Title: A Critical Evaluation of Juvenile Access to Justice in Zambia

By

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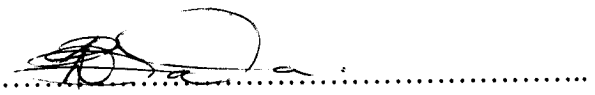

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ABSTRACT

The paper set out to evaluate juvenile access to justice in Zambia seeing that the juvenile justice system is beset by theoratical and practicle problems. In order to achieve this, research and interviews were conducted with people who work in institutions mandated with the responsibilty of handling juveniles. It was discovered that the situation relating to juveniles was very poor in that many children are arrested for petty offences that could have been dealt with outside the criminal justice system. Secondly, few children appear with legal representation and little effort is made to obtain such. Further, law enforcement officers do not receive appropriate training to equip them to deal with children who come into conflict with the law and lastly when detained, children are not separated from adults but kept in an environment that expose them to a high risk of contracting HIV/AIDS, sexually transmitted infections (STIs), tuberculosis (TB), and other transmittable diseases. Hence in order for juveniles to access justice there is need for mechanisms to be in place to help realise their rights such as a review of laws relating to juveniles, training police officers on how to handle juveniles and lastly, introducing diversion programmes as an alternative means to reformatory schools.

DEDICATION

This is dedicated to my parents currently in Malawi, Mrs. Eunice Banda and Mr. Isaac G. Banda who have strived to put me through school. To my Mother who was always there believing that her daughters were the best gift Jehovah could have ever given her and to my Father who always worked hard despite the odds and pressures of life. I would not trade you for anything in this world. May Jehovah keep blessing you abundantly.

and

To David Shiyunga, my fiancée, who has showed me that indeed true love does exist. Despite the many obstacles that he faced at the hands of my father in asking for my hand in marriage, he still kept on without wavering. I look forward to starting my future with you for I know that indeed you are my better half.

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LIST OF ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child
ARRS	Arrest, Reception and Referral Services
CRC	United Nations Convention on the Rights of a Child
CFC	Child friendly Court
CJF	Child Justice Forum
FNDP	Fifth National Development Plan
MYSCD	Ministry of Youth Sport and Child Development
MCDSS	Ministry of Community Development and Social Services
MOJ	Ministry of Justice
NPA	National Plan for Action
RYOCHIN	Rural Youth and Children in Need
UNICEF	United Nations International Children's Emergency Fund

TABLE OF STATUTES

The Constitution Chapter 1 of the Laws of Zambia

The Juveniles Act Chapter 53 of the Laws of Zambia

The Prisons Act Chapter 97 of the laws of Zambia

The Employment of Young Persons and Children's Act Chapter 274 of the Laws of Zambia

The Criminal Procedure Code Chapter 88 of the Laws of Zambia

The Penal Code Chapter 87 of the Laws of Zambia

Probation of Offenders Act Chapter 93 of the laws of Zambia

INTERNATIONAL INSTRUMENTS

United Nations Standard Minimum Rules for the Administration of Juvenile Justice adopted by the General Assembly of the United Nations Resolution 40/33 of 1995

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

United Nations Convention on the Rights and Welfare of a Child (UNCRC)

WEB RESOURCES

LRF website: *http://www.lrf.org.zm/Newsletter/september 2006/grade html*

http://www.endorcorporalpunishment.org/pges/progress/reports/zambia.

http://www.mrforum.se/upload/files/1/Utbildning%20och%20forskning/Barns%20r%20Zambia.p

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CHAPTER ONE

An Introduction to the Research, Concepts and Rationale of the Study.

1.0 Introduction

Is the tendency towards juvenile delinquency inherited or acquired? One school of thought attributes this to genetic factors as its primary cause and the other school of thought indicates social environment.[1] While both may play a part in the development of delinquency, social reaction to juvenile crime has differed considerably in contemporary societies in general. Societal reaction puts pressure on national legislators and law enforcements agents to do something about juvenile crime as it is recognised as a social problem. However, the problem of juvenile delinquency persists.

It has to be stated that a child on account of his or her age and physical or mental state needs special safeguards and care to develop in any given society. Children differ from adults in their physical and psychological development and their emotional and educational needs. Consequently there is need to have appropriate legal protection for children. Further, it is a truism that where children's rights are not implemented, a child's rights are impacted negatively, whether directly or indirectly[2]. Further children who come in conflict with the law have problems in accessing justice. It is for this reason that the paper seeks to evaluate juvenile access to justice in Zambia. The paper also aims to find a rational and lasting solution to the cause of 'juvenile delinquency'. Hence it will analyse the causes, extent and seriousness of this problem.

[1] A. Anolika, Adolescent. Department of Psychology, (Brooklyn: St Francis College, 1987) p56
[2] BEMVI Associates. A Report on the Review of Child Related Legislation in Zambia. 10th January, 2009. P 33

The other problem faced by the juvenile justice system in Zambia is that the various child related legislation lack harmonisation[3] and as such, the essay will endeavour to make an analysis of the various pieces of child related legislation and identify the gaps, discrepancies and weaknesses in the current legislation and further it will make recommendations on how to ensure harmony and consistency with international standards , in particular the United Nations Convention on the Rights of a Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).

1.1 Background of the Study

The historical development of juvenile justice systems in the western countries came about in recognizing crime as a separate and serious social phenomenon from adult criminality. The juvenile justice system in the western countries developed in adaption to the principle of '*Parens patriae'*, a Latin maxim which means 'parent of the nation'. This concept when used refers to governments acting on behalf of a child or acting as guardians of minors and incompetent people[4].

The Zambian juvenile justice system was developed along these lines and this can be seen from the spirit behind the Juveniles Act. The preamble provides that it is, '*an act to make provisions for the custody and protection of juveniles in need of care, to provide for the correction of Juvenile delinquents and to provide for matters incidental or connected to the foregoing.*[5]' There happens to be a discrepancy between the requirements of the Juveniles Act and the agencies entrusted with the administration of juvenile justice in Zambia. For instance, many juveniles are

[3] Statement released by the Zambia Law Development Commission (2008)
[4] E.M. Simulwani, The Criminal Process in Juvenile Courts in Zambia. Zambia law Journal 29(1997)33-44
[5] The Juveniles Act Chapter 53 of the Laws of Zambia

arrested for petty offences such as loitering or petty theft, offences which could ordinarily be dealt with by their guardians or parents outside the criminal justice system.

According to the study commissioned by UNICEF, 60 % of interviewed children awaiting trial in remand prisons reported that they had been assaulted by the police during arrest and questioning. This included plain torture for the extraction of information by use of handcuffs, pieces of hosepipe or whip to flog the child.[6] In addition to that, according to Legal Resources Foundation, few police officers are held responsible for their excessive use of force toward juveniles.[7] In one case six youths where detained by the police in suspicion of murder. Each of them was tortured with a sledgehammer and plastic whips while being suspended upside down from a metal bar. All six were later released without a charge. It is for his reason that children are in need of protection.

Juvenile protection is best ensured when the system is not retributive but instead teaches juveniles the consequences of violating the law, while taking into account their unique physical, psychological and social features. An approach that merely advocates locking up juveniles is short-sighted as it merely worsens their situation. Instead they should be taught responsibility, and provided with the tools they need to become productive members of society[8].

1.2 Statement of the Problem

Juveniles are vulnerable individuals in society. The Juvenile Justice System does not recognise childhood as a special phase in the human cycle which is set apart from adulthood and this is

[6] L .Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, 2008, at 21

[7] Amnesty International, Applying the law fairly or fatally p. 6

[8] T.P. Thornberry, 'Race, Socio Economic Status and Sentencing in the Juvenile Justice System', Journal of Criminal Law and Criminology, 64(1964), 90-98

because it has failed to offer the necessary protection to juveniles and the institutions given the power to have custody of juveniles either do not have the capacity to implement the protective provisions in the Act or they do not just appreciate the need for the special treatment of juveniles as children in need of protection, care and encouragement. Considering the spirit behind which the juvenile justice system was formulated, that of enhancing juvenile justice, this has not been so. Juvenile detainees are not separated from adult offenders, and they are detained in prisons reserved for convicts. A recent tour conducted at Lusaka Central Prison showed that the prison population had increased from three thousand prisoners in 1964 to 14,427 as of August 2005 to 16, 887 prisoners in June 2009 with a breakdown among others of 150 convicted juveniles and 230 remand juveniles.[9] The police seem not to know the difference between the juvenile offenders and the accused persons, as a result, they mix these juveniles with hard core criminals.[10] The consequence of this is that children become hardened criminals. There is also a high risk of HIV infection for children as they are molested in these prisons by adult in mates[11].

Moreover, they are arrested for simple offences like loitering and when taken to court they have no legal representation. When they are before court, they do not understand court language though interpreters may be there, the court language still eludes them hence the need of parents or guardians to be besides these children[12]. In Zambia like any part of the third world, the problem of juvenile delinquency is high. Life on the streets is hash forcing the youths to engage in juvenile delinquency. However, prison sentence should be the last resort on a juvenile. Most prisons are congested and because of slow disposal of cases and limited space in most prisons, it poses a health hazard to inmates who include young offenders. Should then prisons in the era of

[9] Human Rights Commission, A Report on Prison and Police Cells Visits, Lusaka Province, 2009, P4
[10] Legal Resources Foundation News Letter, No. 25 of 2007
[11] Human Rights Commission. Report on Prison and Police Cells Visits, Central province, 2005, Introduction to the Report
[12] Legal Resources Foundation News Letter, No. 25 of 2007

high infection rates be permanent homes for children? There is need to make a difference in this fight against juvenile delinquency by considering an effective way of bettering the juvenile justice system and its accessibility to intended targets.

1.3 Objectives of the Study

- Review the development of the Juvenile Act which was formulated along the western model of the Young Persons Act of 1932. Has it been effective in Zambia?
- Highlight the problems faced by the juvenile justice system in dealing with juvenile offenders.
- Review existing legislation and consider its harmonization and consistency with international standards in particular the United Nations Convention on the Rights of a Child and its existing policies.
- Analyse the root causes of the deviant behaviour of many offenders thereby, getting a perspective on how to reduce the problem.

1.4 Rationale and Justification

This study is relevant in view of the problems that the juvenile justice system faces. For instance, because of the huge number of cases that the courts in Zambia continue to handle, cases such as misdemeanors by juveniles are always shoved aside and adjourned to a later date to give way to more serious crimes and the juvenile goes back in detention[13]. The juvenile therefore, spends a long time in prison just awaiting trial. Moreover, parents, teachers and other persons having lawful control or charge of juveniles have a right which is recognised by law to

[13] More details on the LRF website: http://www.lrf.org.zm/Newsletter/september2006/grade.html.

administer lawful punishment.[14] This recognition by law jeopardizes the protection of juvenile against any form of ill treatment. In addition to this legislation restricting the rights and dignity of children, corporal punishment and other forms of humiliating and degrading punishment of children are widely practiced in Zambia[15]as a means of discipline and education. This study is therefore pertinent and timely in view of the serious problems of accessibility of justice by juveniles in Zambia.

In instances of arrest, there is no special provision which regulates the procedure of arrest when it comes to children, therefore the ordinary rule embedded in section 33 (1)of the Criminal Procedure Code applies, which requires a limit of 24 hours for the presentation before a Magistrate. When a child is arrested, the action of the police need to be closely monitored against well defined standards and procedures, among which is the need to separate juveniles in custody from adults and to place girls in custody under female officers in police stations, the need for juveniles to be kept in a place of safety and the need for the police officer to show to the court the reason why detention of a person under 19 is necessary[16]. Moreover, when the child is presented to the judge, the latter may order an assessment of the child's situation gathering information on the personal, social, and family background of the child. This aims at reaching a decision which is in the best interest of the child.

This however does not happen in practice. According to the Zambia Civic Education Association, it happens sometimes that children are arrested and put in a cell without a warrant being issued by the police. Further, the right to inform a relative or a relevant person of his/her arrest is regularly violated. The police continue to round up street children, a practice that can be

[14] Section 46 (7) of the Juvenile Act
[15] Save the Children Sweden, Ending Corporal Punishment of children in Zambia, May 2005,
[16] Sections 58 to 60 of the Juvenile Act

described as arbitrary detention[17]. The Zambia Civic Education Association confirms that arbitrary arrest of street children is carried out for what are known as cognisable offences or loitering.

Walker provided very useful information on the mode of treating the juveniles who come in conflict with the law. He stated, ' *the rise of juvenile justice system was on the basis of distinguishing juveniles from adult offenders, as the juveniles were regarded more likely to respond to parental influence and as such, that influence should be given a fair chance to correct the juvenile before resorting to more costly and drastic measures*'[18]. This essay is also in furtherance of the above and to the effect will make recommendations on how to deal with juvenile offenders.

In 1999, the Supreme Court of Zambia used the fact that, according to Article 15 of the Constitution, persons have the right to be protected from torture and ill-treatment, and this right can be enforced through the courts' system. Their aim, in invoking Article 15, was to increase the protection against corporal punishment. An appeal was lodged before the Supreme Court concerning the case of Banda v The People[19]. The appeal was aimed at challenging a sentence handed down by a Magistrates' Court where the Magistrate had ordered that a 19 year-old be given ten strokes of the cane after being convicted for causing damage to property. The Supreme Court of Zambia ruled that corporal punishment, as a sentence handed down by a court, was in direct conflict with Article 15 of the Zambian Constitution (this decision is now referred to as the Banda decision). The court specifically declared null and void Sections 24 (c) and 27 of the Penal Code. The effect of this declaration was that corporal punishment as a sentence imposed by a court was unconstitutional.

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[17] L. Munting, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia .2005
[18] N. Walker, Sentencing in a Rational Society. (New York: Basic Books Publishers ,1969) p182
[19] HPA/6/1998

As a consequence of the Banda decision, several provisions on corporal punishment were repealed. On 16 September 2003, the provisions relating to corporal punishment in the Penal Code were repealed with the Penal Code Amendment Act 1. Furthermore, provisions in the Prisons Act[20] (particularly of Article 33 and 98(h)) allowing and regulating the use of corporal punishment as a disciplinary measure in penal institutions, were repealed by the Prisons Amendment Act No 14 of 2004. However, some provisions in the Juveniles Act are yet to be repealed. Despite this, an appropriate interpretation of the law should be as follows: the Banda case law should apply and prevail over those provisions as they are more beneficial to the wellbeing of a child. Although a clear overall prohibition accompanied with penalties of corporal punishment in the legislation is also necessary.

The Reformatory School Rules, pursuant to Article 73(1) of the Juveniles Act, also provide for the caning of detainees[21] as a form of discipline. Indeed, the Banda decision only explicitly outlaws corporal punishment as a sentence for a crime, which leaves the question of corporal punishment as a form of discipline open to interpretation. Provisions in the Juveniles Act allowing corporal punishment as a disciplinary action have not been repealed. Rule 58 (4) of the Reformatory Schools Rules provides that whatever caning shall be inflicted with a light cane not more than 835 mm long and not more than 9.38 mm thick is lawful provided that a superintendent and a medical officer is in attendance at the time the juvenile is being caned. For consistency, the law that still allows the use of corporal punishment in some child care institutions should be repealed.

[20] No 56 of 1966

[21] Global Initiative to end corporal punishment of children, *http://www.endcorporalpunishment.org/pages/progress/reports/zambia.html*

The other problem faced by the juvenile justice system is that of lack of coordination among the various institutions mandated to handle juveniles[22]. The importance of the child in the development of Zambia cannot be overemphasized and as such the need for an institutional framework that will enhance coordination, communication and cooperation amongst the sectors dealing with child and youth related issues, cannot be down played. The review of the legislation based good policies will have no impact on the child if the institutional framework within which it will be implemented is not well planned or functioning. Poor coordination, communication and cooperation amongst the various sectors dealing with child related issues affects the efficient and effective management of the current and future interventions by the Government and other interested bodies. It is imperative to recognize, in this respect, that capacity building is an important aspect of the institutional framework. There are about ten Ministries dealing with child matters and an addition of various other statutory bodies all dealing with children and youth affairs which fall under specific portfolio Ministries. These issues will be dealt with in more detail in chapter three under the subsection 'Institutional Frame -Work Handling Juveniles'.

Further, an institutional framework for the promotion and protection of the child will require financial resources, human resources and technical resources to support it and ensure its sustainability. In this respect the Government has to be committed to allocating sufficient resources to the various institutions dealing with juveniles. Financial reports however, from the Legal Aid Department and Administration of Juvenile Justice in terms of allocations and expenditures in this sector as drawn from the yellow books and financial reports constitute the lowest share. They range between 0.3% and 01% in 1991 with an upward of 0.4% in 2001 to 1.0 in 2008. Though the allocations and expenditure have increased, there was a sustained decline of

[22] BEMVI Associates. A Report on the Review of Child Related Legislation in Zambia. 10th January, 2008, p20-21

the actual expenditure in relation to allocations over the last four years.[23] This needs serious attention by allocating more funding to child related institutions if the rights of a child are to be realized[24]. The government's marked disposition has further prevented it from promoting education and health services to juvenile offenders[25].

1.5 Operational Definition of Key Terms

Juvenile.....a person who has not attained the age of nineteen years and includes a child and a young person

Juvenile Delinquency..... criminal behaviour exhibited by a juvenile offender

Juvenile Courts..... Means a Subordinate Court sitting for the purpose of hearing any charge against a juvenile or exercising any other jurisdiction conferred on juvenile courts under Chapter 53 of the Laws of Zambia

Probation or Approved Schools..... Means a school approved by a minister under subsection (1) or deemed to be an approved school under subsection (2) of Section 75 of Chapter 53 of the Laws of Zambia.

Juvenile Justice System .... A multiple, interconnected functional system with different players concerned with a specific situation.

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[23] L. Mukuka & Andygean, Zambia's Commitment to Child's Rights: The Budget Perspective (UNZA: Economics Department. 2004) p3

[24] L. Mukuka & Andygean, Zambia's Commitment to Child's Rights: The Budget Perspective (UNZA: Economics Department. 2004) p34

[25] Government of the Republic of Zambia. 'Initial and First Periodic Report on the Implementation of the United Nations Convention on Rights of a Child, (2002a)

Juvenile Access to Justice..... Ensuring viable mechanisms through which the juvenile's rights may be protected. Such as courts, representation and creating a conducive environment in approved schools.

1.6 Methodology

Research will be mainly done by desk research. Published and unpublished work will be consulted. Case law as well as other relevant pieces of legislation will be consulted. Visitation to institutions dealing with juveniles such as The Social Welfare Department, The Magistrate Court and Diversion Programme Centers will be done. Statistics in demographical form will be given and the internet will also be used as a source. The research will employ both the Legal Centralist Approach and the Pluralist Approach in order to obtain the maximum benefit.

1.7 Conclusion

The first chapter has considered the various problems faced by the juveniles in their access to justice. The constraints are many. Firstly, Corporal punishment though illegal is still being widely practiced in correctional facilities as a measure of discipline. Secondly, the area of children's rights has the least funding and this has made it difficult for the Legal Aid Department to effectively carry out its mandate in the juvenile justice administration.

Further the chapter has shown that the Government has not taken measures to address the very high level of overcrowding and poor physical conditions prevailing in the prisons and other detention facilities, as well as the lack of hygiene, adequate food and appropriate medical care. Finally, the deprivation of liberty of children in conflict with the law is constantly used though not as a means of last resort. There is need to develop alternative measures to detention if the rights of these children will be realised.

CHAPTER TWO

2.0 A Historical Background of the Juvenile Justice System and International Convention and Treaties on Children

This chapter reviews and evaluates the historical background of the juvenile justice system and the rise of juvenile delinquency. Further the chapter will consider the international instruments and conventions that deal with children who come in conflict with the law and lastly a review of child related legislation and their discrepancies will be analysed.

'Law is shaped and reshaped by changes in the material structures in society, while it simultaneously works back on the structures and conserves or freezes them.'[26]The relevance of the history of the juvenile justice is that it provides an understanding of the major forces and pressures that have influenced social change in Zambian juvenile justice system.

The juvenile justice system evolved from the English juvenile justice. During the colonial times, many Africans migrated to urban areas with their children to look for jobs and better standards of living. The Africans were employed as unskilled labourers with poor earnings coupled with inadequate accommodations for their families. There was a lack of recreational facilities hence forcing young people to resort to crime. The restraining eyes of the village community were no longer upon the juveniles who migrated to urban areas or even those born in urban areas. The youths therefore, found themselves in industrial or commercial centers without friends, family ties and belonging to no social circle in which their conduct could be either scrutinized or observed.

[26] T.I. Katenekwa, A Critical Evaluation of Zambian Juvenile Justice System. A Thesis Submitted to Queens University. Ontario. (1989). P9

The concentration of the population in the newly expanded copper towns and those of other industrial centers, combined with economic instability are considered as contributing factors to criminal behavior that emerged in these areas. The old family and tribal members who in African tradition were considered as protectors of the children had now lost control as more and more children were enticed into various criminal activities and other juvenile vices.[27] There was need to control the behavior of these young people in the expanded towns.

The rise of the number of children in conflict with the law was a big problem for the colonial authorities in Zambia which was similar to the one they faced in their own country. They found it easier to draw on their own experiences in search for a solution to the Zambian problem.[28] The first step they took was to enact The Juvenile Offenders Ordinance in 1933. The Act was to a great extent based on The Children and Young Persons Act of 1932 of England. The juvenile criminal justice system was not a separate system from the whole criminal system at that time because the juvenile crime was not a serious social phenomenon and was more common in urban area. Empey observed; '*Delinquency is a social creation of reality in recent time. It is a concept intended to focus attention upon the forms of youthful behavior which have been common through history but have now become of increasing concern in recent years.*'[29]

In 1953, the Probation of Offenders Act was enacted to provide a more general probation system rather than in correctional institutions. By 1956, the Juveniles Act was enacted, which for the first time attempted to create a separate juvenile justice system. In Zambia, this Act abolished the use of the words 'conviction' and 'sentence'. After independence, the number of juveniles being

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[27] T.I. Katenekwa, A Critical Evaluation of Zambian Juvenile Justice System. (Masters Thesis Submitted to Queens University. Ontario. 1989). P29

[28] L.T. Empey, From Optimism to Despair, New Doctrines on Juvenile Justice. (Beverly Hills: Sage, 1979) p 56

[29] E.M. Simaluwani, Zambian Approaches to Disposition of Juvenile Offenders. (Masters Thesis Submitted to Simon Frazer University , 1985)

dealt with by the Courts increased. This historical background provides an understanding to the rise of juvenile justice. It therefore, becomes imperative at this point to consider the international conventions and domestic legislation that govern the rights of these juveniles.

2.1 International Convention and Treaties on Children

There are growing concerns that the implementation of initiatives to improve and enhance the status of children and protect the child from various abuses as specified under the various international conventions and treaties may be hampered by national legislative and regulatory framework currently in existence in Zambia[30]. The current legal framework, apart from being outdated may also fall short of addressing contemporary issues related to the child, such as the best interest of the child concept. It is envisaged that the analysis in this paper will help document the existing gaps and shortcomings so as to provide the basis for advocating the enactment of a more modern and just legal framework that will address in a more meaningful way the contemporary concerns related to children.

There are several regional and international conventions in the field of Children's rights and Zambia is a state party to the majority of these. The paper will however, concentrate only on the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).

2.1.1 The United Nations Convention on the Rights of the Child (UNCRC)

This was adopted by the United Nations General Assembly by resolution 44/25 of 20th November 1989 and ratified by Zambia on the 6th December 1991. The UNCRC is a

[30] BEMVI Associates. A Report on the Review of Child Related Legislation in Zambia. 10th January, 2008. p14

comprehensive statement on children's rights with the binding force of international law[31]. The UNCRC has specific focus on the protection of the child. Zambia as a state party and in accordance with Article 4 of the UNCRC is obliged to undertake all appropriate legislative, administrative and other measures to implement child's rights as specified under the UNCRC. A Child is defined in Article 2 as '*every human being below the age of 18 years, unless under the laws applicable to the child, majority is attained earlier.* This definition is problematic and is in fact a 'non-definition' as the exception is the rule when it comes to national legal systems. In Zambia, the definition of child is relative to the subject matter, area of law or the legal system[32]. This matter is analysed in depth under each piece of national legislation related to children.

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

The African Countries despite the existence of the UNCRC, thought it prudent to have a home grown convention relating to children. The African Charter on the Rights and welfare of the Child (ACRWC) was necessary. The ACRWC offers a higher level of protection than that offered by the UNCRC. This is evident from the preamble which acknowledges the critical situation children find themselves in due to various factors such as cultural and developmental circumstances[33]. It provides a modernized Africa which obliges state parties to consider what is in the best interest of the child. The ACRWC establishes in clear terms when a child is a child. It appears that the definition as contained in Article 2 is parallel with African culture and tradition.

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[31] The State of the World's Children. 2007 P.28-29

[32] Professor J. E. Doek, Harmonization of National Laws with the Convention on the Rights of a Child; Some Observations and Suggestions, (African Child Policy Forum) 2007.

[33] M. Gose, The African Charter on the Rights of the Child, (Community Law Centre, University of Western Cape South Africa , 2002)

The African Charter provides some protection against adverse cultural requirements, as Article 1 (2) provides that it shall not affect provisions of municipal law or any other international [34]convention in force in the state concerned if they are more conducive to the realisation of children's rights. Therefore, the provisions in the national laws that are not in conformity with the minimum standards stipulated in the ACRWC will only prevail if they are more conducive to the realisation of the child's rights. It should however, be reiterated that, in practice, the provision of the ACRWC could be marred by disparities between traditional customs and values and the standards and principles under the charter. Nevertheless, the ACRWC challenges traditional African views that conflict with children's rights on issues such as child marriages, parental rights and obligations over their children[35].

2.2 Review of Juvenile Related Legislation and Their Shortcomings

'Laws are the foundation of social policy and central to the promotion and defense of child rights and welfare'[36] in this respect, all laws to be enacted on the rights of children in Zambia should help achieve the policy goals, objectives and strategies articulated in the various sector policies, international instruments and the Fifth national Development Plan. The provisions relating to children's rights however, are found in a broad range of legislation and these legislations are fragmented, contradictory and poorly implemented. Chapter 23 of the FNDP deserves special mention as it deals specifically with youth and child development. It is important to note that the youth and children represent the majority of Zambia's population as indicated below: *'Zambia is a youthful country, with young people aged 25and below accounting*

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[35] Realizing Rights for Children: Harmonization of Laws of Children, Eastern and Southern Africa. African Child Policy Forum, P.12

[36] "Realizing Rights for Children: Harmonisation of Laws of Children, Eastern and Southern Africa". African Child Forum Report, (2007) P1

for 68 percent of the countries population of an estimated 11.7 million people. Furthermore, the 2000 Census of Population and Housing indicates that there are more than 5.5 million Children and 1.3 million youth in Zambia.[37] It is important that this essay be read in conjunction with Chapter 23 of the FNDP as it analyses the current situation in relation to the child. A major policy objective set out in the Chapter is to 'promote the rights of children and the youth for their survival, protection and development'. The following subsections will analyse in detail a few Acts of Parliament relating to children who come in conflict with the law.

2.2.1 The Prisons Act, Chapter 97

The Prison's Act provide for the establishment of prisons, for a prison service, for the management and control of prisons. The Act also provides for youth corrective training centers. The Act covers different categories of children. The term 'juvenile' is defined to mean a person under the age of nineteen and includes a child or a young person[38]; and a prisoner under the apparent age of twenty means a young person. As can be seen from these definitions, there is no standard definition of the term child. For instance, under the Employment of Young Persons and Children Act[39], a child is defined as a person who has not attained the age of sixteen whilst a young person is defined as a person aged between fifteen to eighteen years old.

It is evident that there are just too many definitions of the terms *child, young person* and *juvenile* in the various pieces of child related legislation. These different definitions with significant inconsistencies have the effect of making children continue to suffer as the legal protection in some instances is taken away. Both the UNCRC and the ACRWC have a standard definition of a

[37] Fifth National Development Plan. (2006-2010), Chapter 23 Paragraph 23A p 218
[38] The Juveniles Act Chapter 53 of the Laws of Zambia
[39] Chapter 274 of the Laws of Zambia

child as being 'a person under eighteen years old' with the difference that the CRC recognises age of majority which is less than eighteen years, should that be so legislated in a particular jurisdiction.

Section 63 of the Prison's Act empowers the Minister to order the removal from Prison to a reformatory of any juvenile who is serving a sentence of imprisonment. The juvenile so removed would then be treated as if he had been ordered to be detained in a reformatory. This in practice does not really happen[40]. There is hardly any separation of prisoners (apart from the separation based on gender). The prisons are so congested that young persons are mixed with older prisoners in remand prison and after conviction. The fact that Section 60 allows for the separation in as far '*as the prison accommodation renders it practicable*' impliedly authorises non-conformity of the prison authorities.

2.2.2 The Juveniles Act- Chapter 53

The juveniles Act makes provision for the custody and protection of juveniles in need of care and provides for the correction of juvenile delinquents. The Act also makes provision for the establishment of approved schools and reformatories. In order to ensure the full implementation of the principles and rights elaborated in the UNCRC, there is need to establish an effective organization for the administration of justice and a comprehensive juvenile justice system. Articles 37 and 40 of the UNCRC deal with juvenile justice. Articles 37 contains the leading principles on the deprivation of liberty and the treatment and conditions for children deprived of their liberty such as the right to be heard, to call witnesses, to be legally represented and

[40] L .Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, (2008), p21

treatment by way of separation from adults, while Article 40(3) of the UNCRC states that State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law.

The juvenile justice system should be guided by the United Nations Standard Minimum Rules for the administration of justice (the Beijing Rules), the United Nations Rules for the protection of juveniles deprived of their liberty (the Havana rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) in order to establish a progressive justice system for young persons in conflict with the law. The UN Rules for the Protection of Juveniles Deprived of their Liberty (JDL Rules) safeguard fundamental rights and establish measures for social re-integration of young people once deprived of their liberty whether in prison or other institutions. These rules however, are recommendatory and non-binding on States but serve as a useful guide in dealing with juvenile justice[41]. This is disadvantageous because a state may either decide to follow them or not and if they do not, there are no sanctions that follow. These rules are important because they provide guidance to states for the protection of children's rights and respect for their needs in the development of separate and specialized system of juvenile justice. It details norms for the administration of justice in tandem with a child's right and has a developmental oriented approach.

Section 1(2) of the Juveniles Act makes a provision for the observance of customary law unless its observance would not be in the interest of a juvenile. This provision is lacking in that customary law by its nature and interpretation denotes children as property of their parents. The recognition of customary law has the effect of impacting negatively on the realization of a

[41] BEMVI Associates. A Report on the Review of Child Related Legislation in Zambia. (10th January, 2008). P59

child's rights. Further Section 29 of Chapter 53 empowers the Minister at any time in his discretion to discharge a juvenile from the care of the person to whose care he has been committed or from an approved school. This discretion would have been better if it was vested in the Commissioner for Child Welfare[42] as he is more conversant with children's rights than the Minister.

Section 85 also provides for commutation of committal time by the Ministers upon report by the Commissioner for Juveniles Welfare where a person detained in an approved school is exercising bad influence on the inmates or is not benefiting from the training in the school. This however, places too much discretion on the Minister who may not be the best person to make decisions. Further, Section 95 sets out the establishment of Reformatory Boards and empowers the Ministers to appoint members on such Boards. Good governance dictates that there should be transparency in the appointment of Board Members. The Act does not specify where possible the qualification of a person to serve on such a Board. The potential danger of this provision is that Board Members would serve at the whim of the Minister in order to ensure their security of tenure and this may result in corruption thereby preventing the juvenile's accessibility to justice.

Lastly, Section 45 provides for a juveniles inspector to inspect any voluntary home from time to time. It however excludes any home under the authority of a Government Department. This defeats the whole purpose of carrying out inspection by excluding other institutions. An inspection is carried out for purposes of ensuring that the general welfare of children in a home meets the standards, and that other criteria are met and are conducive to juveniles.

[42] A.W. Chanda, Gaps in the Law and Policy in the Implementation of the Convention on the Rights of a Child. Zambia Law Journal Child in Zambia. 15 (1999), 45-55

2.2.3 Probation of Offenders, Chapter 93

The juvenile justice system relates to the process of handling juveniles in conflict with the law. The custody and protection of juveniles in need of care are to some extent applied under the Probation of Offenders Act. This Act establishes probation institutions which oversee the conduct of a probationer. Section 3 *defines a probation order as an order issued by a court that convicts a person of an offence, not being an offence fixed by law, that is of the opinion that having regard to the youth character antecedents, home surroundings, health or mental conditions of the offender.....the court can make a probation order requiring the person to be under the supervision of a probation officer for such period as may be specified in the order*...This definition has been criticized as it does not reflect modern concepts in the area of child treatment, protection and care. The definition relates to punishment and not reformation and is contrary to the principles in Article 37 and Article 40 of the UNCRC.

The question of provision of legal aid as a must is not considered in the Act. Article 17(2) (iii) obligates State Parties to afford legal and other appropriate assistance in the preparation and presentation of a child offenders defence. The MCDSS consolidated report[43] suggested that this definition of probation is archaic and needs to be re-defined in line with international best practices. The best interests of the child should be the paramount concern in the juvenile or child justice system. Further Section 7(3) (b) of Chapter 93 uses the term '*conviction*' in relation to failure of probationer to comply with probation order. The use of the term conviction should be discouraged where a child is in conflict with the law as this may result in stigmatization of a child. It may also be very traumatic on a young child.

[43] Ministry of Community Development and Social Services (2002)

2.2.4 The Penal Code- Chapter 87

The specific Articles of the UNCRC relating to juvenile justice are Articles 37 and 40. The UNCRC requires that a child in conflict with the law be accorded treatment which promotes his or her sense of dignity and worth, takes the child's age into account and aims at the child's re-integration into society. The UNCRC also promotes the use of alternative measures such as diversion and restorative justice. The ACRWC contains specific provision in relation to juvenile justice. Article 17 requires that the detained child shall be subjected to special treatment in a manner consistent with the child's sense of dignity and worth. The Beijing rules[44] also serve as a useful guideline when enacting legislation on juvenile justice. It is a system which encourages that the child should be diverted away from the Criminal Justice System.

Section 14(2) of the Penal Code states that a person under the age of eight is not criminally responsible for any act or omission unless it is proved that he had the capacity to know that what he was doing was wrong at the time. Article 40(3) of the UNCRC or the ACRWC however, does not specify the minimum age. In this regard the Penal Code prescribes an age of eight. The Beijing Rules recommends that the minimum age of criminal responsibility shall not be fixed too low, bearing in mind the facts of emotional, mental and intellectual maturity. Zambia therefore, does not have a standard age of criminal responsibility as guided by the Beijing Rules. The ACRWC does not provide for a minimum age. The current age of eight years may be too low taking into account the child's maturity.

The practice of allowing exceptions such as those contained in Section 14(2) of the Penal code which states in part that '.... *where it can be proved that at the time of doing the act or omission*

[44] The World's Children Report. United Nations International Children's Emergency Fund. (UNICEF 2001).

the child had the capacity to know that he ought not to do the act or omission', should be discouraged. This becomes discriminatory in nature in that it makes it possible for a child under the age of seven to be found criminally responsible before the courts of law. Zambia has many ages of criminal responsibility and by applying these different ages, discrimination surfaces in the implementation of juvenile justice[45]. Therefore, it can be stated that currently, the manner in which responsibility is determined is discriminatory in nature and does not offer adequate protection to a child.

2.2.5 The Criminal Procedure Code Chapter 88

The term child is not defined under this Act. Section 11 of the said Act provides the Chief Justice may by statutory notice order that any class of offence specified in such notice shall be tried or committed to the High Court for trail by a Subordinate Court presided over by a Senior Resident Magistrate only. This order however does not apply where a case is required to be disposed off in accordance with the provisions of the Juveniles Act. This is because juveniles have special courts or juvenile courts specifically tailored for the purpose of hearing any charge against a juvenile and disposing off any case involving a juvenile offender, except for offences of homicide or attempted murder. The exclusion of the juveniles from judicial proceedings and procedures tailored for adults under the Criminal Procedure Code (CPC) is the realization of the need to not subject young offenders to the rigors of adult trails.

Children differ from adults in their physical and psychological development and their emotional and developmental status. These differences are the reasons for a separate juvenile justice

[45] BEMVI Associates. A Report on the Review of Child Related Legislation in Zambia. 10th January, 2008. P91

system. This exclusion conforms with Article 40 of the UNCRC and Article 17 of the ACRWC which provide the minimum guarantees that have to be accorded to every child alleged as or accused of having infringed the penal law and protects the rights, welfare and well being of a child. Article 40 of the UNCRC obliges State Parties to seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children accused of having infringed the law, in particular, measures appropriate and desirable for dealing with such children without resorting to judicial proceedings.

Article 17 of the African Charter also provides for the administration of juvenile justice. The Charter requires that a child who has infringed the law shall have the right to special treatment in a manner which reinforces the child's respect for human rights and fundamental freedoms. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice adopted by the General Assembly of the United Nations Resolution 40/33 of 29th November 1995 seeks to promote the juvenile justice system through emphasizing the well being of juvenile offenders[46]. Section 11 of the Criminal Procedure Code conforms with promoting juvenile justice through the establishment of juvenile courts in order to protect the welfare or well being of the child.

2.3 Conclusion

The general conclusion of chapter two drawn from a broad analysis of data is that the law falls short in the implementations of the provision of the UNCRC and the ACRWC, and the fact is that Zambian Statute books in relation to the laws relating to a child are fraught with inconsistencies, contradictions and negative overlaps. There are a number of key issues that need to be addressed through legislative, administrative and advocacy interventions. The essay has

[46] M.Freeman, The Moral Status of Children, Essays on the Rights of the Child. (London :Sweet & Maxwell, 1997) p45

identified key issues relating to children as specified in the Juveniles Act and the FNDP hence, the implementation of these policies will help in bettering juvenile access to justice.

The chapter has shown how difficult it is to define a child, youth or juveniles using the various national legislations in Zambia. The United Nations Convention on the Rights of a Child sets a standard definition of a child. However the Juveniles Act, The Prisons Act, the Penal Code, the Probation of Offenders Act all have different ways of defining a child, young person or a juvenile. It is evident that these different definitions with significant inconsistencies have the effect of making children continue to suffer as the legal protection is in some instances taken away.

The age of criminal responsibility under the Penal code presents yet another challenge. In that the stipulated age of eight is too low and is not in conformity with the Beijing Rules which makes provision that the age of criminal responsibility should not be too low bearing in mind, the intellectual maturity of the child. A further proviso to this section as set out in section 14 (2) of the Penal code has resulted in discrimination since it entails that even if a child is below eight years of age, as long as he knew that what he was doing was wrong then that child will be criminally liable. All these inconsistencies therefore, need to be addressed in the current law review being conducted by the Zambia Law Development Commission on child related legislation.

CHAPTER THREE

3.0 Institutions Entrusted with the Administration of Juvenile Offenders

This chapter focuses on the institutions that handle juveniles. It also discusses the root causes of juvenile delinquency and the various sentences that are imposed on juveniles when they come into conflict with the law.

3.1.1 The Ministries

The FNDP sets out the National Vision relating to the child and youth as follows;' *Enhance youth and child survival, development and protection through a well coordinated and multi-sectoral approach by 2030'.*[47] Children and youth affairs fall under different portfolio Ministries and institutions, with the judiciary having the final say over juvenile delinquents. In certain instances there is a lot of overlapping of functions, for example, the Ministry of Justice (MOJ) and the Ministry of Community Development and Social Services (MCDSS) all deal with children who come in conflict with the law and try to find ways of providing proper protection for these children.

The Consultant in a report handed to the Zambia Law Development Commission[48]found that although there was some communication and coordination through Cabinet Office, some horizontal consultations and representations on the Board of Councils, it is still insufficient. The Ministries and various institutions more or less continue to exercise on a day to day basis their portfolio or statutory function in accordance with their mandates without adequate reference to each other in the long standing culture of centralized decision-making. These Ministries have not

[47] African Child Policy Forum, Page 12
[48] Ministry of Sport, Youth and Child Development, National Youth Policy. (2006)

taken advantage of existing advances in information, communication and technology to ensure some connectivity in their functions, processes and procedures in order to improve harmonization, coordination, communication and efficiency. The need for inter-sectoral linkages cannot be over-stated.[49]

3.1.2 The Courts

The role of the Judiciary in the area of children's rights must not be under-played. The national goal of the Access to Justice Programme is '***Easier Justice for All***' including children.[50]In Zambia, the magistrate's courts have exclusive jurisdiction to hear cases of children who come in conflict with the law except for those cases of capital punishment or where a child is jointly charged with an adult. The courts are supposed to be a special kind as stipulated by section 119 of Juveniles Act. For example, the Subordinate Courts house juvenile courts and the High Court turns itself into a juvenile court when hearing juvenile cases. There is however, poor coordination which affects the efficient and effective management of cases and movement from one justice sector to another in the correct order and on a timely basis. A delay in accessing justice negatively impacts on the rights of the child. Further, Lusaka is the only province with a juvenile court found at the Magistrate's Complex in Kabwata. Most provinces do not have juvenile courts as such the magistrates who handle matters involving juvenile are the same ones who handle matters involving the adult offenders.

3.1.3 The Social Welfare Department

[49] The National Programme for Action for Children in Zambia: Government of the Republic of Zambia Publication (1994). See page 8 for the goals set to be achieved.
[50] The Fifth National Development Plan, (2006-20101) Chapter 31

This department is under the Ministry of Community Development and Social Services (MCDSS). Social Welfare basically refers to a system of law, 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 social order.[51] Arising from this, it is vivid that the provision of individual wellbeing constitutes the meeting between social welfare activities and the juvenile justice system. The department is charged with the responsibility of preparing a social welfare report on juveniles in conflict with the law. These reports must contain a sufficient quantity of information to facilitate in the adjudication of the case.

Rule 16(1) of the Nations Minimum Standards on Administration on Juvenile Justice (Beijing Rules)[52] provides that, the circumstances and background in which a juvenile is lying or the conditions under which the offence has been committed shall be properly integrated so as to facilitate judicious adjudication of the case by the competent authority. It goes on to provide that these reports include financial status of the family, accommodation of juveniles, income of parents, relationship between juveniles and parents and his friends. The Social Welfare Department however, lacks resources to provide these facilities, for example they lack enough cars for transportation from their work places to the homes of the juveniles. Further some juveniles like street kids have no fixed place of abode and this has hampered the preparation of social welfare reports.

3.1.4 The Police

In Zambia like many other jurisdictions, the police usually have the first contact with the young persons in conflict with the law. It is the police who actually have the role of ascertaining that

[51] W.A. Friedlander at al. Introduction to Social Needs Welfare, 5th edition.(Prentice Hill. New Jersey, 1980). P 4
[52] Adopted by the General Assembly Resolution 40/33 of 29th November, 1995

the potential offender is a juvenile and the case has to proceed on that basis. The police can be called the 'informal screening body'.[53] They have to take account of age of the offender as it plays a cardinal role in the juvenile cases and juvenile justice as a whole. The determination of age by the police sets foundation for the courts later in exercising their jurisdiction and in deciding the criminal responsibility of the offender. It also helps in selecting the sentence imposed on conviction particularly in deciding whether to impose a term of imprisonment or an approved school order[54].

In practice, the police have perpetrated a lot of injustice on 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, Brenda Muntemba, one time Police Spokesperson in 2004, commented on the attitude of some police officers in 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 the police are not equipped on how to handle juveniles.'*[55] Upon arresting the child, Section 127 (2) of Chapter 53 of the Laws of Zambia requires that the police officer must warn the parents /guardian of the child to attend court. It continues to state, '....*if they can be found'*, a qualification which has made the police officers reluctant to try to find the parents or guardians of the juveniles they take into custody.

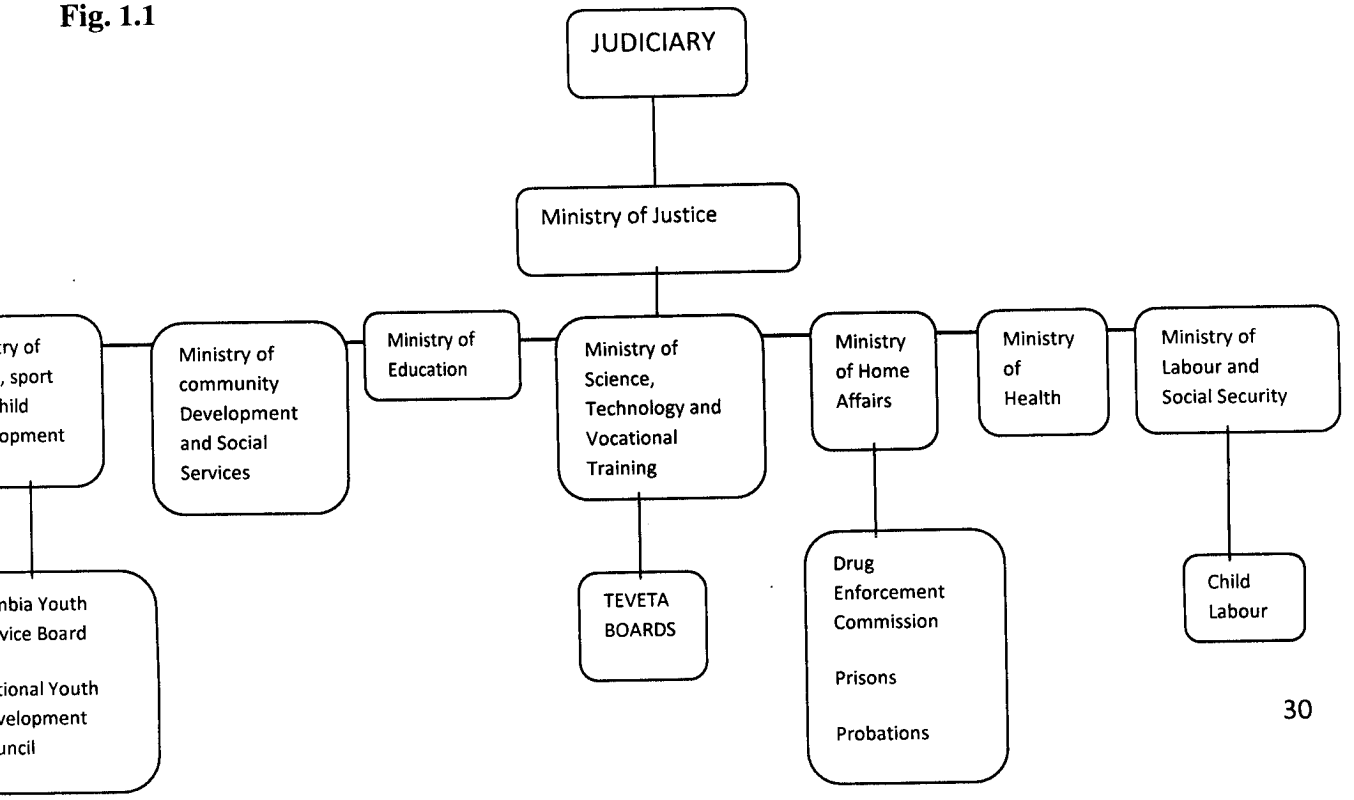
The importance of guardians being present cannot be overemphasized. In the case of Mbewe v The People[56]Bruce Lyle J, stated that, *Section 127 (1) stresses the importance the legislation attaches to the attendance whenever possible during all the stages of the proceedings in court of*

[53] P. Walker, The Law and the Young. Some Necessary External Legal Considerations. (Faculty of Law Review, 1971) p54
[54] P. Walker, The Law and the Young. Some Necessary External Legal Considerations. (Faculty of Law Review, 1971)
[55] The Post Newspaper, September 15th 2004
[56] (1976) Z.R. 317

a parent or guardian of the juvenile but there is no such provision in the Act for the attendance of the parent or guardian at the police station during the taking down of the statement from the child. We should however, urge that it is desirable to have a parent or guardian whenever possible to be present at the police station when a statement is being taken from a juvenile. This calls for the police officers to be diligent in carrying out their job in order to ensure that the welfare of a child is protected at all costs.

The Chart below shows the major institutions and statutory bodies dealing with juveniles, some of which have been discussed. As can be seen all these institutions handle juveniles. For instance, the juvenile courts are under the Ministry of Justice. Diversion programmes are under the Ministry of Youth, Sport and Child Development whilst the Social Welfare Department comes under the Ministry of Community Development and Social services. There is little communication among these institutions and this has also contributed to problems in the juvenile access to justice.

Fig. 1.1



The chart has also helped in outlining the important role of the Judiciary in juvenile justice administration. It is from the Judiciary that all other institutions flow. For instance the Magistrate Courts which have exclusive jurisdiction of hearing juvenile cases are presided over by the Judiciary. Similarly, all other institutions such as TEVETA Boards and the Ministry of Community Development and Social Services all report to the Ministry of Justice which forms a vital part of the Judiciary. For example, a Social Welfare officer from the Ministry of Community Development and Social Services has a duty to prepare a report on a juvenile and this report assists a magistrate having conduct of the matter pertaining to a juvenile to evaluate the needed sentence. Without the Judiciary, the whole concept of juvenile access to justice falls off.

3.2 Causes of Juvenile Delinquency

A building always starts from the foundation. Hence, the paper now aims to analyse the root causes of juvenile delinquency. Platt[57] in his book argued that social factors assist in explaining juvenile crime as well as how the child is handled for misconduct. In every setting, an individual is assumed to be influenced by the beliefs, knowledge and values of that society. The individual adopts himself to the changes in beliefs, knowledge and values of that society. This pertains to the recognized behavior as legally and morally upright in regard to the particular values and beliefs of a particular society. It is agreed that factors associated with the rise of juvenile crime have been urbanization, population growth and social and technological change, poverty, lack of adult support, large household and high dependency ratios.[58]Juveniles are likely to come from homes where there is little understanding, affection and moral strength. The tendencies toward

[57]P.Platt, The Foundation of Delinquent Behavior. (Essex: Faculty Law Review, 1969)p44
[58] H. Gibbens, Discovering family Life. (London: Longman Press, 1966) p 21

juvenile delinquency are deeply anchored in the body and mind and essentially derive their malformations of personality during the first years of life. Dr Spock[59], an American counselor stated that by the age of three, a child's tendencies have already been formed towards constructive or destructive behavior.

The other cause of juvenile delinquency is that most children especially street kids lack proper family life and in order to sustain themselves they engage in crime. The statistics show that children who live on the streets are extremely vulnerable. According to a UNDP report, there are 75, 000 children living and working on the streets of Zambia. The majority of these are boys and over two-third are between 6 to 14 years. 40% have lost their parents and the other 7% have no home to return to.[60] As a result, most of these children become delinquents.

Some behavioural scientists systems have come up with a way of assisting in the guidance and treatment of juvenile offenders. They have come up with a model that helps explain the behavior of juvenile offenders. This model is called the 'medical model' of corrections.[61] According to this model, a criminal behavior is like a disease and can be cured provided the right therapy is applied. This therapy usually involves the creation of an atmosphere in which the individual is able to develop a range of social skills that will later help him to play positive role in society.

3.3 Review of Some Sentences Imposed on Juvenile Offenders

Children will go to court for various reasons. They may be there when they have been accused of a criminal offence or as victims of a criminal offence. When a child is brought before the courts,

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[59] B. Fine, One Thousand Delinquents. The First Six years of a Child's Life. (New York: 2000)
[60] See Children's Rights in Zambia. A Situation Analysis. November, 2008. P29
[61] F.A. Allen, The Borderline of Criminal Justice. Essays in Law and Criminology. (Chicago: University of Chicago Press, 1964)

age becomes an important factor. It is the age which determines whether the child is capable of committing that offence. A child under the age of eight has no criminal liability and a child aged eight years or over but under twelve years has only limited liability.[62] Section 64 (1) of the Juveniles Act provides that where a child is brought before a juvenile court for any offence other than homicide or attempted murder, the case shall be disposed off in such a court.

3.4 Orders Against Child Offenders

The law under Section 73 (1) of the Juveniles Act sets out some of the orders that can be made. The court may dismiss the charge absolutely so that the child may go or the court may dismiss the charge on certain conditions. For example, a juvenile may be required to perform some hours of community service. The court may also make a probation order in respect of the offender or send the offender to an approve school or order the offender to pay a fine. The Act also does provide that the orders may be made against the parents or guardians of the child offender. This is in a situation where the court is satisfied that a parent or guardian has contributed to the commission of the offence by neglecting to exercise due care of the juvenile. As such, the guardian or parent must be given an opportunity of being heard by the court.

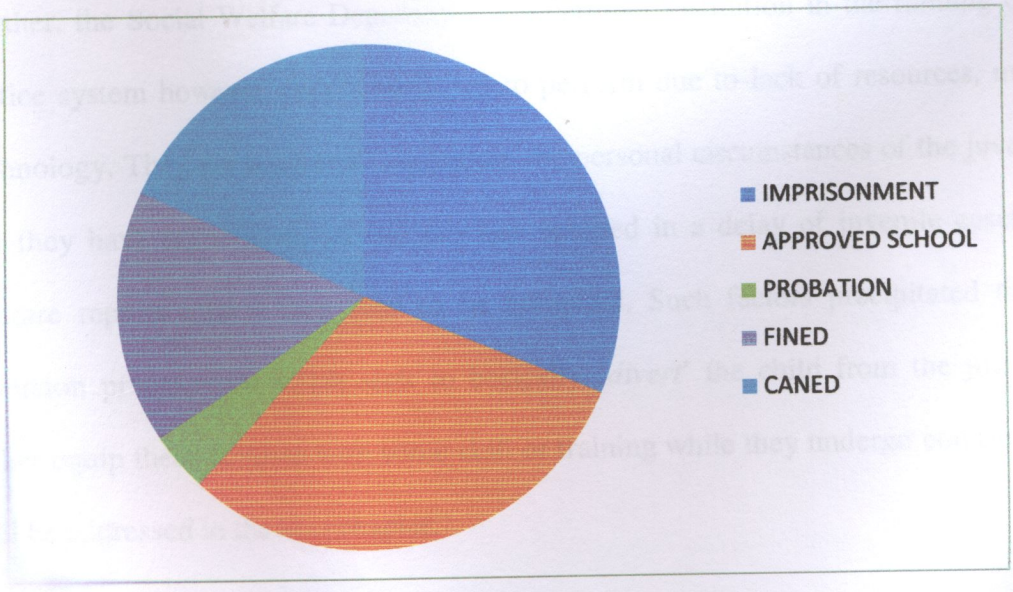
The object of the Juveniles Act is that as far as possible juveniles should not normally be sent to prison. The reason is that if juveniles come into contact with adult hardened criminals, the chances are that they too will become hardened criminals[63]. If a juvenile aged between sixteen and nineteen years is sentenced to imprisonment, the magistrate must enter on the records the reasons why he could not suitably be dealt with in any other way. Imprisonment of juveniles should be extremely discouraged. The story of how a juvenile offender hid in a drum to avoid

[62] Section 14 (1) of the Penal Code, Chapter 87 of the Laws of Zambia,
[63] Mvula v The People (1976) Z.R. 80 (SC)

prison was reported in the Post newspaper[64] were it was stated that a prison sentence was imposed on a juvenile by the Subordinate Court after being convicted of an unnatural offence contrary to section 155 (a) of the Penal Code[65]. The court however, made mention of the fact that imprisonment is completely undesirable for a child offender and should be done only in exceptional circumstances.

Imprisonment is still highly practiced as a mode of sentencing as the statistics provided by the High Court will endeavour to establish. A total of 1483 juveniles where sentenced in Zambia as of the year 2008 and of that, 17% were found guilty of theft whilst 12% where found guilty of crimes against a person and 71% committed crimes involving property. Nearly 42% of juveniles found guilty where ordered to imprisonment which is extremely high. 48 % of juveniles found guilty received custodial sentence[66]. The following pie chart illustrates these findings.

Fig 1.2



[64] The Post Newspaper 'Juvenile Offender Hides in Drum to Avoid Prison', 5th November, 2009 on page 7
[65] Chapter 87 of the Laws of Zambia
[66] B. Chisense Analysis of Juvenile Justice in Zambia. Unpublished Report. 2008. P 8

3.5 Conclusion

In conclusion, it can be seen that some of the major constraints of juvenile justice is that though, there are a lot of institutions handling juveniles, they lack communication and coordination. These various institutions handling juveniles should ensure coordination and harmonization if they are to be of benefit to the intended targets.

The chapter has also highlighted the importance of the Judiciary in the administration of justice. It is from this institution that all other institutions are able to function. The Judiciary ensures that qualified Magistrates are appointed as these are the people who have the power of passing sentences on juveniles. A qualified Magistrate ensures that the best interest of the child is taken into account in making an order against a juvenile.

Further, the Social Welfare Department is a cardinal institution in the running of the juvenile justice system however, they have failed to perform due to lack of resources, man power and technology. They are supposed to ascertain the personal circumstances of the juvenile offenders but they have failed to do so and this has resulted in a delay of juvenile cases as the social welfare reports take a long time to be compiled. Such factors precipitated the adoption of diversion programmes which seek to basically '*divert*' the child from the justice system but rather equip these children with some skill or training while they undergo counseling. This topic will be addressed in the next chapter.

CHAPTER FOUR

4.0 An Analysis of Reformatory Schools

In the preceding chapter, the paper discussed some of the sentences that are imposed on juveniles, one of them being that juveniles may be sent to approved or reformatory schools[67]. Hence, this chapter will provide a situational analysis of reformatory schools and further it will assess whether approved schools are actually the best answer to juvenile problems and it will also consider diversion programmes as an alternative to approved schools.

4.1.1 Katombora Reformatory School

On 10th April, 2009, the researcher conducted a visit to Katombora Reformatory School which is situated in Kazungula District, Southern Province. This school was established in 1957 with a holding capacity of 120 boys. However, at the time of the visit, there were 126 boys. It was observed that at the time of the visitation, the dormitories were overcrowded due to an increase in the number of boys ordered to the facility. These boys sleep on the floor as there are only 50 bunk beds which catered for 100 boys. It was observed that each dormitory has one toilet.

The ablution blocks at Katombora were relatively clean despite the walls being very dirty. It is worth noting that at the time of the visitation, the toilet rooms had no doors. As for the state of the kitchen, the cooks were using firewood at the time of the visit because the three electric pots at the School were not working. It was discovered that the pots blew up and caused a fire which affected the congruent pipes and wiring in the kitchen. The school authorities reported that the pots had been taken to Livingstone to be repaired. The researcher also found that the quantity of food given to the boys was not adequate and was poorly prepared. The boys are given maize grits

[67] Section 73 (C) & (D) of the Juveniles Act

for breakfast while for lunch and supper, they are given nshima and kapenta. These meals are prepared by boys who are assigned to the kitchen. As for beddings and clothing, not all the boys at the school were clad in uniforms and most of the boys were sharing a blanket of which the same blankets were old, and had not been washed for a long time.

Some children made complaints of physical violence by officers. They reported that one officer a Mr. Chipili was in the habit of beating them with an iron rod. It was also alleged that the other officers beat the boys especially when they are found drunk or smoking dagga and at times the boys may be kept in a penal block where each officer who reports for duty would go up and beat them. The boys also stated that at one time, nine of them were taken up to Livingstone Central Prison as punishment for offences such as beer drinking, fighting and smoking dagga and the conditions that side were worse than at Katombora.

4.1.2 Insakwe Probation Hostel

The conditions found at Katombora are bad. However, this probation hostel has better facilities than the ones at Katombora. On the 13th of November 2009, the researcher conducted another visit to Insakwe Probation correctional Facility for girls. It is situated in Central Ndola on a fairly large plot and consists of approximately six buildings for offices dorms and kitchen. At the time of the visit, there were three girls ordered by the courts and two children in need of care. The three girls were undergoing psychosocial counseling. The hostel authorities reported that the hostel is supposed to receive K5, 000,000.00 for all supplies and bills from the Department of Social Welfare. However, the hostel sometimes does not receive funding as government funding is not consistent and this poses a challenge when it comes to paying water and electricity bills.

Further, they reported that there is need for more vehicles from the Department of Social Welfare Headquarters to be used for follow-up visits and aftercare programmes.

From the above it can be seen that while probation or reformatory schools are desirable, the officers in charge of the children lack specialized training on how to handle children who have come in conflict with the law. Further, the Social Welfare Department rarely makes follow-up visits due to lack of resources in the government department. Hence, due to all these constraints diversion programmes have now been seen by the key players in the juvenile justice system to be more beneficial to juveniles than approved schools.

4.2 Diversion- Life -Skills Programme

The courts are using section 73 (j) of the Juveniles Act to implement diversion programmes. This section provides for the courts to deal with the case in any manner in which it may be legally dealt with. There are currently three diversion programmes who have signed agreements with the Child Justice Forum and these are Rural Youth and Children in Need (RYOCHIN), Young Women's Christian Association (YWCA) and Jesus Cares Ministries.

Diversion is a rehabilitation programme that targets mainly juvenile offenders appearing before the Magistrate in the Child Friendly Court. Diversion may be defined as the use of voluntary alternative measures to the criminal justice system. Diversion may also mean moving away from crime towards being a productive member of the community.[68] From a juvenile justice perspective, diversion occurs at the point when the prosecution decides to withdraw the charges or in court when the magistrate decides to impose a sentence other than imprisonment. Hence diversion is a concrete concept in which a young person comes to realize that there are other

[68] N. Fine, Through the Walls: Working with Youth in Conflict With, in Crisis, in Care, in Custody. (Community Law Centre: University of Western Cape, 1996). P67

options in life apart from crime. It has been argued that true diversion actually occurs inside a persons mind.[69] In reality diversion can occur at any stage but the earlier it occurs, the greater the chances of intervening positively in a young person's life.

4.2.1 Aims of Diversion

(i) *Prevention of reoffending*: A feature of most institutions holding young people is that these young people are not provided with skills to be responsible for their actions and for their lives. Community based programmes on the other hand, encourage the child in conflict with the law to take responsibility for their action and to act accordingly. Reoffending is therefore, prevented.

(ii) *Avoid conviction and instead give children in conflict with the law a second chance*: This is especially applied when the offence is trivial or the offender is unlikely to reoffend by avoiding convicting the juvenile. A child in conflict with the law may take responsibility for their actions and be held accountable without going through the entire criminal justice system. The child/young person gets an opportunity for reparation without being labeled a criminal. A criminal record is for life.

(iii)*Improved resource usage*: Minor cases which build up in the criminal justice system are avoided. The courts are freed up to deal with more serious crimes. The problem of overcrowded police station and prisons is universal. Building more prisons or police stations will cost a lot of money. It has been stated that the current facilities should be reserved for dangerous offenders and not juveniles.

[69] P. Osborne, Psychotherapy and Analysis of a Person. (Stanford :Stanford University Press, 1990) p45

(iv)*Avoiding the delays, cost and traumas of trials*: Court rooms are intimidating for children and the process is not child friendly. It is common knowledge that lawyers are costly and legal aid is not always available.

(v) *A better service for the victim*: A victim is made to feel as part of the court process because the victim's feelings are central to the decision as to what would be the most appropriate way to handle the offender. The child in conflict with the law is made aware of consequences of their actions in a warm environment.

(vi) *Improve the perception of the police*: Diversion allows the police to demonstrate that they are interested in helping the offender. The police are no longer perceived as authoritarian crime control agencies but as members of the community with a vital role to play in the prevention of crime and the protection of the community. Diversion thus, allows the community to protect its own thereby reducing the cost and workload of the social workers[70].

4.2.2 RYOCHIN- A Form of Diversion Programme

This is one of the pilot projects that have been established under section 73 (j) of the Juveniles Act. RYOCHIN, in conjunction with UNICEF and the Magistrate Courts have been running a life skills programme for children in conflict with the law as part of its diversion services since 2002[71]. This life skill is based on the YES (Youth Empowerment Scheme) Programme. The need for such programme was identified by stakeholders within the criminal justice system. The stakeholders were of the opinion that it was not in the best interest of these children to be

[70] A. Mofya, An Annual Report on Diversion Life- Skills Programme. Conducted by RYOCHIN in February, 2009. P9

[71] A. Mofya, An Annual Report on Diversion Life- Skills Programme. Conducted by RYOCHIN in February, 2009. P11

convicted if other alternative options could be explored. In addition, many of these children suffered unnecessary exposure to the rigors of the criminal justice system.

The goal of the project is to render diversion services and life skills, psychosocial support to young offenders as part of their reintegration into society. The researcher undertook another visit to RYOCHIN on 16th February 2010. During this period, RYOCHIN had received twenty-eight children diverted by the Child Friendly Court. All the children undertook the YES programme. This is a programme offered to young offenders over a period of time whether on one on one basis or as a group therapy. It involves intensive counseling and instances of other psychosocial support to children who come in conflict with the law. The programme aims at strengthening the participants self knowledge, to help them know how their choices and thinking affect the way they react to challenges. Out of the total of twenty-eight children, 85% that is twenty-one completed the programme successfully. Only a small fraction of the divertees did not comply with the programmes standards, norms and rules and the court have since been notified about the same[72].

4.3 Overview of the Juvenile Justice Process

The paper will now try to illustrate at what point in the juvenile process is the best time for diversion to occur.

After arrest, there are three main options open to the police. Namely, the police may decide not to charge the juvenile or the case may be referred back to the parties' concerned called informal diversion or secondly, the police may decide to release the juvenile into the care of the parents or guardian or they may leave it to the prosecution to make a decision regarding prosecution or

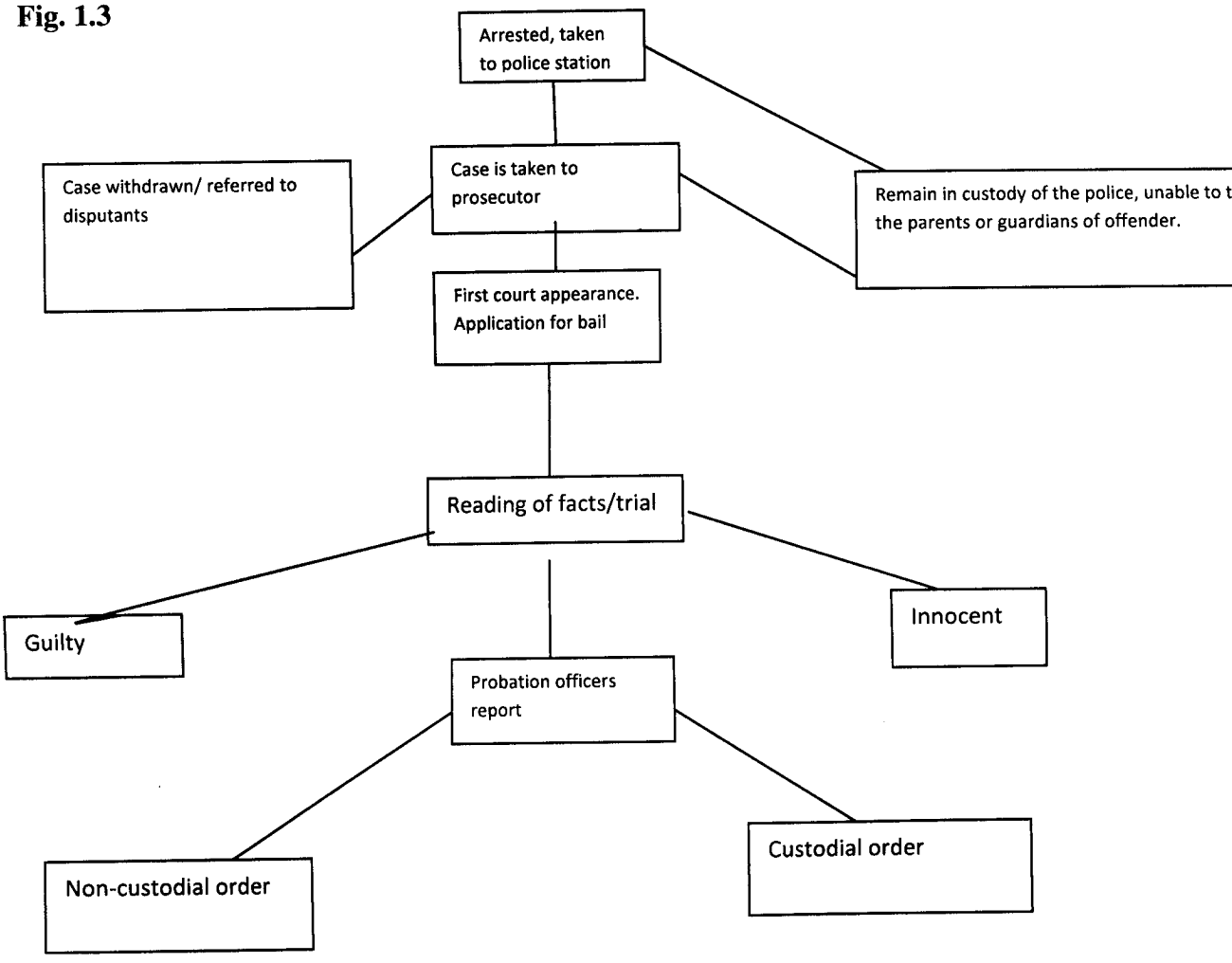
[72] A. Mofya, A Report on Juvenile Justice Administration in Zambia. Conducted by the Child Justice Forum. (2009)p14

withdrawal[73]. This stage has been identified as the crucial and the most appropriate stage for diversion to take place. If the prosecution decides to withdraw the case due to insufficient evidence or to refer the matter back to the parties concerned, the progress of the case ends here. A decision to prosecute will result in the juvenile's first court appearance.

The second stage is to make a finding of either guilty or not guilty[74]. If not guilty, a social welfares report will be requested by the court. A social welfare officer will present his/her findings to court and make a recommendation regarding a suitable order option for the juvenile. The various orders that can be made against juveniles can be categorized into two types namely custodial and non custodial. Custodial orders need to be confirmed by the court. Given the emphasis of international instruments such as the United Nations Convention on the Rights of a Child (UNCRC) and The African Charter on the Welfare and Rights of a Child (ACWRC) on limiting the custody of juveniles and children to the absolute minimum and the general undesirability of police cells and prisons, a number of stages in the justice process can be identified as exacerbating the problem. The following juvenile system flow chart will aid in illustrating what has been discussed.

[73] B. Chisense Analysis of Juvenile Justice in Zambia. Unpublished Report. (2008) P2
[74] B. Chisense Analysis of Juvenile Justice in Zambia. Unpublished Report. (2008) P13

Fig. 1.3



4.4 Some Positive Trends in the Juvenile Justice System

There have been some positive trends in the juvenile justice system. However, inspite of this, it is still felt that there is need for more improvement if the juvenile access to justice is to be achieved. Some of these are the Child Justice Forum (CJF), the National Plan for Action (NPA) and the Child Friendly Court (CFC).

4.4.1 Child Justice Forum (CJF)

Following the ratification of the Convention on the Rights of a Child, the government now aimed at providing an important framework within which the living conditions of many Zambian children would be improved. Hence, in November 2000, a study on Juvenile Justice was commissioned by the Ministry of Home Affairs in collaboration with the Danish and Swedish Embassies and the UNICEF. As part of the situational analysis by these institutions, it was recommended that a Child Justice Forum (CJF) be established as an immediate way of carrying forward the recommendations made in the study.[75] This CJF comprises an open-ended group of role players and stakeholders which aims to provide guidance on the transformation of the juvenile justice system by ensuring that Zambia adheres to the standards set out in the UNCRC and other international instruments, such as the Beijing Rules and the Riyadh Guidelines[76].

The forum also aims to create awareness and sensitize key stakeholders as the police, the prosecution, the courts, prisons and social welfare, civil society and the community at large on juvenile justice issues. The forum meets regularly in order to discuss key issues and share information. The forum is made up of the Ministry of Home Affairs (MHA) Ministry of Sport Youth and Child Development (MSYCD), Ministry of Community Development and Social Services (MCDSS),the Judiciary, Office of the Director of Public Prosecution, Zambia Law Development Commission, RYOCHIN and UNICEF. It is chaired by the Principle Resident Magistrate from Boma Courts and the current chairman is Honorable Zulu of Kitwe Boma Court. In an interview with him [77]he sated that the forum still faces a lot of challenges at district level. He stated that the problems faced by the Lusaka district in dealing with juveniles may not be the

[75] UNICEF Brochure, Administration of Juvenile Justice. July 2000. P 1
[76] Adopted by the United Nations General Assembly by resolution 44/25 of 20th November 1989
[77] Interview with the Principle Resident Magistrate, Honorable Zulu. 4th November, 2009

same as those in Ndola or Kitwe. Hence by having only one Boma central administration in Kitwe, the needs in Lusaka or Ndola are neglected. What is needed is coordination and communication at regular intervals among the key role players of the Forum. The annual meetings make it difficult to discuss urgent issues that may arise before the next meeting because the interval between the meetings is too long.

4.4.2 The Arrest, Reception and Referral Services (ARRS)

This has been another positive trend in the juvenile justice system[78]. This was done in an attempt to centralize all arrests of children in Lusaka. The Inspector General of Police in July 2001 issued instructions to all police stations directing, to the maximum extent that all arrests of children who come in conflict with the law be centralized at the three ARRS police stations. These are situated in Lusaka Central, Kabwata and Matero police stations and four other police stations in Ndola and in Kitwe. These are called ARRS because they provide a service of treating these juveniles as human beings with rights which need to be protected.[79]

The ARRS ensures that, firstly children are no longer being held in custody unless there is no other appropriate option. Secondly, it ensures that parents or guardians of the arrested children are promptly informed so that they can be with their children. Thirdly, the ARRS requires that juveniles are largely handled by probation officers who make an assessment of every arrested child's personal circumstances and the decision resulting there from is based on this information. Lastly it ensures that children are no longer detained with adults, and conditions of detention are improved to mitigate against contracting HIV/AIDS, STIs, TB and other transmissible diseases.

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[78] A. Mofya. A Report on Juvenile Justice Administration in Zambia conducted by the Child Justice Forum . (2003).p12

[79] UNICEF Brochure, Administration of Juvenile Justice. July 2000 p3

UNICEF has helped in facilitating this process by providing blankets, mattresses and books to the three ARRS police stations.

4.4.3 Child Friendly Court (CFC)

The establishment of this court was considered as yet another positive development in the juvenile justice administration. It was also recommended as part of the 2000 situation analysis.[80] This court is designated to foster trials for juveniles in a manner that *inter alia*, reinforces their respect for human and fundamental freedoms of others. This court takes into account the age of the juvenile and provides for their reintegration to enable them to play a meaningful role in the community.

Historically criminal courts are not child friendly. Hampering factors include lack of legal representation in that cases may be complex beyond a child's comprehension. The circumstances of the case may have a large bearing on the order given, hence, it is important to have lawyers help the court arrive at a just decision.[81] The child friendly courts therefore, provides a court system that assesses the child holistically in a non threatening and participative manner and makes decisions based on the best interest of the child balanced with the interests of justice.

The objectives of the CFCs are to create an environment that encourages the participation of children and families, impose sanctions (if necessary) that are least restrictive and for the shortest possible time span and lastly to divert children from the criminal justice system as already discussed in chapter three. This court operates within the common law and statutory rules of

[80] UNICEF Brochure, Administration of Juvenile Justice. July 2000. P 1

[81] H. Lindström and I. Salomonson, Juvenile Justice in Zambia-An Evaluation of the Three Pilot Projects (2005), *http://www.mrforum.se/upload/files/1/Utbildning%20och%20forskning/Barns%20r%20Zambia.pdf*

evidence and procedures like any other court of law. Section 63 of the Juveniles Act[82] defines a Child Friendly Courts to mean; '*a Subordinate Court sitting for purposes of hearing a charge against a child*'. It can therefore, be said that these CFCs have resulted in efficiency, in dealing with children's cases.

4.4.4 The National Child Policy (NCP) and National Plan for Action (NPA)

Following the world summit for children of 1990 and ratification of the UNCRC, Zambia then developed a national child policy (NCP) which was aimed at improving the welfare and quality of life of children in Zambia. This policy was finally approved and adopted in August 1994.[83] Its aim was to provide child advocacy and support systems which would safeguard the rights of children to exist and develop to adulthood. This policy however, had to be translated into action by way of the National Plan for Action (NPA). This was therefore, drawn up and approved by the government in 1992. The programme outlined the commitments made by government and people to the children of Zambia. It provides a well consolidated framework of specific targets and strategies and monitoring plans for achieving them. The NPA also sets out the major goals for improving the welfare of children. If implemented fully, this programme will help in the enhancement of juvenile access to justice in Zambia.

4.5 Conclusion

This chapter has shown that though approved schools are of benefit, there are more challenges than advantages in how they work. One of these challenges is the lack of resources. Further, the officers who deal with the children in these approved schools are not trained to handle juveniles

[82] Chapter 53 of the Laws of Zambia
[83] The National Programme Action for Children in Zambia. Government of the Republic of Zambia Publication. (1994).p11

as such when they anger them with their behavior, they do not refrain from using violence to correct them. Katombora though being one of the largest schools handling juveniles has more juveniles than it can house. The same can be said of Nakambala Approve School in Mazabuka. The conditions there leave much to be desired and children are released even before they finish serving their custodial sentences.

The chapter has also discussed some of the positive trends in the juvenile justice system and among them has been the establishment of the Child Friendly Court. It can be seen that the cases for juveniles are now dealt with more expediently. However, this efficiency depends on inter sectoral support such as bringing children to court on time, presence of witnesses and parents /guardians in court. If this intersectoral support is missing children who cannot be bailed will continue to spend long periods of time custody detained together with adults. This may have an effect of hardening these children. Further, even if these children have been bailed, their prolonged coming to court may disturb the children's school performance due to absence from school.

CHAPTER FIVE

5.0 Conclusion and Recommendations

This paper sought to examine juvenile access to justice. The juvenile justice system is beset by practical and theoretical problems, most of which were highlighted in the preceding chapters. The paper will now proceed to give a summary of these chapters.

Chapter one gave a background to the study and explained the rationale behind the study. It highlighted the many problems faced by juveniles. For instance, corporal punishment is still being practiced as a measure of discipline in reformatory schools and many children are arrested for petty offences that could have been dealt with outside the criminal justice system. These problems call for the Government as a major player to address them if the children's rights are to be realized.

Chapter two discussed the international conventions and treaties on children and how the national laws conform to these instruments. It was discovered that there are many shortcomings in the Acts relating to children. The definition of a child varies depending on the context and piece of legislation. The fragmented legal framework complicates the delivery of justice to juveniles, with numerous articles relating to children scattered among different statutes. In addition to constitutional and statutory legislation, customary law also regulates matters concerning children. In the same fragmented manner, the legislation on children is implemented through five different programmes while different ministries share the responsibility for the welfare of children, but not necessarily in a coordinated manner.

In chapter three, the paper discussed the problem of institutional framework in the juvenile justice system. The institutional framework for the implementation of children's legislation and affairs is not structured under a sustainable and well coordinated governance system. This institutional framework includes not only the public institutions dealing with children's affairs but other institutions dealing with the whole spectrum of services and facilities for the care of children, including maternal/parental family, especially women, which are important in ensuring a child's rights. It is a truism that programmes that empower women lead to the improvement of a child's life.[84]

Further the paper looked at the department of Social Welfare and the important role it plays when a child comes in conflict with the law. The department however, has failed to carry out its mandate due to lack of funding from the government. This has made the government to introduce diversion programmes under section 73 (j) of the Juveniles Act.

Chapter four discussed the situation analysis in reformatory schools and it was found that these schools are beset by a lot of problems. The paper is of the view that sometimes these reformatory schools are more punitive in nature hence diversion programmes are a better option to provide juvenile access to justice than the reformatory schools.

5.1 Analysis of Research Objectives

The first objective was to review existing legislation and to consider its harmonization and consistency with international standards in particular the United Nations Convention on the Rights of a Child and its existing policies. It has been found that the law falls short in the implementations of the provision of the UNCRC and the ACRWC, and that Zambian statute

[84] The State of World's Children Report, 2007 p 42

books in relation to the laws relating to a child are fraught with inconsistencies, contradictions and negative overlaps.

The second objective was to analyse the harmonisation and coordination of the various institutions that handle juveniles. It has been found that there is insufficient communication and coordination. The Ministries and various institutions more or less continue to exercise on a day to day basis their portfolio or statutory function in accordance with their mandates without adequate reference to each other in the long standing culture of centralised decision-making.

5.2 Recommendations

In conclusion the paper is of the view that there are many factors that hinder juvenile access to justice. In order to improve the juvenile justice system, the paper therefore, recommends the following;

1. Legislation relating to juvenile justice should be reviewed and modernised as a matter of urgency. Further, there is need to holistically look into the area of procedure relating to the development and implementation of measures dealing with children in conflict with the law without resorting to judicial proceedings.
2. When the courts are passing sentences and in considering what is in the best interest of the child. Imprisonment should be the last. The courts should endeavor to follow the guidelines set out in the UN Guidelines for Prevention of Juvenile Delinquency (Riyadh Guidelines).
3. The police though lacking appropriate training have knowledge on how to handle juveniles. When a juvenile is brought before them, they are under a duty to ascertain the age for the purpose of determining his/her criminal responsibility. They should also

inform the parents or guardian of the juvenile offender so that they may be present when taking the child's statement. This helps the juvenile to feel less threatened by the formal environment.

4. Diversion programmes are a better option to juvenile access to justice than probation schools. There is need to divert the children from the criminal justice system to a more friendly community based environment whilst equipping them with some skill at the same time. The people who deal with juveniles in these diversion programmes are trained in psychosocial skills and hence are better placed to handle these juveniles. Further, there is need for coordination and communication with the social welfare department as they both handle juveniles.

5. The strategies for implementation of the National Plan of Action (NPA) are still relevant today and should be pursued. These are to maintain a strong national commitment to improving the well-being of children and also to link the NPA to the national planning and resource allocation process.

6. Further, it is imperative that the Government complies with the State Reporting Mechanisms stipulated in the various international and regional conventions. The state reporting mechanisms ensure accountability and help to protect the rights of the child as pressure can be exerted on the government to comply with the obligations under the conventions. State reporting also helps governments to improve their legislative and institutional frameworks in the best interest of the child through advice given by the expert committees responsible for receiving state reports.

7. In all contexts most juvenile crime is committed by marginalized children and young people from backgrounds where parents are largely or completely absent and who are

confronted with extreme poverty. There is a need to work on a comprehensive poverty alleviation strategy for youths who have dropped out of school in order to reduce incidences of property crime, which is mostly committed by unemployed and uneducated youth.

8. There is need to form a Parliamentary information programme. Parliament has had limited exposure to child justice and one submission was made by UNICEF (Head of Child Protection Section), that The Parliamentary committees form an important component of good governance. Hence, in advocating for child justice reform, the executive need to account to Parliament on its performance. It is therefore, recommended that civil societies creates a Parliamentary information programme regarding child justice. This information programme need not focus on one committee only but may address the information needs of more than one committee that has a responsibility towards children and social services.
9. A comprehensive training programme for CJFs is required to improve the juvenile justice system. The CJFs are a key ingredient in the transformation process and they therefore, need to understand their role clearly and have the ability to perform their key functions effectively.
10. Finally, it has been observed that many of the ills that children suffer in the criminal justice system, especially lengthy stays in remand prisons, are attributable to poor management. Hence, the paper recommends that there is need to improve the general management of juvenile administration. In essence, this means understanding what the task is, the required level of performance, monitoring and accountability of role players in the administration of juveniles.

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