

**JUVENILE JUSTICE ADMINISTRATION IN ZAMBIA: HOW EFFECTIVE
DOES IT REACH OUT TO ITS INTENDED TARGETS**

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BY

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SCHOOL OF LAW

I recommend that the directed research prepared under my supervision

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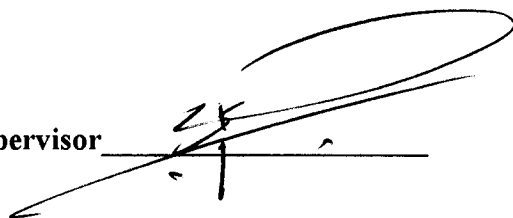
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be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements relating to the format as laid down in the regulations governing directed research essays.

Supervisor

A handwritten signature in black ink, appearing to be 'S.E. Kulusika', written over a horizontal line. The signature is stylized with a large loop at the top.

Date 08.12.2004

MR. S.E. KULUSIKA

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ABSTRACT

Children are the most important segment of society because in them lies the future. However in past years questions arose as to how children should be treated upon them infringing the law.

The ultimate result was that children be given different sanctions from that administered on adult offenders. This was due to the realization that unlike adults, children were fragile beings in whom reality and fantasy had not yet been separated; therefore reformation was only key to preserve the future that lay in them.

This academic work elicits information on juvenile justice in Zambia and how effective it reaches out to its intended targets.

In doing so, this paper commences with the definition of a juvenile, and the law applicable to juveniles in Zambia. Secondly the paper brings out the institutions handling juvenile cases and problems faced by members of staff. The gaps in domestic and international institutions of juvenile justice have also been drawn.

The paper has also focused on a case study of the Nakambala reformatory school and the policies pertaining to juvenile justice in Zambia.

Lastly a conclusion and recommendations have been given based on the analysis of the data.

ACKNOWLEDGEMENTS

I would like to express my gratitude to the following people who made it possible for me to complete this academic project:

I am particularly grateful to Mr. S.E. Kulusika for being my supervisor and more significantly for his patience, understanding and invaluable advice in seeing my research from beginning to end. To you sir I will always be indebted.

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I thank my loving family for their support: Misozi, Cynthia, Wendy, Fred, Livan, Kelvin and to my mother Mrs. Betty Chitembwe Simasiku.

God bless!

**CHITEMBWE AMOS
UNIVERSITY OF ZAMBIA**

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DEDICATION

In Memory of my father Mr. Fred Chambakulwa Simasiku. I will always be grateful for the words of encouragement you gave to me.

To my mother Betty I say thanks for all the support you have given to see me through to this end. It's not easy!

DECLARATION

I hereby declare that the works contained in this essay are wholly mine. Where information has been borrowed from other sources, acknowledgment has been given in that regard. All the omissions and mistakes are entirely mine. Antimbar

1.0 CHAPTER ONE

1.1 INTRODUCTION

Juvenile justice is a matter of practical concern in all regions and all legal systems. Large numbers of children become caught up in the legal system, as accused or accusers, victims or witnesses, and in situations outside conflicts with the criminal law, such as asylum-seeking, refugee and unaccompanied children, and children incarcerated with their mothers.

National laws need to be brought into full compliance with the Convention on the Rights of the Child, and all actions have to be taken with the best interests of the child as a primary consideration. That affects the role played by judges, lawyers, social workers, law enforcement officials, immigration officers, personnel working in children's institution and a range of other workers.

Juvenile justice administration as a concept reflects the recognition of 'childhood' as a special phase in the human life cycle, distinct from adulthood. Children are no longer treated as little adults, but as human beings with a different rhythm of life that has different laws of biological and mental growth. The child's drives, social forces, and motivations are basically different from those governing adult behaviour. To the child the world is identical to his or her personality; fantasy and reality are not yet separated. Only in the period of adolescence do reality and fantasy begin to part.¹ The value that is attached to children is therefore awesome and cuts across cultures, economies, nations and societies at large.

¹ Friedlander, W.A et al. Introduction to Social Welfare. (5th ed), 1980, Prentice Hall, New Jersey p. 213

Etymologically juvenile justice developed at the time when it was realized that children needed to be treated differently from adult criminals and that distinct punitive sanctions were to be imposed on convicted juveniles². For this purpose a ‘child-saving’ movement was established with a sole objective of advocating the reform of the criminal justice systems which eventually culminated into the concept of ‘juvenile delinquency’ which serves as an umbrella term which covers various acts of mischief perpetrated by juveniles³ including such offences as drug abuse, house breaking and all sorts of misdemeanors and felonies. The White House conference of 1930 defined delinquency as juvenile misconduct that might be dealt with under the law.⁴

Although it is the law embodied in various Acts such as the juveniles Act CAP 53 of the laws of Zambia and International instruments such as the Convention On the Rights of the Child (CRC) that children are supposed to be treated with special care distinct from the adults vis- a –vis convictions, in practice however legal theory breaks down with apparent resignation. It is the disparity that exists between what is contained in the law and what prevails in reality that possesses as a challenge for this paper to assess how effective the *Zambian juvenile justice administration* reaches out to its intended targets. Effectiveness of the system can only be appreciated if the realistic treatment administered to juveniles reflects what the law provides.

² Simaluwani, E.M. “ The Criminal Process in Juvenile courts in Zambia”(1997) Volume 29. *Zambia law Journal*. P 73

³ Ibid. P 73

⁴ *Supra* n.1 P. 453

1.2 DEFINITION OF A JUVENILE

In the past adult and children offenders were treated with no distinction and punitive sanctions were equal. However, in recent years movements for criminal justice saw the birth of the term “**juvenile delinquency**” an umbrella term for maladjustment and delinquent behavior of children and also intended to protect deprived and neglected adolescents representing *juvenile offenders* and *juveniles in need of care* respectively.⁵

With such a wide view of the term juvenile it is practical advantage that one understands the meaning attached to those referred to as juveniles as a whole, and particularly juvenile offenders. This will ensure that necessary action both embodied and not embodied in the legal provisions is taken into consideration to avoid maladjustment and asocial behaviour among children.

In defining a juvenile, age plays a very important role however it must be noted that there is no International instrument that defines an age limit of criminal responsibility. In all nations therefore, there is need to have a minimum age below which children shall be presumed not to have the capacity to infringe the penal code.

According to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)⁶, Rule 2.2 (a) defines a juvenile as

“ a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult”.

Rule 2.2 (c) goes further to define a juvenile offender as

⁵ Supra n.2 P.74

⁶ Adopted by General Assembly resolution 40/33 of 29 November 1985

“a child or young person who is alleged to have committed or who has been found to have committed an offence”.

Under the Zambian juveniles Act, in order to make it easier for sentencers to determine the appropriate sentence, it categorizes juveniles into several age categories such as the following-:

- **A child**, who is defined as a person who has not attained the age of sixteen
- **A young person**, as one who has attained the age of sixteen but is still under the age of nineteen years.
- **Juvenile adult**, defined in two ways. In the first one he is defined as that person who has reached the age of nineteen but not yet twenty one years, and in the second instance he is defined as one who is between the ages of twenty one and twenty five years but whose classification as a juvenile is expressly sanctioned by a Minister⁷.

Due to their special characterization in terms of age, Juveniles are considered incapable of criminal intent and can only be found guilty if evidence shows that the juvenile had **mischievous discretion**: an ability to understand the act and to know or appreciate its consequences.⁸

1.3 LAW APPLICABLE TO JUVENILES IN ZAMBIA

In Zambia the law relating to juveniles is contained in the Juveniles Act Chapter 53 of the laws of Zambia. The Act makes provision for the custody and protection of juveniles in

⁷ Section 2 (1) of the Juveniles Act CAP 53 of the Laws of Zambia

⁸ Section 14 (2) of the Penal code CAP 87 of the laws of Zambia

need of care, provides for the correction of juvenile delinquents, and provides for matters incidental to or connected with the administration of juvenile justice.

A juvenile offender is guaranteed the same rights as an adult by the constitution. Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

1.3.1 ARREST OF A JUVENILE

Like an adult offender a juvenile offender in the Zambian law requires to be brought before the court of law to face its adversaries as soon as possible. In any case the time frame should be within 48 hours or should be released on bail. In addition, however, juvenile law also requires that when apprehension of a person under 19 years of age with or without warrant and cannot be brought before the court, the arresting officer should release him on recognizance with or without sureties. It is only in cases such as the following that a juvenile can be detained.

1. Homicide or other grave offence
2. Where it is for the interest of such a juvenile to remove him from association with any reputed criminal or prostitute
3. Where the officer believes release of such a juvenile would defeat the ends of justice.
4. If not released on bail, a juvenile should be placed in a place of safety, which includes any institution, police station, or any hospital or surgery or any other

suitable place the occupier of which is willing temporarily to receive a juvenile, but does not include any remand prison, prison or detention camp, unless where the following apply that is to say:

- It is not practical to do so
- The juvenile is unruly or depraved a character that he can not safely be so detained or
- By reason of the state of health or of mental or bodily condition of the juvenile it is inadvisable so to detain.⁹

1.3.2 THE JUVENILE COURT

The juvenile courts have exclusively jurisdiction to try all criminal charges against juveniles, except where a juvenile is charged with a crime of homicide or attempted murder or is charged jointly with an adult¹⁰. Therefore whether the case is grave or trivial it must be disposed in a juvenile's court as established in **Siwale v. The People**.¹¹

The Supreme Court has also decided that if a person is being tried by High court and during the proceedings it comes to the notice of the court that the accused is a juvenile, the trial has to be discontinued and referred to the juvenile court. This point is illustrative by the case of *Musonda v. The People* where Baron DCJ as he then was stated in his blunt words that:

"In the present case the indication arose for the first time when the statements of the appellants were received in evidence. At this point the trial court should immediately have conducted an inquiry as to the appellants' age, and having found that they were

⁹ Section 60 CAP 53 of the laws of Zambia

¹⁰ *Ibid*, s 64(1)

¹¹ (1973) ZR 218

both juveniles...should have ordered that the matter be heard and disposed of in a juvenile court. The high court had no jurisdiction to hear this matter....”

Attendance is also restricted. Only members of the court, their legal advisors, witnesses, bonafide representatives of the press and other people duly authorized by the court can attend proceedings. Parents or guardians are vital for the protection of the juvenile unless were it is felt unnecessary or unreasonable to acquire the attendance. The terms of this provision have been held by the High Court and Supreme Court to be mandatory¹².

The juvenile Court is expected to sit in different rooms rather than that in which it sits ordinarily and should sit on different days.¹³

1.3.3 SENTENCING DISPOSALS

Section 64(7) of the juveniles Act states that when a juvenile court is satisfied that an offence was committed by a juvenile, it shall, if practicable, obtain information as to the background of the juvenile vis-à-vis, general conduct, home surroundings, school record and medical history, as may enable it to deal with the case in the best interest of the child. This has to be done in the preliminary to the hearing and determination of the case so as to facilitate judicious adjudication of the case by the competent authority.

It is the duty of the social welfare officer to compile the social welfare report (social reports or pre-sentence reports), which are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose use of special social services or personnel attached to

¹² Lumsden v. The People (1967) ZR 145

¹³ Section 119(1) CAP 53

the court or board is cardinal. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

Under the same Act imprisonment of juveniles is expressly prohibited. Juveniles instead are sent to reformatory schools. The period of detention is normally up to 4 years which could be extended if the superintendent feels that the juvenile needs care or training, but no juvenile can be detained there after his/her 23rd birthday.

After release a juvenile is to comply with all condition of his release of which non compliance can lead to recall to the reformatory. Apart from the above the juveniles Act also provides for various disposals such as dismissing the charge, make a probation order, send offender to the approved school, order the offender to be caned, order offender to pay fine, damages or costs, order the parent or guardian of the offender to give security for the good behavior of the offender, as per Section 73 (1)

1.3.4 THE GAPS (*JUVENILE JUSTICE IN ZAMBIA*)

Unlike the foregoing highlights on the expected standards of juvenile justice in Zambia, in practice, the standards leave more to be desired.

There are no special considerations for juvenile offenders. Juveniles are put in prison with adult offenders and exposed to harsh conditions for example; in a recent case 5 juveniles were detained in Livingstone prison with adult convicts. At time of conviction, these convicts were juveniles and adults at time of press.¹⁴ This is against section 73(I)

¹⁴ The LRF News. Number 60: March 2004, p 7

and section 79(ii) of the juvenile's Act which rules out imprisonment of juveniles but contends for reformatory schools.

Unlike the legal provisions it was discovered that the attendance of guardians or parents to court proceedings of the juvenile offenders were not made mandatory. According to a study done between January 1991 and December 1992 it showed that during this period the court heard and determined the cases in absence of the offender's parents or guardians. The reasoning was that if the courts adhered to the requirements of the Act, some cases would not commence and for those that did, they would take a long time to be completed.¹⁵

Moreover, hearing of cases is done in same courtrooms as those for adult offenders at the same time. This is so despite the fact that there is now a juvenile court at chikwa in Lusaka. Other districts do not have such facility and as such juveniles who come into conflict with the law in these deprived towns are subjected to hardship occasioned by lack of a separate courtroom in which they would be comfortable during trial. Thus there has been increased discrimination and criminal labelling from the public audience that is forced on the young offenders.

The old infrastructure plus a fast growing population that has to rely on less than 5 reformatory schools makes the problem even more damaging to the nation than anyone can approximate.

Therefore there is need for reformation in the entire field of juvenile justice taking into account all stakeholders.

¹⁵ Supra n.2 p.82

CONCLUSION

It is therefore desirable that as a nation we come up with reforms that would suit our young offenders. If young offenders were labeled as criminals and processed through the same system as adults they would grow up to live up to that identity and the country would be doing a lot of harm to its young population who are considered as an integral part of social development.

2.0 CHAPTER TWO

2.1 JUVENILE JUSTICE AND PROBLEMS FACED BY STAFF IN RESPECTIVE INSTITUTIONS

INTRODUCTION

The maladjustment and delinquent behaviour of children and adolescents are among the most serious problems of our society. There are many causes of delinquency and a number of theories have been advanced trying to establish the causes. In past years some scientists adhered to explanations of criminal behaviour as caused by certain biological traits. One notable advocate of this outmoded constitutional school of criminality was Cesare Lombroso, an Italian anthropologist and criminologist who taught that the criminal was doomed by certain biological characteristics to lead a life of crime.¹⁶ Others rely on differential association theory which explains causation of deviant behaviour as based on isolated uncommon behaviour nurtured by the surrounding culture, and some on both hereditary and traits learnt from the surrounding environment.

On a broader realm some scientists contend that crime and delinquency are caused by not any single source, be it hereditary, biological structure or environmental influences but usually by several factors working together: referred to as the *multiple causation theory*.¹⁷ Regardless of these causation explanations given, criminal behaviour either by adults or juveniles leaves almost the same scared face of society. However children offenders, it is emphasized should be treated with leniency and in a distinct manner as adult offenders.

From the foregoing emphasis arise questions as to why:

- Children should be given different or no punitive sanctions

¹⁶ Supra n.1 p.453

¹⁷ Ibid p. 453

-Children should be separated from adult offenders during incarceration and

-Why children should be sent to reformatory or approved schools and not the prisons

The basic theme for this chapter is an attempt to explain why we need to treat juvenile differently from adults. Done in a broader view then narrowed to our *Zambian* context.

In short this chapter highlights the need for an effective juvenile justice system in *Zambia*. It extends to looking at some institutions handling juvenile cases and zero in on the role of the juvenile courts in the dispensation of cases involving juveniles.

Last but not least the chapter also discusses the problems faced by staff in correctional institutions, which act as hindrances to effective administration of cases involving juveniles.

2.1.1 NEED FOR EFFECTIVE JUVENILE JUSTICE IN ZAMBIA

Juveniles in *Zambia* are protected by the Juveniles Act Cap 53 of the Laws of *Zambia* and other international instruments, which have been ratified for example the Convention on the Rights of the Child (CRC).

The aim of this law as regard to juveniles in conflict with it is to provide early treatment of behaviour problems or changes in environmental conditions that may lead to delinquency. This if done can direct children from the path which leads to adult crime and imprisonment to one in which they would be responsible citizens.

The main object therefore in this regard to have an effective juvenile justice system and to give special treatment to juveniles is the prevention of further wrongdoing. This prevention of further wrongdoing implies more than the mere negative aim of making a juvenile avoid further criminal activities. It is also directed to the positive end of giving the young delinquent a better start in life, making him a better son or daughter to his or

her parents, a more satisfactory pupil in his school, a more successful worker in his employment and occupation, and ultimately a man or woman more careful in the choice of his or her companions.

The United Nations Standard Minimum Rules on the Administration of Juvenile Justice (The Beijing Rules) embody the aims of each and every juvenile justice system in rule 5. 1, which provides that:

The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Basically this rule refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile, thus contributing to the avoidance of merely punitive sanctions.

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender, for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances should influence the proportionality of the reactions, for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life.

There is need to have an effective juvenile justice system because of the rapid population growth. As the population grows, there is likely to be a corresponding increase in juvenile

delinquency. This can be attributed to the large-scale erection of new housing estates- (shanty compounds in most cases), with little or no community centers and play parks to serve as recreation facilities. As a result of lack of such facilities, groups of boys and girls in some instances who are in their juvenile age, dissatisfied with the dull atmosphere of their home environment are attracted by the light and amusement of the town centers, and there find themselves easily involved in stealing from vehicles and taking other people's possessions and valuables.

Since the culprits are juveniles in such cases, there is a dear need to have an effective system that will help reform them if brought to book. Effectiveness of the system in this regard entails that juveniles brought before the court are dealt with in accordance with the provisions of the law, cases disposed of in short time, and ultimately the intended objective of juvenile justice achieved- this objective being that of reformation.

Another reason that prompts the need to have an effective juvenile justice in Zambia is the worldwide recognition of the fact that children have special needs and capacities different from adults and so deserve to be treated differently. This implies that the treatment rendered to them should be one that sees them through to adulthood. The Zambian child or juvenile is no different from other juveniles in other parts of the world and as such internationally approved standards of treatment should be administered to him or her as well. The Zambian juvenile justice system should therefore strive to meet these internationally approved standards which inter alia contend that juveniles are to be prevented from being taught bad vices by adult offenders, that they are supposed to be separated from adult offenders whilst detained at a police station¹⁸, going to or from

¹⁸ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule 13.4.

court, or when remanded in custody and use different court rooms to have their cases heard.

2.2 INSTITUTIONS HANDLING JUVENILE CASES

2.2.1 THE POLICE

Whenever a juvenile has committed an offence, the Police are the first people who come in contact with the juvenile offender. Because of the emphasis that is placed on the welfare of the juvenile, the police therefore play a vital role to ensure that they do not subject the offender to treatment that would undermine his dignity and worth.

It is the police who actually have the role of ascertaining that the particular offender is a juvenile and the case has to proceed on that basis. They have to take account of the age of the offender as it plays a crucial role in juvenile cases and juvenile justice as a whole. The determination of age by the police sets foundation for the court later in exercising its jurisdiction, in deciding the criminal responsibility of the offender and in selecting the sentence imposed on conviction, particularly in deciding whether to impose a term of imprisonment or an approved school order.

The police in practice have perpetrated a lot of injustice on the juvenile offenders. Most of them in Zambia do not understand their role when it comes to handling of cases involving juveniles and they exhibit bad dispositions. In this regard Zambia Police Service spokesperson Brenda Muntamba commented on the attitude of some police officers handling juvenile offenders that:

“despite them lacking training, police have the knowledge on how they should handle juveniles but sometimes it is just their attitude which is bad, it is a pity that police are not equipped on how to deal with juveniles”¹⁹

She further stated that due to lack of knowledge on how to deal with juveniles, police had sometimes detained the minors together with adults in the cells notwithstanding the fact that detention should be the last resort according to the juvenile administration system.²⁰

Clearly such acts being perpetrated are in contravention of the juveniles Act Cap 53 of the laws of Zambia, which expressly 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 while 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 juvenile) shall, while so detained, being conveyed, or waiting be under the care of a woman.²¹

In some instances police have subjected juveniles to harsh treatment which proves to be fatal. For instance police in Chawama tortured an 18-year-old boy who later died from the injuries he sustained²². This would not have resulted had the police in the first place taken consideration of the fact that they were dealing with a juvenile. The boy was accused of being a mastermind of a spate of robberies in the area.

¹⁹ The Post Newspaper, Wednesday September 15, 2004

²⁰ Ibid

²¹ Section 58 Juveniles Act Cap 53 Of The Laws Of Zambia

²² The LRF News. Number 35: January, 2002.p 1

Therefore in order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime should be specially instructed and trained. Special police units should be established for that purpose as police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the law but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

2.2.2 THE SOCIAL WELFARE DEPARTMENT

This department is under the Ministry of Community Development and Social services. Social welfare basically refers to a system of laws, programmes, benefits and services which strengthen or assure provisions for meeting social needs recognized as basic for the welfare of the population and for the functioning of the social order.²³ The United Nations description of social welfare which seems to have gained wide range of acceptance is that social welfare includes a wide range of socially sponsored activities and programmes directed towards community and individual well-being.²⁴

Arising from the above, it is vivid that the promotion of individual well-being constitutes the meeting point between social welfare activities and the juvenile justice system.

²³ Supra n.1 p. 4

²⁴ Livingstone, A. Social Policy In Developing Countries. (1969), London: Routledge & Kegan Paul p.51

With regard to juvenile justice, the department of social welfare is basically charged with the responsibility of preparing a social welfare report on the juvenile in conflict with the law. These reports play a vital role. The juvenile court must have as much information on the juvenile as possible and invariably a heavy onus lies on the social welfare officer to compile an adequate report. This implies that the report must be of sufficient quality to facilitate a judicious adjudication of the case once it comes before the court. To underscore this requirement, Rule 16.1 of the United Nations Minimum Standards On The Administration Of Juvenile Justice (Beijing Rules) provides:

In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by a competent authority.

In the reports cardinal issues that need to be reflected include type of situation of family accommodation, financial status, income of parents, relationship between the juvenile and the parents, his friends, medical history and any other information that would be relevant to the court to arrive at a determination of the case. With such factors and the variety characteristics involved in determining criminality no adequate assessment of a case can take place without the full data on the juvenile.

However in reality it has been observed that it is very difficult to arrive at such parameters especially with the problems that the social welfare department faces. The problems range from lack of incentives like funding to such as difficult in accessing the homes to the juvenile. The department is also facing administrative problems like those

associated with the bureaucratic procedures. Like most government departments, red tape is very much evident hence reducing efficiency. Lack of adequate funding has adversely affected such sectors within the department, for example transport; lack of refresher courses and hindrance of other issues that need financing. As regards transport, the situation is made worse by the fact that social welfare departments are largely concentrated along the line of rail as such social welfare officers cannot adequately reach out to gather information on juveniles from remote parts of the country. Lack of transport seriously undermines the operations of the department.

Moreover the juveniles themselves especially *street kids* who in most cases have been found to have no fixed abode have hampered preparation of adequate social welfare reports. This creates predicaments on the part of the social welfare officers because valuable historical information regarding the juvenile is not accessed. All these and other institutional problems like inadequate staff resulting in a backlog of cases make a cycle of problems and leads to more pessimism in the way juvenile offenders are treated.

2.2.3 THE ROLE OF THE COURT

The juvenile Act establishes a juvenile court which is basically a subordinate court sitting for the purposes of hearing any charge against a juvenile or exercising any other jurisdiction conferred on juvenile courts by the Act.²⁵

This court has the jurisdiction to hear all matters in which a juvenile is involved save for cases such as murder, attempted murder or where the juvenile is charged jointly with an adult.²⁶

²⁵ Supra n.6 Section 63

²⁶ Ibid section 64(1)

One fundamental role of the court is to ascertain the age of the juvenile appearing before it. If it is satisfied that indeed the offender is a juvenile, then it assumes the jurisdiction. In one old case of **Chipendeka V. The People**²⁷, Mr. Skinner in emphasizing on the need of the court to ascertain the age of the juvenile stated inter alia:

...It appears to me that the magistrate did not appreciate that he was dealing with a charge against a juvenile, and this was an irregularity which arose from his failure to inquire as to the age of the appellant.

The responsibility lies on the court to show that in the preliminary to the hearing, determination as to age has been carried out and this has to reflect in the case record all the time.

The court must ensure that the provisions that are stipulated in the constitution, other laws and international instruments, which are designed to protect juvenile offenders, are observed such as under article 18(1) and (2) of the constitution, and sections 205 and 207 of the criminal procedure code and section 64 of the juveniles Act. These provisions encompass such rights as the right to a timely trial, the right to notice of the charges, the right to cross-examine witnesses and the right to remain silent. All these must be afforded to the juvenile just as they are afforded to an adult offender.

In addition the court should consider the option of imprisonment only as a last resort and for the shortest period of time and should ensure that juveniles are separated from adults when imprisoned because juveniles run the danger of 'criminal contamination' once mixed with hardcore adult criminals. Pre-trial detention of juveniles should therefore take account of this factor.

²⁷ (1969) ZR at p. 83

It is also the responsibility of the court to uphold the cardinal objective of juvenile justice by treating juveniles in a manner consistent with the promotion of their sense of dignity and worth, which reinforces respect for the rights and freedoms of others and to see to it that they are treated in a manner which takes account of their age and the desirability of promoting their re-integration into society to assume a constructive life. The court must also ensure that the juvenile's right to privacy is protected at all stages in order to avoid harm being caused to the juvenile by undue publicity or by the process of labelling. All in all they should not publish information that may lead to the identification of the juvenile offender such as names. In addition they should also handle cases involving juveniles expeditiously without any unnecessary delay.

Notwithstanding the foregoing expectations on the part of the juvenile court, the prevailing situation in Zambia has shown to have a lacuna.

In the first place there are not so many juvenile courts apart from the one recently established at Chikwa courts in Lusaka. This creates inefficiencies in the dispensation of juvenile justice because the number of juveniles who come into conflict with the law has kept on increasing, especially in large cities where there is an influx of street kids. Whatever cases arise involving juveniles are expected to be tried in this one court and it has proved not to be adequate to handle all the cases. The situation is further exacerbated by the fact that there are no juvenile courts in other districts of Zambia, as such those juveniles in these deprived places have to be tried in the same court rooms and by the same magistrates hearing adult criminal cases.

Another noticeable predicament with regard to the court is that there are no facilities to serve as holding places where juveniles can be kept separate from adults as they await

trial at the court. During this period when they are mixed with adults, they tend to learn certain negative skills and are exposed to a lot of harassment and insults from the adults. Moreover the mode of transporting juveniles to and from court is not very conducive. Juveniles are transported together with adults in caged trucks popularly known as *Kasalanga*. Such treatment adversely undermines the juvenile's dignity and perception about life.

The problem of over detention is another issue that has been noted in this study. While the juveniles Act provides that cases involving juveniles are to be handled expeditiously and without delays, the situation on the ground leaves much to be desired. Mostly juveniles are detained for longer periods and the most outstanding excuse given for such delays is lack of transport to ferry the juveniles to court. This should not be the situation taking into consideration that the conditions under which these juveniles are detained are quite pathetic and generally not suitable for young souls to endure. The ideal conditions should be that the juvenile while in detention should even be able to study and engage in activities that can promote his welfare. In Zambia however this is far from being attained.

2.3 PROBLEMS FACED BY STAFF IN CORRECTIONAL INSTITUTIONS

The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society and generally in the interest of their wholesome development. However to set these objectives is one thing and to attain them is another. Correctional institutions in Zambia like Nakambala in Mazabuka and

Katombola in Livingstone have a number of recurring problems, which affect staff and ultimately juvenile justice at large.

Like most government departments correctional institutions have been affected by the lack of coordination with sister ministries charged with the responsibility of contributing in the dispensation of juvenile justice. This lack of coordination between ministries vis a vis juvenile justice was acknowledged by home affairs permanent secretary Peter Mumba who said that the juvenile justice system in Zambia has been impaired because of the non-coordination of sister ministries and that it was high time that these ministries called a meeting where they would discuss and combine efforts to speed up the provision juvenile justice to the young people.²⁸

Inter-ministerial and inter-departmental co-operation is vital and should be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage. Left to stand alone correctional institutions cannot achieve these positive ends of being in a reformatory school.

In addition most teachers currently trained in Zambia do not have any focus to teach in reformatory schools as such these institutions have to rely on the few members of staff to take on the extra work of providing education to the juveniles. It is important to acknowledge the fact that just like any other schools correctional institutions require teachers who are not only dedicated, but qualified through education, certification and special training to provide services to these youths. The situation with regard to teachers in these institutions is disappointing and shows a lack of commitment from the government to provide teachers who are specially trained to teach in reformatory schools.

²⁸ The Post News paper, June 24, 2004.

Closely related to educational problems in institutions is lack of equipment to use in the provision of vocational training for example there are not enough planes to use in carpentry and as such juveniles mostly are engaged in growing of vegetables as the only form of training.

The other problem faced in these institutions is that of overcrowding which has come up due to the growth in population and the corresponding increase in juvenile delinquency which has seen most juveniles being committed to these institutions.

Increased population leads, most obviously, to physical plant capacity problems. There simply is not enough space, in these institutions, to adequately house the number of juveniles being placed in the system. Situations have arisen where three, four or even five juveniles are sleeping in rooms designed for one or two. This leads not only to sometimes-unsanitary conditions, but also to severe problems of providing adequate supervision to the juveniles.

Arising from this problem of overpopulation is that those juveniles with special needs cannot be adequately attended to and their needs remain unaddressed for a long time.

These special needs include juveniles who are sick or have mental illness, which can lead to serious behavior problems as well as other needs that are simply different from the general population needs for which most programs have been developed.

In addition there are no regular visits by mental health professionals to assess and evaluate the behaviour of the juveniles. Some juveniles are simply incorrigible and have found themselves staying even longer in these institutions not because they desire to do wrong but because they have mental problems which prove to be difficult for line staff in

correctional institutions to identify. This creates problems on the part of these officers because they do not have sufficient remedy to such situations

In these kind of circumstances, it is wrong to punish a juvenile for behavior caused by mental illness. And it is wrong to expect correctional officers to supervise juveniles with mental illness in appropriate ways if they have not been trained how to do so.

Conclusion

From the foregoing it can readily be observed that there is need to have an effective juvenile justice administration in Zambia considering that the population increase has a corresponding effect on the number of juvenile delinquency cases. It is not adequate to merely codify the law in this respect but it is important to re-evaluate the operations of each and every relevant institution to find out why it is not functioning in consonant with the law. It is upon identifying the various problems in the institutions handling juvenile cases that a viable and attainable policy regarding juveniles can be realized. Only when all institutions work together and in line with the provisions of the juveniles Act can the Welfare of the juvenile be protected thereby enhancing their sense of dignity and worth.

3.0 CHAPTER THREE

3.1 Gaps In Domestic And International Institutions Of Juvenile Justice

The search for juvenile justice legislation that seeks to comply with international standards remains high in a bid to do away with yawning gaps between what is advocated in the law and the prevailing situations.

The theme of this chapter is to examine the gaps that exist between International instruments of juvenile justice in relation to domestic situations. The international instruments to be considered in this regard are those that Zambia is a party to.

3.1.1 INTERNATIONAL STANDARDS

This chapter is basically tailored to assess Zambia's treatment of children "vulnerable to delinquency" according to international law, as set forth in the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Zambia is party to all of these treaties.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide authoritative guidance on the treatment of children in conflict with the law. The United Nations Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners, and the Body of Principles for the Protection of All Persons under Any Form of Detention or

Imprisonment provide authoritative guidance on the treatment of all persons, children and adults alike, deprived of their liberty.

Zambia has ratified the principal international treaties that seek to protect the human rights of children in police custody or otherwise deprived of their liberty: the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention against Torture).²⁹ In addition to these treaties, a number of United Nations documents provide authoritative guidance under international law for interpreting these treaties' provisions relevant to the treatment of children in.

3.1.1 (a) Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The ICCPR, the Convention against Torture, and the Convention on the Rights of the Child require states to prevent torture, which is defined as any act by which severe pain or suffering that is

"intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or

²⁹ Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (entered into force September 2, 1990); the International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 999 U.N.T.S. 171 (entered into force March 23, 1976), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, G.A. Res. 39/46, U.N. Doc. A/RES/39/46, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

*suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*³⁰

States must also prevent other cruel, inhuman, or degrading treatment or punishment which do not amount to torture when such acts are inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity³¹. This prohibition applies not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.

Many of the instances of police abuse, for example, as noted in the preceding chapter where police beat up to death a Chawama boy they suspected of being the mastermind of robberies in the area constitute cruel, inhuman or degrading treatment. Such fatal results clearly indicate that there was massive ill-treatment, which actually rose to the level of torture.

Police beatings with batons, whips, hoses, or other implements that cause children severe pain or suffering and are intended to punish or intimidate children actually constitute torture. This is more pronounced whenever children first come into contact with the police.

In cases where beatings and harassment of children by police or other detainees do not rise to the level of torture, they may nevertheless produce a level of physical or mental suffering that constitute cruel or inhuman treatment or punishment.

³⁰ Convention against Torture, article 1.

³¹ The Convention against Torture article 16. Article 37 of the Convention on the Rights of the Child and article 7 of the ICCPR also prohibit torture and cruel, inhuman, or degrading treatment or punishment.

Similarly, police verbal harassment of boys and girls that causes or is intended to cause gross humiliation or an insult to a child's dignity violates Zambia's obligation to prevent degrading treatment.

Violence and exploitation of children in custody by police or other detainees violate children's right under the Convention on the Rights of the Child. It provides protection of children from *"all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."*³²

Many a time juveniles or even adult offenders going into the cells for the first time are usually beaten up by fellow inmates as a form of a *welcome practice* and are made to sit next to the toilet. The situation is exacerbated whenever the cells are overcrowded and the authorities seem to pay a blind eye on these happenings.

Such situations are undoubtedly in contravention of Article 20(1) of the Convention on the Rights of the Child which states, *"A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State."*

Therefore it can vehemently be contended that there is no special assistance or protection to that extent.

3.1.1(b) Arbitrary and Unlawful Arrest and Detention

The ICCPR and the Convention on the Rights of the Child prohibit all arbitrary or unlawful deprivations of liberty and provide everyone with the right to challenge the

³² Convention on the Rights of the Child, article 19.

legality of arrest or detention before a court.³³ The ICCPR further provides an enforceable right to compensation for victims of unlawful arrest or detention.³⁴

Arrests effected on children and subjected to the same treatment as adults are inherently arbitrary. Moreover when police fail to present detained children before an appropriate competent court within twenty-four hours as per section 33(1) of the Criminal Procedure Code CAP 88 of the laws of Zambia, or when prosecutors fail to conduct adequate reviews of the circumstances and legality of children's arrest and detention, these deprivations of liberty thus qualify to be called arbitrary and unlawful.

In addition, this lack of prosecutorial review undermines children's ability to document unlawful arrest or detention, and thus undermines their ability to seek compensation.

Even when arrest or detention of juveniles in conflict with the law is not conducted in an arbitrary manner, it is still unlawful whenever children are denied their procedural rights. The Convention on the Rights of the Child specifies that deprivation of liberty of children *"shall be used only as a measure of last resort and for the shortest appropriate period of time,"* and that *"every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision."*³⁵

The principle that detention should only be used as a measure of a last resort has been

³³ ICCPR, articles 9(1) and 9(3); and Convention on the Rights of the Child, article 37(b).

³⁴ ICCPR article 9(5).

³⁵ Convention on the Rights of the Child, articles 37(b) and 37(d).

largely violated and is even applied in trivial cases where detention should not prevail. A sad case in this regard is one in which a 19 year old boy of Kanyama compound was detained at Los Angeles police post where he later died. The juvenile was believed to have gotten an egg from the bar without paying for it. He was later beaten by two men under the instruction of the owner of the bar and taken to the police post where the police without even charging him speedily detained him. For four days after his death the Police could not review to the boy's relatives where they had taken the body and it had to take the intervention of the then Deputy Minister For Community Development and Social Welfare Honorable S.M Manjata to talk to the commissioner of Police to direct the officers to let the relatives have access to the body.³⁶ With such situations at hand one would ask where the best interest of the child is vis-à-vis juvenile justice in Zambia.

The above situation brings out another cardinal aspect that guardians or parent are not informed of the arrest of their children in time to allow them to provide the child with assistance when going before the prosecution office. Such actions violate the Convention on the Rights of the Child's requirement that the best interests of the child be a primary consideration *"in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies."*³⁷

³⁶ www.lrf.org.zm/Newsletter/sep-oct2000/news.boy.lrf.home.htm

³⁷ Convention on the Rights of the Child, article 3(1).

3.1.1(c) Special Needs Of Juveniles In Detention To Be Considered

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides authoritative guidance on the minimum factors to be taken into account when determining the needs of juveniles in detention.

The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.³⁸

As noted in the preceding chapter II, Zambia's routine mixing of children with unrelated adult criminal detainees and with children of different ages, backgrounds, and legal status during detention and transport places children at risk of torture, ill-treatment, and exploitation, and violates children's right to be held separately from adults and to be treated with humanity and respect and in a manner which takes into account their needs. Such practices also violate Article 19 of CRC cited earlier.³⁹

3.1.1(d) Right to Privacy and Minimum Standards for Treatment During Transport

The Convention on the Rights of the Child and the ICCPR prohibit arbitrary or unlawful interference with a child's privacy. Article 16 of the Convention on the Rights of the Child provides to that effect and following closely the language of Article 17 of

³⁸ The U.N. Rules article 28.

³⁹ Supra n.4

the ICCPR, states "(1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. (2) The child has the right to the protection of the law against such interference or attacks."

This prohibition, along with other international law guarantees of treatment with dignity and respect and protection from cruel, inhuman or degrading treatment, underlie the minimum standards for privacy and transport set forth in the U.N. Standard Minimum Rules for the Administration of Juvenile Justice, the U.N. Rules for the Protection of Juveniles Deprived of their Liberty, and the U.N. Standard Minimum Rules for the Treatment of Prisoners. These minimum standards require that every child's privacy be respected at all stages of the juvenile justice process, and that safeguards be taken during transport to shield children from public view and protect them from insult, curiosity and publicity in any form.⁴⁰ These rights are contravened by Zambia's use of means of transport that lack adequate ventilation, light, or secure seating and expose children to public scrutiny and censure, and the practice of exposing children bound in handcuffs or ropes to public view on their way to the police station. These means of transport inherently constitute cruel, inhuman, or degrading treatment.

3.1.1(e) Health Care

Health care constitutes fundamental aspect in juvenile justice matters. It is a requirement that juveniles in custody must be taken good care of and in a manner that promotes their well-being. To this effect the U.N. Rules for the Protection of Juveniles

⁴⁰ The Beijing Rules, paragraph. 8.1; and The Standard Minimum Rules for the Treatment of Prisoners, article 45(1).

Deprived of their Liberty provide detailed guidelines on the minimum standards of medical care guaranteed to children deprived of their liberty.⁴¹ These international rules require that children deprived of their liberty be provided with adequate preventive and remedial medical care, including dental, ophthalmological (eye examination) and mental health care, as well as pharmaceutical products and special diets as medically indicated. As part of that care, every child also has a right to be examined by a physician immediately upon admission to a detention facility.⁴²

The above standards are far fetched for Zambia's juvenile justice administration. There are no medical examinations conducted on juveniles upon their admission to detention facilities.

3.1.1(f) Overcrowding, Food, Water, and Hygiene

International standards require that children deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity and to be provided with separate and sufficient bedding, which should be clean when issued, kept in good order, and changed often enough to ensure cleanliness.⁴³ There is a clear shortfall on the part of the Zambian juvenile justice system in this regard more especially at the police cells. Juveniles in detention are usually exposed to the cooled of

⁴¹ Supra n. 10 paras. 49-55.

⁴² Ibid. para. 50.

⁴³ Ibid, paragraph. 30 and 33.

the night and are made to sleep directly on the floor. The situation is worsened by the fact that the cells are overcrowded and juveniles being the young ones are made to sleep near the door to serve as shields for cooled against the adults. Such treatment fails to meet the required standard of health and human dignity recognized in the international instruments.

There are no shower facilities in the cells and the general sanitation in most of them is in a dismal state. In most of the cells there is no separate room to serve as a toilet. The toilet pans are right in the same room which serves as a cell, mostly just in one of the corners. This poses a health hazard to the inmates who include juveniles and as the situation stands the whole decency that goes with answering the call of nature is seriously undermined. It is worth acknowledging also that in such conditions eating of food becomes a problem as the environment is far below the standards of health and hygiene.

The major questions being posed at the end is whether reformation of the juveniles can effectively take place in such conditions, whether there is a hope of improving the administration of the juvenile justice given the prevailing conditions.

In conclusion it has been noticed from the foregoing analysis of international instruments that there are major discrepancies between what they provide and what the prevailing situation offers in the administration of juvenile justice. A number of gaps exist causing need to have substantive incorporation of international standards in the juvenile justice system. Bringing domestic legislation into conformity with

international standards is on itself not adequate. There is also need for the officials involved in juvenile justice administration to act according to the law. If strictly adhered to, these standards can cast a new face on the juvenile justice system in Zambia.

4.0 CHAPTER FOUR

4.1 CASE STUDY

(THE NAKAMBALA REFORMATORY SCHOOL)

BACKGROUND

The need for the Nakambala Reformatory School is one of the many things that came about due to the reasoning of early criminologists.

As earlier stated in chapter II, the need to have an effective juvenile justice system is to help in the reformation process of the juvenile and avoid them from turning into hardcore criminals. A recognized remedy towards this end has been keeping juveniles separate from adult offenders. Therefore Zambia as a country also took the step to ameliorate the problem by introducing reformatory schools such as the Nakambala, Katombora Reformatory Schools, Nsakwe Probation Hostel and the now defunct Chilenje Remand Home.

As an approved school, Nakambala has an aim of giving therapeutic services to the delinquents through education and vocational training under the Department of the Ministry of Social Welfare. Initially this school acted as the final place after the delinquents were ordered by court to be transferred from the Remand homes.

PRESENT SITUATION

The visit to the institution was done on the 12th November 2004.

The Nakambala reformatory school is situated in Mazabuka District in the Southern province of Zambia (see appendix for the location). By time of visitation the institution was housing forty-eight (48) male inmates instead of the optimal number of 75 children. Whilst at the institution, these children are taught both technical and academic skills. The duration of their stay is dependent on the sentence imposed on them. However after having visited the institution it was established that even after release, some children still go back to the institution on the ground that they have made friends around the area and cannot go to their respective homes living their friends behind. The assistant in charge stated that they only keep children who are on license and those who go back devoid of

such license are not accepted at the institution. Ultimately they find themselves in neighboring compounds like Zambia compound located right behind the institution.

From the general observation, life at the institution is normal save for some shortfalls in terms of what is provided in International Instruments considered in chapter III

METHODOLOGY

In order to put the study under critical analysis, a questionnaire method was employed as the basis for a semi structured interview for the juveniles at the Nakambala Reformatory School. A separate questionnaire was used for the assistant social welfare officer who personally answered a number of questions contained therein.

Acknowledging that the study was also based on value judgment I personally undertook a physical observation of the institution. The two main methods made up the source of my qualitative data.

At this moment I would want to reiterate that at no point was force any unlawful means used to elicit the responses.

ANALYSIS OF SOME SALIENT FEATURES OF THE DATA.

DIET

Food though basic is a crucial indicator of well-being and good health. W.H.O and F.A.O to signify this point have prepared various charts and scales, which many governments including Zambia adhere to. Nakambala Reformatory School is no exception in this matter as under the Laws of Zambia there is a stipulated diet that ought to be followed by the reformatory schools.

However this is not adhered to and the reason advanced was insufficient funding and as an institution it could only adhere to the dietary scale sometimes.

The inmates have three meals in a day albeit on the same type of food such as beans, rice, nshima and sometimes meat. The three children talked to during the visit complained of

lack of meat products and that even though they have poultry at they institution, the children never get to eat any chicken. The only time they got to eat chicken was on New Year's Day and at times when the chicken dies on its own from disease- a thing considered as a fortunate event by the children.

The children further complained that for nine months they had fed solely on beans. They only had beef a week before the visitation and they described the occasion as having been characterized with fights arising due to inadequacies in the number of pieces saved. The children confirmed that their daily meals were centered on 8 kilograms of Rice and 1 kilogram of sugar to carter for the 48 them. These amounts they said are not enough considering the fact that they have to do some manual work in the morning before breakfast.

VISITATIONS

There are no frequent visits by the parents or guardians to the children. The Assistant stated that as an institution, they do encourage parents to visit their children taking into account that they are equally partners in the reformation process. In an endeavor to reach those parents who are unable to travel to the school, the children are allowed to write to their parents once in every three months but are not allowed to visit them.

ESCAPES

The institution has also experienced runaways. As at last year (2003) there were 5 escapees; two were caught whilst three are still at large. This year (2004) as at the time of visitation, there were 4 escapees and they are still at large. So far, efforts to catch any of them have proved futile.

STAFF

The institution is understaffed. They reason advanced in this regard was that because of the restructuring programme going on, the government cannot employ any more. The

situation is further worsened by lack of effective coordination between the institution and sister organizations centered on child welfare.

The other problem the institution faces is the insufficient funding leading to running the programs ineffectively. The main funders for the institution are the government and sometimes-private organizations; UNICEF recently donated mattresses and 10 banker beds to the children.

HEALTH, RECREATION AND EDUCATION.

Government health staffs attend to the children when sick and once in a while render HIV/AIDS awareness talks (at least once so far this year). However there are no constant medical check ups.

The children complain of not having enough clothes, their beddings are also infested with lice, and bed bugs. The last time clothes that were donated were mostly feminine in design and as a result most of the juvenile at the institution characterized with male population ended up wearing blouses.

The toilets for the children are badly damaged and leaky as a result there is always water on the floor of the hostels: Chawama and Monze Hostels respectively. The sinks too are any a deplorable state. Out of the five sinks, only two are any use.

There are rarely toiletries provided; no toothpaste is provided and washing detergents if provided are in insufficient stock. Once these ran out it takes a lot of time before a new consignment is issued to the juveniles.

In terms of recreation, football takes up most of the time and volleyball at times. There is one chessboard though recently acquired. It was the children's request that they need more games to keep them busy for example mini-soccer and pool so as to avoid them going to bars where they can access them.

Educational programmes offered are only Mathematics, English and Social studies. Most of them seem to be literate and are quite good at English. Carpentry and tailoring are also is also offered but there is a problem with equipment. Most of the children when asked as

to what changes they would like to see in terms of education stated that there is need to provide them with more courses to match those offered in other government schools.

AWARENESS ON THEIR SENTENCES

The three inmates who were interviewed seemed not to be aware of the reasons why they are being kept under strict conditions. They reiterated that before their coming to the institution they were told that they were going to school and complained that they were cheated because all they do is work in gardens owned by the members of staff and the institution. There is so much bullying from some people that they are prisoners and not student as they are supposed to. Although they generally appreciate the treatment from the members of staff, they cited instances when they have been scorned that '*you are in jail and you are here to be punished*'. This sends a negative impact on perception of the children with regard to their stay at the institution.

DESCIPLINE

The children at the institution are generally well behaved but when they have a chance of going outside the institution, they subject themselves to dagga (marijuana) and alcoholic intoxication. This causes problems at the institution in terms of sleeping arrangements, as there are no separate rooms to keep the drunk in isolation. Where an offence has been committed, offenders are taken to Mazabuka Police cells where they are detained for one, two or three days without food. During this detention juveniles are not separated from adult offenders. This was one of the complaints by the inmates.

Nonetheless the assistant in charge explained that the children are a problem but after they have served their time change is visible.

CONCLUSION

The case study was used to assess what is advocated for under the law and the prevailing situation.

As has been shown there is a widening gap between what is advocated for and what prevails in the reformatory school.

My presence at the reformatory School in question made me understand in more detail, on one hand the social life of the delinquents and on the other, the dynamics of carrying out the exercise in the face of what appeared to be a combination of resource, institutional, and individual constraints. In this regard I was left with no other conclusion than that, the institution if not improved in the mentioned problematic areas it will be serving as a furtherance of punitive sanctions on the juveniles and not as a reformatory.

4.2 POLICY PERTAINING TO CHILDREN IN ZAMBIA

The future of any society lies in its children for its continued existence. Respect for human rights, it has been argued begins with the way society treats its children. Therefore a nation investing in its development ensures that children enjoy their life with full satisfaction in preparation for adult life, as these will in the end determine the future.

Zambia as a country approved a national child policy, which provides the general policy framework. The overall aim of the national child policy is to improve the standard of living in general and quality of life for the Zambian child in particular.

The provision of a framework to redress the adverse effects of the ongoing economic programmes, creation of a favourable socio-economic environment for child development; prioritization of solutions to child problems in national development plans and programmes; provision of child advocacy and support system which will safeguard the rights of the child to exist and develop; and consolidation and harmonization of existing laws, programmes and activities related to child development.

The policy particularly provides as one of the strategies for implementing, the updating of all existing laws relating to the child to make the laws reflect contemporary situations. The government also undertakes through the policy to implement the principles enunciated in the United Nations Convention on the Rights of the Child (CRC). The general principals under the CRC are: -

- Non discrimination
- The best interest principle

- The right to life and maximum survival and development
- Respect for the views of the child
- Protection against sexual exploitation.

4.2.1 ZAMBIA NATIONAL CHILD POLICY AND JUVENILE JUSTICE

The policy's other aim is to ensure that all laws pertaining to child protection are carried out. The policy pertaining juvenile justice has a number of laws to apply. Article 40 of the CRC deals with the child's human rights and with his or her age and maturity and which focuses on the child's re-integration into society.

The Zambian bill of rights guarantees the right to fair trial to everyone, including children. The Juveniles Act provides further protection and generally regulates the trial of juveniles in conflict with the law. Part III of the Act provides for detailed treatment of juvenile delinquents whereas part IV deals with the order that may be passed in the event of a conviction; for example detention in reformatory or approved schools.

The penal code and prisons act also contain some provisions relating to the trial and custody of children. One area of concern and point of departure between Law and practice is in the detention facilities for juveniles. Section 53 of the Juveniles Act and Section 60 (1), 2 (a)-(f) of the prisons Act Cap 134 of the laws of Zambia generally prohibits the association of juveniles with adults during detention. In practice, as it has been shown in the case study there are deviations from these provisions.

Zambian constitution does not guarantee the child the right to legal representation at the expense of the state and the overwhelming numbers of children are tried without the assistance of lawyers. The constitution should have expressly provided for such assistance to facilitate cases to be handled by people with knowledge and understanding of the rights of the child as contained in various instruments.

CONCLUSION

Having the national policy for children is no a panacea in itself. It needs government's full political involvement. The challenge lies on the Zambian society to develop a culture that puts children a national priority. The process needs the involvement of the civil society, the church, Non-Governmental Organizations and many others.

It's only through this that the children's rights can be acquired and sustained and not remain largely a pleasant but unrealized dream!

5.0 CHAPTER FIVE

5.1 CONCLUSION

The value attached to children is quite awesome and there is need to treat them in a manner that responds to their special needs. Taking into account that children are an exceptional category, the laws that promote their interests must be seen to be effective in their application and they should be responsive to the special needs, vulnerability and general situations in which children find themselves in. The kind of treatment to be imposed on them must not be punitive but oriented towards rehabilitation so that they get reintegrated into society as responsible citizens in whom the future lies.

From what has been observed in this paper, there is need to translate the provisions of the law into reality so as to achieve an effective juvenile justice system. Failure to do so will continue widening the gap between reality and the law; ultimately children's rights will be greatly undermined.

5.2 RECOMMENDATIONS

These recommendations spring from the empirical data of the study. They are nurtured by the sensitive concern for the general welfare of the juveniles in whom the future of this country is vested, as well as to help improve on institutional effectiveness and efficiency.

1. PROVISION OF COUNSELING SERVICES/TRAINING

There is need to establish high quality counselling services at law courts, juvenile homes and other Custodial institutions. Unless the officials charged with the duty to administer juvenile justice are fully aware of their responsibilities they cannot be expected to

discharge their duties effectively. Therefore, there is urgent need to organize systematic and appropriate trainings such as "Rights of the child" for police officials, prisons officials, magistrates, social welfare officers and officials at the approved schools with a view to raise the understanding of their responsibilities in handling juveniles.

A strengthened and improved enforcement infrastructure ultimately promotes effective administration of legislation in the best interests of the child.

As part of this effort, it would be essential to prepare a handbook on the Zambian law on juveniles for all those involved in its administration.

In this era of great advocacy on human rights, there is also need to educate all street children, especially those in conflict with the law, on court procedure, their rights and on such instruments as the Convention on the Rights of the Child (CRC). This can be done through frequent visits of social welfare officials and lawyers to the institutions to give lectures on human rights.

2. MINISTERIAL CO-ORDINATION

There should be more frequent visits by senior government officials from the ministries that deal in children affairs and Non-governmental organizations (NGOs) to the reformatory schools. The present depressing conditions under which the juveniles live as well as the general state of institutional deterioration, would not have reached such high and sad levels had those in command been making periodical visits. All in all there is need for coordination among sister ministries in juvenile justice.

3. NEED TO CONFORM TO THE DIETARY SCALE

There is need to adhere to the dietary scale so as to provide a balanced diet. The recurrent problem of erratic funding to the reformatory schools make it difficult to adhere to the

scale and this has made it possible for officers at reformatory schools to give excuses for not providing balanced diets. From the case study it is gross violation of the dietary scale for juveniles to feed on beans alone for more than nine months.

4. Emphasize community services and supervised family-based work to help rehabilitate the concerned children instead of sentencing them to institutional care, where conditions are quite dismal and amount to punitive rather than rehabilitative environment. Where a sentence to institutional care has been ordered, there is need to set up monitoring committees with state officials and civil society representatives to ensure that the quality of care given by institutions is in the best interest/ welfare of the child.

5. PROVISION OF HOLDING ROOMS

One outstanding predicament noted in juvenile justice in Zambia is that of mixing juveniles with adult convicts more especially at the police cells. In this regard it is an earnest recommendation that there is an urgent need to build or create separate holding places for juveniles at the police and at the courts as they await trial. The current practice as established by the survey indicate that legal requirement on isolation is not strictly followed. The present practice therefore requires immediate redress.

6. NEED TO PROMOTE SELF-SUSTAINING REFORMATORY SCHOOLS

As a general recommendation, reformatory schools should be organized into production institutions for self-sustenance in food, furniture, uniforms, etc and if possible be able to raise some revenue by selling some of their produce. The present arrangement, which makes the schools fully dependent on government and a few donors is unsustainable.

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APPENDIX A

Dear respondent,

Good day to you.

I am a fourth year law student at the university of Zambia carrying out directed research; a pre requisite to bachelors degree program (LLB).

My research topic is Juvenile Justice Administration In Zambia: How Effective Does It Reach Out To Its Intended Targets.

This questionnaire therefore aims at gathering information in relation to the above at the Nakambala Approved School. PLEASE note that the information you give will solely be used for academic purposes only and will be treated with utmost confidentiality.

Thank you.

Amos Chitembwe.

Signed: _____

(N.B: Introductory letter from school attached)

QUESTIONNAIRE FOR MEMBERS OF STAFF.

(Instruction: tick or fill in correct responses)

1. Sex

- (a) Female
- (b) Male

2. what is your age? (Optional)

Ans: _____ years old

3. Marital status

- (a) Married
- (b) Single
- (c) Widow
- (d) Widower
- (e) Divorced

4. what is your position at this institution?

Ans: _____

5. How long have you been working at this institution?

Ans: _____

6. Do you understand law pertaining to juveniles?

(a) Yes

(b) No

7. What recreation activities are offered at this institution?

Ans: _____

7(a) what educational programs are offered at this institution?

Ans: _____

8. Do you have a dietary scale at this institution?

(a) Yes

(b) No

9. If yes to question 8 how much do you adhere to it?

(a) Always

(b) Sometimes

(c) Once a while

(d) Never

10. If no to question 8 what are the reasons for non-adherence to the dietary scale?

Ans: _____

11. What sources of income are available to this institution?

Ans: _____

12. Are the same sources of income mentioned in question 11, sufficient to sustain your programme as an institution?

(a) Yes

(b) No

13. Are there ways of generating income you can propose and if yes what are they?

Ans _____ (If N/A skip to next question)

14. How many children is the institution housing at the moment?

Ans: _____

15. What is the actual capacity of children is the institution supposed to house?

Ans: _____

16. How do you rate the general conditions of living at this institution?

Ans: _____

17. Do you see the children reform at the end of their stay from the institution?

(A) Yes

(B) No

17(a) is there effective co-ordination between this institution and sister organizations?

(a) Yes

(b) No

18. Who attends to the children when they are sick?

Ans: _____

19 If there is someone who attends to them whilst sick, how accessible are these people?

Ans: _____.

18 What changes would you like to see in the running of this institution?

Ans: _____

The respondent should fill in the following table to show personal ranking of problems at the institution. Note that you start with the problem seen as most severe.

Name of problem	Ranking
	1 ST
	2 ND
	3 RD
	4 TH
	5 TH

(Note: less than or exactly five problems to be indicated and not more.)

APPENDIX B

INTERVIEW QUESTIONNAIRE FOR THE JUVENILES

(Instruction: tick or fill in correct responses)

1. Sex

(c) Female

(d) Male

2. what is your age? (Optional)

Ans: _____ years old

3. Education status

Ans: _____

5. How long have you been at this institution?

Ans: _____

6. Do you understand why you are here?

(c) Yes

(d) No

7. What recreation activities are you exposed to at this institution?

Ans: _____

7(a) what educational programs are you offered with at this institution?

Ans: _____

8. Do you like your diet at this institution?

(c) Yes

(d) No

11. What sources of generating income are you involved in at this institution?

Ans: _____

16. How do you rate the general conditions of living at this institution?

Ans: _____

18. Who attends to you when you are sick?

Ans _____

19 If there is someone who attends to you whilst sick, how often do these people come ?

Ans: _____.

18 What changes would you like to see in the running of this institution?

Ans: _____

APPENDIX C

