

**THE JUVENILE CRIMINAL JUSTICE  
SYSTEM IN ZAMBIA VIS-À-VIS THE  
INTERNATIONAL PROTECTION OF  
CHILDREN'S RIGHTS**

**BY**

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## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.0 ABOUT THE STUDY**

It has been accepted by almost every country in the world today that children have rights. There is also little disagreement about exactly what those rights are. However, the question is how are those rights being protected in practice especially in the criminal justice system? How are the provisions of the United Nations Convention on the Rights of the Child (CRC) being implemented in countries that are states-parties such as Zambia? These are questions this research seeks to answer.

This chapter provides an introduction to the concept of the protection of children's rights in the broader context of human rights in general; and briefly discusses the importance of human rights particularly in the post-Second World War era. It further outlines the statement of the problem, the objectives of the study, the methodology of the study and the significance of the study.

#### **1.1. THE EVOLUTION AND SIGNIFICANCE OF HUMAN RIGHTS: A GENERAL PERSPECTIVE**

Human rights are defined as rights that belong to everyone on account of being a human being.<sup>1</sup> Human rights are based on respect for the dignity and worth of each and every human being as a member of the society as a whole. Human rights serve a number of purposes: They help to promote peace both within national states and at international level; they protect human dignity; they are

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<sup>1</sup> Human Rights Commission – Strategic Plan, 2007 – 2011 at p.7 (Unpublished).

essential for individual well being and fulfilment; and they are necessary for the preservation of peace and justice.<sup>2</sup>

The promotion and protection of human rights has now become a subject of great international concern and more importantly so when it concerns the criminal proceedings affecting children who come into conflict with the penal law. After the Second World War in 1945, the world community pledged themselves to promote and protect human rights and fundamental freedoms as one of the purposes of the United Nations (UN). The first global document setting the international human rights standards is the Universal Declaration of Human Rights (UDHR).<sup>3</sup> The UDHR is based on the recognition of the inherent dignity and of the equal and inalienable rights and freedoms of all human beings whether adults or children. Therefore, the adoption of the UDHR was the first step towards the progressive codification of international human rights. Since its adoption, over 60 years ago, the principles enshrined in the UDHR have inspired more than 100 international human rights instruments which, taken together, constitute international human rights standards.<sup>4</sup>

The following are some of the most important characteristics of the international standards on human rights:-

- (i) **Human rights are Universal:** meaning that all people in all countries and of all cultures have and should enjoy them; they are applied to all people equally and without discrimination.
- (ii) **Human rights are inalienable:** this simply means that human rights cannot be taken away or given up. No one can have his or her human rights taken away other than in clear and specific circumstances, as provided by law.

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<sup>2</sup> See L. Henkin, *THE AGE OF RIGHTS (1990)*, Universal Declaration of Human Rights, 1998, preamble in G. Melander and G. Alfredsson, *THE RAOUL WALLENBERG COMPILATION OF HUMAN RIGHTS INSTRUMENTS 27 (1997)*. Also see the Human Rights Commission Strategic Plan (2007 – 2011) at p.7. (Unpublished).

<sup>3</sup> Adopted and proclaimed by the UN General Assembly resolution 217A (111) on 10<sup>th</sup> December, 1948.

<sup>4</sup> Z. Chadamuka, 'Defining Human Rights' *The LRF News*. Number 100 (September, 2007) p. 8 -9.

- (iii) **Human rights are indivisible, interrelated and inter dependent:** for this reason, it is insufficient to respect some human rights and not others. In practice, the violation of one right will often result in the violation of several other rights. All human rights should, therefore, be seen as having equal importance and as being equally essential to respect for dignity and worth of every person.

The concept of human rights enshrined in various international instruments<sup>5</sup> acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, poverty, birth or other status.<sup>6</sup> This means that adults and children are entitled to enjoy the same rights and fundamental freedoms and are subject to the same limitations in their enjoyment. However, the emphasis that children's rights are considered to be of critical importance is reflected in the fact that the derogation clause contained in other human rights treaties, which allows states to put some obligations 'on hold' during situations of emergency, is not found in the CRC.<sup>7</sup> The guiding principles of the CRC also apply with respect to children who are in conflict with the law and are prosecuted before the courts of law. One of the fundamental guiding principles is 'the best interests of the child' which should guide all policies, procedures and practices.<sup>8</sup> Therefore, it has been argued that a good and ideal juvenile justice system is one that is based on the rights of the child as contained in the CRC; one that puts the best interests of the child first by establishing a fair and humane system of justice for children and one that ensures that the national legislation conforms with international standards and guidelines on juvenile justice.

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<sup>5</sup> These include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the UN in 1966 and form part of the International Bill of Rights.

<sup>6</sup> UDHR, Art. 2.

<sup>7</sup> UNICEF, *International Criminal Justice and Children*, September, 2002 at p.37.

<sup>8</sup> CRC, Art. 3.

It is worth noting that international human rights law provides the international community with internationally accepted standards by which to judge and condemn violations of human rights. The fact that most human rights violations occur within a state principally in relations between a government and its own citizens, rather than on the high seas or in outer space outside the jurisdiction of any state means that ultimately effective protection of human rights must come from within the state.<sup>9</sup> Since Zambia is an integral part of the world community, its human rights must inevitably be judged by internationally accepted standards.

Zambia has ratified and is, therefore, a state party to most of the international and regional human rights instruments for the promotion and protection of human rights. This is full recognition and realisation of the fact that the country does not have particular circumstances that can make it possible for it to have its own peculiar procedures and infrastructure for the enhancement and protection of human rights in its own jurisdiction. The fact that Zambia is a member state of the UN as well as the African Union means that it is bound by the provisions of the international and regional instruments that have been proclaimed and adopted by the said organs; and to which it has appended its signature in ratification thereof. However, it has been observed that although Zambia has ratified a number of both international and regional human rights instruments, there has been very little domestication of these instruments. This is because the dualist system of law Zambia inherited from Britain entails that treaties ratified by the country do not automatically become part of Zambian Laws unless they are specifically incorporated through an Act of Parliament.

One of the most important Conventions Zambia has ratified is the CRC. It is this CRC which forms the basis of the legislation that is internationally acceptable for the promotion and protection of children's rights. For the CRC to be binding on Zambia, its provisions or indeed some of them have to be domesticated. The net effect of not domesticating the relevant provisions of the CRC is that these

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<sup>9</sup> Human Rights Commission - Strategic Plan, 2007 – 2011 at p.5. (Unpublished).

provisions and other internationally guaranteed rights for children in conflict with the law cannot be enforced in the Zambian Courts. This simply means that if Zambia does not domesticate the provisions of the CRC, it is as good as not having ratified its provisions.

In the researcher's considered view, it is practically difficult to appreciate the reasons for failure by the Zambian Parliament to incorporate some of the important provisions of the CRC into an Act of Parliament when Parliament sits regularly every year.

## **1.2. THE CONCEPT OF JUVENILE JUSTICE**

The juvenile justice system is the product of a historical and philosophical movement of substantial importance in the 20<sup>th</sup> Century. With the emerging and rising human rights concerns, the administration of the criminal justice system poses even greater challenges all over the world, Zambia being no exception.

Whilst it is recognized that everyone is entitled to the enjoyment and protection of their inherent human rights and fundamental freedoms, it is cardinal to appreciate that the child by reason of his physical and mental immaturity needs special safeguards and care including appropriate legal protection before and after birth.<sup>10</sup> This recognition implies that children are not like adults and consequently, are entitled to be treated differently. Children are people who are susceptible to difficult circumstances, people whose level of maturity is generally lower than that of adults, and as such people with special needs that require careful attention.

In their foreword to the UNICEF report on 'International Criminal Justice and Children' Emma Bonino, Member of the European Parliament and Carol Bellamy, Executive Director of UNICEF make a pertinent observation on the need for every child rights advocate and international criminal justice expert to

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<sup>10</sup> The CRC, preamble.

pay careful attention to the special circumstances of children who get themselves entangled in the criminal justice system. They state that:

By giving careful attention to the broader context of international criminal justice and the special needs of children, we believe that together we can make a difference for children in this world ..... we must not delay because children cannot wait. Let their impatience motivate our actions. We must be clear that the era of impunity is over, that we are entering a new era of justice and peace.<sup>11</sup>

From the above quotation, it can be deduced that every nation that has respect for child rights ought to adopt and formulate appropriate child-sensitive procedures that take into account the special needs of children, and ensure that human rights abuses involving children, such as brutality by the police when they arrest children, the use of adult infrastructure for trial of children etc. are addressed with the special attention they deserve. It is submitted that juvenile justice systems have developed in the world in order to protect the special rights of children in conflict with the law. In particular, the systems have developed to enhance the separation of adult offenders from juvenile offenders so as to avoid crime contamination and stigmatization.<sup>12</sup> For example, juveniles accused of crimes are to be separated from adult criminals, tried in specialized juvenile courts and if their cases are proved might be sent to correctional or training institutions or dealt with in any other less punitive way. The paramount consideration being the best interests of the child.

Even where the child appears before a court as a witness, the principle of separation from adults is still fundamental as it enhances the best interests of the child and his/her free participation in the proceedings.

Numerous human rights instruments that the UN has adopted since the end of the Second World War lay down universal standards for the promotion and protection

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<sup>11</sup> UNICEF, International Criminal Justice and Children, September, 2002. Foreword.

<sup>12</sup> E.M. Simaluwani, 1994. The juvenile justice system of Zambia. PhD Thesis. University of London. (Unpublished).

of human rights, including the rights of children. Therefore, efforts over the last 60 years to put in place an international legal framework for safeguarding children's rights and ensuring their protection have been largely successful.<sup>13</sup> The CRC, being the most widely ratified convention in history,<sup>14</sup> explicitly outlines international obligations for the protection of children. The CRC provides the most extensive articulation of the international standards relating to the protection of children's rights.<sup>15</sup> It recognizes the human rights to which children are entitled, including economic, social and cultural rights as well as civil and political rights.

It has been submitted that although human rights are mostly asserted at international level, their effective promotion and protection is primarily the responsibility of every individual state.<sup>16</sup> In furtherance of this responsibility, UN Member States have signed and ratified a number of international human rights instruments such as the CRC. By ratifying the CRC, States-Parties have committed themselves to protect children as part of their general undertaking to protect human rights and humanitarian principles laid down in various international instruments.

Zambia signed the CRC in September, 1990 and ratified it on 6<sup>th</sup> December, 1991.<sup>17</sup> This action provided an important framework for the government and its partners to work together to improve the living conditions and promote the wellbeing of all children in Zambia as well as to create greater awareness of children's rights.<sup>18</sup> This objective becomes even more important when it relates to criminal proceedings affecting children who come into conflict with the penal

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<sup>13</sup> UNICEF, International Criminal Justice at p.29.

<sup>14</sup> International Save the Children Alliance, July 2005 report indicates that as of January, 2005 the United Nations CRC had been ratified by 192 out of 194 Countries. Only USA and Somalia have not ratified it though both have signed it.

<sup>15</sup> UNICEF, International Criminal Justice at p. 37.

<sup>16</sup> Permanent Human Rights Commission, National Plan of Action for Human Rights, 1999 – 2009 at p.10. (Unpublished).

<sup>17</sup> Zambia popularized version of the State Party Report on the Convention on the Rights of the Child (2001). P.3 (Unpublished).

<sup>18</sup> Child Justice Forum "Promoting the Administration of Child Justice for Children in Zambia" User Guide (Unpublished).



law and face criminal prosecution in the courts of law. Child justice promotes the notion that even when children commit offences, they are still children with rights and must be treated as such. In addition to being a state-party to the CRC, Zambia has also enacted its own legislation which deals with child offenders in the criminal justice system. The legislation include the Juveniles Act,<sup>19</sup> the Constitution,<sup>20</sup> the Penal Code<sup>21</sup> and the Criminal Procedure Code.<sup>22</sup> In practice, the procedures and the infrastructural facilities for administering the law are fundamentally the same for both adults and children despite the recognition that children deserve special care and treatment.

### **1.3 STATEMENT OF THE PROBLEM**

UNICEF has submitted that children are protected by a vast body of human rights and humanitarian law but the key international legal instrument for the protection of children is the CRC. However, it has been contended, on one hand, that the notion of the protection of children and fulfilment of their rights is not new on the African continent, the first declaration on the rights and welfare of the child having been adopted by the Assembly of Heads of State and Government in 1979.<sup>23</sup> On the other hand, some legal theorists have argued that although the African Children's Charter prides itself on its African perspective on rights, it was inspired by trends evident in the UN systems.

World wide, most of the states that have ratified the CRC and other international human rights instruments have made attempts and in some cases have successfully adopted policies and enacted laws that conform to the set international standards in the administration of the juvenile justice system. While there has been progress in developing appropriate justice systems for children, there are still significant gaps in dealing with children caught up in the criminal

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<sup>19</sup> Cap. 53 of the Laws of Zambia.

<sup>20</sup> Cap. 1 of the Laws of Zambia.

<sup>21</sup> Cap. 87 of the Laws of Zambia.

<sup>22</sup> Cap. 88 of the Laws of Zambia.

<sup>23</sup> J.S. Nielsen. 2008. Children's Rights in Africa, A legal perspective. Ashgate Publishing Company at p.3.

justice system.<sup>24</sup> There have been a number of factors that have contributed to the failure of the desired appropriate juvenile justice system. Firstly, it has been widely acknowledged that dealing with the administration of justice for children in the criminal process is not an easy task as children require special attention and skill in handling them. For example, they require specially trained police officers, specially trained magistrates and above all child – sensitive facilities such as children’s courts and separate cells. In fulfilling these aspects, the most significant practical challenge for developing countries, such as Zambia, is the availability of sufficient money to meet these special needs. The major resource needed to realize the appropriate justice system for children is money which most countries lack due to budgetary constraints.

Secondly, whilst it has been accepted by the UN member states that have ratified the CRC that in all actions concerning children, whether undertaken by public or private social institutions, courts of law, administrative authorities or legislative bodies, the ‘best interests’ of the child shall be a primary consideration,<sup>25</sup> acts such as torture of children while in police custody, arbitrary detention, delays in concluding cases by courts and unwarranted removal from parental care are the order of the day in our *Zambian* criminal justice system. The ‘best interests’ of the child as an overriding principle is often blatantly ignored and child tailored facilities are non-existent. The conditions in police cells and court cells are very harsh and mostly unfit for a child’s habitation and yet, these are the places of detention for children who come into conflict with the law. In essence, this means that children are exposed to the same harsh conditions as adult offenders. In fact, it has been discovered that the *Zambian* laws limit the application of the ‘best interest’ principle to proceedings involving child custody and maintenance only<sup>26</sup> and not otherwise. However, it has been submitted that for the adequate

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<sup>24</sup> The African Child Policy Forum, ‘Realising Rights for children – Harmonisation of Laws on Children in Eastern and Southern Africa.’ (2007) at p.3.

<sup>25</sup> CRC, Art. 2.

<sup>26</sup> The African Child Policy Forum, ‘Realising Rights for Children.’ at p.32

protection of children's rights in the criminal justice system, no country can ignore or forego the 'best interests of the child' as being the overriding principle.

Thirdly, the criminal justice system affecting children lacks prioritisation and government commitment to reform the law. It has been observed that children are still not a top priority in Southern Africa despite the number of countries that have become party to the CRC and the African Charter.<sup>27</sup> For instance, in Zambia, this lack of urgency is shown by the time it had taken to report back to the Committee on the Rights of the Child on the progress in meeting the provisions of the CRC. The Human Rights Commission, has observed that Zambia has not been reporting regularly to the Treaty bodies that monitor implementation of international instruments including the CRC. By 1999, the initial report to the Committee on the Rights of the Child was late by more than five years.<sup>28</sup>

Fourthly, there seems to be evident lack of political will on the part of decision makers and legislators to allocate adequate resources to the sections of the criminal justice system, such as the courts, and there is also seemingly no political will to undertake legislative reform of the laws relating to the juvenile justice administration in Zambia. For example, there is evidence of inadequate court rooms in almost all districts in the country and this undermines the individual's right to a speedy trial.<sup>29</sup> Instead of Magistrates sitting to hear criminal cases every day, they do not do so because they share court rooms and have limited specific days of sitting. For instance, at present, Livingstone Subordinate Court has four Magistrates who share two court rooms and each Magistrate has effectively two days in a week to use a court room. In 2007, Kabwe Subordinate Court had seven Magistrates sharing two court rooms. In 2010, Monze Subordinate Court had three Magistrates sharing one court room. This meant that Magistrates had to sit on alternate basis and that arrangement substantially contributed to delayed

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<sup>27</sup> The African Child Policy Forum, 'Realising Rights for Children' at p.1.

<sup>28</sup> Permanent Human Rights Commission. National Plan of Action at p.41. (Unpublished).

<sup>29</sup> Personal Knowledge as a practicing Magistrate.

disposal of cases. It is the researcher's considered view that the issue of inadequate court rooms is as a result of lack of prioritisation by the government.

If one were to compare the provisions of part III of the Zambia Juveniles Act, the CRC and 'the Beijing Rules,'<sup>30</sup> he/she would be inclined to conclude that there are adequate legislative provisions for the protection of the rights of children in the criminal justice system in Zambia. However, the practice and theory seem to be at a great variance. It is an undeniable fact that Zambia faces practical challenges in implementing its own domestic laws and the provisions of the CRC. There are specific and general challenges that need to be addressed such as adequate resource allocation to criminal justice agencies, the change of the mind-set of the law enforcement agencies on how to treat children in conflict with the law, enhancement of political will and government commitment to upholding and protecting children's rights. Without these and many more challenges being addressed, the situation of children in conflict with the law will remain poor and subsequently the violation of their rights will continue unabated.

#### **1.4 OBJECTIVES OF THE STUDY**

The overall objective of this study is to examine and analyse the existing laws and ascertain the extent to which the Zambian laws are compliant with the international standards set out in the CRC and other international legal instruments in terms of appropriate infrastructural facilities and the best practices and procedures for dealing with children who come into conflict with the law. It is significant to appreciate that when a country ratifies a human rights instrument, it becomes accountable to all its citizens, including children, and to the international community for these rights. The state has an obligation to respect, protect and fulfil the rights enshrined in such human rights instruments.<sup>31</sup> It is the duty of the state not to interfere directly or indirectly with the enjoyment of the

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<sup>30</sup> The UN Standard Minimum Rules for the Administration of Juvenile Justice.

<sup>31</sup> International Save the Children Alliance, 'the Child Rights Programming' 2<sup>nd</sup> Edition, July, 2005 at p.16 (Unpublished)

citizen's rights. It has an obligation to take measures that prevent violation of individual rights; and to adopt appropriate legislative, administrative, budgetary, judicial and other measures towards the fulfilment and realization of human rights for its citizenry.<sup>32</sup>

The study seeks to establish the possible reasons for the Zambian government's failure to fully comply with the provisions of the Juveniles Act and the inability to domesticate some of the provisions of the CRC and other relevant international and regional instruments. To fully appreciate some of the reasons or challenges, a comparative analysis of the Zambian juvenile criminal justice system and that of the Zimbabwean juvenile criminal justice system has been done bearing in mind that the two countries share a common political, economic, and social background.

In summary, the consideration of the main objective of this dissertation focuses on the following specific areas of research:

- (i) The assessment of the adequacy of the current legislation, and the infrastructural facilities intended for use by children in conflict with the law in the broader context of the internationally acceptable standards and best practices;
- (ii) The examination and evaluation of the institutional and legal constraints that may have adversely impacted on the protection and realization of the children's rights when they come into conflict with the law;
- (iii) A comparative analysis of the Zambian juvenile criminal justice system and the Zimbabwean juvenile criminal justice system in light of the above stated objectives;
- (iv) Recommending some legislative changes, establishment of suitable infrastructural facilities, rehabilitation and maintenance of the said

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<sup>32</sup> International Save the Children Alliance at p.16.

infrastructural facilities that may positively contribute to the enhancement and protection of the children's rights.

- (v) The domestication of some of the important provisions of the international law on the rights of the children in conflict with the law.

To sum up, the study tests the hypothesis that children are entitled to special protection of their rights in the criminal justice system and that they cannot be treated like adults in similar circumstances.

## **1.5 METHODOLOGY**

The methodology used in this study was basically two fold, viz desk research and field research. Desk research was complemented by field research.

The desk research involved the examination of both primary and secondary data. Sources of data included text books written by legal theorists and practitioners, published articles in the Zambia Law Journal, Newspapers, UNICEF and the Human Rights Commission publications and other relevant unpublished works. The internet also provided a vital source of current information relevant to juvenile justice world wide and Zambia in particular. The researcher constantly made reference to the existing Zambian statutes as well as Zimbabwean statutes. Relevant statutes from other countries such as Ghana and South Africa were also reviewed. In addition, international human rights instruments relevant to the protection of the rights of children in criminal proceedings were an important source of information for this study. The strategy adopted sought to ensure that Zambia being a part of the 'global village' ought to apply both substantive and procedural law that was in conformity with the international bill of rights and the international best practices.

With regard to field research, three types of questionnaire were designed for the collection of data. The first one targeted institutions such as the police, the courts, the prisons, Nakambala approved school and Katombora reformatory school. The

main purpose of this type of questionnaire was to elicit information relating to the physical state of the facilities (building infrastructure), their holding capacity and some of the challenges the institutions were faced with in using and maintaining such facilities. The questionnaire further solicited for recommendations in dealing with some of the problems that were identified. The second type of questionnaire was designed to elicit information from decision and policy makers regarding the implementation of the CRC following its ratification by Zambia. Among the policy and decision makers targeted were the Ministry of Justice (Governance Secretariat), the Human Rights Commission (office of the Commissioner for Children), the Judiciary (National Child Justice Forum), the Commissioner of Prisons, the Commissioner of Juvenile Welfare under the Department of Social Welfare and UNICEF (Child Protection Specialist). The third type of questionnaire was administered directly by the researcher himself through having one-to-one meetings with juveniles. The said juveniles were picked at random. Some of the juveniles interviewed were still serving their school court orders either at Nakambala Approved School or at Katombora Reformatory School. The researcher also targeted juveniles who committed criminal offences either individually or jointly with other juveniles. Further, the researcher interviewed those juveniles who were jointly charged with adults although in such instances juveniles were treated by the system as adults.<sup>33</sup> Furthermore, the researcher held personal oral interviews with persons in authority at various institutions that were visited to clarify certain issues that affected the welfare and protection of children's rights.

This study also greatly draws on the practical experiences of the researcher who is employed as Principal Resident Magistrate in the Judiciary, and in that capacity as a visiting justice.<sup>34</sup> As a visiting justice, the researcher has conducted a number of visits to various police and prison cells, prisons remand cells, and the courts

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<sup>33</sup> For example, section 119 of the Juveniles Act, Cap. 53 provides for the holding of proceedings in camera where the hearing or trial involves juveniles alone and not where a juvenile is charged with an adult.

<sup>34</sup> The term 'visiting justice' has been defined to include the Minister, Deputy Minister and all Magistrates exercising their powers in accordance with sections 124 and 125 of the Prisons Act, Cap. 97 of the Laws of Zambia.

holding cells. Further, the researcher is the chairperson of the Livingstone Child Justice Forum and has in that capacity promoted exchange visits between Zambia and the neighbouring Zimbabwe. At such forums, experiences, the law and country best practices have been shared through well informed discussions and exchange of various pieces of legislation and brochures relating to the administration of juvenile justice in the two countries.

A study tour was undertaken by the researcher to Hwange district in Zimbabwe where an inspection of the Children's Court linked to child friendly room via video conferencing facilities was done. During the visit to Hwange, a focus group discussion was held with key criminal justice agencies such as the Resident Magistrate, the prosecutors, intermediaries and the social welfare officers.<sup>35</sup> This provided an educative information exchange forum. A number of Zimbabwean statutes were obtained in soft copy format at the same time. Further, the researcher had a personal interview with a magistrate<sup>36</sup> based at Victoria Falls town. However, the researcher was not permitted to inspect police cells and remand homes as express authority needed to be obtained from the Ministry of Home Affairs. Due to limited time, this was not possible. The data collected during the visit to Zimbabwe has greatly contributed to this study.

The strategy the researcher employed in both desk and field work was to emphasise the point that while all human beings in this world are entitled to fundamental freedoms and the universal rights, children by virtue of their tender age, immaturity and vulnerability needed special safe guards, protection and special infrastructure to cater for them in the criminal justice system.

The strategy adopted in conducting this research highlights some of the major challenges, problems and the prevailing situation of the children in the criminal

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<sup>35</sup> The Focus group discussion was organized and chaired by the Resident Magistrate for Victoria Falls town, Mr. Ramaboea on 27 November 2009.

<sup>36</sup> Interview: S. Rosemani, 10 /01/2011.



justice system in Zambia vis-à-vis the international protection of the rights of children.

In a nutshell, it is data from the various sources discussed above that has been analysed and subsequently, upon which conclusions and recommendations have been made in this study.

## **1.6 SIGNIFICANCE OF THE STUDY**

The study sought to determine what exactly were the problems in the implementation of the legal provisions of the Juveniles Act, the CRC and the Beijing Rules in Zambia. A number of problems that beset the proper functioning of the juvenile justice system were identified and recommendations intended to address them made.

It is hoped that the study will be significant in the following ways:

- (i) To assist government in enacting laws that will provide the necessary amendments to the existing legislation.
- (ii) To assist policy makers and criminal justice agencies in the formulation of child-friendly policies, procedures, practices, rules and regulations.
- (iii) To contribute to the body of knowledge in handling children in conflict with the law.

## **1.7 CHAPTER OUTLINE**

This study is divided into six Chapters. Chapter one provides an introduction to the concept of the protection of human rights in general and the concept of juvenile justice in particular. It briefly discusses the importance of human rights in the post – Second World War period. It further outlines the statement of the problem, the objectives of the study, the methodology and the significance of the study.

Chapter two outlines the historical background to the juvenile justice system in Zambia. It discusses the law that applies to children in criminal proceedings in Zambia and focuses on the evaluation of the relevant international human rights instruments. This has been done with a view of making a comparative analysis of the Zambian legislation and the international law on the protection of children's rights in criminal proceedings. The CRC, the 'Beijing Rules' and the African Children's Charter are the main instruments of reference in this respect.

Chapter three gives a brief situational analysis of the existing facilities and infrastructure for children who have come into conflict with the law. It evaluates the prevailing conditions in facilities such as police cells, prison cells, remand prisons, court cells and other 'detention' facilities like Katombora Reformatory, Nakambala Approved School and Insakwe Probation Hostel. Further, the chapter evaluates the role and the impact of the relevant legal institutions in the delivery of juvenile justice. The Chapter concludes that children in conflict with the law have received inadequate protection of their rights during the entire criminal process. At almost every stage of the criminal process, children have been mixed with adults and detained in unsuitable institutions.

Chapter four assesses whether Zambia has adequately accorded protection to the rights of children in conflict with the law. It evaluates the basic indicators for such protection and realisation of human rights. The chapter further discusses the juvenile court system in Zambia with regard to the institution of criminal proceedings, pre-trial procedures, court procedures and dispositions.

Chapter five examines the existing juvenile court system in Zimbabwe with regard to the institution of criminal proceedings and pre-trial procedures. It further examines juvenile court procedures and the manner of disposing of cases in that country compared to the Zambian juvenile justice system discussed in chapter four.

Lastly, chapter six summarises the major challenges and constraints in the delivery of juvenile criminal justice in Zambia and makes recommendations for the reform of the system taking into consideration the international standards and best practices. The recommendations also address procedural inadequacies and weaknesses in the system. Further, some law reforms have been recommended.

## CHAPTER TWO

### **INTERNATIONAL AND DOMESTIC LAW APPLICABLE TO CHILDREN IN CRIMINAL PROCEEDINGS IN ZAMBIA**

#### **2.0 INTRODUCTION**

This chapter outlines the historical background to the juvenile justice system in Zambia. It discusses the law<sup>37</sup> that applies to children in criminal proceedings in Zambia and the international human rights instruments. This is done with a view of making a comparative analysis of the Zambian legislation and the international law on the protection of children's rights in criminal proceedings. The CRC, the 'Beijing Rules' and the African Children's Charter are the main instruments of reference because they are the key international and regional legal instruments dealing with the rights of children and the administration of juvenile justice.

#### **2.1 HISTORICAL BACKGROUND TO THE JUVENILE JUSTICE SYSTEM IN ZAMBIA**

As is the case in a number of post-colonial African countries, the legal philosophy of the Zambian criminal justice system must start with a consideration of the country in its historical context. Prior to 24<sup>th</sup> October, 1964, Zambia<sup>38</sup> was a British protectorate and the laws that were applicable to the country were those of the British Government. Therefore, Zambia as it is known today is a product of colonialism. The country only became independent after 70 years of British colonial rule.<sup>39</sup> The legislation that the colonial masters enacted was mainly repressive and suppressive to the indigenous people. In addition, the

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<sup>37</sup> The legal framework and procedure for the administration of the criminal justice system in Zambia is mainly embodied in the Constitution of Zambia, Cap.1; the Juveniles Act, Cap. 53; the Penal Code, Cap.87; and the Criminal Procedure Code, Cap.88. These Acts apply to children as well as adults.

<sup>38</sup> Before independence, the country was called Northern Rhodesia with its neighbouring Zimbabwe in the South called Southern Rhodesia. Zimbabwe got its independence from Britain on 18<sup>th</sup> May, 1980.

<sup>39</sup> Permanent Human Rights Commission, National Plan of Action at p.8.

infrastructure that was built for the administration of criminal justice generally left much to be desired. However, in the sphere of juvenile criminal justice, the law that was enacted contained provisions that were seemingly sufficient for the special treatment of children in conflict with the law. What was lacking were the necessary infrastructure and adequate mechanisms for the implementation of the law. For instance, there was little attention paid to the construction of infrastructure that could be used specifically by children in conflict with the law. As a result of this, children were mixed with adults at almost all stages of criminal proceedings contrary to the legal requirements of the Juvenile Offenders Ordinance.

The Juvenile Offenders' Ordinance was the pre-independence statute that was introduced to Zambia (then Northern Rhodesia) in 1933. This was the same piece of legislation that was re-enacted in 1956 and has maintained its fundamental provisions to date. In short, the present Juveniles Act is a replica of the Juvenile Offenders' Ordinance under the British colonial rule.

At independence, Zambia's population stood at 3,500,000 people and by 1969 the population had increased to 4,056, 995 people. The increase was by an annual average growth rate of 3.1%.<sup>40</sup> Therefore, the infrastructure and other facilities that existed before or immediately after independence were mainly designed to cater for this population. Today, the population of Zambia stands at about 13,046,508 people more than three times what it was in 1969.<sup>41</sup> Like many other countries with increasing crime, the criminal activities in Zambia are mainly perpetrated by young persons who comprise the larger proportion of the population. The 2000 census of population and housing estimated that of the 10 million people in Zambia, 4.6 million were persons aged below 18 years.<sup>42</sup> Similarly, the Zambia Demographic and Health Survey (2001 – 2002) indicated

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<sup>40</sup> Central Statistics Office, 1990 Census of Population, Housing and Agriculture. Volume 10. Zambia Analytical Report, 10<sup>th</sup> August, 1995.p.2.

<sup>41</sup> Central Statistical Office, Zambia 2010 Census of Population and Housing. Preliminary Population Figures, February 2011. p.1 (Unpublished).

<sup>42</sup> Ministry of Sport, Youth and Child Development, National Child Policy (2006) p.4.

that persons below 19 years constituted 57 per cent of the total Zambian population. Despite this phenomenal rapid increase in population, there has been no corresponding infrastructural development and improvement of existing facilities intended for the protection of children's rights especially in the criminal justice system in the country. The infrastructure and 'detention' facilities that existed in the pre-independence era are still there with very little or no improvement at all.

The current Juveniles Act was enacted on 4<sup>th</sup> May, 1956. Since then it has undergone insignificant amendments. Therefore, it has been submitted that the juvenile justice system in Zambia is regulated by an antiquated piece of legislation which is a replica of the British legislation of 1933. However, it should be appreciated that in the last two decades or so the world has witnessed significant changes in dealing with young persons who come into conflict with the law as a result of the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice commonly referred to as the 'Beijing Rules',<sup>43</sup> and the CRC.<sup>44</sup> At regional level, the Organisation of African Unity (OAU) adopted the African Charter on the Rights and Welfare of the Child.<sup>45</sup> These international and regional human rights instruments have set standards to which states-parties such as Zambia should adhere. It has been widely contended that in spite of these positive developments, the implementation of the law as well as procedural practices mainly remain unchanged resulting in failure to provide the desired protection to children in conflict with the law in the context of the internationally accepted norms, standards and the best practices.

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<sup>43</sup> Adopted by the General Assembly Resolution 40/33 of 29<sup>th</sup> November, 1985.

<sup>44</sup> Adopted and opened for signature, ratification and accession by the General Assembly Resolution 44/25 of 20<sup>th</sup> November, 1989.

<sup>45</sup> Adopted by the Assembly of Heads of State and Government in July 1990.

## **2.2 THE LAW AND PRACTICE**

Today, national states have become members of the UN by which action they have agreed to be bound by international agreements and instruments that are intended for the promotion and protection of human rights, as adopted by the UN General Assembly. A country which has signed and ratified any such agreements or instruments is 'legally' bound to implement or enforce the provisions of the ratified instruments. Although there may not be legal sanctions, in the strictest sense of the law, a state-party that violates the provisions of international human rights instruments risks worldwide condemnation and possible exclusion from the membership of the world governing body, the UN. Each state party is also obligated to submit reports to thematic committees and in this regard to the 'UN Human Rights Committee' as a way of monitoring the promotion and protection of people's rights in individual States. Several thematic committees have also been established for specific purposes. For instance, the 'Committee on the Rights of the Child' has been established for the purpose of examining the progress made by States-Parties in achieving the realisation of the obligations undertaken under the CRC.<sup>46</sup> At regional level, a committee known as 'African Committee of Experts on the Rights and Welfare of the Child' has been established to promote and protect the rights and welfare of the child under the African Charter on the Rights and Welfare of the Child (hereinafter referred to as 'the African Children's Charter').

In the light of the foregoing, a nation state has a critical role and responsibility in the observance, upholding, promoting and safeguarding of people's rights. In this respect, it is important for national governments to put in place mechanisms for rendering remedies for violations of human rights. Many States have enshrined in their constitutions a 'bill of rights' which if breached attracts penal sanctions. The renowned American jurist, Oliver Holmes put it aptly that 'legal obligations that exist

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<sup>46</sup> CRC Article 43.

but cannot be enforced are ghosts that are seen in the law but that are elusive to grasp.<sup>47</sup>

### **2.2.1 THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS APPLICABLE TO CHILDREN'S CRIMINAL PROCEEDINGS**

The following are some of the most important international and regional human rights instruments relevant to the criminal proceedings affecting children worldwide and Zambia in particular:

#### **(1) The Universal Declaration of Human Rights (UDHR)**

The UDHR was the first comprehensive human rights instrument to be proclaimed by the UN General Assembly.<sup>48</sup> The UDHR was impressive evidence of the consensus on and commitment to human rights on the part of the nations in the world.<sup>49</sup>

The premise underlying the UDHR is that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.<sup>50</sup> The rights and freedoms contained in the UDHR are to be enjoyed by everyone without distinction of any kind on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>51</sup> Everyone has the right to life, liberty and security of person.<sup>52</sup> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or

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<sup>47</sup> B.M. Majula, 'Statutory provisions as they relate to juveniles: The case of Zambia. 'A paper presented to the YWCA seminar for magistrates on a Child Friendly Court. February, 1999 at p.2.

<sup>48</sup> Resolution 217 (111) of 10<sup>th</sup> December, 1948.

<sup>49</sup> Permanent Human Rights Commission, 'National Plan of Action for Human Rights', 1999 – 2009 at p.3

<sup>50</sup> UDHR, Art. 1.

<sup>51</sup> UDHR, Art. 2.

<sup>52</sup> UDHR, Art. 3.



punishment.<sup>53</sup> Everyone has the right to recognition everywhere as a person before the law.<sup>54</sup> Further, all people are equal before the law and are entitled without any discrimination to equal protection of the law.<sup>55</sup> Therefore, no one shall be subjected to arbitrary arrest, detention or exile.<sup>56</sup> Above all, everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.<sup>57</sup>

The foregoing cited rights and freedoms are fundamental in the dispensation of criminal justice affecting children in conflict with the law. It is to be noted that the rights and freedoms may not be exercised contrary to the purposes and principles of the UN. The rights and freedoms may be restricted only for the protection of the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare of society.

The adoption of the UDHR was the first step towards the progressive codification of international human rights standards. Besides the UDHR, there are two other equally important international human rights instruments namely the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These three international instruments constitute the international bill of rights. The two covenants are legally binding on states-parties.<sup>58</sup>

## (2) **The Beijing Rules**

The 'Beijing Rules' are commonly known as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. These rules were

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<sup>53</sup> UDHR, Art. 5.

<sup>54</sup> UDHR, Art. 6.

<sup>55</sup> UDHR, Art. 7.

<sup>56</sup> UDHR, Art. 9.

<sup>57</sup> UDHR, Art. 10.

<sup>58</sup> Z. Chadamuka 'Defining Human Rights' at p 8-9.

adopted by the UN in Beijing, China in 1985. These are the first set of international standard minimum rules for the administration of child justice or children who come into conflict with the law. The significant point about these rules is that they provide for separate and specialized systems of child justice and set out the minimum standard rules for the handling of children in conflict with the law under any legal system of UN member states. Certain principles of the Beijing Rules have been incorporated in the CRC and are, therefore, legally binding on states-parties.

There are thirteen fundamental guiding principles enshrined in the Beijing Rules as stated here below:

- (i) The fair and humane treatment of children who come into conflict with the law, thus promoting the well-being of the child.<sup>59</sup>
- (ii) The juvenile justice system must react proportionately to the circumstances of both the child who comes into conflict with the law and the offence. The principle of proportionality enhances the well-being of children and curbs punitive sanctions against them.<sup>60</sup>
- (iii) The use of diversion programmes which entails dealing with children in conflict with the law without resorting to formal trial by courts of law. This allows the police, the prosecution and the courts of law to remove the child in conflict with the law from criminal justice process at any stage of the proceedings before the final order is made. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration, for example, the stigma of 'conviction' and 'sentence'.<sup>61</sup> Diversion need not be limited to petty or minor offences only, thus rendering it an important instrument.

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<sup>59</sup> Beijing Rules, Rule 1(3).

<sup>60</sup> Beijing Rules, Rule 5(1).

<sup>61</sup> S. 68 of the Juveniles Act, Cap. 53 prohibits the use of the words, 'conviction' and 'sentence' in relation to any juvenile but this is common among prison officers and the general public.

- (iv) The use of detention only as a measure of the last resort, and for the shortest possible period of time.<sup>62</sup>
- (v) Children should always be detained separately from adults.<sup>63</sup> This is the only sure way of avoiding “criminal contamination” of children. This principle stresses the fact that no child should be held in a detention facility where they are vulnerable to the negative influences of adult detainees.
- (vi) Proceedings should always be conducted in the best interests of the child and should be conducted in a manner which allows for the child’s full participation.<sup>64</sup>
- (vii) Deprivation of the child’s liberty should be carefully considered, and only for serious offences.<sup>65</sup>
- (viii) Capital punishment shall not be imposed for any crime committed by juveniles.<sup>66</sup>
- (ix) Juveniles shall not be subjected to corporal punishment.<sup>67</sup>
- (x) Institutionalization should be a last measure after consideration of alternatives and for the minimum necessary period.<sup>68</sup>
- (xi) There should be continuous and specialized training for police officers who deal with children.<sup>69</sup>
- (xii) Where children do undergo institutional treatment, educational services should be provided to enable the children to return to society.<sup>70</sup>
- (xiii) Release of a child should be considered as soon as possible after arrest. A judge or other competent official/body (e.g. a magistrate or police officer) shall without delay consider release of a juvenile who is arrested.<sup>71</sup>

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<sup>62</sup> Beijing Rules, Rule 13(1).

<sup>63</sup> Beijing Rules, Rule 13(4) as read with Rule 26(3). See also International Covenant on Civil and Political Rights (ICCPR) art. 9 and 10(2)(b).

<sup>64</sup> Beijing Rules, Rule 14(2). See also Rule 15(1) and 2 of the same Rules.

<sup>65</sup> Beijing Rules, Rule 17(1)(b)(c).

<sup>66</sup> Beijing Rules, Rule 17(2). See also Art. 6(5) of the ICCPR.

<sup>67</sup> Beijing Rules, Rule 17(4) as read with Rule 18(1). See also art. 7 of ICCPR.

<sup>68</sup> Beijing Rules, Rule 19(1).

<sup>69</sup> Beijing Rules, Rule 12(1).

<sup>70</sup> Beijing Rules, Rule 26(1).

<sup>71</sup> Beijing Rules, Rule 10(2).

Further, the Beijing Rules in Rule 7(1) provide for the due process rights that are essential for a fair and just trial of juveniles. These procedural safeguards include the presumption of innocence; the right to be notified of the charges; the right to remain silent; the right to legal representation; the right to the presence of parents or guardians<sup>72</sup>; the right to call and cross-examine witnesses; and the right of appeal. These procedural safeguards are supposed to be guaranteed at all stages of proceedings.

Furthermore, Rule 8(1) of the said Rules entitles a juvenile to the right to privacy which right shall be respected at all stages of proceedings in order to avoid harm being caused to her/him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published.

### **(3) The United Nations Convention on the Rights of the Child (CRC)**

This is the key international legal instrument for the protection of children's rights. The CRC provides the most extensive articulation of the international standards relating to the protection of children's rights. First and foremost, the CRC is premised on the 'best interests of the child' principle as a primary consideration in all matters concerning children. This principle's application is not limited to decisions made by courts of law. It must be broadly applied to administrative decisions, policy formulation, diversion measures and so forth. The principle guides the application of all other principles of the Convention.<sup>73</sup> It implores states parties to respect and to accord each child within their jurisdiction the enjoyment and protection of the rights enshrined in the Convention without discrimination of any kind.<sup>74</sup> The importance of the CRC is highlighted by the fact that it includes the whole spectrum of rights such as civil and political, as

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<sup>72</sup> Rule 18(2) of the Beijing Rules also protects juveniles in this respect. See also Art.10 of ICESOR.

<sup>73</sup> J.S. Nielsen and J. Gallinetti, (eds). 2004. Child Justice in Africa, a guide to good practice. Community Law Centre. South Africa p. 22-23.

<sup>74</sup> CRC, Art. 2.

well as economic, social and cultural rights, adapted to the specific needs of children.<sup>75</sup>

To this end, therefore:

States Parties recognize the rights of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.<sup>76</sup>

It is cardinal, therefore, having regard to the provisions of the penal law and the CRC that each state party shall ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.<sup>77</sup> No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.<sup>78</sup> Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.<sup>79</sup> Such a child shall have the right to prompt access to legal and other appropriate

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<sup>75</sup> UNICEF, *International Criminal Justice and Children. No Peace without Justice* p.35

<sup>76</sup> CRC, Art. 40(1)

<sup>77</sup> CRC, Art. 37(a).

<sup>78</sup> CRC, Art. 37(b).

<sup>79</sup> CRC, Art. 37(c).

assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court of law and to a prompt decision on any action.<sup>80</sup>

Article 40(2)(b) of the CRC provides for the following guarantees to secure the protection of the due process of the law for children who are in conflict with the law:

- (i) To be presumed innocent until proven guilty according to law;
- (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians; and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (iii) To have the matter determined without delay in a fair trial in the presence of a legal counsel or his/her parents or legal guardians;
- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) To have the right of appeal against any decision made against him or her;
- (vi) To have the free assistance of an interpreter, if the child cannot understand or speak the language used; and
- (vii) To have his or her privacy fully respected at all stages of the proceedings.

To sum up, states-parties are required to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children who are in conflict with the law.<sup>81</sup>

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<sup>80</sup> CRC, Art. 37(d).

<sup>81</sup> CRC, Art. 40(3).

(4) **The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (RPJDL)**

In addition to the CRC and the Beijing Rules, there is the United Nations Rules for the Protection of Juveniles Deprived of their Liberty<sup>82</sup>(RPJDL) which is a very important international legal instrument for the protection of children in detention. These rules supplement the principles and procedures set forth in both the CRC and the Beijing Rules. The rules emphasise the principle that deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases only.<sup>83</sup> The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.<sup>84</sup>

It is emphasized that the deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles.<sup>85</sup> The juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.<sup>86</sup>

Juveniles who are detained under arrest or awaiting trial are presumed innocent and shall be treated as such. These detainees should be separated from convicted juveniles.<sup>87</sup> Further, juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available. They should have

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<sup>82</sup> The Rules were adopted by the UN General Assembly resolution 45/113 of 14 December, 1990 barely a year after the adoption of the CRC.

<sup>83</sup> RPJDL, Rule 2.

<sup>84</sup> RPJDL, Rule 11(b).

<sup>85</sup> RPJDL, Rule 12.

<sup>86</sup> RPJDL, Rule 13.

<sup>87</sup> RPJDL, Rule 17.

private and confidential access to their legal representative. They should also be provided with opportunities to pursue work with remuneration and continue education or training but such work, education or training should not be the cause for their continued detention. They should be afforded leisure and recreation compatible with the interests of the administration of justice.<sup>88</sup>

Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, including a police cell, in order to record evidence of prior ill-treatment or to establish whether there is need for further medical care.<sup>89</sup> The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile while in a detention facility. This includes the juvenile's illness, injury and death.<sup>90</sup>

Rule 60 prohibits the use of instruments of restraint and force except in exceptional cases when explicitly authorized and specified by law and regulation; and where all other control methods have been exhausted or have failed. Finally, rule 67 prohibits all forms of disciplinary measures constituting cruel, inhuman or degrading treatment, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.

**(5) The African Charter on the Rights and Welfare of the Child (ACRWC)**

The African Children's Charter was adopted by the OAU Assembly of Heads of State and Government in July, 1990. The African Children's Charter came into force on 27<sup>th</sup> November, 1999 after its ratification by 15 member states. To date 26 member states, including Zambia, have ratified it while 34 countries have signed it. In adopting the African Children's Charter, the African Heads of State

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<sup>88</sup> RPJDL, Rule 18.

<sup>89</sup> RPJDL, Rule 50.

<sup>90</sup> RPDJL, Rule 56.



and Government committed themselves individually and collectively to take all necessary steps and measures, legislative and otherwise to ensure the protection, survival and development of the child in conformity with the provisions of the African Children's Charter and discourage any inconsistency with regard to the rights, duties and obligations contained therein. The African Children's Charter recognizes the unique and privileged position of a child in an African Society. In a broader sense, the African Children's Charter supplements the CRC as it spells out some clauses that have not been covered in the CRC. It further covers some specific aspects which are peculiar to Africa.<sup>91</sup> For example, it provides for the elimination of customs, social and cultural practices that endanger the health or life of a child.<sup>92</sup>

The African Children's Charter notes with concern that the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger; and on account of the child's physical and mental immaturity he/she needs special safeguards and care. Furthermore, the child requires legal protection in conditions of freedom, dignity and security.<sup>93</sup>

With regard to the legal protection of children, the African Children's Charter stipulates a number of safeguards which include the following: Every child shall be entitled to the enjoyment of the rights and freedoms without any form of discrimination.<sup>94</sup> The best interests of the child shall be a primary consideration in all actions concerning the child.<sup>95</sup> In all judicial proceedings the child shall be provided with the opportunity to communicate his/her views either directly or

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<sup>91</sup> OAU Special Committee on Children and Armed conflict, A Guide on Children's Rights (May, 2002) Addis Ababa. Ethiopia. Foreword.

<sup>92</sup> ACRWC, Art. 21(1)(a). Other matters specially provided for in the Children's Charter include rights of refugee children, adoption of children, protection against apartheid, abduction and sexual exploitation.

<sup>93</sup> ACRWC, preamble.

<sup>94</sup> ACRWC, Art. 3.

<sup>95</sup> ACRWC, Art. 4(1).

through an impartial representative and those views shall be taken into consideration by relevant authorities.<sup>96</sup> Every child has an inherent right to life and no death sentence shall be imposed on him/her for any offence.<sup>97</sup> No child shall be subjected to arbitrary or unlawful interference with his/her privacy.<sup>98</sup> The child shall be protected from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse.<sup>99</sup> The African Children's Charter makes special provisions for the administration of juvenile justice and states that:

Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.<sup>100</sup>

In addition, some important safeguards provided for in the African Children's Charter include the following:

- (i) Children in detention must be separated from adults.
- (ii) Every child accused of infringing the penal law:
  - (a) Shall be presumed innocent until proven guilty.
  - (b) Shall be promptly informed of the charges against him in a language he/she understands.
  - (c) Shall be accorded legal assistance in the preparation and presentation of his defence.
  - (d) Shall have the matter determined as speedily as possible.
  - (e) Shall enjoy the right of appeal against any decision to a higher body.
  - (f) Shall not have his/her trial proceedings published in the press or other media.

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<sup>96</sup> ACRWC, Art. 4(2)

<sup>97</sup> ACRWC, Art. 5.

<sup>98</sup> ACRWC, Art. 10.

<sup>99</sup> ACRWC, Art. 16.

<sup>100</sup> ACRWC, Art. 17.

- (g) Once apprehended, shall have his parents or guardians notified as soon as possible of such apprehension.

## **2.2.2 ZAMBIAN LEGISLATION APPLICABLE TO CHILDREN IN CRIMINAL PROCEEDINGS**

Zambia has enacted a number of statutes which provide for the overall legal framework and procedure for the administration of the criminal justice system in the country. The criminal justice system inevitably extends its tentacles to children who come into conflict with the law. The principal pieces of legislation that apply to children in conflict with the law are the Constitution of Zambia, the Penal Code, the Criminal Procedure Code, the Probation of Offenders Act,<sup>101</sup> and the Juveniles Act. However, this is not to say that there are no other statutes that have criminalized certain acts or omissions by children.<sup>102</sup>

Below is the brief summary of the salient features of the principal Acts aforesaid:

### **(1) The Constitution of Zambia, Cap. 1 of the Laws of Zambia**

The Constitution of Zambia is the supreme law of the land and if any other law is inconsistent with it that other law shall, to the extent of the inconsistency, be void.<sup>103</sup> The Bill of Rights contained in part III of the Constitution provides for the protection of the fundamental rights and freedoms of every individual in the country.

The Constitution of Zambia in Art. 11 provides that:

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<sup>101</sup> Cap. 93 of the Laws of Zambia.

<sup>102</sup> There are a number of statutes which include: Road Traffic Act No. 11 of 2002; Wildlife Act No. 12 of 1998; Narcotic Drugs and Psychotropic Substances Act, Cap. 96 of the Laws of Zambia; Dangerous Drugs Act, Cap. 95 of the Laws of Zambia; Immigration and Deportation Act No. 25 of 1997, to mention but a few.

<sup>103</sup> Constitution of Zambia, Cap.1, Art. 1(3)

It is recognized and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this part,  
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Although Part III of the Constitution does not specifically mention children, the provisions contained therein nonetheless articulate children's rights as part of their human rights.<sup>104</sup> The Bill of Rights guarantees to every person, including children, the right to life,<sup>105</sup> the right to personal liberty,<sup>106</sup> protection from torture or inhuman treatment or degrading punishment,<sup>107</sup> and protection from discriminatory laws,<sup>108</sup> to mention but a few.

With regard to criminal proceedings, the Constitution of Zambia has provided adequate safeguards to secure the protection of every individual who is charged with a criminal offence. Article 18(1) of the Constitution states that if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Further, Article 18(2) of the Constitution of Zambia provides that:

Every person who is charged with a criminal offence:-

- (a) Shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;
- (c) Shall be given adequate time and facilities for the preparation of his defence;

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<sup>104</sup> Report on the Review of child related legislation in Zambia, Zambia Law Development Commission, (January, 2008).p.12-13

<sup>105</sup> Constitution of Zambia, Cap. 1, Art. 12.

<sup>106</sup> Constitution of Zambia, Cap. 1, Art. 13.

<sup>107</sup> Constitution of Zambia, Cap. 1, Art. 15.

<sup>108</sup> Constitution of Zambia, Cap. 1, Art. 23.

- (d) Shall unless legal aid is granted to him in accordance with the Law enacted by Parliament for such purpose be permitted to defend himself before the court in person or at his own expense, by a legal representative of his own choice;
- (e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to the witnesses called by the prosecution; and
- (f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

And except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(2) **The Penal Code, Cap. 87 and the Criminal Procedure Code, Cap. 88 of the Laws of Zambia**

The law enshrined in the Penal Code and the Criminal Procedure Code provides for the overall legal framework for law and order in Zambia. The Penal Code prescribes the acts or omissions which constitute offences and the penalty for the persons convicted of such offences. The Criminal Procedure Code, on the other hand, outlines the procedure that should be followed in handling cases by criminal justice agencies such as the police, the magistrates (judges) and to some extent the prisons authorities.

The non-observance of some of the provisions of the Penal Code or the Criminal Procedure Code may render the criminal proceedings including trial and judgment a nullity. But in some instances, the non-observance of other provisions of the aforesaid legislation may prompt a Superior Court or an Appellate Court to order a re-trial of a case.

It is provided that a person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and a penalty shall not be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time it was committed.<sup>109</sup>

According to s. 14 of the Penal Code, a child who is under the age of eight years is not criminally responsible for any act or omission. However, a child above eight years but below 12 years is only criminally responsible for his acts or omissions if it can be proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or to make the omission. Therefore, it can safely be concluded that criminal liability for children in Zambia arises after a child has attained the age of eight years. A male child who is under the age of twelve is presumed to be incapable of having carnal knowledge.<sup>110</sup>

Children in Zambia enjoy the sacred right to life to the fullest. A sentence of death shall not be pronounced on or recorded against a person convicted of an offence, if it appears to the court that, at the time when the offence was committed, he/she was under the age of 18 years.<sup>111</sup>

The Criminal Procedure Code in s.90 to s.99 makes provisions for the institution of criminal proceedings against a person, either being an adult or a child. s.90(1) states that proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without a warrant. This is the same way in which children are brought before magistrates (subordinate courts which assume the jurisdiction of juvenile courts).

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<sup>109</sup> The Constitution of Zambia, Cap. 1 of the Laws of Zambia, Art. 8(4).

<sup>110</sup> Penal Code, Cap. 87, s. 14(3)

<sup>111</sup> Penal Code, Cap. 87, s. 25(2)

### (3) **The Juveniles Act, Cap. 53 of the Laws of Zambia**

The Juveniles Act<sup>112</sup> is the primary law that governs children in conflict with the law. The Act in s.2 defines a ‘child’ as a person who has not attained the age of 16 years. A ‘young person’ as a person who has attained the age of 16 years, but has not attained the age of 19 years. A ‘juvenile’ simply means a person who has not attained the age of nineteen years and include both a child and a young person. The words ‘juvenile’ and ‘child’ in this study are used interchangeably. However, contemporary theorists consider the word ‘juvenile’ as having negative connotations and labelling. Therefore, the word ‘child’ is more preferred.

The procedures for conducting preliminary proceedings as well as court proceedings is outlined under Part III of the Juveniles Act.

The Act in s.58 to s.62 outlines the procedure relating to preliminary proceedings which include: arrest and detention of juvenile offenders, bail for juveniles arrested; custody of juveniles not released on bail after arrest; custody of juveniles in places of safety<sup>113</sup> and remand prisons. For example, a juvenile may not be detained in custody unless the charge is one of homicide;<sup>114</sup> or it is in the interest of such person to be removed from association with any reputed criminal or prostitute; or the police officer in charge believes that the release of such juvenile would defeat the ends of justice. Other than in the foregoing circumstances, the police officer in charge is required to release a juvenile on police bond in his own

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<sup>112</sup> Cap. 53 of the Laws of Zambia.

<sup>113</sup> Juveniles Act in s.2 defines ‘place of safety’ as including any institution, police station, or any hospital or surgery, or any suitable place the occupier of which is willing temporarily to receive a juvenile, but does not include any remand prison, prison or detention camp.

<sup>114</sup> Bail or police bond is prohibited for offences of murder, treason, misprision of treason or treason felony, aggravated robbery and other offences carrying a possible mandatory capital penalty (see s.123 of the Criminal Procedure Code Cap.88). Section 43 of the Narcotic and Psychotropic Substances Act Cap.96 prohibits the release of accused persons on bail.

recognizance, with or without sureties.<sup>115</sup> If the juvenile is not released on police bond, the officer in charge of the police station shall cause such person to be detained in a place of safety. However, the question that begs an answer is whether there are such places of safety in Zambia or if such places exist are they sufficient or do they meet the acceptable standards as places of safety? According to Miss Olipa Manenga, Social Welfare Officer for Livingstone, a place of safety must be one which should provide safety and comfort to children in distress. It must be a well ventilated shelter with sufficient beddings, enough food provisions, clean water supply, sanitary disposal facilities and well trained officers to take care of the needs of such vulnerable children. The officers in charge of places of safety ought to possess skills in psycho-social counselling. Ms. Manenga indicated that there were no places of safety in Livingstone. Lubasi home which used to be a place of safety was turned into a transit home for children and other people in need.

The Juveniles Act provides that where it is impracticable to detain a juvenile in a place of safety or the juvenile is of so unruly or depraved a character that he cannot safely be so detained or that by reason of the state of health or of the mental or bodily condition of the juvenile it is inadvisable so to detain the juvenile, a certificate under the hand of the police officer in charge of a station shall be produced to the court before which the juvenile is brought. The purpose of the certificate is to explain reasons why it was not possible to release the juvenile on his own recognizance on police bond. In practice, it seems that this provision is not complied with and magistrates do not even ask about the certificate in question. Hence there is a good number of juveniles in detention in remand prisons pending their trial.

The Juveniles Act in s.58 prohibits the mixing of juveniles with adults while in detention in a police station, or while being conveyed to or from any

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<sup>115</sup> Juveniles Act, Cap. 53, s. 59.



criminal court, or while waiting before or after attendance in any criminal court. Further, the Act prohibits the association of juveniles with adult offenders who are not their relatives, other than an offender with whom the juveniles are jointly charged. A girl child (being a juvenile) is provided with a special safeguard while in detention, being conveyed or waiting for a court case in that she always has to be under the care of a woman.

The Juveniles Act in s.59 empowers a police officer in charge of a police station to release on police bond juveniles who have been arrested and detained in police cells prior to their appearing before a Court. This power cannot be exercised for non-bailable offences such as murder, treason, aggravated robbery, and other serious crimes. The issue of bail or police bond is discussed in details from page 71 to page 74 of this study.

The procedure of juvenile court proceedings is provided for under s. 64 of the Juveniles Act. A subordinate court sitting as a juvenile court is empowered to hear and to determine any charge against a juvenile except for offences involving homicide or attempted murder. A juvenile court is supposed to hold its sitting in a room other than that in which any other courts ordinarily sit, unless no such other room is available or suitable. If no such room is available or suitable, the juvenile court shall sit on different days or different times from those on or at which ordinary sittings are held.<sup>116</sup> At the hearing of juveniles cases, only persons authorized by court may be present. The people who may be present during the hearing include: members and officers of court; parties to the case; legal advisers or representatives; and witnesses; *bona fide* representatives of newspapers and news agencies; and those persons specifically authorized by court may be present at the hearing of juvenile cases.<sup>117</sup> The procedure followed in terms of explanation of the charge or taking a plea, the presentation of evidence in chief, cross-

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<sup>116</sup> Juveniles Act, Cap. 53, s.119(1).

<sup>117</sup> Juveniles Act, Cap. 53, s. 119(2).

examination and re-examination is the same as in adult courts.<sup>118</sup> There are, however, some special rules of procedure and practice that apply to juvenile court proceedings which do not apply to adult court proceedings. These special procedures include, but are not limited to the following:

- (i) Juvenile court proceedings are always held *in camera*, that is, in closed courts.
- (ii) At the close of the evidence in chief of each witness, the magistrate shall, if the juvenile is not legally represented, ask the juvenile, and the juvenile's parents or guardians to put any questions to the witness.<sup>119</sup>
- (iii) Where the court is satisfied that the offence is proved against a juvenile, there is always the need for a social welfare inquiry report which gives such information as to the juvenile's general conduct, home surroundings, school record and medical history. This is to enable the court to deal with the case in the best interests of the juvenile.<sup>120</sup>
- (iv) The words 'conviction' and 'sentence' are not used in relation to juveniles who have been found guilty of an offence.<sup>121</sup> The court would simply enter 'a finding of guilty' if the charge has been proved beyond all reasonable doubt by the prosecution. If not, 'a finding of not guilty' or 'charge not proved' would be entered on the record.
- (v) No child shall be sentenced to imprisonment or to detention in a detention camp.<sup>122</sup>
- (vi) No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other manner.<sup>123</sup>

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<sup>118</sup> The procedure is substantially the same as that provided for under the Criminal Procedure Code, Cap.88.

<sup>119</sup> Juveniles Act, Cap. 53, s. 64(4).

<sup>120</sup> Juveniles Act, Cap. 53, s. 64(7).

<sup>121</sup> Juveniles Act, Cap. 53, s. 68.

<sup>122</sup> Juveniles Act, Cap. 53, s. 72(1).

<sup>123</sup> Juveniles Act, Cap. 53, s. 72(2).

- (vii) A court shall not order a child who is below 16 years of age to be sent to a reformatory unless the court is satisfied that having regard to his character and previous conduct, and to the circumstances of the offence, it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a reformatory.
- (viii) Publication of the juvenile court proceedings is restricted to the facts of the case only. Therefore, no newspaper report or wireless broadcast shall reveal the name, address or school, or include any particulars calculated to lead to the identification of any juvenile concerned in any such court proceedings. The taking of pictures of any juvenile so concerned in the proceedings is prohibited.<sup>124</sup>
- (ix) Parents or guardians of the juveniles are entitled to be informed of the arrest of their children; and are required to attend at the court before which the case is heard or determined during all stages of the proceedings. The parents or guardians whose attendance is required are those who have had the actual possession or custody of the juvenile.<sup>125</sup> In practice, where a parent or a guardian is not able to attend court proceedings and the court is satisfied that it would be unreasonable to require his or her attendance, it may dispense with such attendance. In such a case a social welfare officer will be required to attend the trial of a juvenile instead. It is not permissible for a juvenile court to proceed to hear a juvenile's case in the absence of a parent or guardian or a legal representative of the juvenile or indeed a Social Welfare Officer. One of the aforesaid persons must always attend court whenever a juvenile appears before it.
- (x) Where a juvenile is found guilty of an offence for which, but for the provisions of the Juveniles Act, a sentence of imprisonment would have been passed, the court by which the juvenile is found guilty may instead of passing such sentence of imprisonment, order him to be detained in a

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<sup>124</sup> Juveniles Act, Cap. 53, s.123(1).

<sup>125</sup> Juveniles Act, Cap 53, s. 127.

reformatory.<sup>126</sup> The Juveniles Act provides for the establishment of approved schools and reformatories and how they are expected to function. For example, Katombora Reformatory School and Nakambala Approved School have been established pursuant to the provisions of this Act.

#### 4. **The Probation of Offenders Act, Cap. 93 of the Laws of Zambia**

This Act provides for the probation of offenders and for matters incidental thereto. It is an important piece of legislation because ordinarily children should not be sentenced to a term of imprisonment for the offences of which they have been found guilty. The Probation of Offenders Act in s.3(1) provides that:

Where a court by or before which a person is convicted of an offence, not being an offence the sentence for which is fixed by law, is of the opinion that, having regard to the youth, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to do so, the court may, instead of sentencing him, make an order, hereinafter in this Act referred to as a 'probation order', requiring him to be under the supervision of a probation officer for a period to be specified in the order of not less than one year nor more than three years.

The provisions of s.3 of the said Act apply to both adults and children. In Zambia, probation orders have mostly been used for child offenders. In fact a 'probation order' is specifically provided for under s.73(1)(b) of the Juveniles Act as one of the methods of dealing with juveniles against whom a charge has been found proved. A probation order entails that a juvenile offender shall be under the supervision of a probation officer (social welfare officer) who will ensure that such a juvenile exhibits good behavior, undertakes to

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<sup>126</sup> Juvenile Act, Cap. 53, s.73(2).

reform and does not commit any more crimes during the probation period. The probation officer's main duty is to provide counseling and education services to the juvenile for a minimum period of one year and not exceeding three years. In some instances both the offender and the victim may be required to attend counseling sessions by the probation officer. This is mostly common for assault and sexual offences. The need to attend counseling sessions has sometimes been extended to parents and guardians in the event that the court is of the view that they might have conducted to the commission of the offence for which the juvenile's case has been found proved and the juvenile ordered to undergo probation. When a court settles for a probation order it means that the juvenile offender may not also be ordered to be sent to a reformatory or approved school or a prison unless he fails to abide by the terms of the probation order.

## **CHAPTER THREE**

### **THE GENERAL OVERVIEW OF THE EXISTING SITUATION OF CHILDREN IN CONFLICT WITH THE LAW IN ZAMBIA**

#### **3.0 INTRODUCTION**

This chapter gives a brief situational analysis of the existing facilities and infrastructure for children who have come into conflict with the law. It evaluates the prevailing conditions in institutions such as police cells, prison cells, remand prisons, court cells and other ‘detention’ facilities like Katombora Reformatory School, Nakambala Approved School and Insakwe Probation Hostels. Further, the chapter evaluates the role and the impact of the relevant legal institutions in the delivery of juvenile justice. The Chapter concludes that children in conflict with the law have received inadequate protection of their rights during the entire criminal process. At almost every stage of the criminal process, children have been mixed with adults and detained in unsuitable institutions. Furthermore, children in conflict with the law have had limited access to legal representation.

#### **3.1 SITUATIONAL ANALYSIS OF CHILDREN IN THE CRIMINAL JUSTICE SYSTEM**

To clearly understand and appreciate the situation in which the Zambian children find themselves in the criminal justice system, inspection visits to various institutions that directly handle and deal with children were conducted. The prevailing conditions in such institutions, the procedures adopted in dealing with children and the treatment they received from officers provided significant indicators of how the rights of children in conflict with the law were being promoted and protected in Zambia.

The research revealed that the physical state and appearance of most of the institutions is not good. Generally, the buildings are dirty both inside and outside

requiring to be repainted. Most of the institutions experience frequent sewerage blockages, inadequate or no piped water supply. There are no bathing facilities particularly in police cells. Toilet fittings such as toilet pans and cisterns are broken or damaged in nearly all institutions making the places terribly filthy and unfit for human habitation. Ventilation is poor with no lighting system in most of the cells. It is apparent to the authorities, ventilation and lighting are not necessary in detention facilities. Such was the mentality of the colonial masters which unfortunately survives to this modern age.

Most of the children who experienced the criminal justice system submitted that they were ill-treated, tortured and badly beaten by police officers who apprehended them or those that were on duty at the time they were taken to police stations for various offences. Such beatings and torture were described as one way by which the police sought to obtain confessions, on one hand; and as a punishment for the offences they committed, on the other hand. They said they were rarely provided with food and water to drink. In cells which had no toilets, children were provided with either newspapers or plastic bags to defecate in and only allowed to do so once per day. As for taking a bath, such activity was unknown for the period they spent in police custody. The children further stated that they were incarcerated together with adults in the same cells which at times were congested especially at most police stations in Lusaka.

At most police stations, the police officers in charge kept the female juveniles in female adult cells where these were in existence or at the inquiries office until the day they would appear before court for their charges. In all situations, children were exposed to the cold and mosquito bites as the police did not provide any beddings and mosquito nets to detainees. Some juvenile offenders complained that sometimes they were granted police bond which was later revoked by the courts on their first appearance for plea. Instead, the courts substituted police bonds with cash bails which were beyond the means of many juveniles and their parents or guardians. In other instances, the police or courts were simply not

willing to release juvenile offenders on either police bond or bail for reasons which were not explained to juvenile offenders and/or their parents or guardians. They alleged that police bond or bail was easily granted to children of the rich who were represented by lawyers. The children described police officers as cruel, and not fit to handle human beings.

With regard to prison authorities, the children submitted that they had fair treatment from the officers. The treatment they received was not as bad as that which they were exposed to by police officers. However, they complained of being mixed with adult offenders in cells that were filthy and over-crowded. They also complained that the 'cell captains'<sup>127</sup> imposed unnecessary punishment on them for minor offences such as putting hands in pockets, failure to address them appropriately according to prison language (e.g. *Bwana* or *bwana mukubwa*). They further complained of diseases such as scabies, malaria, sexually transmitted diseases such as HIV/AIDS. Male juveniles submitted that male adults sodomised them at night. They stated that they were compelled to submit to such barbaric acts by adult offenders; and were warned not to report to anyone in authority because if they did so, they would subsequently be beaten or denied food and sleeping space. The Human Rights Commission observes that the problem of sodomy in the country's prisons cannot end because prisoners sleep close to each other due to congestion.<sup>128</sup>

The researcher discovered that although prison cells at Mukobeko, Mpima, Mazabuka, Kamwala (commonly known as Chimbokaila) and Livingstone had toilets and bathrooms, these were in most cases damaged with no piped water supply. They were dirty and filthy places. The inmates used buckets to bring water for the toilets and for their bath. The buckets were insufficient and in some cases were a source of fights between inmates. Children suffered more at the hands of adults. It was further discovered that there were no separate cells for

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<sup>127</sup> These are fellow inmates who assume the role of overseers in dormitories or cells.

<sup>128</sup> The Post, 4 February, 2011 at p.8.



adult offenders and juvenile offenders at both police stations and prisons except at Mukobeko Medium Prison where there was a separate cell for juveniles.

At both Katombora Reformatory School and Nakambala Approved Schools, the main problem seemed to have been lack of suitable beds and mosquito nets resulting in children complaining of backaches and suffering from malaria respectively. The dormitories had no ceiling boards at both schools and window panes had been extensively damaged thereby allowing free entry of mosquitoes and flies. No fly screens were provided.

With specific reference to Katombora Reformatory School, nearly all the dormitories had cracked and damaged floors. The toilets were dirty and mostly submerged in water as the toilet rooms were also used by the pupils<sup>129</sup> as shower rooms. There were no shower rooms provided in the dormitories. The wet floors of the toilets provided a breeding ground for germs and other water borne diseases. Children further complained that apart from carpentry, plumbing, bricklaying and tailoring courses, they did not receive skills training in other fields to meet their various aspirations in life. They proposed that they be trained in driving, mechanics, and computer sciences. They also suggested that they needed to be provided with the necessary tools and equipment on their release on licence.<sup>130</sup> They stressed that without the necessary tools and equipment they were forced into committing further crimes which they deemed would assist them to survive in society. Children's complaints and suggestions at Katombora Reformatory School were similar to those of children at Nakambala Approved School. However, the proposal made by the pupils for the provision of tools and equipment was not backed by any legislation. If anything, it needed government to formulate a deliberate policy of providing tools and equipment to pupils released on licence or indeed the enactment of appropriate legislation.

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<sup>129</sup> In accordance with Rule 2 of the Approved School Rules, Cap. 53 'pupil' means a juvenile sent to an approved school in pursuance of an approved School Order.

<sup>130</sup> According to Rule 67(1) of the Reformatory School Rules, Cap. 53 an inmate is eligible for release on licence by the Commissioner of Prisons after he has served not less than nine months of his detention at the reformatory school.

Nearly all the officers in charge of police stations and prisons, magistrates, prosecutors, as well as other decision makers in government and key stakeholders such as UNICEF and the Human Rights Commission admitted in their questionnaires that children's rights in the criminal justice system in Zambia were not adequately protected because of the reasons which include the following:

- (i) Children are ill-treated, beaten and tortured by police upon their arrest in order to extract confessions from them;
- (ii) Children are detained in police cells for unnecessarily long periods before making their first appearance in court;
- (iii) The police or prison cells used for the detention of children in conflict with the law are unfit for children's habitation. The cells lack water borne toilets, bathrooms/showers, and there is no provision of beddings.
- (iv) Children are usually mixed with adults while in police custody, in remand prisons, in court holding cells and when being conveyed to and from court and indeed while awaiting their turn in court itself.

Various sectors of society have bemoaned the situation in which children find themselves in the criminal justice system. For example, the Provincial Education Officer for Copperbelt Province had this to say:

It is my cry to the nation as a whole that we protect our children from torture or any other cruel or degrading treatment. Children in conflict with the law are to receive fair and just treatment. Those who work to uphold the law must administer it in a just way. This means that children cannot be imprisoned or held in police cells with adults.<sup>131</sup>

- (v) Children are made to serve longer 'prison' terms under the pretext of reformation than adults for similar offences when they are detained at Katombora Reformatory School. The minimum period being nine months

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<sup>131</sup> Sunday Post, 8 August, 2010. Remarks by the Provincial Education Officer for Copperbelt Province during the launch of the Children's manual.

and the maximum being four years as provided by s.103 of the Juveniles Act. It would appear that it was for this reason that the Supreme Court in the case of **Gedion Musonda and Another v The People**<sup>132</sup> decided that a reformatory order is a very severe punishment and should only be made when other methods of reformation are in the circumstances entirely inappropriate or have proved in vain in the past. In this case, three juvenile offenders aged 16,15 and 13 were found guilty of burglary and theft. The trial magistrate on the recommendation of a probation officer ordered that they be sent to a reformatory.

In the same case Cullinan, A.J.S. observed that in the case of the second appellant juvenile, the learned trial magistrate did not seem to consider the provisions of s.72(3) of the Juveniles Act which reads as follows:

A court shall not order a child to be sent to a reformatory unless the court is satisfied that having regard to his character and previous conduct and the circumstances of the offence, it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a reformatory.

In the instant case, the reformatory order was set aside and a probation order substituted.

In similar terms, Article 37(b) of the CRC provides that detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

- (vi) Children are subjected to the same punishment as adult offenders. This is especially so for children who are jointly charged and convicted of offences together with adult offenders. This also extends to cases where

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<sup>132</sup> (1979) ZR.53.

minimum mandatory sentences have been prescribed, for instance, defilement, stock theft etc.

In the case of **Kapya Kandeke v the People**<sup>133</sup>, the appellant who was aged 18 years at the time of his trial appealed against the minimum mandatory sentence of 15 years imposed on him for the offence of defilement by the high court. His lawyer argued that as a juvenile, he should have been suitably dealt with in any other manner.

The Supreme Court, observed that:

Under s. 72(2) and 73(1)(i) of the Juveniles Act, Cap. 53 where the offender is a young person, he can be sentenced to imprisonment, if he cannot be suitably dealt with in any other manner. However, having regard to what we have said above, the sentence of 15 years imprisonment, with hard labour, stands. That is the statutory minimum sentence for defilement.’

- (vii) Children’s cases are not usually properly determined because, they are heard by the same magistrates who preside over adult cases. This, therefore, means that the juvenile offenders have to join the long endless cause lists thereby denying them a speedy trial. Additionally, this procedure takes away the ability of a magistrate to take into account the best interests and special needs of children in the criminal justice system. For example, in the case of **Tembo v The People**,<sup>134</sup> the appellant, a juvenile, appealed against a finding of guilt and a reformatory order made against him by the juvenile court following his own plea of guilty. The record disclosed that the resident magistrate made no inquiry concerning the whereabouts of the appellant’s parents until after the plea had been taken and the finding of guilty recorded.

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<sup>133</sup> SCZ Judgment No. 32 of 2010 (Unreported).

<sup>134</sup> (1974) ZR.286.

The Supreme Court held, *inter alia* that:

Section 127 of the Juveniles Act, Cap. 217 (as it then was) stresses the importance which the legislature attaches to the attendance wherever possible, during all stages of the parents or guardian of a juvenile; sets out in detail the procedure to be adopted and the circumstances in which such attendance may be dispensed with. In all cases the record should disclose that these provisions have in fact been complied with and, where the parent or guardian is not required to be present, the reasons why his attendance has been dispensed with should be stated.

In the same case cited above, Baron DCJ (as he then was) stated that:

‘We cannot over emphasise that such provisions designed for the protection of juveniles are there to be complied with and not ignored’

In this case the appeal was allowed and the reformatory order set aside on account of the trial magistrate’s failure to comply with the provisions of the Juveniles Act.

In the case of **Clever Chalimbana v The People**<sup>135</sup> which considered the provisions of section 127 of the Juveniles Act, it was held that ‘the important consideration is that if these provisions are not complied with the juvenile may be prejudiced.’

The researcher<sup>136</sup> has experienced several instances where the high court has sent back juvenile cases for retrial on account of trial magistrates’ failure to comply with necessary provisions of the Juveniles Act.

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<sup>135</sup> (1977) ZR. 282 (SC).

<sup>136</sup> As Principal Resident Magistrate, the researcher is charged with the responsibility of allocating both new cases and those sent for re-trial by the high court to other Magistrates or himself.

### **3.2 THE ROLE AND IMPACT OF CRIMINAL JUSTICE AGENCIES (C.J.A.s).**

It is acknowledged that the promotion and protection of human rights does not end at standards setting alone. For the rights to be respected, protected and realised certain mechanisms have to be put in place. It is for this reason that the African Child Policy Forum observes that:

The effective implementation and fulfillment of children's rights are directly related to the magnitude of effort made by various stake- holders, particularly government, to meet their obligations to respect, protect and fulfill children's rights... In general, child-friendliness in a government is reflected in the form of conducive legal and policy foundations for the protection of children; budgetary commitment to the provision of their basic needs and achievement of outcomes for children, and government's willingness to allow children's participation in the decision-making process.<sup>137</sup>

In Zambia, there are many key role players in the criminal justice system that may enable the system to either succeed or fail in achieving the intended purpose. If the criminal justice system is to work very well, all the key role players must be keen and willing to uphold and protect the rights of every individual regardless of their status in society, whether adults or children, in conformity with the Constitution, various pieces of legislation and indeed the international bill of rights. The objective of promoting and protecting the rights of individuals may sometimes fail due to inadequacies in the law, failure to comply with the established legal rules and norms and at times due to ineptitude of the role players. Some challenges can be addressed by the national government whereas others by the individual officers and their institutions. There is, for instance, the issue of finances, and the reform of the law which are the sole responsibility of

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<sup>137</sup> African Child Policy Forum. "The African Report on Child well being: How Child-friendly are African governments?" 2008. Addis Ababa. Ethiopia. p.125.

the government. However, issues such as failure to comply with established legal norms and procedures may be addressed at both individual and institutional level.

This part of the study discusses the role and impact of each of the key role players in the criminal justice system affecting children as follows:

### **3.2.1. THE ZAMBIA POLICE FORCE**

The Zambia Police Force is established pursuant to Art. 103 of the Constitution of Zambia and its operations are regulated by the Zambia Police Act<sup>138</sup>. This Act provides for the organisation, functions and discipline of the Zambia Police Force. The command and control of the Zambia Police Force is vested in the Inspector General (I.G.) of police who is appointed by the President of Zambia. The I.G. delegates some of his powers to the officers in charge of police stations who subsequently exercise their powers through individual police officers. In exercising their functions, the police officers are expected, among other things, to be professional, disciplined and competent. Police officers are generally expected to play a vital role in promoting and protecting individual rights and liberties. They have the duty to protect life and property; to preserve law and order; and detect and prevent crime.<sup>139</sup> This has to be done in a manner that is consistent with the domestic law and international human rights standards. It is for this reason that the effective deployment of a policing service in a manner that respects human rights is one of the key means through which a sovereign state can fulfil both its international and national obligations towards its own citizens.<sup>140</sup> It is, therefore, cardinal that government as a whole and police officers in particular treat their role as being of great importance in the protection of human rights

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<sup>138</sup> Cap. 107 of the Laws of Zambia.

<sup>139</sup> Constitution of Zambia Cap. 1, Art. 104.

<sup>140</sup> Amnesty International, "Policing to protect Human Rights. A survey of police practice in countries of the Southern African Development Community (1997- 2002)" p. 3

because police agencies that operate effectively, lawfully and humanely are essential elements in securing a social order for all human rights to be realized.<sup>141</sup>

In Zambia, the police are given wide powers of arrest under s.26 of the Criminal Procedure Code. Under this section a police officer is empowered to arrest any person whom he suspects, upon reasonable grounds, of having committed a cognizable offence, without an order from a magistrate. The powers of arrest exercised by the police are in fulfilment of their mandate under the provisions of Art. 104 of the Constitution of Zambia referred to above. These powers of arrest are exercised by police in respect of both adults and children.

The police provide the initial contact with the children who have been apprehended. This initial contact might profoundly influence the child offender's attitude towards the state and society. The success or failure of subsequent interventions is, to a large extent, dependent on the initial contact. If a child in conflict with the law is treated badly by the police at this point, it will be difficult for the state to build a relationship of trust and co-operation and later on reform the child. The police are expected to behave in a manner appropriate to the legal status of the child, and in a manner which promotes the well-being of the child.<sup>142</sup>

The police must always act fairly, humanely and in an informed manner.

### **3.2.2 SUBORDINATE COURTS**

Subordinate courts are commonly referred to as magistrates' courts. These courts are established pursuant to the provisions of s.3 of the Subordinate Courts Act.<sup>143</sup> All subordinate courts in Zambia are courts of record.<sup>144</sup> They have limited jurisdiction to hear and determine both civil and criminal cases. All trials in the

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<sup>141</sup> R. Crawshaw and L. Holmstrom, (eds). 2001. 'Essential text on Human Rights for the police : A compilation of International instruments; Kluwer Law International, The Hague.

<sup>142</sup> The essential procedural safeguards and the manner in which children are supposed to be treated is elaborated in Art. 37 of the CRC. See also Rule 10(3) of the Beijing Rules.

<sup>143</sup> Cap.28 of the Laws of Zambia.

<sup>144</sup> Subordinate Courts Act, Cap. 28, s. 11.



subordinate courts are held before a magistrate sitting alone, or before such a magistrate with the aid of assessors.<sup>145</sup>

In terms of juvenile criminal justice, the Juveniles Act establishes every subordinate court as a juveniles court for the purpose of hearing any charge against a juvenile; or exercising any other powers conferred on it by or under the Juveniles Act or any other Act.<sup>146</sup> A juvenile court is empowered to hear and dispose of any case against a juvenile other than homicide or attempted murder.<sup>147</sup> However, in instances where a juvenile is jointly charged with an adult for a serious offence triable only by the High Court, such a case shall not be heard and determined by the juveniles' court. For example, treasonable offences and aggravated robbery are triable only by the High Court. A juvenile or a child who has been jointly charged with an adult is treated as an adult and as such not entitled to the protection of the Juveniles Act.<sup>148</sup>

The establishment and empowerment of subordinate courts to deal with children's cases may reasonably justify the argument that any logical effort to design and implement policy for the promotion and protection of children's human rights in the juvenile justice system in Zambia should be based on a firm knowledge of the underlying principles to the juvenile courts and in the manner in which these courts handle juvenile offenders in the criminal process.<sup>149</sup> It is further submitted that subordinate courts in Zambia have a significant role to play in enforcing constitutionally guaranteed rights as well as international human rights standards, although they have no powers to invalidate laws that violate the rights and freedoms contained in the Constitution of Zambia.<sup>150</sup> They have, for instance, the power to decide whether to proceed with a child's case or deal with it in any other

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<sup>145</sup> Criminal Procedure Code, Cap. 88, s. 197.

<sup>146</sup> Juveniles Act, Cap. 53, s. 63.

<sup>147</sup> Juveniles Act, Cap.53, s. 64.

<sup>148</sup> Juveniles Act, Cap.53, s.119 and s.59.

<sup>149</sup> E.M. Simaluwani, 1997. 'The Criminal Process in Zambia'. Zambia Law Journal, Vol 29. p.71.

<sup>150</sup> A.W. Chanda, 2000. 'The Role of Lower Courts in the Domestic Implementation of Human Rights.' Zambia Law Journal. Vol. 33. p. 1 – 17.

manner, to release the child on bail and order parents to provide counseling, to make a probation or reformatory order and above all, to create a friendly court environment which ensures a fair and free trial of a child offender with enhanced child's participation in the proceedings.

### **3.2.3 THE LEGAL AID BOARD (LAB)**

The LAB is constituted pursuant to the provisions of the Legal Aid Act.<sup>151</sup> The Act provides for the granting of legal aid in civil and criminal matters and causes to persons whose means are inadequate to enable them engage legal practitioners to represent them. The professional staff of the LAB is 34 lawyers. LAB offices have been established at each provincial centre. As at 31<sup>st</sup> December, 2010 there were only 18 lawyers employed and it is these same few lawyers who were expected to cover the entire nation.

Legal aid may be applied for by the indigent or people with inadequate means to hire the services of a private legal practitioner. The courts on their own motion may also grant legal aid certificate to those people who fall in the said category.<sup>152</sup> Persons whose applications are successful or those who have been granted legal aid by the courts are required to contribute to LAB a total sum of K170,000.00 as consultation fee<sup>153</sup>. There have been instances where some people have failed to raise the said K170,000.00 to pay to LAB. In those instances, the Director of LAB

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<sup>151</sup> Cap. 34 of the Laws of Zambia as amended by Act No. 17 of 2000.

<sup>152</sup> Legal Aid Act, Cap. 34, ss.8,9,13 and 16. Under the foregoing sections, Subordinate Courts and High Courts have power to issue legal aid certificates to any person who has insufficient means to engage a legal practitioner to represent him/her; or having regard to all the circumstances of the case, it is desirable in the interests of justice to do so; or in a case where a point of law of public importance is likely to arise.

<sup>153</sup> Legal Aid Act Cap. 34, s.17. Under this section the Director of LAB is empowered to determine the amount of fees to be paid by any person who has been granted legal aid, as a contribution to the cost of that legal aid. An interview with Mrs S.C. Lukwesa, Senior Legal Aid Counsel for Southern Province on 28<sup>th</sup> May, 2012 revealed that the consultation fee has now been increased from K170,000.00 to K180,000.00.

may use his discretion to allow a lawyer from LAB to represent such people in court.<sup>154</sup>

Much as LAB is an institution with good intentions, it has had its own challenges. One of the challenges is that most people still believe that lawyers from LAB are not as good and articulate as private legal practitioners. However, this perception is gradually changing. Secondly, the K170,000.00 consultation fee seems to be unaffordable by most people who are intended to benefit from this scheme. Thirdly, there is insufficient knowledge about the existence and the role of LAB amongst the majority of people in the country. Lastly, LAB is too grossly understaffed to make any meaningful contribution to the criminal justice system. According to the Senior Legal Aid Counsel<sup>155</sup> for Southern Province, the last constraint seems to be the major determinant of the provision of legal aid. Therefore, LAB has tended to limit the grant of legal aid to accused persons facing serious criminal cases mostly in the High Court. To this extent, therefore, the Board handles a very limited number of criminal cases in the Subordinate Court where naturally juvenile cases are supposed to be heard and disposed of. The consequence has been that most juvenile offenders appear before the juvenile courts without legal counsel representation.

#### **3.2.4 DEPARTMENT OF SOCIAL WELFARE**

The Department of Social Welfare is core to the promotion and protection of the rights of children in the criminal justice system. As far as dealing with juvenile offenders is concerned, Social Welfare Officers are usually brought into the juvenile justice system as law enforcement agents as they get cases referred to them for the purpose of conducting social investigations and submitting reports and recommendations to the courts. However, courts are not bound by such recommendations, although they are nevertheless assisted and guided in deciding

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<sup>154</sup> Interview: B. Chiwala, 31/12/2010.

<sup>155</sup> B. Chiwala.

on the most appropriate dispositions to be handed down. Depending on the order made by the courts, Social Welfare Officers may be called upon to implement such orders e.g. probation orders which give them the power to provide counseling and education services to probationers.<sup>156</sup>

Social Welfare Officers are knowledgeable in child protection systems hence the justice system gets great assistance in the form of probation officers and juvenile inspectors. These officers are generally trained to handle children in distress situations such as defilement, sodomy, incest, indecent assault, kidnapping, abduction, assault, unlawful wounding, forced marriage, etc.

The Director of the Department of Social Welfare has been appointed as Commissioner for Juvenile Welfare. The Commissioner for Juvenile Welfare and juvenile inspectors are empowered to perform the duties assigned to them under the Juveniles Act.<sup>157</sup> The Commissioner of Juvenile Welfare and a juvenile inspector may, at any reasonable time and for the proper performance of their duties, enter, among others, any institution or dwelling of any person, society or body in whose custody a juvenile has been placed and may make such examination into the state and management of that institution as he or she thinks fit.<sup>158</sup> As probation officers, social welfare officers also manage the affairs of juveniles placed under the probation order in accordance with the provisions of the Probation of Offenders Act.

At all times, social welfare officers have represented parents or guardians who have either not been traced or have been unable to attend court sittings at which their children's cases are tried. They have also acted as guardians for children when they are apprehended or arrested by police.

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<sup>156</sup> A person placed under supervision by a probation order is known as 'probationer'

<sup>157</sup> Juveniles Act, Cap. 53, ss.7(1) and 7(2).

<sup>158</sup> Juveniles Act, Cap.53, s.8.

### **3.2.5 KATOMBORA REFORMATORY SCHOOL**

Katombora Reformatory School situated in Kazungula District of Southern Province was established in 1950 pursuant to s.91 of the Juveniles Act with a capacity to accommodate 120 male juveniles only. The institution was established as a correctional and training facility for juvenile offenders that have been found guilty of various offences and ordered by the juvenile court to be placed in a reformatory.

According to s.94 of the Juveniles Act, a reformatory order made by a juvenile court must be confirmed by the high court before it is carried into effect. The male juveniles in the reformatory are commonly referred to as 'lads'. At the time of research,<sup>159</sup> only 45 out of 81 lads had their reformatory orders confirmed by the High Court.

The Reformatory is under the supervision and control of the Commissioner of Prisons and for this purpose he is known as Chief Inspector of Reformatories. He/she is assisted by Katombora Reformatory Board. At present, Katombora Reformatory School is managed by a senior prisons officer at the rank of superintendent and he is assisted by a number of other prison officers. Technically, these prison officers still feel that children sent to the institution are also prisoners and the treatment they give them does not usually differ from that given to adults. Although the Department of Social Welfare has seconded a social welfare officer whose main task is to provide counseling and educational services, the overall impact is negligible.

For academic education, there is Katombora basic school which also provides education to the lads who are willing to continue with school. So far the School has been doing well in this area.

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<sup>159</sup> On 31 May 2010.

Katombora Reformatory School also offers training courses in carpentry and joinery, plumbing, bricklaying and blocks making, and tailoring. The lads proposed the introduction of new courses such as driving, mechanics and information technology (IT).

At the time of research, there were only 81 inmates. This may not be an indication that the number of juveniles ordered to go to the reformatory is low but there are more juveniles ordered for reformation from other provinces in Zambia who for logistical reasons are never taken by the Department of Social Welfare to Katombora Reformatory School.<sup>160</sup> Juveniles who have not been taken to the Reformatory usually find themselves in ordinary prisons where they are detained together with adult convicts.

In the immediate vicinity of the Reformatory School, there is an open air prison which accommodates adult convicts. Serious concerns have been raised as to the location of this open air prison because of the potential danger of the juveniles mixing with adults and thereby being taught criminal activities by hard-core adult criminals.

### **3.2.6 NAKAMBALA APPROVED SCHOOL**

Nakambala Approved School is situated in Mazabuka District of Southern Province. It is the only approved school in Zambia. It was established in 1963 pursuant to the provisions of s.75 of the Juveniles Act with a capacity to accommodate 75 pupils. It was established for the reception, maintenance and training of male juveniles only.<sup>161</sup> It has facilities for education and training of pupils in the School. For administrative purposes, Nakambala Approved School is referred to as 'Nakambala Training School' and is run by the Department of Social Welfare under the Ministry of Community Development and Social

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<sup>160</sup> B.M. Majula, 'Study on the juvenile access to Justice.' February, 2000. p.15.

<sup>161</sup> Juveniles Act, Cap. 53, s.75(1).

Services. The School is supervised and controlled by the Commissioner of Juvenile Welfare who, by law, must be a person holding the position of the Director of Social Welfare. The Director is also referred to as the Principal Probation Officer. The Director is assisted in the execution of his/her duties by the Provincial Social Welfare Officer and such other social welfare officers as may be appointed from time to time. These officers assume the roles of probation officers and juvenile inspectors, as the case may be. For example, when a social welfare officer carries into effect a probation order, he/she is referred to as a probation officer.

Nakambala Approved School accommodates only male juveniles who are sent to the school in pursuance of an approved school order. In accordance with s.79 of the Juveniles Act, no approved school order made by a juvenile court shall be carried into effect until it has been confirmed by the High Court.

The day to day administration of the School is vested in the Principal who is appointed by the Commissioner for Juvenile Welfare. Juveniles sent to the School are referred to as pupils<sup>162</sup> to avoid stigmatization and labelling. The Principal of the School is responsible to the Commissioner for the efficient management of the School. As soon as practicable after the admission of a pupil, the Principal shall notify that pupil's parent or guardian of such admission.<sup>163</sup>

The School offers both education and vocational training. Lower primary education from grade 4 to grade 6 is provided to all interested pupils in the school.<sup>164</sup> Beyond grade 6, pupils are enrolled for their education in the surrounding schools. At the time of research, it was found that Mazabuka High School had opened classes from Grade 8 to Grade 12 under the Academic Production Unit (APU). This is a programme run by the Ministry of Education.

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<sup>162</sup> Juveniles Act, Cap. 53, Rule 2 of the Approved School Rules.

<sup>163</sup> Juvenile Act, Cap. 53 Rule 4(5) of the Approved School Rules.

<sup>164</sup> Juveniles Act, Cap. 53 Rule 8 of the Approved School Rules, provide that further education may be provided according to their age, aptitude and capability.

Some of the pupils from the Approved School had been enrolled in various classes under the APU.

With regard to vocational training, pupils were offered courses in carpentry and joinery, bricklaying and tailoring. Pupils proposed the introduction of new courses such as mechanics, driving, information technology, welding and power electrical. Recreation activities were promoted in football, volleyball, pool table and watching television connected to the DSTV satellite dish. Pupils were also encouraged to do piece-work within the School and within the precincts of the School, especially for the trusted pupils. Some pupils had their own vegetable gardens whose products they sold to raise pocket money.<sup>165</sup> Well disciplined pupils were usually granted 'home leave' to visit their parents or guardians during School holidays. Parents or guardians were also encouraged to visit their children or wards at the School.

At the time of research,<sup>166</sup> the School had 30 pupils. All the pupils had their approved school orders confirmed by the High Court. There was no congestion in all the three dormitories.<sup>167</sup> Pupils proposed the introduction of new courses such as mechanics, driving, information technology, welding and power electrical.

### **3.2.7 INSAKWE PROBATION HOTELS (IPH) FOR GIRLS**

In the recent past, there was no single correctional institution that government had established to cater specifically for female juvenile offenders. It would appear that there was a false belief predicated on the assumption that girls were well behaved and were not in the habit of contravening laws and regulations in society. From the researcher's practical experience, the truth appeared to be that law enforcement officers, including the Police and Courts, tended to be more lenient

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<sup>165</sup> This is perfectly correct and in compliance with Rule 9 of the Juveniles Approved School Rules, Cap. 53. See also Rule III(18)(b) of the UN Rules for the Protection of Juveniles deprived of their Liberty.

<sup>166</sup> On 10 May 2010.

<sup>167</sup> According to Rule 4(5) of the Approved School Rules, Cap. 53 each pupil is entitled to be provided with a separate bed and supplied with suitable beddings.



in dealing with cases involving girls than they were with those involving their male counterparts. However, it has now been shown that most of the cases involving female juveniles are diverted from the formal criminal justice system right at police stations thereby creating a false impression that girls do not usually offend society. The number of cases of female children in conflict with the law has recently been on the increase necessitating the need for secure and appropriate care facilities.<sup>168</sup>

Insakwe Probation Hostel (IPH) was opened in 1971 in Ndola for the sole purpose of providing residential probation services to male juvenile offenders.<sup>169</sup> In June 2006, the institution was officially converted from its original purpose to cater for girls.<sup>170</sup> IPH is a government institution under the Department of Social Welfare in the Ministry of Community Development and Social Services. It is designated as a residential home for female probationers and children in need of care, for example, orphans and vulnerable children. The female juveniles are sent to the institution in accordance with s.73(b) of the Juveniles Act. This section empowers a juvenile court to make a probation order in respect of a juvenile offender be it a female or a male.

The Department of Social Welfare has appointed two social welfare officers who offer psycho-social counseling and rehabilitative services to the juveniles sent to the institution. While at the institution, juveniles are placed in formal education and also engage in poultry and crop farming projects.

IPH has eight hostels, each with a capacity to accommodate six juveniles. Therefore, the total capacity of the institution is 48 for the entire country.

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<sup>168</sup> Admittedly, there are more male juvenile offenders than female juvenile offenders.

<sup>169</sup> Ministry of Community Development and Social Services (Department of Social Welfare) "Profile on Insakwe Probation Hostels for girls, February, 2011 at p.2.

<sup>170</sup> Human Rights Commission, "Children's Correctional facilities tour report, 2009".

At present, the institution has old and dilapidated infrastructure that has partially been renovated by government. There are two semi-detached communal ablution blocks, a kitchen, a dining hall, girls' rooms for practical work, two poultry houses and a large gardening area. The administrative block is also in a dilapidated condition. The institution has two institutional residential houses one of which is in a dilapidated state and is earmarked for demolition. The other house is currently occupied by one of the two probation officers.

At the time of research,<sup>171</sup> there were eight girls in the institution. Four of these were juvenile offenders undergoing probation and the rest were children in need of care. The institution has never had more than twenty girls in boarding at any given time.<sup>172</sup> In essence there is no congestion.

### **3.2.8 THE ZAMBIA PRISONS SERVICE**

The Zambia Prisons Service is established pursuant to Art.106 of the Constitution of Zambia. It is mandated to act as the police force entrusted with the management and control of prisons and prisoners lodged therein in conformity with the provisions of s.8 of the Prisons Act.<sup>173</sup> This Act provides, *inter alia*, for the establishment of prisons and for the discipline of prison officers.

In every prison, there is an officer in charge appointed by the Commissioner of Prisons. Among other duties, every officer in charge shall supervise and control all matters in connection with the prison to which he is appointed.<sup>174</sup> Since the power and authority for the administration of the Zambia Prisons Service, and the control and supervision of all prisoners is vested in the Commissioner of

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<sup>171</sup> On 10 February 2011.

<sup>172</sup> Interview: M. Mwale, 10/02/2011.

<sup>173</sup> Cap. 97 of the Laws of Zambia.

<sup>174</sup> Prisons Act, Cap. 97, s.5.

Prisons,<sup>175</sup> the officer- in- charge of a Prison also exercises such powers for and on behalf of the Zambia Prisons Service.

Prison officers are expected to act in a professional, proficient and humane manner. In addition, the buildings or infrastructure are expected to be in a habitable state and conducive to provide the necessary environment for the reform of prisoners.

### **3.3 CONCLUSION**

It can be concluded that the manner in which the children in conflict with the law have been dealt with by police, prisons and courts of law in Zambia leaves much to be desired. From the situational analysis, it is abundantly clear that children have received a raw deal. They have been mistreated and dehumanized by police, denied police bond or bail by both police and courts; they have in most instances been detained with adult offenders in congested cells and transported with adult offenders in the same vehicles. Secure care facilities for children are inadequate. The overall conditions in police and prison cells are particularly unsuitable for children. There is limited access to health and medical care, no beddings are provided while in police detention, and there are inadequate educational services. Children are usually detained without the knowledge of their parents and, therefore, spend long periods in police cells. Magistrates, social welfare officers and police officers who deal with children do not seem to have received specialised training in dealing with children in conflict with the law.

Simply put, children have not received the expected level of special care and attention appropriate for their age and development. The question is: is it the domestic legislation which does not have adequate provisions for the promotion and protection of children's rights or is it the practices or mentality of the CJA's which need to be changed?

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<sup>175</sup> Prisons Act, Cap. 97, s. 10(2).

## CHAPTER FOUR

### **PROTECTION OF THE RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW IN ZAMBIA**

#### **4.0 INTRODUCTION**

Everyday hundreds of children around Zambia get caught up in the formal justice processes for adults. Children are arrested and are detained by police, tried by magistrates and sent to institutions under systems of justice which in many cases are set up for adults. Although there are explicit domestic and international legal provisions on the proper and appropriate administration of the juvenile justice, children's rights and their special needs are often ignored as shown under this chapter and in chapter three of this study.

The UNICEF Child Protection Specialist<sup>176</sup> stated that the CRC recognizes that children have unique human rights; and the emerging human rights debate stresses that as human beings, children deserve the kind of dignity, respect and freedom from arbitrary treatment.

To discover whether or not Zambia has accorded the necessary protection to the rights of child offenders, this study takes the form of analysing the manner in which CJAs handle children in conflict with the law; and the evaluation of the conditions prevailing in institutions designated for use or habitation by such children with reference to the international standards set out in the CRC and the Beijing Rules for the promotion and protection of children's rights in the criminal justice system.

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<sup>176</sup> Mrs Ngosa Kaloto-Lesa in her answers to the questionnaire for policy and decision makers.

#### **4.1 BASIC INDICATORS FOR THE PROTECTION OF CHILDREN'S RIGHTS IN CRIMINAL PROCEEDINGS**

The juvenile justice indicators may be used as a starting point for national assessment of how children in conflict with the law are dealt with, and for the identification of areas for improvement or reform.<sup>177</sup>

With regard to procedure, the arrest and detentions by police; detention pending trials, release on police bond or bail; separation of children from adults; protection from torture, violence and abuse while in detention; and the court procedure and practice during proceedings themselves, these are seen as some of the basic indicators set by UNICEF for monitoring of children's well being in the criminal justice system.<sup>178</sup>

The basic indicators are briefly discussed below:

##### **4.1.1 SPECIALISED JUVENILE JUSTICE SYSTEM**

The existence of a specialized juvenile justice system has been recognized as one of the core indicators of the juvenile justice system.<sup>179</sup> This indicator measures whether a specialized juvenile justice system exists for children in conflict with the law. It assesses implementation of the obligation of states to promote the establishment of laws, procedures, authorities and institutions specifically for children in conflict with the law.<sup>180</sup> In essence, Art. 40(3) of the CRC requires states-parties to establish a specific system of juvenile justice which is sensitive to the needs of children and operate a 'child-friendly' environment. Whether or not Zambia has established a separate juvenile justice system can be discerned from the existing court systems and procedures in place for dealing with children in conflict with the law. This is discussed in more detail under the 'court procedure' item no 4.1.4 below.

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<sup>177</sup> Manual for the Measurement of Juvenile Justice System. 2007. UN Office on Drugs and Crime. UNICEF. New York.p.3.

<sup>178</sup> L. Muntingh, 'Evaluation Report on Child Justice in Zambia' presented to UNICEF and the Government of the Republic of Zambia in 2008, p.11.

<sup>179</sup> Manual for the measurement of juvenile justice system, p.24

<sup>180</sup> CRC, Art. 40(3).

#### **4.1.2 PRE-SENTENCE DIVERSION**

This is another core indicator of how the rights of children in conflict with the law are protected.<sup>181</sup> An ideal juvenile justice system must provide measures, where appropriate, that ensure that children in conflict with the law are not subjected to criminal proceedings. The system must also provide a variety of alternatives to institutional care. The use of diversion seeks to resolve the case of a child in conflict with the law without recourse to a formal hearing before the relevant competent authorities.<sup>182</sup> Diversion may range from an informal police caution to a reconciliation scheme between victim and offender run by social welfare department.<sup>183</sup> Art. 40(3)(b) of the CRC provides that whenever appropriate and desirable, states-parties shall seek to promote measures for dealing with children without resorting to judicial proceedings provided that human rights and legal safeguards are fully respected. A key principle of diversion is that the child and/or his or her parents or guardians must consent to the diversion of the child's case. Typically, this means that the child accepts responsibility for the offence.<sup>184</sup>

In Zambia, there is no specific law that provides for diversion programmes for children in conflict with the law other than s.73(1)(j) of the Juveniles Act which provides for dealing with the juvenile's case in any other manner in which it may legally be dealt with. This provision by the inclusion of the word 'legally' may imply that unless there is a specific way of disposing of a juvenile's case as provided by statute, a court may not deal with the juvenile's case in any other manner.

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<sup>181</sup> Manual for the measurement of juvenile justice system, p.19.

<sup>182</sup> Manual for the measurement of juvenile justice system, p.19.

<sup>183</sup> Manual for the measurement of juvenile justice system, p.19.

<sup>184</sup> Manual for the measurement of juvenile justice system, p.19.

#### 4.1.3 **THE INSTITUTION OF CRIMINAL PROCEEDINGS AND PRE-TRIAL PROCEDURES**

It is a well-known fact that many things happen before a case gets to Court and that not all young persons who commit offences end up being formally charged with offences that they are alleged to have committed.

In Zambia, the police usually have the first contact with children in conflict with the law. In their initial contact, the police usually make decisions which influence the kind of action to follow from the young offender's act or omission. They often make the decision as to which kind of offending behaviour to refer to court, or which behaviour to ignore or simply admonish against. In their duties, police officers, therefore, exercise a lot of discretion in the juvenile criminal justice system.

##### i) **Arrest and detentions by police**

The Criminal Procedure Code empowers police officers to arrest any person believed to have committed an offence.<sup>185</sup> This power of arrest extends to children who come into conflict with the law. However, this power should not be exercised arbitrarily but in a professional, skilful and diligent manner. The police are expected to exercise a lot of care and pay special attention to children who are arrested for various crimes. L. Muntingh, a Consultant for UNICEF had this to say:

The arrest of children should be avoided but when this is necessitated by the crime and circumstances, the actions of the police need to be closely monitored against well-defined standards and procedures. Arrest should as soon as possible be followed by an assessment of the child by a social welfare officer who needs to gather information with regard to the personal and social circumstances of the juvenile so as to inform the relevant criminal justice official(s) accordingly with the purpose to reaching a decision in the best interests of the child. This decision should be

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<sup>185</sup>Criminal Procedure Code, Cap. 88, s.26

guided by following the least restrictive measures, minimizing exposure to the hardships of the criminal justice system and due process.<sup>186</sup>

Criminal proceedings may be instituted either by making a complaint or by bringing before a magistrate a person who has been arrested without a warrant.<sup>187</sup> The making of a formal complaint eventually leads to the issue of summons requiring the appearance of the summoned person at a time and place therein appointed.<sup>188</sup> In other instances this leads to the issue of a warrant of arrest for the person against whom the complaint is made.<sup>189</sup> A juvenile like an adult may be arrested with or without a warrant for the violation of the law. Children who are arrested are, in most instances, firstly detained in police cells while awaiting to be formally charged. At most police stations there are no separate cells for juveniles and as such children are mixed with adult offenders. Those juveniles whose cases are found to be serious are formally charged and await appearance before courts of law. Those whose offences are deemed to be minor are released after being warned. Juveniles required to appear in court are usually transported from police cells to courts in the same vehicles with adults. At court, they are put in the same holding cells and made to sit on the same benches with adult offenders.

Police conduct and practice is contrary to the provisions of s.58 of the Juveniles Act which provides that:

It shall be the duty of the Commissioner of Police to make arrangements for preventing, as far as possible, a juvenile while detained in a police station, or being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with an offence, other than an offence with which the juvenile is jointly charged, and for ensuring that a girl (being a

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<sup>186</sup> L. Muntingh, 'Evaluation Report on Child Justice in Zambia' at p.18.

<sup>187</sup> Criminal Procedure Code, Cap. 88, s.90(1)

<sup>188</sup> Criminal Procedure Code, Cap.88, s.92

<sup>189</sup> Criminal Procedure Code, Cap.88, s.91



juvenile) shall, while so detained, being conveyed, or waiting be under the care of a woman.

The above provision has, however, been complied with for girls to the extent only that they are always under the custody of a woman police officer. As far as the other aspects are concerned the law has not been complied with as girls are also mixed with women accused of criminal offences, while in detention and at courts, in most of the instances elaborated above.

In Zambia, the Police Force has not performed to expectation. They have, under the guise of performing their noble duties, infringed or violated the rights and liberties of individuals, both children and adults. It has been submitted that there is a lack of professionalism on the part of the police in handling offenders, the use of unnecessary force in apprehending suspects and the infringement of the rights of persons in police custody.<sup>190</sup> It has been observed that the most common abuses committed by police officers include torturing suspects in order to obtain confessions; false arrests; illegal detentions; and extra-legal execution of suspects. In fact, the Police Force has been cited as the major violator of human rights.<sup>191</sup> In summary, the general perception of the police by individuals is that they are corrupt, abusive, brutal, and that rather than protecting rights, police violate the rights of individuals.<sup>192</sup>

Unfortunately, this is the situation in which children who come into conflict with the law find themselves in Zambia. It can safely be said that police conduct and behaviour is in total disregard of the rights of children in conflict with the law. By so doing, the police have breached the provisions of both domestic and

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<sup>190</sup> African Human Security Initiative, 'A Country Review of Crime and Criminal Justice in Zambia'. Institute for Security Studies. (2007 – 2008). p.7.

<sup>191</sup> Human Rights Commission. 'Strategic Plan.' p.16

<sup>192</sup> Human Rights Commission. "Constitutionalism and Human Rights: Perspectives on the Judiciary and the Police in Human Rights Protection, Individual Rights and Democratic Governance in Zambia." State of human rights report in Zambia (2008). p.38

international law, procedure and best practices under Art. 9 of UDHR, Art. 37(b) of the CRC, s.58 of the Juveniles Act, Cap.53 and Art.13 of the Constitution of Zambia.

(ii) **Release of children on police bond or bail pending trial**

Pre-trial detention of juvenile suspects is seen by police officers as a form of punishment. What police officers have failed to appreciate is the fact that the juveniles who are detained under arrest or pending trial are presumed innocent until proven guilty by courts of competent jurisdiction and as such they are entitled to the enjoyment of all their rights and freedoms. One of those rights is the right to be released on police bond or bail. Therefore, detention before trial should be avoided to the extent possible and must be limited to exceptional circumstances only. Many juvenile suspects are kept in remand prisons for long periods, even for years, without being brought before courts for trial. Some of the reasons advanced for extended periods of pre-trial detentions are inadequate or a failure of police investigations into the alleged offences; and lack of communication between the arresting officers and the prosecutors for the indictment of the persons arrested. It has been submitted that the Zambia Police Force lacks investigative capacity and because of the lack of credible evidence, mainly resulting from poor investigations, some crimes have not been prosecuted. This limitation translates into relatively low successful prosecution rates.<sup>193</sup>

It should be appreciated that bail is a constitutional right of every individual who is detained by police. Generally, bail is granted pursuant to the provisions of s.123 of the Criminal Procedure Code. The said section provides that:

When a person is arrested or detained, or appears before or is brought before a Subordinate Court, High Court or Supreme Court he may, at any time, while he is in custody, or at any stage of the proceedings before such court, be admitted to bail upon providing

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<sup>193</sup> African Human Security Initiative, 'A Country Review of Crime and Criminal Justice in Zambia.' 2007 – 2008.

a surety or sureties sufficient, in the opinion of the police officer concerned or court, to secure his appearance, or be released upon his own recognizance if such officer or court thinks fit:

Provided that any person charged with:

- (i) Murder, treason, or any other offence carrying a possible mandatory capital penalty;
- (ii) Misprision of treason or treason felony; or
- (iii) Aggravated robbery;

Shall not be granted bail by a Subordinate Court, High Court or Supreme Court or be released by any police officer.

Further, bail is not granted for drug trafficking related offences as provided by s.43 of the Narcotic Drugs and Psychotropic Substances Act.<sup>194</sup> The said section states that:

Whenever any person is arrested or detained upon reasonable suspicion of his having committed a cognisable offence under this Act, no bail shall be granted when he appears or he is brought before any Court.

The above statutory provisions apply to both adults and juveniles offenders.

Under Zambian law, a juvenile who is arrested should not be unduly detained over a long period of time. Whenever possible, such a juvenile should be released on police bond or bail. In this respect, s. 59 of the Juveniles Act provides as follows:

Where a person apparently under the age of nineteen years is apprehended with or without a warrant, and cannot be brought forthwith before a court, the police officer in charge of the police station to which he is brought shall inquire into the case, and may in any case, and

- (a) Unless the charge is one of homicide or other grave crime or
  - (b) Unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute;
- or

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<sup>194</sup> Cap.96 of the Laws of Zambia.

- (c) Unless the officer has reason to believe that the release of such person would defeat the ends of justice; shall release such a person on a recognizance with or without sureties, for such amount as will, in the opinion of the officer, secure the attendance of that person upon the hearing of the charge, being entered into by him or by his parent or guardian or other responsible person.

The above quoted section by the use of the word ‘shall’ clearly directs the officer in charge of a police station to release a juvenile on bail so long as such juvenile does not fall within the categories (a) to (c). The officer in charge of a police station is duty bound to release the juvenile on bail, and his discretion is limited to releasing the juvenile on bail with or without sureties or determining the amount of bail such officer thinks sufficient to secure the attendance of the juvenile before court.<sup>195</sup> Consequently, the right to be admitted to bail is treated as a sacred right which must be enjoyed by all children who are apprehended or arrested by police. The bail conditions ought to be set with minimum restrictions so as to enable children in conflict with the law to enjoy this right unreservedly.

It should be appreciated that bail is constitutional right of every individual who is detained by police. As such the High Court<sup>196</sup> has the power to grant ‘constitutional bail’ to the detained accused persons even for offences that are not bailable provided that the Court is satisfied that there has been unreasonable delay in bringing a case to court; and that an accused person has been in detention for a prolonged period of time. Constitutional bail is granted by the High Court in pursuance of the provisions of Art.13 (3) of the Constitution of Zambia. The said Article provides as follows:

- Any person who is arrested or detained-
- (a) for the purpose of bringing him before a court in execution of an order of a court; or

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<sup>195</sup> Under the Zambian law, bail must not be excessive as provided by s. 126(1) of Criminal Procedure Code, Cap. 88 which states: “ The amount of bail shall, in every case, be fixed with due regard to the circumstances of the case but shall not be excessive”.

<sup>196</sup> Subordinate Courts have no jurisdiction to grant constitutional bail. However, they must grant bail in cases where they are competent.

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia.

And who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

In the case of **Chentankumar Shantkal Parekh v The People**,<sup>197</sup> the Supreme Court held that:

(a) “where any trial is unreasonably delayed through no fault or stratagem of the accused, arrested person must be released on what is called constitutional bail such bail is available and clearly overrides any prohibitions in the lesser laws, so that Article 13(3) of the Constitution Chapter 1 of the laws would apply to any unreasonably delayed case whatever the charge and whatever section 43 of the Act or section 123 of the Criminal Procedure, Chapter 88 or any other similar law may say.

(b) There is nothing in the Constitution which invalidates a law imposing total prohibition on the release on bail of a person reasonably suspected of having committed a criminal offence, provided that he is brought to court within a reasonable time after he has been arrested and detained.”

The importance of bail for children has recently been endorsed by the decision of the High Court for Zambia in which a ten year old boy of Katete district was granted constitutional bail after having been remanded in prison for nine months in the murder case of his father.<sup>198</sup> The approach to the issue of bail by the High Court in this case ought to be replicated by all other courts in the country if the rights of children in conflict with the law are to be enhanced and adequately protected.

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<sup>197</sup> (1995) Z.R. 78.

<sup>198</sup> The Post, 26 August, 2010.

Unfortunately, in Zambia, police officers have usually detained juveniles in police cells and have treated them like adults. This practice may be attributed to the inadequate knowledge of the law by police. Police training takes only six months and is not long enough to cover all the fine details of the law. With a poorly trained police service, the intentions of the law no matter how benevolent are often lost in the statute books.

It is, therefore, vital that both the police and courts alike begin to consider bail as a fundamental human right which should not be denied to any child as doing so would be contravening both domestic and international law as provided under Art.37(b) of the CRC, Rule 10(2) of the Beijing Rules, s. 59 of the Juveniles Act and Art. 13(3) of the Constitution of Zambia.

(iii) **Conditions in police cells**

The people who are apprehended by police for various offences are usually detained in police cells which are the custodial places for individuals not yet charged with a crime.<sup>199</sup> This applies to children in conflict with the law as well.

After conducting a number of visits to prisons and police cells, the Human Rights Commissions has observed in its various reports<sup>200</sup> that nearly all police cells in Zambia are in a terrible state of dilapidation, filthy and without human waste disposal facilities. They also have no piped water supply. Ventilation is very poor and in some instances non-existent. At most, if not all stations, there is only a single cell where both male adults and male juveniles are incarcerated. Female adults and female juveniles are usually detained at a police inquiries office in the cold. Inmates in

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<sup>199</sup> Human Rights Commission, "Constitutionalism and Human Rights." 2008. p.51(Unpublished).

<sup>200</sup> For example, Report on Prison and Police Cells visits in Lusaka Province, June 2004; Report on Prison and Police Cells visits in Central Province, 2005 and page 15 of the National Plan of Action for Human Rights (1999 – 2009) indicate the overall prevailing conditions in prison cells.

police cells are usually forced to use plastic bags or old newspapers for the disposal of their faecal matter and urinate just on the bare floor where they also sleep. Children have not been spared from such cruel, inhuman and degrading treatment. The officer-in-charge of Livingstone central police station observed that:

The sewer system is bad and sometimes breaks down. In its current state, the cell is unfit for human habitation. The sewer system should be worked on so that the flushing system can be used as opposed to the existing arrangement where buckets are used to draw water from outside and poured into the toilet pans. Water supply should also be worked on so that water can run into the cisterns.

This scenario is the worst form of abuse, torture and punishment for children who are presumed innocent until proven guilty by the courts of law. Incarcerating children in police cells of this nature contravenes the provisions of both domestic and international law which prohibit subjecting human beings to torture, or to cruel, inhuman and degrading treatment. Police conduct is contrary to Art. 5 of the UDHR, Art. 37(a) of the CRC, Art. 16 of the ACRWC, Rule 1(3) of the Beijing Rules, and Art. 15 of the Constitution of Zambia.

#### **4.1.4 COURT PROCEDURE AND PRACTICE DURING CRIMINAL PROCEEDINGS**

There are no special courts in Zambia to deal specifically with children and young persons' cases. However, Zambia has attempted to establish a separate juvenile justice system. The Juveniles Act in s.119(1) provides that:

A juvenile court shall sit in a room other than that in which any court other than juvenile courts ordinarily sit, unless no such other room is available or suitable, and if no such room is available or suitable, the juvenile court shall sit on different days or at different times from those on or at which ordinary sittings are held.

Despite the clear provisions of the Act, the study found that juveniles were tried by magistrates on the same days, at the same times and in the same court rooms as were the adults. Magistrates usually took plea or mentioned juvenile cases in open court as opposed to closed court. Therefore, the question still remains whether Zambia has a separate system of juvenile justice administration.

It has been submitted that unlike other courts, juvenile courts are supposed to be informal. It is believed that subjecting juveniles to the formality of court process will adversely affect them.

The system followed in criminal trials in Zambia is the adversarial system following the British pattern. Ideally, therefore, evidence should be adduced against an accused person, and the accused person is supposed to cross-examine the people testifying against him either personally or by counsel of his own choice. Generally speaking this is the kind of system which obtains in the Zambian juvenile courts with modifications.

Where a juvenile is brought before a juvenile court for any offence other than homicide or attempted murder, the case shall be finally disposed off in such court.<sup>201</sup> After explaining the substance of the alleged offence, the court asks the juvenile whether he/she admits the offence.<sup>202</sup> Where a juvenile is not represented by legal counsel, a simple admission is not enough. It is, therefore, the duty of the court to ascertain that the juvenile in fact admits the material ingredients of the offence. In other words, the court must make sure that the plea of guilty by the juvenile is unequivocal.<sup>203</sup> If the juvenile pleads not guilty to the charge, the court will proceed with trial. At the close of the evidence in chief of each witness the magistrate shall, if the juvenile is not legally represented, ask the

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<sup>201</sup> Juveniles Act, Cap. 53, s.64(1)

<sup>202</sup> Juveniles Act, Cap. 53, s.64(2)

<sup>203</sup> S. 64(3) of the Juveniles Act provides that notwithstanding that the juvenile admits the offence, a juvenile court, other than a court presided over by a Senior Resident Magistrate, Resident Magistrate ..... shall in any case where the Juvenile is not legally represented then hear the evidence of the witness in support thereof.



juvenile, and the juvenile's parent or guardian if present in court, whether he wishes to put any questions to the witness.<sup>204</sup> A juvenile who is not legally represented may be assisted by the court to put to the witnesses such questions as it thinks necessary and the prosecution will thereafter re-examine its witnesses.<sup>205</sup>

If at the close of the prosecution's case it appears to the court that a *prima facie* case is made out against the juvenile, the court must hear the evidence of any defence witness and allow the juvenile to give any evidence or make a statement.<sup>206</sup> If the court is satisfied that the offence is proved, it must record a finding of charge proved against the juvenile.<sup>207</sup> The court will then ask the juvenile whether he/she has anything to say in mitigation of the penalty that may be imposed. It is a requirement of the law that before the court decides on how to deal with the juvenile, a social welfare report is prepared and presented to the court by a juvenile inspector (social welfare officer). A social welfare report contains relevant information about the juvenile such as general conduct, home environment, school and medical history.<sup>208</sup> The social welfare report also makes a recommendation of the most suitable disposition. The court is, however, not bound by such a recommendation and is at liberty to decide on the appropriate order taking into account all the circumstances of the case.

#### **4.1.5 PROTECTION OF THE RIGHT TO PRIVACY OF CHILDREN IN CRIMINAL PROCEEDINGS**

Ordinarily, all cases involving children are supposed to be heard and determined in privacy or *in camera*. This implies that a juvenile court is supposed to sit either in a different building or room from that in which sittings of adult courts are held or

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<sup>204</sup> Juveniles Act, Cap.53, s.64(4).

<sup>205</sup> Juveniles Act, Cap. 53, s.64(5).

<sup>206</sup> Juveniles Act, Cap.53, s.64(6).

<sup>207</sup> Under s. 68 of the Juveniles Act, the words 'conviction' and 'sentence' are not allowed to be used against juvenile offenders. The court must always record a finding of guilty where it finds the offence proved.

<sup>208</sup> Juveniles Act, Cap.53, s.64(7)

on different days from those on which sittings of other courts are held. At such sittings, no person is allowed to attend the hearing or trial of a child's case except officers of the court, parties to the case before court, lawyers and witnesses, parents or guardians of the child being tried and any other persons that the court may specifically authorize to be present in the best interests of the child and justice.

In Zambia, the privacy of children in conflict with the law has not been well protected and respected. In this study it was found that there are no special courts to deal with children's cases. The ordinary court rooms are simultaneously used for the trial of juvenile cases. Children are mixed with adults in either court holding cells or at the court premises while awaiting their trial. Juveniles sit on the same benches as adults in front of the court rooms. In most instances, juvenile cases have been called by prosecutors while adults, offenders alike, are seated in the same court rooms. After the case has been called out, that is when a court interpreter or prosecutor asks the people who are not related to the juvenile to leave the court room. At that stage, the juvenile would have been identified and his names disclosed as the case was being called out. Further, juvenile cases are heard in the presence of adult offenders who are usually allowed to remain in court to await their own trial. Some juveniles interviewed complained against this practice which made them feel embarrassed and stigmatized them as 'criminals'. Furthermore, the juveniles were seen being conveyed together with adult offenders in the same police vans from remand prisons or police cells to the courts and vice versa.

This practice by courts and prosecutors is contrary to the provisions of Art. 40(2)(b)(vii) of the CRC, Art. 10 of the ACRWC as read with Art. 17(2)(d), Rule 8(1) of the Beijing Rules, and s.119 of the Juveniles Act, Cap.53 as read with s.123 of the said Act.

#### **4.1.6 ATTENDANCE OF PARENTS OR GUARDIANS TO THE CHILD AT ALL STAGES OF CRIMINAL PROCEEDINGS**

Parental role is vital in the juvenile justice system. Parents or guardians usually provide guidance to their children in conflict with the law. Basically, parents act in place of a lawyer to represent their children. Parental participation also assists the courts to assess whether the parents contributed to the juvenile's misconduct through their neglect in instilling in him or her the right norms and cultural values. It was observed that most children were detained without the knowledge of their parents or guardians and remained in police custody or remand prisons for unnecessarily long periods. The frequent absence of parents or guardians contributed to the delay in commencing trial of juvenile cases as well as their conclusion. This is because in the absence of parents or guardians plea or trial could not be proceeded with unless a social welfare officer was present before court.

The table below shows juvenile cases that were completed at Livingstone subordinate court between the year 2009 and 2010. The information reveals that parents or guardians did not attend court in most of the cases:

##### **COMPLETED JUVENILE CASES AT LIVINGSTONE SUBORDINATE COURT**

<b>YEAR</b>	<b>TOTAL NO OF CASES</b>	<b>CASES ATTENDED BY PARENTS</b>	<b>CASES NOT ATTENDED BY PARENTS</b>
2009	21	05	16
2010	63	25	38

*Source: Livingstone Subordinate Court Annual returns.*

In cases where parents or guardians were absent a social welfare officer attended court as a guardian. While the role of parents or guardians has been recognized by the Juveniles Act, the CRC and the Beijing Rules as being vital, the police and courts have in most instances failed to comply with this necessary legal

requirement. Police officers fail on flimsy grounds to inform parents or guardians to the arrested juveniles. Further, juvenile courts do not also inquire into the reasons why parents or guardians are unable to attend court but proceed to hear and determine cases in their absence much to the disadvantage of the juvenile. Police and court practice and conduct is contrary to the letter and spirit of the law.

Section 127(1) of the Juveniles Act provides that:

Where a juvenile is charged with any offence, or is for any other reason brought before a court, his parent or guardian may in any case, and shall if he can be found and resides within a reasonable distance be required to attend at the court before which the case is heard or determined during all stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

The provisions quoted above place a duty on the police officer by whom a juvenile is arrested to inform the parent or guardian and to warn him or her to attend court where the matter will be disposed off. The terms of the above quoted section have been held by the High Court and the Supreme Court to be mandatory. For example, in **Lumsden v The People**,<sup>209</sup> Ramsay, J. stated:

There is nothing in the record to show that the requirements of s. 125 (as it then was) ..... were complied with. In my judgment, this section is mandatory in its terms and a juvenile court must either ensure that a juvenile's parents or guardian attend or make an order that it is unreasonable to require the attendance. This was not done in the instant case ..... Accordingly I quash the finding of guilty.

If the attendance during court proceedings by the juvenile's parents is dispensed with, the juvenile court should make an order that in the circumstances, it was unreasonable to require such attendance. The attendance of parents is vital and the provisions are designed for the protection of juveniles. The important

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<sup>209</sup> (1967) ZR. 142 at p.145.

consideration is that if these provisions are not complied with they may prejudice juveniles.

S. 127 of the Juveniles Act is reinforced by Art. 40(2)(b)(ii) of the CRC which states that a child is entitled to be informed of the charges against him/her directly or through his/her parents or guardians. Further, Rule 10(1) of the Beijing Rules is more instructive on the requirement to notify parents/guardians of a juvenile who is arrested or detained by police. The said Beijing Rule states that ‘upon the apprehension of a juvenile, her or his parents or guardians shall be immediately notified of such apprehension, and, where such notification is not possible, the parents or guardians shall be notified within the shortest possible time thereafter.’ It has been argued that failure by police to inform parents or guardians about the arrest or detention of their children leads to delayed trial and subsequently denies children their right to have their cases speedily determined by a court of competent jurisdiction.

There is also usually a breakdown of information flow between the police and the social welfare officers from the moment the police apprehend a child to the first time the child appears in court.

Admittedly, there is no time limit within which a child can be held in pre-trial detention. Children are held in custody for long periods and in some cases for over five years without trial. FP is an example of a juvenile who was held in remand prison for five years without trial on allegations of stealing a cell phone; and was only released after the State discontinued proceedings against him.<sup>210</sup>

#### **4.1.7 SEPARATION OF CHILDREN FROM ADULTS**

A conducted tour of detention facilities by the Human Rights Commission revealed that almost all children who were arrested by police were detained with

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<sup>210</sup> Sunday Post, 27 August, 2008

adults in the same police cells because most police stations or police posts did not have suitable cells for juveniles.<sup>211</sup> They were transported to remand prisons together with adult offenders and were taken to and from court in the same vehicle compartments or squeezed together in a police van with adults. It would appear that the police were severely constrained by the limited number of vehicles and inadequate supplies of fuel for the prosecution's section under the Director of Public Prosecutions' office. Despite all these shortcomings and challenges, there was also the more difficult task of trying to change the mind-set of the 'general duty' police officers who did not comprehend that juveniles must not be treated in the same manner as adult offenders. They perceived children as criminals and as such treated them in the same way as adult offenders.

At the court, while awaiting the hearing of their cases, juveniles were further placed in the over-crowded court holding cells together with adult offenders. They were also made to sit on the same benches in court with adult offenders while they awaited their turn for trial. This practice mostly affected male juvenile offenders rather than their female counterparts who were merely guarded by female police officers outside a cell. At most institutions, police, prisons and courts alike, there were no separate cells for children in conflict with the law. It is worth to note that the association of children with adults is a potential source of crime 'contamination' and 'pollination' and this practice runs counter to both national and international law.

The Juveniles Act in s.58 prohibits the mixture of adults and children in detention. In addition, Art.37(c) of the CRC directs that every child deprived of liberty shall be separated from adults unless it is considered to be in the child's best interest not to do so. The foregoing provisions are further supported by Rules 13(4) and 26(3) of the Beijing Rules which stipulate that juveniles under detention pending trial or in any other institution shall be kept separate from

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<sup>211</sup> Human Rights Commission. "Report on Prison and Police Cells visits." Central Province, 2005.

adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

It seems clear from the study that there are very few separate cells that have been built specifically to cater for juveniles in Zambia. The only examples in mind are the new cells being built at Livingstone subordinate court and those existing at the Lusaka magistrates' complex.

#### **4.1.8 PRISON CONDITIONS**

Rule 11(b) and Rule 12 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide that the deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Further, juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled.

The conditions in most of Zambia's prisons have been described to be horrible mainly due to over-crowding and lack of maintenance of the existing infrastructure. It has been observed that:

Most of Zambia's prisons were built in colonial days and are ancient monuments that need major refurbishment or replacement. The physical state of these prisons is lacking in both security and fitness for human habitation. This aspect is one of the major problems the Zambia Prisons Service is facing in upholding, maintenance and enhancement of inmate's human dignity.

The prison population has increased from 3,000 prisoners in 1964 to 14, 427 as at 29<sup>th</sup> August, 2005 with the following breakdown: 8,568 convicted prisoners; 4,933 remand prisoners; 273 condemned prisoners; 25 mentally sick; 294 prohibited immigrants; 79 convicted juveniles; and 230 remand juveniles.<sup>212</sup>

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<sup>212</sup> Human Rights Commission ' Report on prison and police cells visits in Central Province (2005) P.(iii).

As at 15 January, 2010, the prisons in the whole country had 16,005 inmates for infrastructure designed to cater for only 5,000 people.<sup>213</sup> The immense growth in the prison population has not been matched by an extension of the physical structures and capacity of the prisons to accommodate the increased numbers. The consequence has been endemic over-crowding leading to shortage of food, outbreaks of infectious diseases, grossly inadequate medical care and routine violence and abuses committed among inmates, including sexual immorality such as sodomy. Due to congestion, some inmates are forced to sleep while seated or sleep in shifts. Admittedly poor sanitation and water reticulation system is yet another major source of concern to both inmates and government.<sup>214</sup>

The Human Rights Commission has summarised the foregoing scenario in the following passage:

Almost all prisons in Zambia are in a terrible state of dilapidation and are not fit for human habitation. Tuberculosis, Scabies, dysentery, Malaria, chest infections and maladies are rampant due to low protein diets, lack of clean water, severe overcrowding, and poor sanitation and medical facilities. Food is often in short supply and in most prisons inmates do not have blankets. The prisoners usually have little or no recreation facilities. Because of the shortage of prison space, remand prisoners and convicted prisoners are often kept in the same cells, and juveniles are mixed with adult prisoners or suspects.<sup>215</sup>

#### **4.2 DISPOSAL OF JUVENILE OFFENDERS' CASES**

A juvenile court exercises wide discretionary powers for the purpose of choosing the most appropriate disposition that may be suitable for each individual offender. In fact, the disposition stage of proceedings can perhaps be said to be the most important and crucial stage for the court. The court is expected to place itself in the shoes of a kind and loving parent and render a disposition which is deemed to

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<sup>213</sup> Sunday Mail, 17 January, 2010.

<sup>214</sup> Times of Zambia, 30 July, 2008.

<sup>215</sup> Permanent Human Rights Commission, National Plan of Action for Human Right 1999 – 2009.P 1.5.



be in the best interests of the child. The central premise of the juvenile courts is that children should be treated differently from adults. The crucial aspect for consideration is that children are a special group of people with their own special needs hence needing special treatment. The courts are to handle juveniles on the basis of the least restrictive measures and dispositions should be based on individual circumstances of the offender and the offence committed.

Generally, courts are expected to balance the needs of the individual and the interests of society by taking into account the seriousness of the offence and its impact on society; the personal character of the offender and the circumstances under which the crime was committed, the age,<sup>216</sup> the antecedents, the family background, education background and the economic position of the offender's parents or guardians. In deciding on how to deal with each particular case, courts are also called upon to consider the 'proportionality principle'. It has been submitted by Professor G. Feltoe<sup>217</sup> that the personal experiences of a trial magistrate and his understanding of the theories of punishment are likely to influence his judicial decision in each particular case. However, in some instances, magistrates are constrained by specific legislative provisions, for example, as where a mandatory minimum sentence has been prescribed by law. It has been observed by several Judges and Magistrates at various workshops that by prescribing mandatory minimum sentences the legislature takes away the discretion of an adjudicator to decide upon an appropriate sentence based upon the particular circumstances of the offender and the offence; and the various mitigating and aggravating factors in the case. Where minimum sentences of imprisonment have been prescribed by statute, no exceptions have been provided for juveniles who are, therefore, subject to the same minimum sentences as adults.<sup>218</sup>

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<sup>216</sup> Very young people are normally treated more leniently than mature people. Juveniles are more prone to making ill-considered and unwise decisions than adults.

<sup>217</sup> Author of the Zimbabwean Magistrates Handbook, (Revised edition), 2008.

<sup>218</sup> The only exception the researcher found is in defilement cases in Zambia. The Penal Code (Amendment) Act No. 15 of 2005, states in s. 138(4) that a child above the age of twelve years who commits an offence under subsection (1) or (2) is liable to such community service or counseling as the

#### **4.2.1 METHODS OF DEALING WITH CHILD OFFENDERS**

Once the court is satisfied that an offence is proved and the social welfare report has been submitted by a social welfare officer, the court is now empowered to pass an appropriate order. Because of the special status of juvenile offenders, methods used in dealing with adult offenders are not necessarily considered suitable although they may sometimes be applied.<sup>219</sup> In recognition of the special status of juvenile offenders, the Juveniles Act sets out specific limitations on the manner in which juvenile offenders may be dealt with, the general idea being to make the criminal justice system more humane to juveniles. Although juveniles may be charged under the Penal Code or other statutes which in almost all instances set down the penalties which the court may impose, for juveniles, the provisions of the Juveniles' Act relating to punishment almost inevitably take precedence. A court in Zambia may deal with the juvenile in one of the following ways: dismissing the charge; making a probation order; sending the offender to an approved school or a reformatory; ordering the offender, parent or guardian to pay a fine, damages or costs; where the offender is a young person sentencing him to imprisonment; or by dealing with the case in any other manner in which it may legally be dealt with. A court may pass a combination of orders which it is empowered to pass.<sup>220</sup>

The Juveniles Act in s.72 limits the punishments which a court can lawfully inflict on a juvenile offender. Subsection 1 provides that 'No child shall be sentenced to imprisonment or to detention in a detention camp'. Subsection 2 states that 'No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other manner'.

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court may determine in the best interests of both children. However, in Zimbabwe, courts have the discretion to impose a sentence less than the mandatory minimum sentence after taking into account special circumstances and special reasons for the commission of the offence.

<sup>219</sup> Juveniles Act, ss.73(1)(i) and 73(3) as read with s. 24 of the Penal Code.

<sup>220</sup> Juveniles Act, Cap.53, s.73.

Discussed here below are some of the dispositions available to courts:

(1) **Probation Order**

A probation order requires the offender to be under the supervision of a probation officer<sup>221</sup> for a specified period of time not less than one year and not exceeding three years.<sup>222</sup> This disposition is like a suspended sentence in respect of adults. It is one of the dispositions which has always been considered an alternative to custodial based-sentences for young offenders. The court imposes special conditions which the probationer must observe, for example, the probationer to attend school, reside in a particular district, not to associate with a co-defendant, be in doors by 20.00 hours in the evening etc. It is expected that the probationer shall be subjected to counseling sessions by the social welfare officers for the duration of the probation.

(2) **Reformatory Order**

According to s.93 of the Juveniles Act, a reformatory order shall be authority for the detention of the person named therein in a reformatory school for a period of four years. Every reformatory order made by a juvenile court requires confirmation of the High Court before it is carried into effect.<sup>223</sup> However, any juvenile with respect to whom a reformatory order has been made shall be conveyed forthwith to the receiving centre without awaiting the confirmation of the order by the High Court<sup>224</sup>.

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<sup>221</sup> A Probation Officer is appointed under s.15 of the Probation of Offenders Act. Ordinarily, a probation officer is a Social Welfare Officer by appointment under the Department of Social Welfare. He/she carries into effect a probation order.

<sup>222</sup> Probation of Offenders Act, Cap. 93,s. 3(1).

<sup>223</sup> Juveniles Act, s. 94(1).

<sup>224</sup> Juveniles Act, s. 94(2).

A reformatory order is usually made by the court after evaluating all the information available about the offender and deciding that individual treatment is necessary in the best interests of the young offender. Under normal circumstances, a court shall not order a child to be sent to a reformatory unless the court is satisfied that having regard to his character and previous conduct, and to the circumstances of the offence, it is expedient for his reformation and the prevention of crime that he shall undergo a period of training in a reformatory.<sup>225</sup> Katombora Reformatory School is the only reformatory school in Zambia.

**(3) Approved School Order**

An approved school order is considered as a disposition which allows courts to send juveniles to a specialised institution for instruction and training rather than a prison which is generally considered as a place for punishment of adult offenders.

An approved school order is an authority for the detention of the person named therein in an approved school for a period not exceeding three years.<sup>226</sup> However, no approved school order made by a juvenile court shall be carried into effect until the order has been confirmed by the High Court.<sup>227</sup> Before the confirmation of such order, the court may make a temporary order committing the juvenile to the care of a fit person or to a place of safety. The temporary order shall remain in force for a period of twenty-eight days renewable until the juvenile is sent to the approved school.<sup>228</sup>

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<sup>225</sup> Juveniles Act, s. 72(3).

<sup>226</sup> Juveniles Act, s.72(3) .

<sup>227</sup> Juveniles Act, s. 79.

<sup>228</sup> Juveniles Act, s.79

(4) **Fines**

A fine is a sum of money ordered to be paid to the State on conviction for an offence. Any person convicted of a crime may be ordered by the court to pay a fine as an alternative sanction to imprisonment for crimes regarded as misdemeanours. The imposition of fines is one of the methods prescribed by the Juveniles Act for disposing off a juvenile's case under s.73(1)(g).<sup>229</sup> A fine can be an effective deterrent measure but it does not have the highly destructive consequences that incarceration often has. However, the way in which fines are imposed can sometimes be highly discriminatory against the poor especially juveniles who usually have no means. Therefore, before deciding on this disposition, it is advisable that juvenile courts bear in mind the means of the juvenile or his parents/guardians to pay otherwise it will be an exercise in futility. It has been submitted that whenever a fine is appropriate it must be made a real option given with the intention of keeping a child out of an institution. In practice, this method of disposition is rarely used by courts in Zambia.<sup>230</sup>

(5) **Compensation**

Compensation is a payment to make amends for loss or injury to person or property, or as recompense for some deprivation.<sup>231</sup> All criminal courts in Zambia exercise extensive powers to order payment of compensation by convicted persons to persons who have been physically injured or suffered loss or damage to their property as a result of the commission of the crimes in question. Under s. 175 of the Criminal Procedure Code, a court is empowered to order a convicted person or a juvenile against whom a finding of guilty is entered to pay compensation to the complainant, in kind or in money, as the court deems fair and reasonable. Further, under s.

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<sup>229</sup> See also Penal code, Cap.87, s.28

<sup>230</sup> Personal experience as a Magistrate.

<sup>231</sup> Osborn's concise Law Dictionary, 8<sup>th</sup> Ed. p. 79

177 of the said Act, when a court imposes a fine it may direct that part of the money be paid to the complainant as compensation. However, ss. 73(1)(f) and (g) of the Juveniles Act use the term ‘damages’ which may be interpreted to include ‘compensation’. It has been observed that many complainants withdraw charges against juveniles, preferring to settle matters outside court, no doubt often in anticipation of receiving compensation for loss or injury suffered.<sup>232</sup>

(6) **Absolute and Conditional Discharge**

After the court has found the offender guilty, it may make an order discharging him/her absolutely or subject to a condition that he/she commits no further offences during a period of twelve months from the date of the order.

The Penal Code in s.41(1) provides that:

Where a court by or before which a person is convicted of an offence, not being an offence the sentence for which is fixed by law, is of opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order under the Probation of Offenders Act is not appropriate, the Court may make an order discharging him absolutely or subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of order, as may be specified therein.

On the imposition of an absolute discharge order, the sentencing court demands nothing of the offender, and imposes no restrictions on his future conduct. While on a conditional discharge order, the court warns the offender that it is not prepared to make a penal sanction against him for the offence on which he has been found guilty but should the offender

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<sup>232</sup> Personal experiences as a magistrate.

commit another offence within twelve months he would be liable to be sentenced for the first conviction as well as the subsequent one. In short, an offender who re-offends can be sentenced for the original offence and for the later one.<sup>233</sup>

(7) **Community Service**

Community service is a form of punishment provided for by the Penal Code, and the procedure of its implementation is outlined in the Criminal Procedure Code.<sup>234</sup> This form of punishment may be ordered by a court of law for an offence classified as a misdemeanour. A court may order this kind of punishment for either an adult person or a juvenile offender. The Penal Code (Amendment) Act No.12 of 2000 defines ‘community service’ as a form of punishment as a condition of suspension of sentence of imprisonment requiring an offender to perform unpaid work within the community where the offender resides for the period specified in the order for community service.

Under s.73(1)(j) of the Juveniles Act, a juvenile court is empowered to deal with a case of a juvenile offender in any other manner in which it may legally be dealt with. Although community service order has not been provided for under s.73 of the Juveniles Act, it is one such disposition which a juvenile court may legally resort to for a juvenile offender, against whom a charge has been proved. This is for an offence which is a misdemeanour. However, in some specified cases, community service may be ordered for ‘felony’ cases. For example, the Penal Code under s.138(4) as amended by Act No. 15 of 2000 provides that:

A child above the age of twelve years who commits an offence under subsection (1) or (2) is liable to such

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<sup>233</sup> See s. 42 of the Penal Code.

<sup>234</sup> The Criminal Procedure Code (Amendment) Act No. 13 of 2000.

community service or counselling as the court may determine in the best interests of both children.

The offences referred to in subsection (1) and (2) of the aforesaid s.138(4) are defilement and attempted defilement of a child, respectively. These offences are classified as felonies by the Penal Code.

In Zambia, community service is considered to be a sentence which is less punitive and as such a better method of dealing with juvenile offenders. It is also a better method of dealing with juvenile offenders than institutionalisation. It is the researcher's view that the restriction of whether an offence is a misdemeanour or a felony tends to limit the court's discretion in ordering the juvenile offenders to perform community service other than for cases of defilement and sexual related cases. This restriction ought to be abolished for cases relating to juvenile offenders.

#### 4.3 **CONCLUSION**

Despite Zambia having enacted the Juveniles Act<sup>235</sup> and ratified the Convention on the Rights of the Child, there is still a high level of violation of the rights of children in conflict with the law by the law enforcement agents especially the police, prisons and courts. The separation of children from adults which is the core principle of the juvenile justice system has failed, in most instances.

Simply put, there is no specialized juvenile justice system in Zambia. Consequently, children in conflict with the law have been put through the criminal justice system designed for adults. There are a few or no diversion options legally available to criminal justice agents for the benefit of children in conflict with the law.

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<sup>235</sup> Juveniles Act, Cap.53, substantially conforms with the acceptable international standards for dealing with children in conflict with the law though certain areas of the law need reform.



The juvenile justice system in Zambia is, therefore, in need of reform in terms of the law, practice and procedure in dealing with children in conflict with the law.

Zambia may have good lessons to learn from the juvenile justice system of Zimbabwe discussed in the next chapter. Other countries that have reformed their juvenile justice systems in conformity with the provisions of the CRC include Ghana and South Africa. A few examples have been drawn from these countries in recommending some vital provisions for incorporation in the Zambian statutes.

## CHAPTER FIVE

### THE JUVENILE JUSTICE SYSTEM OF ZIMBABWE

#### 5.0 INTRODUCTION

This chapter examines the juvenile court system in Zimbabwe in terms of the law and practice with regard to the institution of criminal proceedings, pre-trial procedures, the court procedures and the manner of disposing off cases. Like Zambia, Zimbabwe is a commonwealth country and as such its constitution contains a ‘bill of rights’ entrenching fundamental rights and freedoms which courts are expected to interpret once a person has been arrested by police and subsequently brought before them. It is the duty of the courts of law to dispose off the cases before them in a completely fair and just manner. Courts must decide all criminal cases on a fair, objective and impartial basis. The main objective being to afford protection to those rights and freedoms subject to such limitations which ensure that the enjoyment of the rights and freedoms by any person does not prejudice the public interest or the rights and freedoms of other persons.<sup>236</sup>

A juvenile accused of a criminal offence is guaranteed by the Constitution the same rights as an adult. These include the right to a ‘timely’ trial, the right to have notice of the charges, the right to cross-examine a witness, and the right to remain silent. Juveniles also have the right to legal representation by counsel of their own choice.

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<sup>236</sup> Constitution of Zimbabwe, Art.11.

### **5.1.1 THE INSTITUTION OF CRIMINAL PROCEEDINGS AND PRE-TRIAL PROCEDURES**

In Zimbabwe, the involvement of a juvenile with the criminal justice system begins long before trial. It begins at the time a complaint is laid or he is arrested by police. The nature of the complaint will help police officers to determine whether the charges should end up in court.

A child below the age of seven years shall not be arrested and tried for any crime as such child is still presumed to lack criminal capacity; he/she is deemed to be *doli incapax*, that is, incapable of forming the intention necessary to commit a crime. However, a child between the ages of seven and fourteen years may only be prosecuted with the consent of the Attorney-General, where it is proved beyond reasonable doubt that the child had the capacity to form the intention necessary to commit the crime. Further, where negligence is an element of the crime committed, that the child had the capacity to behave in the way that a reasonable adult would have behaved in the circumstances.<sup>237</sup> In short, children or young persons who are strictly liable to prosecution are those above the age of 14 years. Although there is no legal requirement for the Attorney General's consent for a case involving a child aged over 14 years, consent has always been sought as a matter of policy.

It is provided in s.142(5) of the Criminal Procedure and Evidence Act,<sup>238</sup> that when the police arrest a person under the age of 18 years in order to bring him to court on a criminal charge or warn him to appear before the court to answer a charge, the police must also warn the parents or guardians, if they can be located, to attend court when the juvenile appears. It is important that the court, where possible, hears from the parents or guardians as to the domestic circumstances of

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<sup>237</sup> Criminal Law (Codification and Reform) Act, Cap.9:07,s.7

<sup>238</sup> Cap. 9:07 of the Laws of Zimbabwe.

the juvenile. The police also has the duty to inform a social welfare officer about the arrest of the juvenile.

The arrest of a child or young person is usually followed by an assessment of the child by a social welfare officer who gathers information with regard to the family history of the juvenile, home surroundings, health status, education background and the circumstances under which the crime was committed. An interview with the child and his/her parents or guardians is usually arranged. Thereafter, the police exercises a lot of discretion in dealing with the child in a number of ways deemed to be in the best interests of that child.

There are a number of courses of action available to the police which include an outright release of the offender after an initial interview, they might release the child or juvenile after the social welfare officer has submitted a recommendation to that effect, release the offender to the parents or guardians with a reprimand. Lastly, police have to decide whether to charge the juvenile. In that instance, whether to take the juvenile in detention pending a hearing or to release him to his parents on bail. It was learnt that very few cases are referred to court in Zimbabwe.<sup>239</sup>

Recently, Zimbabwe Republican Police have established a special unit which now deals with children in conflict with the law unlike in the past where the general duty police officers also handled children's cases. Under the Zimbabwean system, police officers have been specially trained to deal with children cases only. In Zambia, children cases and complaints are handled by the Victim Support Unit (VSU). Although this may be said to be a special unit, it was found to be different from the Zimbabwe Police Unit dealing with children. Under the Zambian system, VSU police officers also deal with a variety of other complaints such as gender based violence, witchcraft accusations, property grabbing from

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<sup>239</sup> The revelation was made during an interview with Ms. S. Rosemani, Magistrate at Victoria Falls Town, Zimbabwe on 10<sup>th</sup> January, 2011.

widows and widowers, spouse battery etc. making it not to be a special unit for children cases only.

### **5.1.2 COURT PROCEDURE AND PRACTICE DURING CRIMINAL PROCEEDINGS**

There are three types of subordinate courts in Zimbabwe that deal with cases involving children or young persons. These are the magistrates courts, the children's courts and the victim friendly courts (VFCs). As a consequence, the procedure of these courts also differ slightly.

#### **(a) Magistrate Courts:**

In accordance with the provisions of s.4(1) of Magistrates Court Act,<sup>240</sup> the Minister of Justice, Legal and Parliamentary Affairs may establish a magistrate's court for any regional division or province. Every court so established shall be a court of record. Proceedings are conducted in English language and in open court.<sup>241</sup> The procedure adopted by the magistrate courts in Zimbabwe is more or less the same as that which the magistrate courts in Zambia have adopted.

By the provisions of s. 3(2) of the Children's Act,<sup>242</sup> every magistrate court shall be a children's court for any part of the area of its jurisdiction for which no children's court has been established. Magistrate's courts are found in almost every district and town of the Republic of Zimbabwe. In rural districts where there are no children's courts and VFCs, magistrate's courts handle children and young person's cases. The procedure is informal. When it is time for a juvenile's case, persons who are not

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<sup>240</sup> Cap. 7:10 of the Laws of Zimbabwe.

<sup>241</sup> Except where the Court is hearing a case involving a child or young person. In that case proceedings are held *in camera*.

<sup>242</sup> Cap. 5:06 of the Laws of Zimbabwe.

related to the juvenile are requested to leave the court room. The proceedings are thus held *in camera* and publication of the proceedings is prohibited by law. The same courtroom that is used by adults is also used by children. The presiding magistrate is the same person as for the adults. The magistrates have adopted child-friendly practices when they preside over children's cases. They try as much as possible to create a child-friendly environment by leaving the bench and sitting around the table used by court staff and lawyers thus making the child to feel free to answer to the charges. His or her parents and social welfare officers are required to be present throughout court proceedings as it is done in Zambia. In summary, there is no marked difference in practice between the converted juvenile courts in Zambia and the converted children courts in Zimbabwe. In simple terms, magistrate courts in both countries are simply converted to juvenile/children courts and hold their proceedings as such.

(b) **Children's Courts**

These courts are exclusively used for the hearing and trial of children's cases. Children's courts are established by s.3(1) of the Children's Act. The said section provides that the Minister responsible for Justice may, after consultation with the Minister of Public Service, Labour and Social Welfare, establish a children's court for any area of Zimbabwe. The Minister of Justice is also empowered to appoint a magistrate to preside over a children's court established pursuant to the provisions of s. 3(1) of the said Children's Act.

It is mandatory that a probation officer is appointed for every children's court. The officer so appointed is responsible for safeguarding the

interests of any child or young person who is brought before the court. He is also expected to be present during all the proceedings of the court.<sup>243</sup>

Every magistrate presiding over a children's court is entitled to sit with assessors. However, whenever the court is inquiring into the case of a female child or female young person, the magistrate shall summon to his aid a woman assessor if a suitable woman is available to act as such.<sup>244</sup> Assessors advise the magistrate on all questions, except questions of law, arising during any sitting, inquiry or hearing, but the final determination or order of the court shall be the responsibility of the presiding magistrate.<sup>245</sup> Although this aspect is similar to the Zambian court practice, it is rarely used in Zambia.

As regards procedure, a children's court is not bound by any rules relating to civil or criminal proceedings. The court proceedings are conducted in such a manner as seems best fitted to do substantial justice.<sup>246</sup> The magistrate presiding over a children's court may in his discretion permit evidence to be given to the court by way of affidavit or report and may permit the child or young person to express his views or opinion on the matter before the court.<sup>247</sup> However, any person who in the opinion of the magistrate is a properly interested person may be permitted to examine and cross-examine the deponent or the maker of the report on oath. Where it appears to the presiding magistrate that a witness has been asked any question tending to incriminate such witness, the magistrate shall inform the witness that he may refuse to answer the question.<sup>248</sup> Publication of the name, address or school or any other information likely to reveal the

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<sup>243</sup> Children's Act, Cap.5:06, s.4(2a).

<sup>244</sup> Children's Act, Cap.5:06, s.4(2).

<sup>245</sup> Children's Act, Cap.5:06, s.4(4)

<sup>246</sup> Children's Act, Cap. 5:06, s.5(1).

<sup>247</sup> Children's Act, Cap.5:06, s.5(2).

<sup>248</sup> Children's Act, Cap.5:06, s.5(7)(8)

identity of any child or young person who is or has been concerned in any proceedings of a children's court is prohibited.<sup>249</sup>

Proceedings of the court are held *in camera* and persons who attend are those authorized by law or the court itself.

The Children's Act in s.5(6) provides that:

At any sitting of a children's court no person shall be present unless –

- (a) His presence is necessary in connection with the proceedings of that court or he is an officer of that court; or
- (b) He is a parent or guardian of a child or young person whose presence is necessary in connection with the proceedings of that court; or
- (c) He is the legal practitioner representing such child or young person or parent or guardian; or
- (d) The officer presiding at that sitting has granted him permission to be present; or
- (e) He is the person in charge of the home or institution in which the child is residing or the nominee of such person.

However, children's courts have powers to *subpoena* any witness to give evidence or to produce a book or document during any stage of its proceedings.<sup>250</sup> The *subpoena* is served in the same manner as if it were a *subpoena* for the attendance of a witness at a criminal trial in a magistrate's court.<sup>251</sup>

### (c) **Victim Friendly Courts (VFCs)**

In addition to the two types of courts discussed above, the Zimbabwean government has also initiated the establishment of victim friendly courts in major cities and towns such as Hwange, Bulawayo and Harare. These

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<sup>249</sup> Children's Act, Cap.5:06

<sup>250</sup> Children's Act, Cap. 5:06

<sup>251</sup> Children's Act, Cap. 5:06, s.5(9)



courts have been established through a deliberate Government policy and are not at all a creation of statute.

VFCs are mainly intended to be used for the trial of sexual related offences committed against children and for the trial involving other vulnerable witnesses. A vulnerable witness is a witness who is likely to suffer emotional stress from giving evidence; and one who is likely to be intimidated by the accused or by the nature of the proceedings or the place where they are taking place so as not to be able to give evidence fully and truthfully.<sup>252</sup> Children who are victims of sexual crimes have also been classified as vulnerable witnesses.

The researcher visited and inspected the VFC established for Hwange District during a one day study tour of Zimbabwe on 27<sup>th</sup> November, 2009. The VFC comprises the main court room and the victim friendly room both of which are user friendly to the court, the accused and the victim. The court room is connected to the victim's room via a video link. The T.V. screen is placed in the main court room and positioned in such a way that both the magistrate and the accused are able to see the picture of the child located in the victim friendly room where a camera is mounted.

The child (victim) gives evidence from a victim friendly room which is a separate room from the court room. The victim's room is manned by an intermediary who is appointed by the court (as an officer of the court). The intermediary and the public prosecutor should meet a day before the trial or on the morning of the trial, when the prosecutor should give the intermediary a brief background of the case. Details such as the age of the child, his/her home area, language and charge etc are some of the things the intermediary should be made aware of.

The child is usually accompanied to court by a social worker or a support person. The court usually appoints a support person who provides the

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<sup>252</sup> Zimbabwe Magistrates' Handbook at p. 75.

moral and emotional support to the child. The Criminal Procedure and Evidence (Amendment) Act under s.319F provides that in appointing a support person for a vulnerable witness the court shall select a parent, guardian or other relative of the witness or any other person who the court considers may provide the witness with moral support when giving evidence.

Once the child has been introduced and handed over by the social worker to the intermediary, he/she is taken together with the support person in an interview room. The intermediary will then explain to the child some of the things that will be happening during the court's proceedings, for example, that the people in the courtroom want to know exactly what happened. Indicate to the child that some questions may be asked by the accused and the court and that the child will be expected to provide answers. A child speaks to the magistrate and the accused person through an intermediary. This sort of arrangement creates a conducive atmosphere which ensures that children and other vulnerable witnesses, without being in the presence of the accused, feel free to testify against the accused. In essence, intimidation of any kind is eliminated and the emotional stress associated with court environment minimized. The main role of the intermediary is to convey the testimony of the child to the court and the accused without altering any meaning and vice versa. In case of questions, the intermediary must convey to the child the general meaning of the question without altering the question. This must be done in a language and form the child can understand without difficulty, and as far as possible repeat to the court or the accused the child's precise reply. Anatomically correct dolls may be used by an intermediary to help a child demonstrate what happened in cases where the witness has difficulty verbalizing events.<sup>253</sup>

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<sup>253</sup> Protocol for the Multisectoral Management of child sexual abuse in Zimbabwe. 2<sup>nd</sup> ed. June, 2003. p.18 (Unpublished).

When the issue of identification arises, this is resolved by the exchange of positions. The accused is taken to the victim friendly room and the victim taken to the main court room where the accused will be seen on the T.V. screen. At no time do the accused and the victim comes into close touch, or in the physical presence of each other.

VFCs are sometimes converted into children's courts for the purpose of hearing children's cases in criminal proceedings. This is where the social welfare officer has made a recommendation or the court on its own motion decides to hold such a hearing in that manner. When the VFC is converted into a children's court, all the rules of procedure of the children's court also apply *mutatis mutandis*.

### **5.3 DISPOSAL OF JUVENILE OFFENDERS' CASES**

Where a child or young person pleads guilty or is convicted of an offence, it falls upon the court to give a sentence.<sup>254</sup>

#### **5.3.1 Methods of dealing with juvenile offenders**

Before assessing sentence, a magistrate must equip himself with sufficient information in any particular case to enable him to assess sentence humanely and meaningfully, and to reach a decision based on fairness and proportionality.<sup>255</sup>

The Criminal Procedure and Evidence Act in s.351<sup>256</sup> provides for the manner of dealing with convicted juveniles. The prescribed methods of disposition include sending a juvenile to a remand home, a reform school or a training institute for a minimum period of three years unless he is released earlier on licence. Other methods are imposition of a fine or a sentence of imprisonment. The juvenile

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<sup>254</sup> In Zimbabwe the words 'conviction' and 'sentence' are used in the statutes dealing with children and young offenders.

<sup>255</sup> Zimbabwe Magistrate Handbook, 2008 at p.136.

<sup>256</sup> Cap. 9:09 of the Laws of Zimbabwe.

may also be ordered to pay compensation to the victim of his criminal activities. He may be discharged absolutely or conditionally.

It was apparent that Zambia and Zimbabwe employed almost the same or similar methods of disposing off criminal cases involving children and young persons. However, there were three major dispositions that marked the difference. First, it was found that Zimbabwe still embraced corporal punishment (canning of offenders) whereas in Zambia this was abolished following the High Court of Zambia decision in the case of **Banda John v The People**.<sup>257</sup> Secondly, probation orders were not made in respect of persons under the age of nineteen years. Thirdly, community service was another disposition that aroused a lot of interest in the manner it was being implemented by the Zimbabwean government. The foregoing dispositions are briefly discussed:

(1) **Corporal Punishment**

This is the form of punishment which involves the caning of a male juvenile who has been found guilty of an offence by a court of competent jurisdiction and has been ordered to be caned. In accordance with s. 353(i)(c) of the Criminal Procedure and Evidence Act, a magistrate's court has the jurisdiction to impose corporal punishment not exceeding six strokes upon a convicted person who is under the age of eighteen years.

Corporal punishment is inflicted in privacy using a rattan cane. Parents or guardians of the offender are entitled to be present when the strokes of a cane are administered. However, corporal punishment shall not be inflicted on the offender unless a medical practitioner has examined the person on whom it is to be inflicted and has certified that he is in a fit state of health to undergo the punishment.<sup>258</sup> The court has the power to amend the sentence if it is satisfied that the person against whom corporal punishment was ordered is not in a fit state of health to receive the

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<sup>257</sup> HP/06/98 (Unreported)

<sup>258</sup> Criminal Procedure and Evidence Act, Cap. 9:09, s.353(4)

punishment or any part of it. When a juvenile has been sentenced to caning such caning shall not be carried into effect until it has been confirmed by a judge of the High Court. The caning of a convicted person is done by a prisons officer who has been trained to administer this form of punishment. It was submitted that corporal punishment is usually ordered for violent cases mostly in the category of aggravated assaults.<sup>259</sup>

On the international plane, corporal punishment is now considered a form of ‘institutionalised violence’. It has been held at the European Court of Human Rights in Strasbourg that corporal punishment is cruel, inhuman and degrading treatment.<sup>260</sup> Further, corporal punishment runs counter to Art. 5 of the African Charter on Human and People’s Rights and Art. 37(a) of the CRC which prohibit cruel, inhuman and degrading treatment or punishment of juvenile offenders.

(2) **Community Service**

Community service has been defined as any service for the benefit of the community or a section thereof which an offender is required to render in terms of a community service order.<sup>261</sup> A court which convicts a person of any offence may, instead of sentencing him to imprisonment or fine, make a community service order for the benefit of the community or any section of the community for such number of hours as shall be specified in the order.<sup>262</sup> The order for community service may be made in respect of both adults and children.

This disposition has in essence, provided an alternative to imprisonment and it has been particularly beneficial to the first and youthful offenders. It gives the offender an opportunity to reflect on his wrong doing. Most

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<sup>259</sup> As revealed by magistrate Sharon Rosemani during a personal interview on 10<sup>th</sup> January, 2011.

<sup>260</sup> B.M. Majula, ‘Statutory provisions as they relate to juveniles: The case of Zambia. ‘A paper presented to the YWCA seminar for magistrates on a Child Friendly Court. February, 1999.

<sup>261</sup> Criminal Procedure and Evidence Act, Cap 9:09, s. 335A

<sup>262</sup> Criminal Procedure and Evidence Act, S. 350A

importantly, the offender is not only kept out of prison where he would otherwise get into contact with the worst elements in society but he is also made to pay reparation for his wrongs to society.

Community service has been institutionalised in Zimbabwe and it is well supervised by community service officers. It is one form of disposition which has been used for young offenders who are students and in full time employment. According to Community Service Guidelines<sup>263</sup> there is need for the court to specify the hours to work and times of starting and ending work. The court ought to take into account the fact that the convicted person is a full time student or in full time employment. In these circumstances, the court may allow community service to be carried out over weekends and after or before working hours, by arrangement with the institution concerned.

Although community service is one of the dispositions available to the courts in Zambia, it is not well established and institutionalized as in Zimbabwe. Therefore, this kind of disposition is rarely used in this country. In Zambia, most offenders who are put on community service consider it a pardon and in most instances do not complete the period of their community service leaving courts reluctant to order this sort of disposition.<sup>264</sup>

(3) **Probation order**

The Criminal Procedure and Evidence Act in s.351(3)(a) provides that:

Any court before which a person who is nineteen years of age or more but who is under twenty-one years of age has been convicted of any offence other than murder, treason or rape may, instead of imposing a punishment of a fine or imprisonment on him for that offence –

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<sup>263</sup> Revised Guidelines for Magistrates, Prosecutors and other Court officials issued by the Ministry of Justice, 2009. Legal Resources Foundation: Harare, Zimbabwe.

<sup>264</sup> These are the views expressed by most magistrates interviewed in relation to community service as an alternative to imprisonment. The researcher holds the same view.

(a) order that he shall be placed under the supervision of a probation officer .....

From the above cited section, it would appear that probation orders may not be made in respect of children and young persons below the age of nineteen years. However, in Zambia probation orders are made for juveniles, juvenile adults and adult convicts.<sup>265</sup>

#### 5.4 **CONCLUSION**

Whilst Zimbabwe has performed well in its effort to establish a separate juvenile justice system by the establishment of children's courts and VFCs, the country still has its own practical and legal challenges that need to be addressed. There is, for instance, the need to establish children's courts and VFCs in all districts and towns of Zimbabwe. At present, only major towns and cities have such facilities. Further, there is an urgent need to abolish corporal punishment and substitute it with a humane disposition such as probation orders.

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<sup>265</sup> According to S.2 of the Juveniles Act, Cap. 53 a "juvenile adult" is a person who has attained the age of nineteen years but has not attained the age of twenty one years (part of the definition).

## CHAPTER SIX

### CONCLUSIONS AND RECOMMENDATIONS

This study sought to determine the extent to which the rights of children in the criminal justice system in Zambia are protected in comparison with the set standards enshrined in the relevant international and regional human rights instruments. The question that was being determined was whether the existing statutory provisions in the Juveniles Act contained adequate legal provisions for the protection of the rights of children in the criminal justice process. On a more pragmatic level, the study examined the procedures used by the law enforcement agencies in dealing with child offenders. Further, the study assessed the infrastructural facilities that were being used by children in conflict with the law. It examined and evaluated both institutional and legal constraints that negatively impacted on the protection and realization of the children's rights in the criminal process.

Having evaluated both the international and domestic legislation, it was evident that most of the important statutory safeguards for the protection of children's rights in the criminal justice system were provided for. What seemed to be lacking was compliance with the necessary provisions of the international law as well as domestic law by law enforcement officers. As a result of non-compliance with the statutory provisions, there was a high level of violation of children's rights. It was observed that the negative attitude exhibited by the law enforcement agents might have been as a result of lack of specialised training in handling children in conflict with the law or it might have been due to their own ineptitude.

It was further shown that the lack of special courts to deal with children in the criminal process also adversely affected the protection and enhancement of their rights. It was found that the conditions in most of the institutions intended for the use and habitation by child offenders were in a deplorable state. Most of the institutions needed a comprehensive refurbishment and rehabilitation and, in some instances, reconstruction.



It was further submitted that the inadequate protection of children's rights might be attributed to government's own lack of political will and the inability to provide sufficient funds and the necessary resources to the criminal justice agencies, for example, there was inadequate provision of vehicles and fuel to the police and the prosecutors, the insufficient court rooms and lack of separate cells, inadequate staffing levels in the department of social welfare and the Legal Aid Board. Above all, there was lack of specially trained magistrates to hear and determine juvenile cases country wide.

This study, therefore, confirms the assertion that despite Zambia being a state-party to the CRC and the African Children's Charter; and having adopted the Beijing Rules and enacted its own Juveniles Act, the situation of children in the country is still far from being satisfactory. It is evident that children have been ill-treated, abused and dehumanized by the police, prison authorities and at times by the courts themselves; they have been mixed with adults whilst in detention; they have also not been separated from adult offenders on being transported to and from courts; they are denied bail or granted bail with restrictive conditions which they subsequently fail to fulfil. Children's privacy has not been protected as they have been compelled to confess their own guilt thereby arbitrarily taking away their right to remain silent. The presence of their parents or guardians has not been facilitated by police as parents or guardians are not informed of their arrest and such situation contributes to delayed trials of cases. In Zambia, there are no suitable places of safety where children may be detained if not released on bail. While in police custody children are not provided with any food, water to drink and bathing, mattresses and blankets. In remand prison, the food and beddings provided are usually insufficient.

Throughout this dissertation, it has been consistently shown that the Zambian juvenile justice system is not very satisfactory in its present form. The findings contained in Chapter 3 and 4 particularly support this assertion. A striking practice which emerged was the mixing of juvenile offenders with adult offenders at almost all stages of the

criminal process. This practice has been shown to be counter productive as it leads to contamination of the juveniles by experienced adult criminals.

As the Zimbabwean experience clearly demonstrates, there are a number of good lessons that Zambia can learn from Zimbabwean juvenile justice system. Granted that Zambia has a lot of other important matters to attend to, the reform of the juvenile justice system still remains an urgent matter. It is accepted and recognized that appropriate and relevant criminal justice practices, procedures and policies produce best results. It is for these reasons that major reforms are suggested.

Arising out of this study, a number of measures need to be put in place and implemented in order to enhance the protection and realisation of the rights of children in conflict with the law. This fact has been acknowledged by the Government of the Republic of Zambia when the Deputy Minister of Community Development and Social Services made the following statement:

There is need to review the justice system in order to safeguard the interests of children ... the need to urgently create a system and atmosphere that protected children by using a conducive approach that included capacity building for officers involved in the criminal justice system and the review of laws.<sup>266</sup>

In view of this realisation, the following recommendations are made:

- (1) **Establishment of Children's Courts:** Government should consider establishing, by statute, courts that will deal exclusively with children's cases. The sole objective of these courts will be to hear and determine all cases involving children in conflict with the law, and those jointly charged with adults. These courts should be presided over by specially trained magistrates. In this regard, it will also be necessary to have specialised prosecutors dealing exclusively with child offenders.

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<sup>266</sup> Times of Zambia, 16 July, 2008. This statement is a manifestation of Government's commitment and shows that the juvenile justice system is in dire need of reform.

- (2) **Amendment of the law for granting bail or police bond to children:** The detention of juveniles in police cells or other detention facilities should be avoided and as far as possible be used as a measure of the last resort and for the shortest appropriate period of time.<sup>267</sup> Therefore, s.123 of the Criminal Procedure Code and s.59 of the Juveniles Act should be amended to make the release of children on bail or police bond a mandatory requirement despite the seriousness of the offence committed, unless the detention of a child is proved to be in his or her best interests. Where detention is necessary, the time frame must be specified by statute beyond which the detention of the child shall be unlawful.
- (3) **Separation of children from adults and ‘convicted’ juveniles:** Despite the economic problems being experienced by the country, government should seriously consider the construction of separate infrastructure for the sole use by children in conflict with the law. In a situation where detention is necessary, children should never be mixed with adult offenders. Further, children whose cases are pending conclusion of trial should not be detained with juveniles against whom a plea of guilty has been made by a court and are in detention serving a court order.<sup>268</sup>

Until appropriate detention facilities for children in conflict with the law are constructed, no child should be detained together with adults whatsoever.

- (4) **Specialised training in child justice for key actors:** Nearly all law enforcement agencies are lacking officers specially trained in juvenile justice. Therefore, specialised training in child justice should be provided to all magistrates, prosecutors, social welfare officers and lawyers especially those from the Legal Aid Board. The training should be extended to prison officers for as long as they

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<sup>267</sup> Beijing Rules, Rules 13(1) and 19(1) . See also Art. 37(b) of the CRC.

<sup>268</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule III(17). See also Rule 13(4) of the Beijing Rules and Art.37(c) of the CRC. See also Art.40(3)(b) of the CRC and Rule 11 of the Beijing Rules.

continue to deal with children in conflict with the law. This training could be in the form of seminars or workshops with emphasis on the rights of children who go through the criminal process. This will help all criminal justice agencies to appreciate the special status of children and become better equipped to handle children in conflict with the law.

- (5) **Diversion Programmes:** A juvenile offender should not be prosecuted for a minor offence. Therefore, diversion as a form of disposition should be explicitly provided for in the Juveniles Act. The use of diversion programmes entails dealing with juvenile offenders without resorting to formal trial by courts. Diversion allows the police, prosecutors and the courts to remove the child in conflict with the law from the criminal justice process at any stage of the criminal proceedings before the final order of the court is made. The removal of the bulk of cases from the criminal process would lead to fewer juveniles being brought before the courts of law and as a result make it possible for lawyers from the understaffed Legal Aid Board to represent them. Further, the work of social welfare officers and indeed the courts themselves would be made easier. This move will ultimately lead to a situation where the rights of juveniles can, instead of merely being stated in the statute books as is now mostly the case, be translated into reality. It will improve the quality of justice dispensed to juveniles. Diversion is also important as it promotes reconciliation between the juvenile and the person or community affected by the harm caused. It further encourages the juvenile to be accountable for the harm caused. It encourages restitution and helps the child to be reintegrated into his or her family and community. Diversion also prevents stigmatization and prevents the child from acquiring a criminal record.<sup>269</sup>
- (6) **Penalties for non-compliance with the law:** Parliament should enact a law to provide for penalties for the law enforcement officers who fail to comply with the

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<sup>269</sup> For example, Ghana has explicitly provided for diversion programmes under sections 25, 26 and 27 of the Juvenile Justice Act, 2003 – Act No. 653. Ghana was the first country to ratify the CRC.

statutory provisions intended for the protection of the children. This is because the ill-treatment of children in the criminal justice system is not as a result of the inadequacy of the law but because of non-compliance with the existing laws. The Zambian Government has to cease thinking that the illicit treatment of juvenile offenders on grounds of adverse economic pressure is a tolerable excuse.

- (7) **Provision of Legal Aid to Children in conflict with the law**: Every child who has committed a serious offence(s) should be granted legal aid which shall be at the full expense of the Government. Considering the economic situation prevailing in the country, many juveniles or their parents cannot afford to pay legal fees no matter how moderate the fees may be. The provision of legal aid will enhance the children's right to legal representation and subsequently, secure a fair trial.<sup>270</sup>
- (8) **Minimum age of criminal capacity for children**: The Penal Code should be amended in s. 14 by increasing the age of criminal liability from 8 years to 10 years. This will significantly lead to the reduction of the number of children deemed to be in conflict with the law and will be in conformity with progressive states such as South Africa.<sup>271</sup>
- (9) **Need for the Director of Public Prosecution's Consent**: No child should be prosecuted for any criminal offence without the prior consent of the Director of Public Prosecutions. This will act as a 'filter' and enhance diversion of children's cases. This idea will be in line with progressive countries like Zimbabwe.
- (10) **Institutions of Correctional Services to be under the Department of Social Welfare**: All institutions offering correctional services, such as Katombora Reformatory School, should be delinked from the Ministry of Home Affairs under

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<sup>270</sup> For example, Art. 35(3)(g) of the South African Constitution provides that every person's right to a fair trial includes the right to have a legal practitioner assigned by the state and at state expense.

<sup>271</sup> For instance, the Child Justice Act No. 75/2008 of South Africa provides in s.7 for the minimum age of criminal capacity at 10 years.

the Commissioner of Prisons and be placed under the Ministry of Community Development and Social Services under the supervision of the Director of the Department of Social Welfare (Commissioner for Juvenile Welfare). This approach will help eliminate the notion that juvenile offenders are also prisoners. It will help minimize stigmatization which prisoners usually suffer from after leaving prison.

- (11) **Establishment of a Special Police Unit for children:** The Zambia Police Force should establish special children's units at all police stations to be manned by specially trained police officers. The present arrangement where the victim support unit handles children cases as one of their routine duties should be discouraged. The proposed arrangement will enable the specialised police officers to concentrate on promoting and protecting the rights of children as their core function.
- (12) **Provision of adequate funds, equipment and motor vehicles to Criminal Justice Agencies:** Government is implored to consider increasing funding and make adequate provision of the necessary tools and equipment to the criminal justice agencies particularly for the benefit of children in conflict with the law so as to uphold and enhance the principle of separation of juveniles from adults at all stages of the criminal process.
- (13) **Establishment of reformatories and approved schools for girls (Female juveniles):** There are no reformatories or approved schools established for girls in Zambia. There is, therefore, a need to establish such institutions as not having one is predicated on the false view that girls never offend to the extent of requiring correction or rehabilitation and the advancement of their education.
- (14) **Recruitment of Additional Social Welfare Officers:** There is urgent need to recruit and train more social welfare officers. These officers should be attached to

all children's courts once established. In the meantime, they should be attached to every correctional and rehabilitation institution for children.

- (15) **Construction of additional reformatories and approved schools**: Considering that there are only two institutions offering correctional and rehabilitation services for children in conflict with the law and the fact that these institutions (Katombora Reformatory and Nakambala Approved School) are both located in Southern Province easily accessed by Western, Central and Lusaka Provinces, it is recommended that two more institutions be established on the Copperbelt to be accessed by Northern, North-western and Luapula Provinces. Eastern province can access any of the four facilities. This development would greatly minimize on the practice where juveniles against whom a finding of guilty has been recorded are detained in prisons which do not have separate facilities for juveniles.

In the meantime, every prison and police station must be compelled to create a separate detention centre for juveniles found guilty of an offence before they are finally delivered to either Katombora Reformatory or Nakambala Approved School.

- (16) **Domestication of the Principle of 'The best interests of the child'**: It has been submitted that 'the best interests of the child' principle is not fully recognized as the provisions of the Juveniles Act only take into account 'mere interests' of the child as opposed to the best interests of the child.<sup>272</sup> Art. 3 of the CRC provides that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. Art. 4 of the ACRWC also provides that:

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<sup>272</sup>UNICEF Child Protection Advisor's response to the questionnaire for policy matters

‘1. In all actions concerning the child undertaken by an person or authority the best interests of the child shall be the primary consideration.’

Recognising that this is a fundamental principle of the juvenile justice system, Parliament should immediately enact these provisions into the Constitution of Zambia as well as the Juveniles’ Act.<sup>273</sup>

- (17) **Redefining the meaning of the word ‘child’**: The term ‘juvenile’ is labeling and has negative connotations of a delinquent child who is socially unacceptable in society. Therefore, the use of the word ‘juvenile’ should be abolished in all statutes and replaced with the word ‘child’. In the circumstances, the word ‘child’ should be redefined to mean ‘a person below the age of eighteen years’.<sup>274</sup>
- (18) **Provision of food, water, mattresses and blankets for children in police custody**: Government should consider providing food, safe and clean water, mattresses and blankets to children detained in police custody. The provision of these necessities of life will enhance the protection and realization of children’s rights in detention.<sup>275</sup>

In conclusion, the dissertation has shown the weaknesses and deficiencies in the structure and operations of the institutions of the juvenile justice system in Zambia. The recommendations mainly seek to ensure compliance with the existing laws, and lobby for increased funding by government. Further, the study recommends the establishment of separate facilities for the children in conflict with the law. The facilities would include children’s courts, police cells, remand homes or safe houses. Therefore, it is argued that

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<sup>273</sup> For instance, Ghana has explicitly provided for this principle referred to as ‘the welfare principle’ under s. 2 of its children’s Act, 1998 – Act No. 560.

<sup>274</sup> This will be in compliance with Art. 2 of the CRC. Ghana, for example, has provided for the meaning of the word ‘child’ in similar terms under section 60(1) of the Juvenile Justice Act, 2003 – Act No. 653 and s. 1 of the Children’s Act, 1998 – Act No 560.

<sup>275</sup> For example, by the provisions of s.28(1)(d)(ii) of the Child Justice Act, 2008; the south African government has made it a mandatory requirement to provide adequate food, water, blankets and beddings to children detained in police custody.



the reform of the juvenile justice system cannot be achieved by merely codifying the law but it is also important to re-evaluate the operations of each relevant institution, as has been done in this study. This approach has helped to discover why each institution is not functioning well and necessary measures to remedy the situation recommended.

It is hoped that once the recommended measures are implemented, there will be great improvement in the delivery of child justice in Zambia.

**THE UNIVERSITY OF ZAMBIA  
LL.M PROGRAMME**

**RESEARCH QUESTIONNAIRE**

The undersigned LL.M student at the University of Zambia is conducting research on the topic:

**“Assessment of the Administration of the Juvenile Criminal Justice System in Zambia vis-a-viz the International protection of children’s rights.”**

You are kindly requested to contribute to the process of preparing recommendations on how the law should deal with young people in conflict with the law, through the “Juvenile Justice System”, by responding to the questions that follow.

It is important to note that Zambia ratified the United Nations Convention on the Rights of the Child (CRC) in 1991 and the country is also a signatory to the African Charter on the Rights and Welfare of the Child. The Permanent Human Rights Commission in its National Plan of Action (1999 – 2009) has observed that despite Zambia being a signatory to the CRC and the aforesaid African Charter, the situation of children in the country is far from being satisfactory. The Researcher agrees with this observation but has not found reasons why this should be the situation for Zambia almost two decades since the country willingly accepted to be bound by the provisions of the International Law contained in the said CRC and the African Charter.

**KEY TERMS**

1. INSTITUTION – includes a police station or prison cell, a court’s holding cell, an approved or reformatory school or place of safety.
2. CHILD – is any person below the age of 18 years.
3. JUVENILE COURT – is any Subordinate (Magistrates) Court constituted as such, under the Juveniles Act, Cap. 53.
4. JUVENILE OFFENDER – A child who has come into conflict with the established Laws of the country and faces criminal prosecution.

5. JUVENILE JUSTICE – refers to the administration of justice for Children and young persons under the age of 18 years, in conflict with the law.

1. Position/Name of Respondent: .....

2. Rank: .....

3. District .....

4. Province .....

5. Name of your institution .....

6. What is the approximate distance between your institution and the Juvenile Court? .....

7. What mode of transport do use you to take the juvenile offenders to Court?

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8. Are Juvenile offenders separated from adult offenders (Give a brief account)

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9. Is there a stage at which it is impossible or difficult to separate Juvenile offenders from adult offenders? If so state reasons why they are mixed:

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10. When was your Institution built? .....

11. At the time it was built, what was the estimated occupation capacity:

(i) POLICE CELLS FOR:

(a) Male Adults .....

(b) Female Adults .....

(c) Male Juveniles .....

- (d) Female Juveniles.....
- (ii) PRISON CELLS FOR:
  - (a) Male Adults .....
  - (b) Female Adults.....
  - (c) Male Juveniles .....
  - (d) Female Juveniles .....
- (iii) COURTS' HOLDING CELLS FOR:
  - (a) Male Adults .....
  - (b) Female Adults .....
  - (c) Male Juveniles .....
  - (d) Female Juveniles.....
- (iv) APPROVED SCHOOL/REFORMATORY
  - (a) Male Adults .....
  - (b) Female Adults .....
  - (c) Male Juveniles .....
  - (d) Female Juveniles.....

12. Do you think the capacity of your buildings in question no. 9 above adequately cater for offenders or is there any congestion? If there is congestion, state number of inmates by which the capacity is exceeded: .....

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13. Do you have separate cells for Juvenile Offenders and adult offenders at your institution? .....

14. Supposing you do not have separate cells for Juvenile Offenders, how and where do you keep the children who are detained for various offences pending their appearance before Court? .....

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Give a brief description of the state of your institution:

- (a) State of repair .....

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(b) In your own opinion do you consider that the institution is fit for human habitation?

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15. State recommendations about the improvement you would like to see done to your institution: .....

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16. In your own opinion, do you consider that Zambia being a signatory to the United Nations Convention on the Rights of the Child has done well in the promotion and protection of the children's rights especially those children who have come into conflict with the law.

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17. If the answer to question 15 is NO, tick reasons why the children's rights have not been adequately protected in the Criminal Justice System:

- (i) Children are ill-treated and/or tortured by Police upon their arrest in order to obtain confessions.
- (ii) Children are detained in police custody for longer periods.

- (iii) Police/Prison/Reformatory cells are filthy and unfit for children’s habitation.
- (iv) Police/Prison/Reformatory cells lack facilities such as toilets, showers, beds etc.
- (v) Children are not brought before court within a reasonable time following their arrest.
- (vi) Juvenile offenders are usually mixed with adult offenders:
  - (a) while in police custody
  - (b) while in remand prisons
  - (c) while in court holding cells
  - (d) when being conveyed to and from Court.
- (vii) Children are made to serve longer prison terms than adults when they are detained in Reformatory Schools.
- (viii) Children are subjected to the same punishments as adults.
- (ix) Children’s cases are heard or determined by the same magistrates and in the same courts as adult cases.
- (x) Indicate any other reasons:.....  
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18. Do you think Zambia should establish specialized courts to deal with juvenile offenders or juveniles should continue being tried in adult courts? State reasons for your answer? .....

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19. Do you think it is necessary to have specially trained magistrates to hear cases involving juveniles or the present arrangement is sufficient? State reasons: .....

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20. Do you consider that the Juvenile Act, Cap. 53 in its current form provides sufficient protection to children who come into conflict with the law? State your reasons.

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21. Suggest any measures that you consider necessary for the promotion and protection of Children’s rights in Zambia vis-à-vis the International human rights Instruments for the protection of children.

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22. What sections of the law would you like to be amended to enhance and promote the rights of Juvenile offenders in the following Acts. (Please Specify):

- (i) The Constitution of Zambia, Cap.1

- (ii) The Police Act, Cap. 107
- (iii) The Penal Code, Cap. 87
- (iv) The Criminal Procedure Code, Cap. 88
- (v) The Prisons Act, Cap. 97
- (vi) The Probation of offender's Act, Cap. 93

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*Thank you so much for finding time to respond to this questionnaire.*

Davies C. Mumba  
Cell: 0977471121  
Email: [cdaviesmumba@yahoo.com](mailto:cdaviesmumba@yahoo.com)

**NB: CONFIDENTIALITY OF INFORMATION**

*The information provided in this questionnaire is STRICTLY for research purposes and shall not be divulged to any other person or authority.*



**THE UNIVERSITY OF ZAMBIA  
LL.M PROGRAMME  
RESEARCH QUESTIONNAIRE FOR POLICY AND DECISION MAKERS**

The undersigned LL.M student at the University of Zambia is conducting research on the topic:

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You are kindly requested to contribute to the process of preparing recommendations on how the law should deal with young people in conflict with the law, through the “Juvenile Justice System”, by responding to the questions that follow.

It is important to note that Zambia ratified the United Nations Convention on the Rights of the Child (CRC) in 1991 and the country is also a signatory to the African Charter on the Rights and Welfare of the Child. The Permanent Human Rights Commission in its National Plan of Action (1999 – 2009) has observed that despite Zambia being a signatory to the CRC and the aforesaid African Charter, the situation of children in the country is far from being satisfactory. The Researcher agrees with this observation but has not found reasons why this should be the situation for Zambia almost two decades since the country willingly accepted to be bound by the provisions of the International Law contained in the said CRC and the African Charter.

**KEY TERMS**

6. INSTITUTION – includes police station or prison cell, a court’s holding cell, an approved or reformatory school or place of safety.
7. CHILD – is any person below the age of 18 years.
8. JUVENILE COURT – is any Subordinate (Magistrates) Court constituted as such, under the Juveniles Act, Cap. 53.
9. JUVENILE OFFENDER – A child who has come into conflict with the established Laws of the country and faces criminal prosecution.

10. JUVENILE JUSTICE – refers to the administration of justice for Children and young persons under the age of 18 years, in conflict with the law.

1. Name of organization/Department/Ministry: .....

.....

2. Rank or Position of the Person answering the questionnaire: .....

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3. Do you consider that Zambia has adequately promoted and protected the rights of children who come into conflict with the law? .....

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4. (a) If the answer to question 3 above is YES, which of the best international practices do you think Zambia is practicing in the Criminal justice system affecting children?

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5. Do you consider that the Zambia’s Juvenile Act, Cap. 53 has adequate provisions for dealing with children who come into conflict with the law?

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6. (a) If the answer to question 5 above is yes, why do you think some people strongly believe that the protection of the rights of children who come into conflict with the law in Zambia is still very unsatisfactory:

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(b) Which sections of the Juvenile Act, Cap. 53 do you think require to be amended? Please indicate what you consider to be the best provisions in place of those sections:

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7. Zambia ratified the convention on the Rights of the Child (CRC) in 1991. Are there any reasons why the situation of children who come into conflict with the law is still unsatisfactory despite Zambia being a state-party to the CRC:

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(c) When was the latest report submitted?

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(d) Are there any constraints experiences in submitting the thematic treaty reports? If so list them down.

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11. What sections of the law would you like to be amended to enhance and promote the rights of Juvenile offenders in the following Acts. (Please Specify):

- (vii) The Constitution of Zambia, Cap.1
- (viii) The Police Act, Cap. 107
- (ix) The Penal Code, Cap. 87
- (x) The Criminal Procedure Code, Cap. 88
- (xi) The Prisons Act, Cap. 97
- (xii) The Probation of offender's Act, Cap. 93.

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**RESEARCH QUESTIONNAIRE****FOR CHILDREN WHO HAVE EXPERIENCED THE CRIMINAL JUSTICE  
SYSTEM***(To be administered by the Researcher)*

The undersigned LL.M student at the University of Zambia is conducting research on the topic:

**“Assessment of the Administration of the Juvenile Criminal Justice System in Zambia vis-a-viz the International protection of the children’s rights.”**

You are kindly requested to contribute to the process of preparing recommendations on how the law should deal with young people in conflict with the law, through the “Juvenile Justice System”, by responding to the questions that follow.

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14. JUVENILE OFFENDER – A child who has come into conflict with the established Laws of the country and faces criminal prosecution.



15. JUVENILE JUSTICE – refers to the administration of justice for Children and young persons under the age of 18 years, in conflict with the law.

1. Interview authorized by:.....
2. Full names: .....
3. (i) Age:.....  
(ii) Offence: .....
4. District: .....
5. Occupation at time of Arrest: .....
6. Date of arrest:.....  
(released on \*Police Bond/\*bail or \*detained)  
(\* delete whichever is inapplicable)
6. If detained, where were you detained and for how long:.....  
.....  
.....  
.....
7. Date of first appearance in Court:.....
8. (i) Was the charge explained on the first day of appearance .....
- .....
- .....
- (ii) If not, what was the reason for this .....
- .....
- .....
- (iii) Were you represented by a Lawyer .....
- (vi) If not, what was the reason for lack of legal representation:.....
- .....
- .....
9. (i) When was the case concluded:.....
- (ii) Order made by Court: .....
- .....

.....  
.....

10. Are there any good things you liked about the way the police officers, prison officers and the courts (Magistrates) handled you:

- (a) .....
- (b).....
- (c).....

11. Are there any bad things that you disliked about the Police, Prisons and courts?

- (a) Police:.....  
.....  
.....  
.....

- (b) Prisons:.....  
.....  
.....  
.....  
.....

- (c)Courts:.....  
.....  
.....  
.....

12. What would you suggest as the best ways of improving the criminal justice system for children in Zambia:

- (i)About Police:.....  
.....  
.....



.....  
.....  
.....

*Thank you so much for finding time to respond to this questionnaire.*

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***NB: CONFIDENTIALITY OF INFORMATION***

*The information provided in this questionnaire is STRICTLY for research purposes and shall not be divulged to any other person or authority.*

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