenile delinquency so as to keep up with changes and dynamics in the field. Mainstreaming strategies can be employed in which during child welfare related surveys some components of juvenile delinquency related questions are incorporated.

The social work profession is a vital component in the juvenile justice system. However, social workers continue to perform traditional remedial roles which center on case inquiry conducted through home visits, report writing, placement and counseling service. There is need to incorporate pragmatic approaches such as advocacy and lobby for comprehensive legislative policies, better treatment of juveniles and increased access to resource for enhanced efficient processes.

Social workers are change agents. Hence they should advocate for child-friendly reforms in the juvenile justice system. The law should provide the court with a wide range of alternatives to institutional care and deprivation of liberty. Corporal punishment was widely used as a disposition measure for convicted child offenders but has since been repelled. Hence social work practice should be proactive and innovative in designing new disposition measures that respect the inherent dignity and worth of the child. The measures should be rehabilitative while promoting the rights and welfare of the juvenile offender. Article 40 (4) of the CRC states that a variety of dispositions such as care, guidance and supervision orders, counseling, probation, foster care and vocational training programmes and other alternatives to institutional care should be available to ensure that children are dealt with in a manner that is consistent with their well-being and proportionate to the offence. Social workers are agents of change and should be actively involved in lobbying for child friendly disposition measures that are in the best interest of the child especially on a time in which corporal punishment has been revoked.

Social workers should advocate legal reforms, especially changes with to the minimum age of criminal responsibility. The Committee on the Rights of the Child (1996) recommended that Zimbabwe raises the minimum age of criminal responsibility. Social workers should help Zimbabwe realise this recommendation. They need to

be at the forefront, lobbying for legal reforms. This ensures that children do not acquire a criminal record at a young age as a criminal record has ripple effects in their lives.

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