

**AN ETHICAL ASSESSMENT OF THE TREATMENT OF JUVENILE OFFENDERS  
UNDER THE JUVENILE JUSTICE SYSTEM IN ZAMBIA: A CASE STUDY OF  
CHIRUNDU DISTRICT AND NAKAMBALA APPROVED SCHOOL**

**by**

**LUMBANI MAZUNDA**

**A dissertation submitted to the University of Zambia in partial fulfilment of the  
requirements of the degree of Master of Arts in Applied Ethics.**

**The University of Zambia, Lusaka,**

**2017**

## **DECLARATION**

I, Lumbani Mazunda, do hereby declare that this dissertation:

- a) Represents my own work
- b) Has not previously been submitted for a degree at this or any other University, and
- c) Does not incorporate any published work or material from another dissertation

**Signature**.....

**Date**.....

## **COPYRIGHT**

All rights reserved. No part of this thesis may be reproduced or stored in any form or by any means without prior permission in writing from the author or the University of Zambia.

**CERTIFICATE OF APPROVAL**

This dissertation of..... is approved as fulfilling the partial requirements for the award of the Degree of Master of Arts in Applied Ethics by the University of Zambia.

Examiner's Name :.....

Examiners Signature :.....

Date :.....

Supervisors Name :.....

Supervisors Signature:.....

Date:.....

## ABSTRACT

This study aimed at empirically investigating and ethically assessing the treatment of juvenile offenders in the Zambian Juvenile Justice System (ZJJS). The Juveniles Act of the laws of Zambia and international legal instruments provide for the treatment of juvenile offenders with special care as distinct from adult offenders at the stages of arrest, trial and after-court disposition. However, there exists the problem of the gap in knowledge about the treatment of juvenile offenders in the ZJJS at different stages. The objectives of the study were, (i) to establish the current situation of delinquency among juveniles in Chirundu district, (ii) to investigate the treatment of juvenile offenders during arrest, trial and after-court case disposition in Chirundu, (iii) to investigate the treatment of juvenile offenders during rehabilitation at Nakambala Approved School and (iv) to ethically assess the treatment of juvenile offenders in Chirundu district and at the Nakambala Approved School

A case study design adopting a qualitative methodology with an ethical component was used to collect and analyse the data. The primary data was collected using in-depth interviews, observation and Focus Group Discussions. Secondary data was collected using relevant literature from books, journals and the internet. Officers from Chirundu Police, Social Welfare Department, Chirundu Magistrate Court and Nakambala Approved School were purposively selected and interviewed. Four Focus Group Discussions were conducted with 24 juvenile offenders, 12 of whom forming two FGDs were detained in Chirundu Police cells and were selected using stratified random sampling. The other 12 forming two additional FGDs – all males – under rehabilitation at Nakambala Approved School were randomly selected. This made a total sample of 28 participants. Data obtained were analysed by coding and grouping them according to emerging themes.

The study revealed an increase in juvenile delinquency in Chirundu mainly due to poverty, unemployment and peer pressure. Many juvenile offenders came from disadvantaged backgrounds where lack of appropriate parental care as well as lack of supervision and limited educational and development opportunities is the norm. The study also gave some evidence that juvenile offenders experience some forms of humiliating physical and emotional treatment by police officers during arrest and that those with minor offences were detained without the option of bail and diversionary services. It was further found that juveniles in conflict with the law were detained with adult offenders in the same facilities that exposed them to the risk of negative social influences and contracting disease. Another finding was that offenders undergoing rehabilitation were not satisfied with the existing educational and vocational programmes as they were limited and without adequate instructional materials and equipment. The study further noted the tendency to release offenders before being fully rehabilitated in order to give chance to new entrants and to maintain the number of offenders to a level that allowed their needs to be supported by available resources. Educational and psycho-social care-givers were also not always available to attend to offenders' needs, hence compromising their rehabilitation.

The ethical evaluation with reference to virtue ethics indicated a negative influence on the character traits that juvenile offenders acquired from adults while in detention. Care ethics, deontology and justice ethical theories posed a challenge to the care givers at Nakambala as well as agents in the JJS in Chirundu as the rights of juvenile offenders were not protected accordingly basing on their state of vulnerability.

The study recommended, among others, the following: (1) ethical awareness raising among police officers, court officials and social welfare officers about minimal rights and procedures with regards to the treatment of offenders under the ZJJS; and (2) the prioritization by government, in partnership with NGOs, of the specific needs of offenders through increased support and funding towards the expansion of educational and vocational training to include skills that increase their educational, occupational and entrepreneurial opportunities upon release in order for them to contribute to the positive development of society and become law-abiding citizens.

## **DEDICATION**

This work is dedicated to my late father, Johnson K.P Mazunda for all his wise words of encouragement and hardwork and my mother, Mrs Eneless Joyce Mazunda for her never ending patience and love.

## **ACKNOWLEDGMENTS**

First and foremost, I would like to thank the almighty God for providing me with the strength and determination to complete this work. My sincere gratitude also goes to my supervisor, Dr Anthony Musonda for the mentorship and intellectual advice he provided as my supervisor. I wish to also thank Professor Clive Dillon- Malone for his support throughout the duration of the masters programme.

I am also grateful to my wife, Lauzi, and our daughters, Vitumbiko and Walusungu, for their encouragement and support throughout the entire programme. Finally, I wish to thank my brothers and sisters for the moral support that they rendered to me during the course of this work.

## ACRONYMS

ACRWC.....	African Charter on the Rights and Welfare of the Child
ARRS.....	Arrest, Reception and Referral Service
CFC.....	Child Friendly Court
CSO .....	Central Statistics Office
DCI .....	Defence for Children International
FGD .....	Focus Group Discussion
JJB .....	Juvenile Justice Board
JJS.....	Juvenile Justice System
NGO.....	Non-Governmental Organization
UN .....	United Nations
UNCRC.....	United Nations Convention on the Rights of the Child
UNICEF .....	United Nations International Children’s Emergency Fund
UNZA.....	University of Zambia
WHO.....	World Health Organization
ZJJS .....	Zambian Juvenile Justice System



## **LIST OF FIGURES**

Figure 1: Location of Chirundu District on the Zambian Map.....	35
Figure 2: Location of Mazabuka District on the Zambian Map .....	36

## TABLE OF CONTENTS

<b>DECLARATION</b> .....	
<b>COPYRIGHT</b> .....	
<b>CERTIFICATE OF APPROVAL</b> .....	
<b>ABSTRACT</b> .....	iv
<b>DEDICATION</b> .....	v
<b>ACKNOWLEDGMENTS</b> .....	vi
<b>ACRONYMS</b> .....	vii
<b>LIST OF FIGURES</b> .....	viii
<b>CHAPTER ONE: INTRODUCTION</b> .....	1
1.1 Overview.....	1
1.2 Background to the Study.....	1
1.3 Statement of the Problem.....	3
1.4 Aim of the Study.....	3
1.5 Research Objectives.....	3
1.6 Research Questions.....	4
1.7 Theoretical Framework.....	4
1.8 Methodology and Methods.....	4
1.9 Significance of the Study.....	4
1.10 Delimitations and Limitations of the Study.....	5
1.11 Operational Definitions.....	5
<b>CHAPTER TWO: LITERATURE REVIEW</b> .....	6
2.1 Introduction.....	6
2.2 International Instruments on the Protection of the Rights of Juvenile Offenders.....	6
2.2.1 The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).....	6
2.2.2 The United Nations Convention on the Rights of the Child (UNCRC).....	7
2.2.3 African Charter on the Rights and Welfare of the Child (ACRWC).....	8
2.3 Juvenile Justice Outside Africa.....	9
2.3.1 United States.....	9
2.3.2 United Kingdom.....	12
2.3.3 Sweden.....	13
2.3.4 India.....	15
2.4 Juvenile Justice on the African Continent.....	16

2.4.1	South Africa .....	17
2.4.2	Ghana.....	19
2.4.3	Uganda.....	21
2.5	Zambian Context.....	23
2.6	Summary .....	25
<b>CHAPTER THREE: THEORETICAL FRAMEWORK .....</b>		<b>27</b>
3.1	Introduction.....	27
3.2	Virtue Ethics .....	27
3.2.1	Ethics of Care .....	28
3.3	Deontological Ethical Theory .....	29
3.4	Justice Ethical Theory.....	30
3.4.1	Distributive Justice.....	30
3.4.2	Restorative Justice .....	31
3.5	Summary .....	32
<b>CHAPTER FOUR: METHODOLOGY AND METHODS .....</b>		<b>33</b>
4.1	Introduction.....	33
4.2	Research Design and Methodology .....	33
4.3	Study Population.....	33
4.4	Sample Size.....	33
4.5	Sampling Techniques.....	33
4.6	Data Collection Methods .....	34
4.7	Study Sites .....	35
4.8	Data Analysis .....	37
4.9	Ethical Considerations .....	37
<b>CHAPTER FIVE: FINDINGS AND DISCUSSION.....</b>		<b>38</b>
5.1	Introduction.....	38
5.2	The Current Situation of Juvenile Delinquency in Chirundu District.....	38
5.3	The Treatment of Juvenile Offenders during Arrest, Trial and after-Court Disposition of their Cases in Chirundu.....	41
5.3.1	Treatment of Juvenile Offenders during Arrest.....	41
5.3.1.1	Handling juvenile offenders at the pickup point .....	41
5.3.1.2	Diversion.....	42
5.3.2	Treatment of Juvenile Offenders before Trial .....	44
5.3.3	Treatment of Juvenile Offenders During Trial .....	48

5.3.4	Treatment of Juvenile Offenders After-Court disposition of their Cases .....	50
5.4	The Treatment of Juvenile Offenders Undergoing Rehabilitation at Nakambala Approved ... School. ....	52
5.4.1	Institutional Capacity.....	52
5.4.2	Recreational, Educational and Vocational Activities Offered.....	53
5.4.3	General Living conditions .....	55
5.4.4	Follow- ups .....	56
5.5	Summary .....	57
<b>CHAPTER SIX: ETHICAL ASSESSMENT .....</b>		<b>59</b>
6.1	Introduction.....	59
6.2	The Virtue Ethical perspective .....	59
6.2.1	The Ethics of Care perspective .....	60
6.3	The Deontological perspective.....	60
6.4	The Justice Ethical perspective .....	61
<b>CHAPTER SEVEN: SUMMARY, CONCLUSION AND RECOMMENDATIONS.....</b>		<b>64</b>
7.1	Summary .....	64
7.2	Conclusion on findings.....	64
7.3	Conclusion on Ethical Assessment .....	65
7.4	Recommendations .....	66
<b>REFERENCES.....</b>		<b>67</b>
<b>APPENDICES.....</b>		<b>71</b>
<b>APPENDIX 1.....</b>		<b>71</b>
<b>APPENDIX 2.....</b>		<b>72</b>
<b>APPENDIX 3.....</b>		<b>73</b>
<b>APPENDIX 4.....</b>		<b>74</b>
<b>APPENDIX 5.....</b>		<b>75</b>
<b>APPENDIX 6.....</b>		<b>76</b>

## **CHAPTER ONE: INTRODUCTION**

### **1.1 Overview**

This chapter presents the statement of the problem, aim and objectives of the study as well as research questions. It also presents the ethical theoretical framework, methodology and methods of the study. Furthermore, the chapter presents the significance, delimitations and limitations of the study and the operational definitions of terms used in the title of the study.

### **1.2 Background to the Study**

Zambia, like the rest of the world, has one of the fastest growing populations of young people which, according to the 2012 CSO report, accounts for almost a quarter of its entire population. The growth in youth population makes crime to be largely a problem involving youths in Zambia. This, according to Banda (2010) is attributable to the spread of urban culture, the high incidence of HIV/AIDS and orphaned children, the breakdown in traditional family structures that scrutinized and observed youths, limited educational and skills-training opportunities, unemployment, limited recreational facilities, extreme poverty and the general marginalisation of children. The 2014 and 2015 annual Social Welfare reports have indicated an increase in juvenile offenders represented in the courts of law from 1,550 and 1,707 respectively.

Banda (2010) further indicates that, in response to the rise in juvenile crime, the development of the idea of a separate justice system for juveniles in Zambia before independence to-date has been a result of the recognition of the fact that juveniles who come into conflict with the law act with less rationality than adults and therefore cannot fully understand the implications of their actions. Scott and Steinberg (2008) argue that recent research has been conducted to demonstrate how developmentally different an adolescent's brain is from an adult brain which helps explain differences in the behaviour and thoughts of an adolescent person. The research points to an area of the brain called the pre-frontal lobes that undergoes important structural change during adolescence and young adulthood. This area is especially important in the development of advanced thinking processes such as controlling emotions and impulses and weighing the risks and rewards of a decision before acting. This part is not fully developed in juveniles hence their thinking process is not as advanced as that of adults.

Further, Scott and Steinberg (2008) clarify that juvenile's relative developmental immaturity contributes to immature judgement and delinquent behaviour on account of poor decision

making, impulsivity and limited self-control and thus cannot be held responsible the same way that adults are. In terms of poor decision making, juveniles are less able to process information quickly and thoughtfully in real world situations. Their ability to make good decisions in situations that require a fast and well thought out response is sometimes flawed because they do not have the ability to process the ramifications of the act quickly. In the case of impulsivity and limited self- control, juveniles are more reckless than adults because they are still developing the ability to control impulses. The combination of moodiness and impulsivity leads juveniles to have more difficulty in controlling their behaviour than adults.

Therefore, on account of a juvenile's physical and mental immaturity, there has been the recognition that juvenile offenders who come into contact with the law are a particularly vulnerable group. They may be victims of physical and emotional abuse at the hands of police during arrest and questioning; they may be denied bail pending trial. Consequently, they may be detained in facilities deemed unsafe, for instance, in remand prison with adults accused of crimes which may worsen their delinquent behaviour. Mumba (2011) writes that keeping juveniles with adult inmates exposes the former to physical or sexual harm and increases their chances of contracting STIs or HIV. Additionally, juveniles experience psychological harm and bullying and are subjected to forced labour. He also indicates that female juvenile offenders remanded in detention facilities in Zambia are usually not under the care of female police officers.

Studies conducted by the Ministry of Home Affairs (2000) and Robins (2009) on the subject of the treatment of juvenile offenders in the Zambian juvenile justice system have revealed that the rights of juveniles in conflict with the law are not protected in processes of arrest, trial, as well as after court-disposition, as there is a tendency by the police to mistreat juvenile offenders during investigations and arrest. In addition, juvenile offenders are usually not separated from adults during detention. Furthermore, there is limitation in coverage of educational and vocational programmes tailored to the rehabilitation of juveniles in conflict with the law in custody.

International legal instruments such as the United Nations Convention on the Rights of the Child (UNCRC), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), as well as the African Charter on the Rights and Welfare of the Child (ACRWC) exist in order to guide member states that are signatories to these conventions and statutes to better protect the rights and welfare of juveniles in conflict with

the law, in addition to the local legislation. Zambia signed the UNCRC on 30<sup>th</sup> September 1990 and ratified it on 6<sup>th</sup> December 1991 without any reservations. This implies that the country is required to adhere to all conditions set in this international statute regarding the protection of juveniles' rights under the juvenile justice system. Simaluwani (1997) has written about the importance of having juvenile offenders in Zambia treated in accordance with the provisions of the Juveniles Act Cap 53 of the laws of Zambia as well as other international statutes that promote the rights of juvenile offenders. This is to ensure protection, care and guidance of juveniles in conflict with the law.

### **1.3 Statement of the Problem**

The Juveniles Act Cap 53 of the laws of Zambia and international legal instruments such as the United Nations Convention on the Rights of the Child (UNCRC), the United Nations Standard Minimum Rules on the Administration of Juvenile Justice (Beijing Rules), and the African Charter on the Rights and Welfare of the Child (ACRWC) provide for the treatment of juvenile offenders with special care as distinct from adult offenders' vis-a-vis their arrest, trial and after court-disposition. However, studies undertaken on this subject have shown that there exist gaps in knowledge about the treatment of juvenile offenders under the Zambian Juvenile Justice System. It is in this regard that an ethical assessment of the treatment of juvenile offenders during the entire process of the juvenile justice system needs to be done so as to fully highlight the need to protect and care for juvenile offenders in the juvenile justice system in order to fill up the existing gaps in knowledge.

### **1.4 Aim of the Study**

The aim of this study will be to empirically investigate and ethically assess the treatment of juvenile offenders in the ZJJS during arrest, trial and after court-disposition of their cases with special reference to the Juvenile Justice System in Chirundu district and at Nakambala Approved School.

### **1.5 Research Objectives**

- a. To establish the current situation of delinquency among juveniles in Chirundu district.
- b. To investigate the treatment of juvenile offenders during arrest, trial and after court-disposition of their cases in Chirundu district.
- c. To investigate the treatment of juvenile offenders during rehabilitation at the Nakambala Approved School

- d. To ethically assess the treatment of juvenile offenders in Chirundu district and at the Nakambala Approved School

### **1.6 Research Questions**

- a. What is the current situation of delinquency among juveniles in Chirundu district?
- b. How are juvenile offenders treated during arrest, trial and after-court disposition of cases in Chirundu district?
- c. How are juvenile offenders treated during rehabilitation at the Nakambala Approved School?
- d. What is the ethical assessment of the treatment of juvenile offenders in Chirundu district and at the Nakambala Approved School?

### **1.7 Theoretical Framework**

Virtue and Care Ethics, Deontological and Justice ethical theories were adopted in the theoretical framework to guide the collection of relevant data and inform the ethical assessment with respect to the treatment of juvenile offenders under the Zambian Juvenile Justice System in Chirundu district and at the Nakambala Approved School.

### **1.8 Methodology and Methods**

The research used a case study design and adopted the qualitative methodology that had an ethical component. Primary data was collected through in-depth semi structured interviews with key informants comprising officers from Chirundu Police, Social Welfare Department, Chirundu Magistrate court and the Nakambala Approved School who were purposively selected. Two Focus Group Discussions with 6 members each were conducted with juvenile offenders that were arrested, taken to and ordered in court in Chirundu and two FGDs with six members each with those undergoing rehabilitation processes at Nakambala Approved School. The members were selected by simple random sampling. Secondary data was collected from available literature on the subject from books, journal articles and the internet. An ethical evaluation of data was done using virtue and care ethics, deontological and justice ethical theories.

### **1.9 Significance of the Study**

This study was significant in eliciting an ethical response to the appropriate treatment of juvenile offenders during the entire process of the juvenile justice system. The findings of



this study also yielded information that could serve as a reference for future work and research on the subject.

### **1.10 Delimitations and Limitations of the Study**

Though crime among juveniles is committed by both males and females, this study focussed on investigating and ethically assessing the treatment of Juvenile offenders under the juvenile justice system in Chirundu and Nakambala Approved School in Mazabuka. The latter, however, is an institution that only accommodates male juvenile offenders and, as such, there was no representation of female juvenile offenders at this facility.

Challenges that the researcher encountered in the study were that some juvenile offenders that were interviewed at Nakambala were too closed up and could not easily give out information even after giving a clear indication that they wanted to share something. The researcher assured them that the study was purely meant for academic purposes and that they were free to either respond or not. This made the stay at Nakambala a bit longer as the few juveniles gathered confidence to express themselves.

### **1.11 Operational Definitions**

- Ethical Assessment:** The use of systematic methods of ethical examination such as theories in making a judgement about the ethical issue of the treatment of juveniles under the Juvenile Justice System in Zambia.
- Treatment:** The act, manner or method of handling or dealing with juvenile offenders by agencies under the Zambian Juvenile Justice System that include the police, courts, probation and correction facilities.
- Juvenile Offender:** A person below the age of 18 who has committed a crime.
- Juvenile Justice System:** This is the structure and process of the criminal legal system that deals with crimes committed by juveniles. The structure consists of the police, courts, probation services and correctional facilities. The process consists of decision making by police officers, magistrates and probation officers who work with these different components of the juvenile justice system to serve the best interests of children.

## **CHAPTER TWO: LITERATURE REVIEW**

### **2.1 Introduction**

This chapter is a review of current literature on the treatment of juvenile offenders by juvenile justice systems around the world. It begins by highlighting some important international legal instruments that deal with the protection of juvenile offenders under the Juvenile Justice System. It then reviews available literature on what has been done on the topic from outside Africa before focussing on the African continent and Zambia in particular with regards to the treatment of juvenile offenders during their arrest, trial and disposition of their court cases. This is in order to establish what has not been done and what I will do to fill the knowledge gap.

### **2.2 International Instruments on the Protection of the Rights of Juvenile Offenders**

UNICEF (2007) observes that various instruments have been put in place for the purpose of protecting children in conflict with the law that emphasize the need to observe the principle of proportionality which means that any response to a juvenile offender must be in proportion to his background and the nature of the crime committed. They take into account not just the gravity of the delinquent act but also the juvenile's profile. The rights of juvenile offenders are defined by a wide range of instruments which indicate that there is need to devote special attention to these young offenders and ensure maximum guarantee of the protection of their rights.

Mumba (2011) observes that countries that have signed or ratified any such agreements or instruments are legally bound to implement or enforce the provisions of the ratified instruments. Although there may not be legal sanctions, in the strictest sense of the law, a state party that violates the provisions of international or regional human rights instruments risks worldwide condemnation and losing recognition from within the United Nations system.

#### **2.2.1 The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)**

According to UNICEF (2009), these rules which list standards for the administration of child justice in a comprehensive manner were adopted by the United Nations in 1985 in Beijing, China. They detail the development of a separate and specialised child justice system. The

Beijing Rules are not legally binding but many of the principles have been incorporated into the United Nations Convention on the Rights of the Child (UNCRC) thus making it legally

binding. The rules are divided into several parts such as investigation and prosecution, adjudication and disposition, non-institutional treatment and lastly, institutional treatment.

UNICEF (2007) has summarised the content of the minimum rules by highlighting that juvenile justice systems should: (1) emphasize the well-being of young people and ensure that any reactions should always be in proportion to the circumstances of both the offenders and the offence; (2) encourage the use of diversion programs which remove young people from the criminal justice process and implement services such as temporary supervision and guidance, restitution and compensation of victims. This implies that consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings; (3) ensure the right to privacy and procedural safeguards including presumption of innocence; (4) ensure that proceedings are conducive to the best interests of the child and that young people have the opportunity to participate and express themselves freely; (5) use inquiry reports on social, family and educational background to identify and provide appropriate social services; (6) avoid institutionalization as much as possible by using other measures such as counselling, probation and community service; and lastly, (7) focus the goal of institutionalization on assisting young people in becoming productive members of society.

### **2.2.2 The United Nations Convention on the Rights of the Child (UNCRC)**

According to Save the Children (2015), the UNCRC is a legally binding international agreement setting out the civil, political, economic, social and cultural rights of every child regardless of their race, religion or abilities. It consists of 54 articles that set out children's rights and how governments should work together to make them available to all children. Since it was adopted by the United Nations in November, 1989, 196 countries have signed up to this instrument including every member of the United Nations, except for the United States of America. All countries that sign up to the UNCRC are bound by international law to ensure it is implemented.

UNICEF (2009) has highlighted the articles in the UNCRC that deal in particular with juveniles in conflict with the law. Article 3 of the CRC indicates that the best interest of the child is a primary consideration. All decisions taken within the context of the administration of juvenile justice must be taken in the best interests of the child especially that children have

different psychological, physical, emotional and educational needs compared to adults. It is for this reason that children must be treated differently in the criminal justice system; they should be considered as being less culpable and their treatment processes should be geared towards social reintegration by applying principles of restorative justice. In article 37, children shall not be subjected to torture or other cruel and inhuman or degrading treatment or punishment or to be deprived of their liberty arbitrarily or unlawfully. They have the right to be treated with dignity and humanly while they are in detention.

According to UNCRC (1989), article 40 states that children's age must be taken into account and their treatment plan must promote their reintegration in society. They are also entitled to due process rights. UNICEF (2009) explains that due process rights are rights such as the presumption of innocence, to be informed of charges in the presence of parents or guardians, the right to legal counsel, the right for parents and guardians to be present in court, the right for the juvenile offenders' case to be fairly determined without force and without delay by an impartial tribunal and the right to privacy at every stage of the proceedings. Furthermore, states need to set a minimum age for criminal responsibility, for diversion from judicial proceedings and from the courts and for children to be dealt with in a manner appropriate to their well-being and proportionate to the offence.

### **2.2.3 African Charter on the Rights and Welfare of the Child (ACRWC)**

According to the WHO (2005), the African Charter on the Rights and Welfare of the Child (ACRWC), also called the Children's Charter, was adopted by the African Union in 1990. It entered into force on 29<sup>th</sup> November 1999. The Charter was adopted within one year of the adoption of the UNCRC. One of the reasons for a separate African Children's Charter is that during the drafting process of the UNCRC, Africa was under-represented. The ACRWC is an important tool for advancing children's rights. While building on the same basic principles as the UN Convention on the Rights of the Child, the ACRWC highlights issues of special importance in the African context.

Kaime (2009) has clarified that articles 4, 16 and 17 of the Charter relate to the rights of children in conflict with the law. Article 4 states that all actions and decisions to be taken concerning the child must of necessity have the best interest of the child as the primary objective. This also includes judicial and administrative proceedings that involve a child who is capable of communicating his/her views. Article 16 on the other hand states that Governments must take specific legislative, social and educational measures to protect the

child from all forms of torture, inhuman and degrading treatment, especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse. This should involve effective monitoring and reporting mechanisms to ensure prevention and identification of cases. Lastly, article 17 of the Charter provides that, in the event that a child is arrested and charged with an offence, his/her sense of dignity and self-worth must be preserved through all stages of the juvenile justice system. It also provides that all forms of torture, inhuman and degrading treatment or punishment must be removed.

## **2.3 Juvenile Justice Outside Africa**

### **2.3.1 United States**

The United States has not signed the UNCRC. It is the only United Nations member state that is not a party to it. (UN Treaty Collection 2015, 8). Under the United States Constitution, the ratification of treaties involves several steps. First, the president or his representative would negotiate, agree and sign a treaty, which would then be submitted to the U.S Senate for its "advice and consent" At that time, the President would explain and interpret all provisions in the treaty. If the Senate approves the treaty with a two-thirds majority, it goes back to the President who can ratify it. This may, however, take years.

Ramirez (1998) has observed that until the twentieth century, there was little difference in the U.S between how the justice system treated adults and children. Age was considered only in terms of appropriate punishment and juveniles were eligible for the same punishment as adults until psychologists and sociologists began to recognize the emerging notion of adolescence as a developmentally distinct period of life. The idea of handling adolescent offenders outside of the adult court system hence became widely accepted. Attitudes of children who committed crimes began to change. The term "delinquent child" rather than "criminal" began its development owing in large part to the development of the British doctrine of "parens patriae". Pollock (2004) indicates that the formation of a separate justice system for youths which was based on the British doctrine of *parens patriae*, implied that the state was to stand in the stead of the parent. The doctrine was interpreted to mean that, because children were not of full mental capacity, the state had the inherent power and responsibility to provide protection for children whose natural parents were not providing appropriate care or supervision. The judicial system viewed inadequate parenting as part of the problem with delinquent youth and reasoned that, with appropriate interventions, troubled

juveniles could be put back on the path towards becoming law abiding, productive members of their communities. *Parens Patriae* is rooted in the welfare model of juvenile justice. This model, according to Alder and Wundersitz (1994), is associated with paternalistic and protectionist policies, with treatment rather than punishment being the key goal. From this perspective, due to their immaturity, children cannot be regarded as rational or self-determining agents, but rather as subject to and as the product of the environment within which they live. Any criminal action on their part can therefore be attributed to dysfunctional elements in that environment. The task of the justice system in this model then, is to identify, treat and cure the underlying social causes of offending, rather than inflicting punishment for the offence itself.

According to the National Institute of Justice (2012), the US census bureau found that there were approximately 73.8 million youths under the age of 18 in the United States in 2012. In 2013, courts with juvenile jurisdiction disposed more than 1.3 million delinquency cases. Poverty, drugs, gangs, abuse and neglect and truancy are some of the causes and conditions of delinquency in the U.S.

Goswami and Mehra (2014) have noted that because of the high levels of serious crime among juveniles in the US, the country is shifting from the welfare model to the justice model with regards to the treatment of juvenile offenders in the country's justice system. Currently, a child aged twelve years who commits a heinous crime in the United States may face life imprisonment which is considered to be the maximum punishment. As far as state jurisdiction is concerned, when a child commits a grave or grim crime, their case is automatically shifted to an adult court. Alder and Wundersitz (1994) have summarised the justice model by noting that it assumes that all individuals are reasoning agents who are fully responsible for their actions and so should be held accountable before the law. Within this model, the task of the justice system is to assess the degree of culpability of the individual offender and apportion punishment in accordance with the seriousness of the offending behaviour.

According to Hagen (2013), police officers generally bring in or summon young offenders to the police department's juvenile division and question, fingerprint, book and, if necessary, detain them. At the time of arrest, officers decide whether to refer young offenders to juvenile courts or to route these cases out of the justice system. Police account for most referrals to juvenile courts. According to the US Justice Department, 83 percent of court referrals of

young offenders came from law enforcement agents in 2009. Parents, schools, crime victims and probation officers made the remaining referrals. In the same year, police departments handled and released 22 percent of all juveniles arrested. By contrast, the police referred 70 percent of all young offenders to juvenile courts. Officers who detain young offenders in the USA usually keep them secure while in custody and for a period of not more than six hours. This is in line with the US federal law. Most Police officers, unfortunately, tend to react aggressively to the kinds of activities indulged in by delinquent children in the United States. In many ways, they represent public opinion in the community. Acts of vandalism, for example, are likely to provoke an antagonistic reaction on the part of police and other members of the community. Human Rights Watch (2005) documented physical abuse of juveniles in Louisiana Tallulah correctional centre for youths which houses 620 boys. Meals were so meagre that many boys lost weight. Clothing was also scarce that boys fought over shirts and shoes. Three juvenile rehabilitation facilities in Maryland were closed in the same year and top juvenile justice officials lost their jobs after physical abuse of juveniles by staff was found to be widespread.

According to Gottesman and Schwarz (2011), once a juvenile case is received in a juvenile court, it is heard by a judge who decides upon an order. From here, most juveniles receive orders such as probation or community service. Often times, the order calls for placement in a traditional juvenile residential placement facility. For those who are charged with serious crimes, including murder, assault, and robbery, many states have systems in place that allow the transfer from a juvenile court to an adult court. From here, youths are incarcerated in an adult prison, where they will be even less likely to receive the necessary therapeutic and rehabilitative services than they would in juvenile residential facilities.

According to the National Academic Press (2001), detention can be quite disruptive to children's and adolescents' lives. It separates them from their families, friends, and support systems, and it interrupts their schooling. Although some traditional juvenile residential placement facilities have many services in place to assess and treat physical and mental health and behavioural problems and to provide educational services, the scope and quality of services varies greatly from jurisdiction to jurisdiction. In addition, many rehabilitation centres have become overcrowded, jeopardizing their ability to provide services. Nearly 70 percent of children in public detention centres are in facilities operating above their designed

capacity. Overcrowded conditions in these facilities have been found to be associated with increased altercations between juveniles and staff and increased injuries to juveniles.

### **2.3.2 United Kingdom**

The United Kingdom signed the Convention on the Rights of the Child (CRC) in April 1990, ratified it in December 1991. It came into force on 15<sup>th</sup> January 1992 (UNICEF 2007, 48).

Blakeman (2009) has written that to ensure an integrated approach to youth justice in England, in which justice and child welfare policies are in harmony and practitioners in both fields can work together effectively, the Department for Children, Schools and Families (DCSF) and the Ministry of Justice (MOJ) have been given a shared responsibility for youth justice policy and funding. A joint DCSF and MOJ youth justice unit has been established with the dual aims of (i) contributing to the protection of the public by developing policy and law in relation to children who offend and are at risk of offending to ensure implementation and delivery; (ii) Contributing to the outcomes of “Every child matters” in terms of ensuring that children and young people in contact with the criminal justice system are protected at all stages of the system.

According to Kingsman (2013), when arresting juvenile offenders, police usually conduct thorough investigations. For example, the Juvenile Bureau for the Metropolitan Police for London screens all cases referred to them by visiting the juveniles and their families, and by checking school and previous referrals to social service agencies. Based on these inquiries, a decision is made which reflects the police view of the likelihood of the juvenile's future deviant behaviour. If the likelihood of future deviant behaviour is great, then referral to court usually results. However, if the child denies the offence the case must still go to court. The police usually use the diversion process for mostly juvenile first offenders that behave anti-socially and commit minor offences. These are dealt with outside the court system using a variety of orders and agreements. This is done to avoid young people from getting sucked into the youth justice system too early while still offering them the help and support they need to stop offending.

Blakeman (2009) further indicates that when a young person, however, appears before the youth court, if the case cannot be dealt with immediately, a date is set for the trial when the magistrate will hear all the evidence and decide whether or not the young person is guilty. If the young person is found guilty, the magistrate will then decide on the most appropriate



order. Magistrate courts in England deal mainly with cases involving people over the age of 18. They can deal with young people but only if they are being tried with an adult. The youth court is just a section of the magistrate court. It deals with all cases involving people under the age of 18. This section of the magistrate court is served by youth panel magistrates and district judges. They have the power to give detention and training orders of up to 24 months and a range of community court orders that include probation, community service and counselling.

With regards to institutionalisation for Juvenile offenders who commit heinous offences, Her Majesty's prison service is managed as part of the National Offender Management Service (NOMS). The NOMS is responsible for delivering custodial sentences for offenders in England. The prison service has always been responsible for delivering custodial sentences for juvenile offenders. Since 2000, all juvenile offenders held in prison have been held in dedicated prisons for young people which have specialised programmes meant for them. (Ibid, 84).

### **2.3.3 Sweden**

UNICEF (2007) has shown that Sweden signed to be state party to the UNCRC on 26<sup>th</sup> January 1990 and ratified this on 29<sup>th</sup> June 1990.

According to Granath (2000), the responsibility of handling young people in Sweden is shared by the social authorities (youth care). All juvenile crimes fall under the Swedish penal code of 1990. By law, juveniles receive special consideration when found committing a crime. The definition of "young offenders" in Sweden is offenders who have reached the age of 15 but have not yet turned 19. The aim of the social services measures is to contribute to a positive development of the individual and to counteract the risk of further offences.

Anderson (2011) points out that the police in Sweden investigate crimes committed by young people over the age of twelve and such investigations are carried out in collaboration with the social services. The principal objective of an investigation of this kind is to investigate the need for social measures. The social services, however, have the right to request that specific criminal investigations be suspended when they relate to persons under the age of fifteen.

According to Potkanski (2011) the project against juvenile crime is a recently launched Swedish project led by the social services in collaboration with the police which has targeted

primarily approximately 5,000 young people aged 15 to 25 who are at risk of becoming criminals. Its main objectives are to prevent juvenile offenders from moving on to more serious crime, to provide support to those who want to leave the criminal networks, and to lower the juvenile crime rate. This is done by conducting intensive educational programmes that focus on the dangers of recidivism. The project was launched on 15 June 2011 and has been seen to be an effective measure of lowering crime rates. The National Police Board (*rikspolisstyrelsen*) was advised by the government to start the activities under the direction of social services and work together to identify new methods of youth crime prevention.

Most investigations of juvenile crimes are relatively simple since most crimes committed by young people in Sweden are usually not of a particularly serious nature. Police usually show great respect and care in their interrogations of juveniles. Parents and/ or representatives of the social authorities are in most cases present during an interrogation. In different parts of Sweden, the juvenile crime investigation issue has been resolved organisationally in variety of ways. In some areas, special units have been established which specialise in crimes committed by juveniles, or in some instances even certain types of juvenile crime, such as mugging. In other areas, the less serious offences committed by juveniles are investigated by local community police officers whilst investigations into more serious offences are transferred to the central criminal investigation departments at the police district level. Irrespective of the way in which the police organise investigations of juvenile crime internally, this work always takes place in collaboration with the local social services.

Granath (2000) further explains that when a prosecutor decides to prosecute an individual, his guilt and any possible sanction will be determined by the court. When deciding what measures to take, the social services in Sweden make an assessment of the young person's overall social situation and not only look at the crime committed. These assessments are forwarded to the Swedish Juvenile Court. Youth service and closed youth detention are often used in the Swedish Juvenile Justice System.

According to Anderson (2011), Youth service involves carrying out unpaid work for 20 to 150 hours under the auspices of the social services. The sanction, which was introduced as an independent sanction in 2007, is intended as an alternative to fines and deprivation of liberty for less than one year, primarily for young people between the ages of 15 and 17, and who are not in need of care under the Social Services Act. The most common category of crime that receives this order is theft. Youth detention facilities on the other hand are meant for young

persons who have committed serious crimes such as robbery/gross robbery and assault/gross assault are ordered to go to these special youth detention centres instead of prison. The aim is to reduce the detrimental effects of time spent in prison. The length of the order is determined on the basis of the penal value of the crime and can vary from fourteen days to four years, ten months being the average. The other sanctions which a court can use in sentencing minors are suspended sentences and probation services.

#### **2.3.4 India**

According to UNICEF (2007), India ratified the UNCRC on 11<sup>th</sup> December 1992 agreeing in principle to all articles except with certain reservations on issues dealing with child labour.

Dey (2014) indicates that the juvenile justice policy in India is structured around the constitutional mandate prescribed in the country's Juvenile Justice Act of 2000, as well as some international covenants such as the UNCRC and the Beijing rules. The stated objectives of the country's Juvenile Act are to provide for the proper care, protection and treatment by catering for their developmental needs and by using a child friendly approach in the adjudication and disposition of matters in the best interests of children and for their ultimate rehabilitation and re-socialisation.

Dey (2014) further reveals that the police are the first major component in the juvenile justice system of India. A Special Juvenile Police Unit (SJPU) is set up in every police station. The police are mandated to produce a child before the Juvenile Justice Board in 24 hours from the time of arrest. This must be accompanied by a report that indicates particulars of the case, that is the name of the juvenile offender, their age, circumstances in which the juvenile was apprehended, that the juvenile was not lodged in police lock up and also that the parents or guardians and probation officers have been informed about the juvenile's arrest. The police officers are supposed to also state the reasons for delay if production of a juvenile offender before the juvenile justice board happens after 24 hours.

Criminal cases of juveniles in conflict with the law in India are dealt with by the Juvenile Justice Board (JJB) and not the regular criminal courts. The board consists of a principal magistrate and two social workers as members sitting to conduct inquiries into juvenile crime in a child friendly manner in order to pursue the ends of justice. The inquiries are done in order to focus on understanding the juvenile and his or her circumstances as well as the motives and root causes that may have played a role in the commission of the crime (Ibid 35).

However, Juvenile Courts in India have heavy caseloads which sometimes lead to hasty decisions to be taken by the magistrates about juveniles in conflict with the law, hence defeating the ends of justice. Due to governmental pressures, sometimes, the judges finish off the load of pending cases without inquiring much into the age issues with the result that often juvenile cases are tried and decided as regular criminal cases.

Bloch (1956) contends that in order for a juvenile court to become fully effective and a fair tribunal operating for the general welfare to be assured, two things are cardinal. Firstly, a judge and a member of staff identified with and capable of carrying out a non-punitive and individualised service. Secondly, there needs to be sufficient facilities available in the court and the community to ensure that the dispositions of the court are not delayed and are based on the best interests of the child.

Dey (2014) has further explained that, in India, if the JJB is of the opinion that a juvenile should be institutionalised, he is required to be placed in a special home for his treatment. These homes have been set up in most districts of India and placement of juvenile offenders in these homes is restricted to a period of three years. During their stay in these special homes, juveniles are availed with educational or vocational courses depending upon a child's aptitude. Facilities for sports and co-curricular activities such as music, painting, reading, drama and yoga are also available. An incarcerated juvenile must benefit from his stay in a special home as otherwise his detention will amount to punishment and the object of juvenile legislation will be defeated. Moreover, the stay in the special home should lead to realisation in the child that what he had done was wrong. It is not only vocational training or education that can bring about this change which is why institutionalised juvenile offenders are under the guidance of probation officers who mostly give intensive counselling services.

#### **2.4 Juvenile Justice on the African Continent**

In Africa, studies undertaken in different countries have shown that juvenile delinquency is a serious concern and that different countries have used different strategies and procedures to handle juveniles that come in conflict with the law. This part hence looks at the situation in South Africa, Ghana and Uganda. These countries are part of the African Union and are signatory to the ACRWC.

### **2.4.1 South Africa**

South Africa ratified the Convention on the Rights of the Child (CRC), shortly after the advent of democratic rule, in June 1995. In the process leading to the formulation of the National Programme of Action that followed ratification, the matter of law reform for children was identified as an important priority (James 2012:69).

According to Gallinetti (2006), during the arresting of a juvenile offender, a police official notifies the parents or guardians of the child as soon as possible that he or she is in police hands or being arrested. The parents must be notified as to the time, place and date on which the child will appear in court. The release of the child into the care of a parent or guardian is also considered. A written notice to appear in court is also issued. The police also notifies the probation officer that a juvenile has been arrested. The juvenile is then taken to the probation officer for assessment. The assessment report, once completed, must contain recommendations regarding diversion, release into the care of a parent or guardian, possible placement options and information relating to the age of the child.

Diversion is the act of steering appropriate and desirable measures for dealing with children who come into conflict with the law without resorting to judicial proceedings, in particular the court process provides that human rights and legal safeguards are fully respected. The idea behind diversion is that, processing through the juvenile justice system may do more harm than good for some offenders. It is an important component of restorative justice which includes processes such as mediation, conciliation, compensation for victims and restitution. (Kariuki 2010: 50).

Defence for Children International (2011) has noted that diversion of children in conflict with the law from the mainstream criminal justice system in South Africa has been possible through the co-operation of the prosecution, the judiciary, the probation officers, the police and NGOs. Approximately 30, 000 children were diverted from the criminal justice system during 2005 via agreements with the National Prosecuting Authority and NGOs.

Gallinetti (2006) clarifies that there has been the establishment of one stop child justice centres in several districts in South Africa where key players in the juvenile justice system that include police officers, probation officers, a legal advisor and court personnel operate under one roof, providing integrated services specifically designed for children in conflict

with the law. This model ensures that children accused of crime are treated in a way that promotes their sense of dignity and worth and encourages in them a respect for the rights of others. The multi-disciplinary team of trained personnel are always mindful of the child's rights hence seek by all means to protect them. This system was specifically designed for children in line with article 40 of the CRC and article 17 of the ACRWC that implore various governments to take necessary steps to protect the dignity of juvenile offenders in the juvenile justice system and prevent inhuman treatment against them. At these centres, preliminary screenings by probation officers are undertaken, access to diversion is promoted and detention of children is used as a last resort. According to Reyneke (2011), child justice centres also provide internal training to new members of staff on how to deal with children and have a positive attitude that focuses on restoring the child and solving problems rather than focussing on punishment. In some instances, police do not wear police uniforms and handcuffs are used only in extreme cases.

According to Kariuki (2010), the trial stage begins when a child is formally arraigned in court. There is no separate court that deals with child offenders in South Africa. A child justice court is simply a court with requisite jurisdiction for dealing with child offender matters before it. To counteract the effect of not having a separate court for dealing with child offender cases, certain safeguards have been put in place. For example, the proceedings are usually closed off to all but authorised persons and the identity of the child is not published in order to safeguard the best interests of the child in terms of privacy. The child is also assisted by a parent, guardian or appropriate adult in the court unless it is in the best interest of the child for their presence to be dispensed with. The orders in court are usually aimed at reintegration and rehabilitation. Detention is a last resort. Non-custodial orders include community based orders, restorative justice orders for example victim and offender mediation or correctional supervision. Correctional orders in a child and youth care centre may also be imposed. According to Mabetoa (2008), Child and youth care centres in South Africa offer residential support services not only for juvenile offenders but also for youths with various needs including runaways, children living in deprived family environments, children with disabilities, illnesses or substance abuse problems. Placement in child and youth care centres is usually a temporary measure that courts and advocates only use as a last resort. In 2008, there were nearly 20,000 youths in child and youth care centres.

#### **2.4.2 Ghana**

According to Nyantakyi (2013), Ghana enacted the Children's Act in 1998, the Criminal code (Amendment Act 554) in 1998 and the Juvenile Justice Act in 2003 following her ratification of the CRC in 1990. Currently, these laws serve as a basis for juvenile justice administration in Ghana. Hoffman and Baerg (2011) have written that when a juvenile is arrested in Ghana, the first step for the police is to try to determine his or her age. If there is reason to believe that the accused is under the age of 18, then the accused is dealt with differently from adult offenders.

Juveniles are not usually kept in the same cells as adult offenders and they are taken to a remand home within 48 hours from the time of arrest. A "Remand Custody" order is written by the police and given to the social workers at the remand home. This remand warrant can only be valid for 48 hours. Section (39) of the JJA requires the DSW to establish Correctional Centres and Juvenile remand homes. Correctional centres provide housing for juveniles who are found guilty of crimes for the purpose of rehabilitation and reintegration. Remand homes serve as a temporary facility for housing juveniles prior to trial or during the period when cases are still pending.

According to the Ghanaian Juvenile Justice Act (2003), section 21 indicates that bail should be granted for juveniles as much as possible. Such bail requests can be made when the juvenile first attends a juvenile court. If the juvenile court denies their request, a juvenile or his guardian may apply to the High Court. Hoffman and Baerg (2011), however, have noted that even if the court is willing to grant bail to a juvenile offender, it is sometimes difficult because some youths do not have relatives that would take them in. This may be due to the fact that the relative is unwilling to advocate for the youth, or it may be because the police cannot find any relatives. This means that the court is sceptical of providing bail to juveniles who do not have a responsible adult caring for them while on bail.

DCI (2011) has revealed that the Government of Ghana through the Children's Act has established child justice panels to deal with minor criminal complaints against children. The idea behind child panels in juvenile justice cases is that they provide the opportunity for the juvenile to be diverted from the criminal justice system before the juvenile goes for trial. The child panel advises the court on how to process the juvenile, and whether any reparations or apologies need to be made to the person whom the juvenile affected. Especially in

communities where a Juvenile Court is not easily available, the Child Panel can effectively rehabilitate the juvenile without sending them through the formal system. The panels are composed of the chairman of the social services sub-committee of the district assembly, a representative from a women's organization, a representative of the traditional council, a district social worker and two members of the child's community.

Hoffman and Baerg (2011) have further noted that the Juvenile Court room in Ghana is informal and does not look like a traditional court room. This is done to ensure that proceedings are kept informal while professional. The judge does not wear the traditional robe as she would in any adult court as juvenile offenders must be treated differently by law. In court, there are usually the following people present: the judge, two panel members, the court clerk, the court social worker, the translator; the defence counsel, the police prosecutor, the police investigator, any witnesses, the complainant, the guardian or parent of the juvenile, and the juvenile. The panel members are present to provide advice to the judge, and to discuss the issue as a group. The judge is not bound by the opinion of either of the panel members, but takes their views into consideration. In the early stages of a juvenile court session, a plea is taken and recorded. If the accused pleads guilty, the judge will order the court social worker to prepare a social inquiry report. This is usually done within two weeks. If the accused pleads not guilty, then a trial must begin. All applicable parties must be present for the trial to occur: the police prosecutor, the investigator, the complainant, any witnesses, and the accused and his lawyer. During the trial, the judge and panel members listen to evidence provided by the police prosecutor and his or her witnesses. The judge discusses the matter openly with the prosecutor, defence counsel, and the two other panel members. If juveniles have committed a serious offence, then they are ordered to serve at a correctional centre even if they are 17 years of age or younger. These serious offences include: murder, rape, defilement, and indecent assault involving unlawful harm, robbery with aggravated circumstance, drug offences and offences related to firearms. Unlike in some other countries, there are no community service options in Ghana, hence judges are forced to either commit the juvenile to probation or to a correctional centre (ibid, 16).

Nyantakyi (2013) has also revealed that in Ghana, there are inadequate juvenile facilities such as correctional centres, remand homes and juvenile courts. Currently, the country has 10 remand homes with only three functioning and four junior correctional centres across the country. Remand homes are overcrowded, provide inadequately for juveniles due to



budgetary constraints; they lack of transport and have very few trained social workers. Most remand homes are situated in cities and thus not accessible to local communities. In some communities where remand homes are unavailable, juveniles are often kept in police cells and in some cases, detained together with adult offenders.

### **2.4.3 Uganda**

The Republic of Uganda is a member of the UN and the African Union. It signed the ACRWC on 26<sup>th</sup> February 1992 and ratified it on 17<sup>th</sup> August 1994. (UNICEF 2011, 45).

According to the Foundation for Human Rights Initiative (2009), a child in Uganda is defined as someone below the age of 18 years. In, 2006 there were 16.8 million children in the country. The age of criminal responsibility in Uganda is 12 years old. For children aged between 12 and 18, less than 4% have birth certificates, meaning that determination of a person's age is subjective. In order to establish the age of children who come into conflict with the law, the police contact parents, assess appearance, or check the children's teeth.

Malaba (2010) states that drug abuse, alcoholism, broken marriages and single parents contribute to juvenile delinquency in Uganda. Children with a history of drug abuse are known even to commit capital offences like murder, rape and child-to-child sex. Cases have been reported to police where children have murdered their grandparents over food. Most of the children however steal in order to make a living.

According to Moore (2010), after the arresting of a juvenile offender, the police in Uganda are obliged to inform the child's parent or guardian and the Secretary for Children's Affairs of the local government council in the area in which the child resides. Then, either the children's parent and guardian or a probation and social welfare officer should attend the police interview. Unfortunately, this does not appear to be happening. Even when they are informed, parents or guardians are often scared to accompany their children to police stations in case they themselves are arrested. As a consequence, children appear in court unaccompanied and the magistrate is forced to deny them bail and remand them. If a child cannot immediately be taken to court, then the police may give them a release bond or they may be detained in police custody for a maximum of 24 hours or until they are taken to court. During this time, the police usually make sure not to mix juvenile offenders with adult offenders. Moore (2010) further highlights that the Family and Children Court in Uganda has

the jurisdiction to hear and determine all criminal charges against a child except for offences punishable by death or offences for which a child is jointly charged with a person over 18 years of age which are handled by the High Court.

In Uganda, all children undergoing trial for an offence have a social welfare report prepared by a probation and social welfare officer to ensure that the welfare needs of children are considered in sentencing. This report is designed to give a full picture of the young person and their background and makes a recommendation to the judge as to what solution would be most desirable for the child. The social welfare report is taken into account by the court before making the order/sentence. A copy of the report is given to the child and their legal representative. The report includes the social and family background, the circumstances in which the child is living and the conditions under which the offence was committed.

A positive stride made with regards to juvenile justice in Uganda according to DCI (2011) is that the Ugandan Government through its chain linked project has overcome juvenile court delays by aiming to improve the efficiency of the juvenile criminal justice system by making it possible for more trials involving accused children to “jump the queue.” This means that no matter how big the adult criminal case load is, juvenile cases are to be given first priority to be heard in court all the time.

According to UNICEF (2009), whilst in court, judges usually ascertain the effect of custodial and non-custodial orders bearing in mind the best interests of the child. Section 94 of the Children’s Act Cap 59 emphasises that detention of children should be used as a matter of last resort. The Children’s Act of Uganda usually sets detention at a period of six months for children who have committed petty offences while those charged with capital offences can be convicted and detained for a maximum of three years. An alternative order often used in Uganda is probation for not more than 12 months with conditions as may be recommended by the probation officer. Probation is a non-custodial measure involving the monitoring and supervision of a child whilst he or she remains in the community. A competent authority, the public prosecutor, the social welfare service or a probation officer usually supervises probation.

## **2.5   Zambian Context**

In Zambia, the Juveniles Act Chapter 53 of the laws of Zambia is the legislation that governs procedures for juveniles who come into conflict with the law. According to the main report of the committee on Youth, Sport and Child Development (2015), it is indicated that the Act acknowledges the need for special treatment of children and incorporates the basic fundamental aspects of juvenile justice such as the separation of juveniles from adults, the creation of juvenile courts, the need for rehabilitation and the prohibition of harsh and cruel treatment.

With regards to the separation of children and adults, the Juvenile Act in section 58 (1956) states that it shall be the duty of the Commissioner of Police to make arrangements for preventing, as far as possible, a juvenile while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with an offence, other than an offence with which the juvenile is jointly charged, and for ensuring that a girl (being a juvenile) shall, while so detained, being conveyed, or waiting be under the care of a woman. Furthermore, on the aspect of the creation of juvenile courts, section 66 of the Juveniles Act states that the Juvenile courts shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on them by or under this or any other Act. Section 98 states that reformatories shall be classified according to the discipline and training required by the persons detained therein.

Section 59 and 60 of the Juveniles Act (1956) also indicate that a juvenile offender is to be granted bail unless the charge is that of homicide or any other grave offence or unless the arresting officer has reason to believe that the release of such a person would defeat the ends of justice. However, if a juvenile offender has not been released on bail, he or she is to be detained in a place of safety until he or she can be brought before the courts of law.

UNICEF (2005) has highlighted that one positive approach towards Juvenile Justice Administration in Zambia was the formation of the Child Justice Forum in 2000. This was established after a study done by Ministry of Home Affairs in 2000 on the experiences of juveniles accused of crimes in Zambia. The findings of the study were that a lot of children were arrested for trivial offences that could be dealt with outside the child justice system and that children in conflict with the law were being detained in prisons as opposed to places of safety. Furthermore, law enforcement officers were not trained to handle matters relating to

juvenile offenders and lastly, juvenile offenders were not separated from adults during detention. The Forum comprised of an open ended group of role players and stakeholders who aimed to provide guidance by ensuring that Zambia adheres to the standards set out in the UNCRC and other international instruments dealing with the protection of the rights of children in conflict with the law. Mushitu (2011) adds that the Child Justice Forum embarked on capacity building in the transformation of child justice in Zambia. In this programme, about 266 police officers, 70 magistrates, 167 social workers and about 100 prison officers were trained in juvenile justice. The Forum was involved in developing and strengthening partnerships with several stakeholders that included social welfare, prison service, police and quasi institutions such as the Drug Enforcement Commission (DEC) and the Human Rights Commission.

According to UNICEF (2005), the Child Justice Forum was a pilot project in Lusaka District that implemented two projects, that is, the Arrest, Reception and Referral Service (ARRS) and the Child Friendly Court (CFC). The ARRS worked to ensure that firstly children were not being held in custody unless there was no other option. Secondly, it ensured that parents or guardians of the arrested children were promptly informed so that they could be with their children. Thirdly, the ARRS required that juveniles were largely handled by probation officers who would make an assessment of every arrested child's personal circumstances and the decision resulting therefrom was based on this information. Lastly, it ensured that children were not detained with adults and conditions of detention were improved to mitigate against contracting HIV, TB and other communicable diseases.

The Child Friendly Court was designated to foster trials for juveniles in a manner that, *interalia*, reinforces their respect for human and fundamental freedoms of others as enshrined in local and international statutes. The objectives of the CFC were to create an environment that encouraged the participation of children and their families, to impose sanctions that were least restrictive for the shortest period of time, to oversee the treatment of juveniles in the juvenile justice system and to divert cases from the criminal justice process (ibid.)

It should, however, be noted that the initial study that was conducted by the Ministry of Home Affairs which culminated into the formation of the Child Justice Forum did not assess its findings ethically. Furthermore, there is still more ground to be covered to achieve an optimum transformation in juvenile justice in Zambia which includes rolling out the ARRS

and CFC projects throughout the nation as it is not clear whether all the districts in Zambia are implementing these measures.

Mumba (2011) conducted a study on the juvenile criminal justice system in Zambia in relation to the international protection of children's rights and the findings were that juvenile's rights in the criminal justice system in Zambia are not adequately protected because firstly, juvenile offenders are ill-treated, beaten and tortured by police upon their arrest in order to extract confessions from them; secondly, they are detained in police cells for unnecessarily long periods before making their first appearance in court; thirdly, the police or prison cells used for the detention of juveniles in conflict with the law are unfit for their habitation as they lack water borne toilets, bathrooms/showers, and there is no provision of beddings; and lastly, juvenile offenders are usually mixed with adult offenders while in police custody, in remand prisons, in court holding cells and when being conveyed to and from court. These findings were however not assessed ethically.

Robins (2009) has written that in Zambia, the rights of juveniles in custody continue to be violated, notably through a failure to segregate them from adults. He indicated that treatment in these facilities do not serve a reformatory role due to the lack of efficient educational and vocational training for juvenile offenders.

## **2.6 Summary**

This chapter has highlighted good lessons as well as weaknesses in several countries regarding the treatment of juvenile offenders in the juvenile justice system. In Sweden for instance, police work in collaboration with the social services (probation officers) in order to prevent juvenile offenders from moving on to more serious crime and to provide support to those who want to leave the criminal networks. This is done through the use of education in communities. In Ghana through the introduction of child justice panels, diversion is used to rehabilitate juveniles without sending them through the formal justice system. This practice is similar in South Africa where diversion has been made possible through the setting up of one-stop child justice centres where various role-players operate under one roof, providing integrated services specifically designed for children in conflict with the law. In Uganda, through the government's chain link project, juvenile cases in court are given first priority to be heard by the judge. This is in order to avoid delays in juvenile court case proceedings thus protecting juvenile offenders from being in police custody for longer periods of time. There is a similar practice in the Zambian Child Friendly Court. With regards to institutionalisation of

juvenile offenders, India, just like Japan has set an example of setting up special homes in order to effectively treat juveniles who come in conflict with the law. Educational, vocational and other courses and activities are offered depending on the child's aptitude.

Weaknesses noted in various countries on the treatment of juvenile offenders in various juvenile justice systems are that, firstly in the United States, due to increased crime rates, many states are currently using the justice model other than the welfare model in handling heinous cases committed by juvenile offenders. The focus thus changes from treatment to punishment of the offending behaviour thus eroding the concept of acting in the best interests of the child. Secondly, in India, due to heavy caseloads, some magistrates handle juvenile offenders in adult courts as there is no time for age determination. Lastly, in the United States as well as Ghana and Zambia, research has shown that there is overcrowding of rehabilitation facilities for juvenile offenders and inadequate training and recreational programmes. This prevents the juvenile offenders from fully receiving necessary therapy and education in order to reform.

There is, thus, a clear indication that there is still more to be done in improving the treatment of juvenile offenders in conflict with the law, hence the need to analyse this issue from an ethical standpoint in order to fully highlight the need to protect and care for juvenile offenders as they are developmentally different from adults.

## **CHAPTER THREE: THEORETICAL FRAMEWORK**

### **3.1 Introduction**

This chapter presents a discussion of the theoretical framework used to ethically assess the findings of this study. In brief, an ethical theoretical framework is a set of ethical principles or theories systematically worked out for the purpose of objectively analysing and understanding an ethical problem in order to provide ethically sound solutions. As such, an ethical theoretical framework is a necessary tool for ethical decision making. For this study, virtue, deontological and justice ethical theories were systematically worked out to formulate the ethical theoretical framework.

### **3.2 Virtue Ethics**

The ethics of care is very closely related to virtue ethics. According to the Internet Encyclopaedia of Philosophy (Fieser, 2017), care ethics is most often defined as a practice or virtue rather than a theory. Hence both virtue ethics and care ethics will be considered together here. Whereas virtue ethics focuses on developing habitual character traits in people, the ethics of care focuses on the particular specific context of relationships and dependencies in human life in which care is expressed and the emotions that accompany it in meeting the needs of ourselves and others.

According to Taylor (2002), virtue ethical theory, unlike utilitarian and deontological ethical theories, sees the primary focus of ethics to be on the character of a person and not on the consequences or the nature of his actions. The theory traces its roots to the ancient Greeks whose original exploration of morality was not concerned with how we determine what the right thing to do is but rather with cultivating morally desirable character traits such as honesty, courage, compassion and generosity, that is, the concepts of human excellence and human thriving. Virtues are these qualities that define what a good person ought to be and the question central to this is thus, “What sort of a person should I be?” It focuses on making someone a good or admirable person rather than simply focussing on what actions the person ought to perform.

Aristotle distinguished intellectual virtues (wisdom and understanding) from moral virtues (generosity and self-control). He believed that intellectual virtues were not sufficient for the good life. One must also have the moral virtues. Aristotle believed that we are by nature

neither good nor evil but become so through training and the acquisition of habits. (Pollock 2004, 40).

Moral virtue comes from practicing good habits, which is why this ethical system emphasizes character. The idea here is that one does not do good because of reason; rather, one does good because of the patterns of a lifetime. If one has a good character, he or she will be inclined to do the right thing. But if one has a bad character, he or she will usually be inclined to choose the immoral path. For example, detained juvenile offenders that are mixed with adult offenders in detention facilities may cultivate bad habits through their interaction with adult offenders as they would experience or witness torture, beatings, harassment, rape, humiliation and the use of abusive language. These bad habits may lead to the accentuation of delinquent behaviour after a juvenile's release.

According to Velasquez (2009), as people mature, their personalities are deeply affected by the values that their communities prize, by the personality traits that their communities encourage and by the role models that their communities put forth for imitation. In this regard, if an adult offender becomes a juvenile offender's role model, the juvenile grows to imitate and adopt the bad behaviour of the adult offender and hence grows into a bad person. The virtue approach urges us to pay attention to the contours of our communities and the habits of character they encourage and instil.

Jiyuan (1998) has written that it is important for one to develop right habits so that he develops the disposition or tendency to perform virtuous acts. Virtue is not itself a habit. Habituation is merely an aid to the development of virtue. The moral life then is not simply a matter of following moral rules and of learning to apply them in specific situations. The moral life is also a matter of trying to determine the kind of people we should be and of attending to the development of character within our communities and ourselves.

### **3.2.1 Ethics of Care**

The ethics of care is a moral theory that implies that there is moral significance in the fundamental elements of relationships and dependencies in human life. It is another influential version of virtue ethics (Athanasoulis, 2016: 8). The focus of the ethics of care is not on habitual virtues but on individual particular contexts of human relationships and dependencies, such that parents have a moral responsibility to care for their children or children are dependent on their parents or guardians for care. Similarly, children have a moral



responsibility to take care of the elderly, a nurse has a moral responsibility to take care of her patients, a government has a moral responsibility to care for its citizens, and so on. This is in order to safeguard and promote the best interests of those involved. The ethics of care normatively seeks to maintain relationships by promoting and contextualising the well-being of care givers and care receivers in a network of social relations. It is often defined as a practice rather than a theory; ‘care’ involves sustaining and meeting the needs of others. It builds on the motivation to care for those who are dependent and vulnerable. (Sander Staudt, 2017:1). In particular, ‘caring’ refers to care for, emotional commitment to and deep willingness to act on behalf of persons with whom one has a significant relationship (Beauchamp and Childress, 2009: 36). In this study, we can apply this by looking at juvenile offenders as vulnerable members of a society and thus needing to be protected and cared for by government agents of the juvenile justice system throughout the process of arrest, trial and court disposition.

### **3.3 Deontological Ethical Theory**

This theory holds that our duty to perform an action or refrain from doing it is based on the nature of the act itself and not on its consequences. It is based around established rules and guidelines and, as such, considers morality to be unconditioned by our personal desires, and hence being obligatory and universal. For a Kantian ethicist, the ends of an action never justify the means; rather, it is the action itself that is intrinsically good or bad.

In this study, the second formulation of Kant’s self-evident principle or guideline of reason called the categorical imperative that mandates an action irrespective of one’s personal desires will be used to assess the findings. According to Velasquez (2009), Kant believed in his second formulation of the categorical imperative that every person, as a rational being, has a fundamental human dignity that gives the person value of the kind that must be respected. However, this does not deny human dignity to humans whose rationality is not fully developed, say juveniles. For this reason, the state adheres to a *parens patriae* model (standing in the stead of a parent) for juvenile offenders whose situation of delinquency may derive from inadequate guidance by their parents or guardians. Kant expressed these ideas by formulating his categorical imperative in these words: “Act so that you always treat people as ends in themselves and never merely use them as means”.

According to Velasquez, Kant’s second version of the categorical imperative implies that we should not use people as objects, as things whose only function is to satisfy our desires.

Instead, he claims, morality requires that we always give others the opportunity to decide for themselves (autonomously) whether or not they will join us in our actions. This rules out all forms of deception, force, coercion and manipulation. Moreover, the second formulation implies that we should promote people's capacity to choose for themselves. It also implies that we should strive to develop this capacity in ourselves and those around us through education. In this case, corporal punishment that is meted out on juvenile offenders, involving the use of physical force causing pain is a violation of the dignity of the juvenile. For the nature of the act is such that it relies on the police officers desire to instil fear in a juvenile offender and make the offender submissive which diminishes a juvenile's capacity to grow up as an autonomous and responsible person.

The use of the deontological ethical theory may therefore be justified on grounds of it supporting the further development of the rational capacity of a juvenile offender through educational and vocational training, and as against the use of force causing pain as a means of disciplining juvenile offenders which violates the principle of respect for their dignity as rational beings, though not yet fully developed, and as such, diminishes their capacity to develop as autonomous and responsible persons.

### **3.4 Justice Ethical Theory**

#### **3.4.1 Distributive Justice**

According to Feinberg and Gross (1991), justice originates in the Greek word "*dike*" which is associated with the concept of everything staying in its assigned place or natural role. In more traditional terms, it means giving each person his or her due. Velasquez (2009) explains that when people differ over what they believe should be given, or when decisions have to be made about how benefits and burdens should be distributed among a group of people, questions of justice inevitably arise. When such conflicts arise in our society, we need to find principles of justice that we can accept as reasonable and fair standards for determining what people deserve.

Gillon (1994) contends that the most fundamental principle of justice, one that has been widely accepted since it was first defined by Aristotle, is the principle that equals should be treated equally and un equals unequally. In its contemporary form, this principle is sometimes expressed as "individuals should be treated the same unless they differ in ways that are relevant to the situation in which they are involved. According to this formal principle of

justice, if everyone is equal, that is, has equal value as a human person, then everyone has a claim to equal treatment in virtue of their rights to non-interference and of welfare in securing a minimum level of human well-being. But then, there are circumstances in which everyone does not have a claim to equal treatment. The reasons for unequal treatment may, according to Nash (2013), be based on factors such as ability, past achievement, effort, vulnerability (in view of their physical, psychological and emotional immaturity in the case of juveniles), merit and desert. The use of the traditional justice ethical theory is therefore justified, as it supports a differential treatment of juvenile offenders for the reason proffered of the vulnerability of juveniles on account of their physical, psychological and emotional immaturity.

### **3.4.2 Restorative Justice**

Since it is widely recognized that juveniles who come into conflict with the law act with less rationality and therefore cannot fully understand the consequences of their actions, restorative justice has also been used especially in cases of delinquency. Jensen and Shoemaker (2012) explain that restorative justice attempts to make the juvenile offender aware of the consequences of his actions for the victim, with the larger aim of developing in him a sense of responsibility and accountability.

According to UN (2006), restorative justice insists that justice should repair the injuries that crime causes to people and communities. It is based on a belief that parties to a conflict ought to be actively involved in resolving it and mitigating its negative consequences, rather than using the formal justice system to do so, as it is believed that formal justice systems can sometimes do more harm than good to some juveniles in conflict with the law as there is a possibility of them getting traumatised through the process. In restorative justice, offenders take meaningful responsibility for their actions by redeeming themselves through the victim's presence by reconciling and compensating the victim. This can include money, community service, education to prevent recidivism and expression of remorse. Through these avenues, the victim, the offender and affected members of the community become central to the juvenile justice process with governmental professionals such as probation officers serving as facilitators of a system that aims at offender accountability, reparation to the victim and full participation by the victim, offender and community.

The restorative process of involving all parties in often face to face meetings is a powerful way of addressing not only the material and physical injuries caused by the crime but the

social, psychological and relational injuries as well. It is justified for use in this study as it is particularly useful for promoting diversionary measures and for providing alternatives to measures that would deprive a youth of his or her liberty as it is stressed in the Juvenile Act cap 53 section 72 b of the laws of Zambia as well as in article 3 of the United Nations Convention on the Rights of the Child (UNCRC) which emphasize on detention of the juvenile offender as a last resort and decisions in any juvenile administration should be in the best interest of the juvenile.

### **3.5 Summary**

This chapter has described the ethical theories that have been used in this study. Virtue and care ethics emphasize the moral character and the moral significance in the fundamental elements of relationships and dependencies in human life respectively. Deontological theory highlights the need to treat the humanity of juvenile offenders with dignity and to develop their capacity through education and lastly justice ethical theory focuses on actions of fairness basing on the differences in the situation that is involved. These theories were applied to the findings of this study in the chapter on ethical evaluation.

## **CHAPTER FOUR: METHODOLOGY AND METHODS**

### **4.1 Introduction**

This chapter presents the research design and methodology of the study. It describes the research design and methodology, study population as well as the sample size. Sampling techniques, data collection methods, study sites and data analysis are also highlighted. Lastly, it explains how participants were ethically protected.

### **4.2 Research Design and Methodology**

The study adopted a case study design using a qualitative methodology involving an ethical evaluation in order to gain an in depth understanding of the issue from the point of view of the research participants.

### **4.3 Study Population**

The study population included participants drawn from the following institutions; (a) Chirundu Police; (b) Chirundu Social Welfare Office; (c) Chirundu Magistrate Courts; (d) Nakambala Approved School

### **4.4 Sample Size**

The sample size in this study comprised of 28 people which included 12 juvenile offenders detained at Chirundu Police who have gone through the process of arrest and others, trial; 1 officer from Chirundu Police; 1 officer from Chirundu Social Welfare Office; 1 officer from Chirundu Magistrate Court; 1 officer from Nakambala Approved School and 12 Juvenile offenders undergoing rehabilitation process at Nakambala Approved School.

### **4.5 Sampling Techniques**

The researcher used purposive sampling technique to conduct 4 separate interviews with key informants from the following four institutions: Chirundu Police, Chirundu Social Welfare Office, Chirundu Magistrate Court and Nakambala Approved School. Purposive sampling was used based on the officers known expertise of the subject being researched on. Four focus group discussions were conducted with 12 juvenile offenders detained at Chirundu police as well as 12 juvenile offenders who were undergoing the process of rehabilitation at Nakambala Approved School in Mazabuka. Stratified Random sampling was used to divide the number of juvenile offenders to be part of the two FGD's in Chirundu into 6 males and 6

females. This was done by randomly picking 6 boys and 6 girls then separating them based on the stratum of gender. Involving both male and female juvenile offenders in the 2 FGDs in Chirundu was done in order to understand gender variations pertaining to the subject. On the other hand, simple random sampling was used in the two FDG's conducted at Nakambala Approved School. All 12 juvenile offenders who participated in the 2 FGD's in Mazabuka were boys as Nakambala Approved School is an institution that accommodates male juvenile offenders only. These were randomly picked from a group of 35 boys.

#### **4.6 Data Collection Methods**

In this study, qualitative data was collected through primary and secondary methods of collecting data. The primary data collected was obtained through field work by using Observations, in depth semi structured interviews and Focus Group Discussions. The data collection instruments involved the interview schedule and FDG guide.

Observation method was used to confirm some of the information the researcher got from the FGDs and interviews. Observed areas of this study included the mixing of juvenile and adult offenders in police cells, the general living conditions at Nakambala Approved School as well as the court process that is the creation of a child friendly environment in Chirundu.

In depth interviews were used to gather information from key informants from Chirundu Police, Chirundu Social Welfare Office, Chirundu Magistrate Court and Nakambala Approved School. Each of the key informants had a specific interview guide with sets of questions based on their mandate. For this purpose, semi structured interviews were employed so that participants got to be free to express their answers.

The Focus Group Discussions were conducted with juvenile offenders detained in Chirundu police cells as well as those undergoing rehabilitation at Nakambala Approved School in Mazabuka. FGD guides were used with a few questions that were posed to the discussants who discussed the questions. The discussion was recorded by taking notes. Audio and /or visual equipment were not used in this undertaking.

The secondary data collection method involved the review of relevant literature from books, journals as well as from the internet.

## 4.7 Study Sites

The study was conducted in Chirundu and Mazabuka Districts.

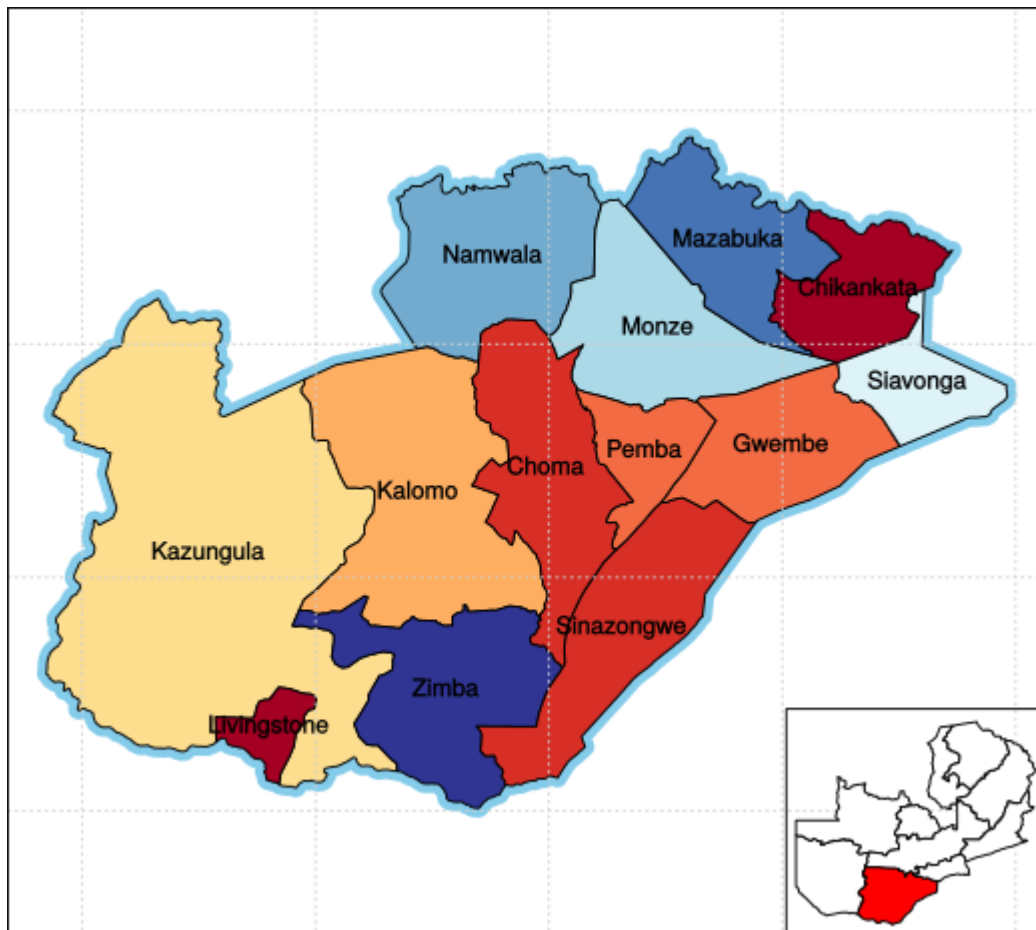


**Figure 4.1: Location of Chirundu District on the Zambian Map**

Chirundu District is positioned about 136km south of Lusaka and it is under Lusaka Province. It borders Siavonga District in the west and Chikankata District in the north (both of which are in Southern Province) Kafue District is in the east and the south is separated from Zimbabwe by the Zambezi river. Chirundu is one of the border towns between Zambia and Zimbabwe.

Chirundu was declared a district in early 2013 which prompted the setting up of various government departments and parastatals in the area including institutions of core importance to this study such as the Police, Social Welfare department and the courts of law.

Most departments are closely situated in order to enhance efficient and effective service delivery to the people of Chirundu.



**Figure 4.2: Location of Mazabuka District on the Zambian Map**

Mazabuka District is located in the Southern Province of Zambia. It is 125 km by road from Lusaka, the capital of Zambia and about 360 km from Livingstone City, the tourist Capital of Zambia. The district has a total population of 182,205 people and an annual population growth rate of 4 %. Of the total population, 90,752 are male and 91,453 are female. This is according to the 2010 census that was conducted in the district. Nakambala Approved School is situated in Mazabuka District. It is run by the Department of Social Welfare in the Ministry of Community Development and Social Welfare. It was established in 1963 by an Act of Parliament and its capacity is 75 boys. The premises are surrounded by high density



residential areas and local people often meet juvenile offenders working in school fields. The School is not fenced and access to it is not difficult as it is within walking distance from the rail and bus stations.

#### **4.8 Data Analysis**

The analysis of data involved organizing relevant data collected in accordance with emerging themes in relation to the research objectives. This was followed by the identification, explanation and interpretation of the emerging themes

#### **4.9 Ethical Considerations**

For this study, authority for ethical clearance was sought in view of the fact that it is dealing with juveniles. The participants were also given sufficient time to consider whether or not to take part in the study after being informed about the purpose of the study. According to Robson (2007), informed consent ensures that informants or respondents participate in the study voluntarily. All participants were guaranteed of their identities remaining anonymous and that the information they gave was purely for academic purposes.

## CHAPTER FIVE: FINDINGS AND DISCUSSION

### 5.1 Introduction

The main aim of this study was to empirically investigate and ethically assess the treatment of juvenile offenders in the Zambian juvenile justice system during arrest, trial and after-court case disposition with special reference to the JJS in Chirundu and at the Nakambala Approved School. In this regard, a case study design was used and the data collection methods included observation, interviews and focus group discussions. The findings were presented and discussed to address the following objectives of the study: (a) to establish the current situation of delinquency among juveniles in Chirundu district; (b) to investigate the treatment of juvenile offenders during arrest, trial and after court- disposition of their cases in Chirundu and; (c) to investigate the treatment of juvenile offenders during rehabilitation at the Nakambala Approved School.

### 5.2 The Current Situation of Juvenile Delinquency in Chirundu District

In the attempt to establish the current situation of delinquency in Chirundu, the researcher relied on two categories of participants who provided this information, that is, the social welfare officer who mainly highlighted the causes of juvenile delinquency in Chirundu and the police officer who cited the main offences recorded among juvenile offenders in the district.

When asked about the main causes of juvenile delinquency in the district, the social welfare officer had this to say,

*One of the causes of juvenile delinquency in the district is poverty. Juveniles from poor homes tend to be neglected by their parents and guardians who are not able to provide for their daily needs. As a result, they engage in bad vices such as stealing in order to survive. The other factor causing delinquency among juveniles is unemployment. The high unemployment levels in Chirundu have led to failure by parents to meet the needs of the family hence leading to a situation where children are providing for their family through in appropriate means such as theft. Peer pressure is also another cause of delinquency in the district in that there is the tendency by some of the children to be influenced by friends to engage in bad vices such as sex and theft in order to “fit in the group or gang”. Lastly the aspect of broken*

*homes is also one of the major causes of delinquency. Divorce and gender based violence are the major reason for broken homes in the district and this has had a negative impact on the children. Frequent fights in a home for instance would lead to children thinking that this was a normal way of life, hence taking this attitude into the street where they have to fight with anyone to get what they want.<sup>1</sup>*

These findings are pointing to what the UN (2003) has highlighted that the intensity and severity of juvenile offences are generally determined by the social, economic and cultural conditions prevailing in a country. The report highlights that in Africa, delinquency tended to be attributed primarily to hunger, poverty, malnutrition and unemployment, which were linked to the marginalization of juveniles in the already severely disadvantaged segments of society. On poverty and employment, the UN report (2003) states that juvenile delinquency is driven by the negative consequences of social and economic development, particularly economic crises and political instability experienced in many countries in Africa. Social economic instability is often linked to high poverty levels and unemployment among the young which can increase the likelihood of their involvement in criminal activity.

With regards to broken homes, various studies have shown that children who live in dysfunctional family settings that are characterised by conflict, inadequate parental control and premature autonomy are closely associated with juvenile delinquency. The family as a social institution is currently undergoing substantial changes; its form is diversifying with for example the increase in one-parent families and non-marital unions. The absence of fathers in many low income families can lead boys to seek patterns of masculinity in delinquent groups or peers. These groups in many respects substitute for the family defined male roles and contribute to the acquisition of such attributes as cruelty, strength, excitability and anxiety. (ibid 45).

On the aspect of peer pressure, it has been a concern that through primary associations such as gangs, individuals acquire a sense of safety and security and also develop knowledge of social interaction and can demonstrate such actions of loyalty and leadership. Juvenile gang

---

<sup>1</sup> Interview with a social welfare officer in Chirundu District, 10<sup>th</sup> July 2017

members consider their group as a family hence it is easy to influence one another in committing crime as every member is loyal to the group.

In many cases, it would appear that children in Chirundu became young offenders because of violent encounters in their immediate social environment as either witnesses or victims of violent acts. The educational attainments of this group were rather low and the basic social experience acquired in the family was too often insufficient for juveniles to avoid delinquency.

The police officer interviewed at Chirundu police station explained that juvenile crime in the district was very high owing mainly to the busy nature of the border town. He noted that the total number of juvenile cases handled by police in 2015 was 178. This rose to 205 in 2016. However, there was lack of statistics from Chirundu police on juvenile delinquency for 2014 and previous years to give a clear picture on the trend in juvenile delinquency in the district. When asked about the main offences committed among juveniles in the district, the police officer had this to say,

*The main offences that juveniles commit in the district include theft, assault and defilement. On theft, juveniles usually steal from the trucks that await clearance at the border in order to sustain themselves and sometimes their families. On assault, some juveniles tend to come from very violent backgrounds and hence easily pick fights with others thinking it is a normal way of life and therefore end up being arrested for assault. On defilement, it is very unfortunate that modern technology that includes phones and computers that the children are using have exposed them to things such as pornography and violence on the internet. The children hence want to imitate what they see. Therefore, they end up taking advantage of fellow juveniles.<sup>2</sup>*

This statement gives an indication that, due to the geographical location of the District as a border town, there is so much activity as it is a transit point where people get busy clearing their goods and vehicles. Crime among juveniles is more likely in such a place as they take advantage of the delays in processes of clearance and hence steal from the parked trucks.

---

<sup>2</sup> Interview with a police officer in Chirundu District, 10<sup>th</sup> July 2017

Secondly, it is suggesting that many juveniles come from violent backgrounds where family ties to ensure close supervision are non-existent. One possible reason that has exacerbated this situation is that since Chirundu is a transit town, truck drivers who are always on the move do sometimes engage in sexual relationships with the local women. These women bear children and fail to support them hence the influx of children on the streets. These then resort to delinquency to make a living and support their families.

### **5.3 The Treatment of Juvenile Offenders during Arrest, Trial and after-Court Disposition of their Cases in Chirundu.**

#### **5.3.1 Treatment of Juvenile Offenders during Arrest**

Information on the treatment of juvenile offenders during arrest was acquired from the interview with the police officer, the social welfare officer and from the two FGDs conducted with the 12 juvenile offenders in police cells.

##### **5.3.1.1 Handling juvenile offenders at the pickup point**

When asked how juvenile offenders were handled during arrest and the investigation process, the police officer had this to say:

*At the point of arrest, we do not become brutal towards the juvenile offender unless he or she shows signs of rudeness and stubbornness. That is when we cane them a bit in order for them to comply with the police. Police rarely handle juvenile offenders in a bad manner as most of the arrested juveniles comply with the officers.<sup>3</sup>*

The majority of responses, that is, eight out of twelve juvenile offenders showed that there existed some form of brutality by the police when arresting juvenile offenders. This was attributed to by responses such as

*Ba kapokola banatimenya mambama pe banabwela kutitenga.<sup>4</sup>*

This is translated as:

The police slapped us at the time they came to pick us.

---

<sup>3</sup> Interview with a police officer in Chirundu District, 10<sup>th</sup> July 2017

<sup>4</sup> Discussion with juvenile offenders detained in police cells in Chirundu District, 10<sup>th</sup> July 2017

This was said by five out of twelve participants in the first focus group discussion and one participant in the second FGD.

Another response from juvenile offenders interviewed on police treatment was:

*Bakapokola benze kuti gwila mu belt na kuti donsa monga mbala kuchila kuti tiyende teka.*<sup>5</sup>

This is translated as

The police dragged us at the point of arrest and treated like hard-core criminals instead of letting us free to walk on our own.

This was said by two participants in the second FGD. However, one juvenile offender in the first focus group discussion noted that there was no form of violence or brutality from police when he was being arrested. This was the same response given by the other three participants in the second FGD. The researcher observed that out of the four members that indicated that there was no form of police brutality exhibited when arresting them, three of them seemed not to be confident when giving this response hence this made the researcher to conclude that other factors behind the contradictory responses were at play that possibly included fear by the juvenile offenders that the arresting officers would punish them further for divulging information.

Findings here indicated that there existed some form of brutality by police when arresting juvenile offenders. This is evident from the majority responses, from the two FGDs, that were in the negative regarding the treatment of juvenile offenders at the point of arrest. Harsh treatment of juvenile offenders is contrary to the Juveniles Act Cap 53 of the laws of Zambia and international legal statutes such as the ACRWC. According to section 46 of the Juveniles Act of Zambia as well as Article 16 of the African Charter on the Rights and Welfare of the Child, (ACRWC), children need to be protected from all forms of humiliating and degrading treatment such as torture, physical or mental injury or abuse, neglect or mal-treatment. This applies to juvenile offenders too.

### **5.3.1.2 Diversion**

Diversion is the process of channelling juvenile cases out of the formal justice process in order to explore other community based forms of justice. It is an important component of

---

<sup>5</sup> Discussion with juvenile offenders detained in police cells in Chirundu District, 10<sup>th</sup> July 2017

restorative justice. The UNCRC encourages the use of diversionary programmes which remove young people from the criminal justice process and implement services such as temporary supervision and guidance, restitution and compensation of victims.

The findings on the use of diversion were obtained from the interviews with the police, the social welfare officer as well as the juvenile offenders in detention. When asked if diversion is considered when handling juvenile offenders, the response by the police officer was that the process of diversion is often considered for juvenile offenders who have committed minor offences to prevent them from having a criminal record and also to try and help them reform so that their bad behaviour does not land them in custody which would disturb their school programme in cases where some of the juveniles are school going children.

When asked on the types of offences they committed, three juveniles, that is, one boy and two girls stated that they stole food stuffs at the market. They further indicated that their intention was just to find something to eat as they had stayed for two days without eating, four other juvenile offenders comprising two boys and two girls indicated that they were charged with theft from motor vehicles. These pointed out that they got phone chargers and clothes from the trucks that were awaiting clearance at the border with the view of selling these to obtain money to buy food. Two boys were charged with defilement while the remaining three comprising one boy and two girls were charged with assault.

From the information above it appears that the drive for delinquency in the district is not out of malice but rather out of their immature mental capacity and of course social status as most of these delinquents come from vulnerable incapacitated homes.

When asked if she considered diversion when handling juveniles, the social welfare officer's response was:

*Diversion is not at all considered because the police rarely notifies my office when there are juvenile arrests. Hence a background information search on these juveniles is not done at the earliest stage to ascertain the reason for offending as well as other factors such as level of education and general family background. It is very unfortunate that the only time that my office is notified of juvenile cases by police is when there is a requirement of a social inquiry report in court to enable the magistrate to pass an appropriate order*

*based on recommendations generated from the social inquiry report that I process.*<sup>6</sup>

From the findings here, it would appear that diversionary measures were not usually considered after juvenile arrests were made as the probation officer was rarely notified of juvenile arrests on time. This meant that social inquiry assessment reports were not done on time in order to establish the kind of relationship the child had with his family and with others, the dynamics of the family background itself as it has an impact on the child, his level of education and capacity. As has been noted, some offences that were committed by juvenile offenders interviewed were of a minor nature that were best left handled outside the formal justice system. According to UNICEF (2005), the arrest of children should be avoided but when this is necessitated by the crime and circumstances, the actions of the police need to be closely monitored against well-defined standards and procedures. Arrest should as soon as possible be followed by an assessment of the child by a suitably qualified person (such as a probation officer) who needs to gather information with regard to the personal, social and familial circumstances of the child in order to inform the relevant criminal justice officials accordingly with the purpose of reaching a decision in the best interests of the child. This decision should be guided by following the least restrictive measures and minimising exposure to the hardships of the criminal justice system. This, however seemed not to be the case in Chirundu.

### **5.3.2 Treatment of Juvenile Offenders before Trial**

The Juveniles Act (1956) in section 59 states that when police apprehend a juvenile, the officer in charge of the police station must release the juvenile before a parent, guardian or other responsible person after payment of an amount that the officer in charge deems sufficient for ensuring that the juvenile will attend a subsequent hearing on the charge. The officer may, however, choose not to release the juvenile if (a) The juvenile is accused of homicide or another grave offence, (b) detention is necessary to stop the juvenile from associating with a reputed criminal or prostitute, or (c) The officer in charge has reason to believe that releasing the juvenile would defeat the ends of justice.

---

<sup>6</sup> Interview with a social welfare officer in Chirundu district, 10<sup>th</sup> July 2017



For bail options to be considered in cases involving arrested juveniles, the presence of parents and guardians is cardinal as enshrined in the Juveniles Act cap 53 of the laws of Zambia. This is done in order to avoid the juvenile's flight risk. The parent or guardian hence pays an amount of money to the police so as to ensure that the juvenile is present in court when hearing the charge against him. Parental presence is also important at all stages of the juvenile justice system as this is one of the due process rights that need to be enjoyed by juveniles.

When asked about the notification and presence of parents or guardians after their arrest, seven juvenile offenders suspected that the lack of parental presence during the formal arresting process was due to failure of their location by police as they came from far flung areas within the district. Two juvenile offenders did not know why their parents and guardians did not come during their arrest while the remaining three participants did not give any response when asked.

The police officer, however, attributed the lack of parental presence to lack of transport to reach some far flung areas where some juvenile offenders come from in order to notify the parents of their children's arrests.

The Social Welfare Officer's response with regards to the notification by police to be present when arresting a juvenile was as follows,

*As a social welfare officer, it is not often that I get to be notified by the police regarding the arrest of juvenile offenders despite them recording numerous juvenile arrests. This is due to lack of proper coordination between the police department and the social welfare department.<sup>7</sup>*

Findings here pointed to a situation where juveniles were detained without the exploration of the option of releasing those with minor offences on bail. This was due to the non-availability of their parents or guardians and the social welfare/ probation officer during the arresting process.

With regards to pre-trial detention and conveyance to court, the commissioner of police is, according to the Juveniles Act (1956), responsible for taking steps to prevent juveniles from

---

<sup>7</sup> Interview with a social welfare officer in Chirundu district, 10<sup>th</sup> July 2017

associating with adults accused of crimes (other than relatives or those with whom the juvenile has been jointly charged of an offence) while the juveniles are being detained in a police station, are being taken to or from court or either before or after attending court. He or she must also ensure that female juveniles in these circumstances are under the care of a woman.

Asked on whether juveniles and adults were separated during pre-trial detention, the police officer interviewed explained that detained female juvenile offenders were always mixed with adult female offenders in the female adult cell because the institution had no special detention facility for female juvenile offenders. Male juvenile offenders, on the other hand, had a separate detention room from adults although for some time now they were being mixed with adults because their detention room had no running water.

Using observation, the researcher noted the lack of running water in the male juvenile cell which was empty as all male juveniles were transferred to the male adult cell which was overcrowded. Furthermore, female juvenile offenders were seen mixing with female adult offenders in the adult cell.

Asked on how frequent inspections were carried out in juvenile detention facilities in the district, the social welfare officer/ juvenile inspector responded that:

*Inspections of these facilities are not done often because of lack of financial resources and transport. The office does not receive funding specifically, for Juvenile Welfare Programme. It is difficult to carry out these inspections of course coupled with pressure from other programmes that need to be attended to.<sup>8</sup>*

When asked about their treatment during detention, juvenile offenders had different responses such as:

*Bakapokola banatifaka mu cello pamodzi na ba kulu bamene bamati tukana na kuti setting'a.<sup>9</sup>*

This is translated as:

Police put us in cells together with adult offenders who insult and bully us.

---

<sup>8</sup> Interview with a social welfare officer in Chirundu district, 10<sup>th</sup> July 2017

<sup>9</sup> Discussion with juvenile offenders in detention in Chirundu, 10<sup>th</sup> July 2017.

This was said by eight out of the twelve juvenile offenders interviewed.

Another response was that:

*Ma toilet muno mu ma cello ni ya doti kaili ya sebenzesewa na bantu bambili.*

*Tili mu ma bvuto muno.*<sup>10</sup>

This is translated as:

The toilets in here are very dirty because they are used by many people.

We are in serious problems here.

This was said by three out of the twelve juvenile offenders that were interviewed. However, one juvenile offender had this to say:

*Vonse vili che mushe muno. Tinkhala che bwino.*<sup>11</sup>

This is translated as:

Everything is just okay here. We are living well.

The conditions of detention of juvenile offenders in Chirundu pointed to the aspect of juvenile and adult offenders mixing in police detention facilities. This not only contradicts the provisions of the Juveniles Act Cap 53 of the laws of Zambia but also the UNCRC and the Beijing rules. Article 37 b of the CRC (1989) states that every child deprived of his or her liberty has the right to be separated from adults unless if it is in the child's best interests not to do so. Similarly, rule 13.4 of the Beijing rules (1985) indicates that juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or a separate part of an institution also holding adults. The mixing of juvenile offenders with adult criminals in the police cells in Chirundu thus poses a very serious psychological risk on the part of the young offenders which is the use of humiliating and degrading insulting language and bullying exhibited by adults, as well as a health risk that includes the transmission of HIV and STI's to the young offenders. The response by the social welfare officer on conducting inspections in juvenile detention facilities to discourage the mixing of juveniles with adult offenders surprised the researcher in that the social welfare

---

<sup>10</sup> Discussion with juvenile offenders in detention in Chirundu

<sup>11</sup> Discussion with juvenile offenders in detention in Chirundu

officer complained of lack of transport and monetary resources to conduct the said inspections and yet the distance between the social welfare office and the police is a walkable one. The researcher also observed that there was no female police officer attending to the female juveniles. There was only one male officer attending to all cases in the police cells. The presence of the female police officer is cardinal in order to assist female juvenile offenders with intimate personal matters that they cannot easily confide to a male police officer.

With regards to conveyance to court, the police officer interviewed explained that Chirundu district has had no resident magistrate to hear cases specifically for Chirundu and added that the court building in Chirundu was still under construction. This is why court cases are once every week taken to the neighbouring district of Siavonga to be handled by the magistrate there. In some instances, the magistrate travels from Siavonga District to go and handle the cases from Chirundu when he is given an allowance for his fuel. One of the offices at Chirundu police is used as a court room when this happens. The police officer further explained that in cases where the juvenile cases are heard in Siavonga magistrate court, a stationed vehicle is used to ferry both the juvenile offenders and adult offenders at the same time. But if cases are being heard in Chirundu, there is no need for transport as the cases are held within the police premises.

The findings on conveyance, based on the interview with the police officer suggested that juveniles and adults were mixed when the court was held from the neighbouring district of Siavonga, which is 86 km away from Chirundu as they use one vehicle to get to and back from court. Here, it is very easy for juveniles to learn from the bad habits of adult offenders as the situation in which they are found is made into a conducive environment for sharing various ideas. The adult criminals thus inculcate wrong values and ideas in the young offenders who would turn out to be difficult to reform. This is why the Virtue ethical theory urges people to pay attention to the contours of their communities and the habits of character they encourage and instil.

### **5.3.3 Treatment of Juvenile Offenders During Trial**

The findings regarding the court process were revealed from participants in the two FGD's involving juvenile offenders in detention, as well as from the court official.

Asked if juvenile court cases and adult court cases were heard in the same court at the same time, the court official had this to say:

*Juvenile cases and adult cases are held in the same court room but at different times. The court always adheres to the provisions of the Juveniles Act cap 53 of the laws of Zambia to create a child friendly environment during juvenile court sessions due to the recognition of the fact that juveniles are psychologically and emotionally immature and thus more vulnerable.<sup>12</sup>*

When asked about the good and bad aspects on the treatment received during the court process, seven out of the twelve juvenile offenders interviewed and who appeared before court explained that the court officials conducted the hearing in a friendly manner and they did not feel intimidated. This indicates that court procedure in Chirundu was followed in accordance with the provisions of section 64 to 65 of the Juveniles Act Cap 53 of the laws of Zambia that stipulate the establishment and procedure of juvenile courts in Zambia.

These findings are also in line with UNICEF (2005) where it is clarified that a subordinate court may identify itself as a juvenile court by referring to itself as a juvenile court or by sitting in a different room to adjudicate juvenile cases as distinct from adjudicating cases involving adults. Once transformed into a juvenile court, magistrates are expected to create a non-threatening and participative environment and make decisions based on the juvenile's best interests. The researcher observed that, at the beginning of the handling of juvenile cases, all adults were asked to go outside the court room and only the adults who were interested parties in the juvenile cases were allowed to remain. By so doing, the juvenile offender did not feel intimidated or afraid of saying anything regarding his or her case when given a chance to do so. When asked on whether social inquiry reports done by social welfare officers/probation officers were detailed enough in order to arrive at an appropriate disposition in court, the court official had this to say:

*Probation officers are really helpful in that they provide detailed information about juvenile offenders. They ensure that they gather all information about the family background of the juvenile thereby helping the court to determine*

---

<sup>12</sup> Interview with a court official, 11<sup>th</sup> July 2017.

*the right disposition to give to the juvenile offender based on age, education, school conduct and medical history, among other factors.*<sup>13</sup>

The positive findings on social inquiry reports are in conformity with the Centre for Law and Justice et al. (2014) which states that the court seeks to obtain background information about the juvenile that enables it to handle the case in the juvenile's best interests. The court is to make this inquiry regardless of whether or not the juvenile decides to make a statement of his or her own accord. Similarly, the Beijing rule 5.1 mandates that courts should base the disposition of cases on both the offence and the circumstances of the child who comes in conflict with the law. This can only be known through carrying out a social inquiry report on the juvenile offender's social setting.

#### **5.3.4 Treatment of Juvenile Offenders After-Court disposition of their Cases**

Information on this aspect was acquired from the court official as well as the social welfare officer/probation officer. When asked about the circumstances for recommending for a custodial order in court, the social welfare officer responded as follows:

*Custodial orders are rarely recommended in court for juvenile offenders unless the juvenile is a consistent delinquent and also if they commit a very serious offence such as homicide.*<sup>14</sup>

When asked a similar question, the court official responded that:

*The court seldom imposes custodial orders on juvenile offenders. In instances when it does, it has more to do with the gravity of the offence committed by the juvenile and also the details provided by the social welfare report regarding the juvenile on say, a recurring offence. However, if it is a very serious offence committed for the first time by the juvenile or the character of the child seems to be that of one who cannot easily reform through ordinary help, then the court may consider a custodial order regardless of the recommendations of the social welfare officer.*<sup>15</sup>

The responses by both the social welfare officer and the court official indicated that custodial orders were recommended and only given in rare circumstances such as when a juvenile was

---

<sup>13</sup> Interview with court official, 11<sup>th</sup> July 2017

<sup>14</sup> Interview with social welfare officer in Chirundu, 10<sup>th</sup> July 2017.

<sup>15</sup> Interview with court official, 11<sup>th</sup> July 2017.

a consistent offender or committed a heinous offence. These findings are in line with article 3 of the UNCRC (1989) which states that institutionalization of juvenile offenders should be a measure of last resort.

When asked on the types and circumstances under which non-custodial orders are given to juvenile offenders in court, the court official had this to say:

*In most cases, a non-custodial order is given to a juvenile offender if he or she is a school going child or if she or he is a first offender, having committed a minor offence. These non-custodial orders include probation period mostly of two years. In some instances, the court fines the parents as it is known that sometimes juveniles commit crimes due to parental negligence.<sup>16</sup>*

When asked on what measures have been put in place to effectively supervise juvenile offenders given non-custodial orders in court, the social welfare officer had this to say:

*The office has put in place a schedule for counselling activity that needs to be followed by the juvenile offender. The probation officer closely monitors the juvenile offender each time he comes to report so as to ascertain whether he is reforming or not. As for an order like community service, a reporting schedule is put in place to ensure that the juvenile offender reports to the probation officer before and after carrying out the community work.<sup>17</sup>*

The researcher observed that there were several counselling and reporting schedules in the social welfare office, for probationers as well as juveniles who were still doing community service work. This is encouraged by the Centre for Law and Justice et al (2014) which have stated that if a juvenile court issues a probation order, a probation officer must supervise the juvenile for a specific period of time. This specific period of time must be no less than one year and no more than three years. The probation officer should ensure that the juvenile does not commit any more crimes during the probation period and exhibits good behaviour.

---

<sup>16</sup> Interview with the court official 11<sup>th</sup> July, 2017.

<sup>17</sup> Interview with the social welfare officer in Chirundu 10<sup>th</sup> July 2017.

## **5.4 The Treatment of Juvenile Offenders Undergoing Rehabilitation at Nakambala Approved School.**

### **5.4.1 Institutional Capacity**

When asked how many juvenile offenders the institution was accommodating and what its capacity was, one of the care givers at Nakambala explained that the school was currently accommodating forty- two juvenile offenders and that the capacity was seventy-five. In his exact words he mentioned that:

*The income is not sufficient to run the institution at full capacity because the government grant, which is about K30, 000 monthly has remained the same over the years though the cost of living keeps increasing. Hence the money is not enough to meet the institutional expenses which include food, water bills for the staff houses inclusive and electricity bills. So we just work with numbers that we can manage which do not exceed forty-five.<sup>18</sup>*

When asked on how long juveniles are expected to be at the institution in order to reform, the care giver responded as follows:

*The Juveniles Act cap 53 of the laws of Zambia mandates juvenile offenders to be institutionalized for a maximum of three years. The reformation process is, however, also highly dependent on the change in behaviour of the juvenile offender. But in most cases, juveniles are discharged before being reformed due to insufficient income as the ones who came earlier are released to give chance to the new cases coming in, that is if the number 45 is reached. It is also difficult for some juveniles to reform because they overstay in detention centres where they are mixed up with adults before coming here.<sup>19</sup>*

Juvenile offenders at Nakambala were asked on the duration of stay at the institution, four juveniles out of 12 indicated that they have been in the institution from one to six months, five said that they had been there from seven to twelve months, three of them indicated that they have stayed there from twelve to twenty-four months. None mentioned that there were in

---

<sup>18</sup> Interview with a social worker at Nakambala Approved School 21<sup>st</sup> July 2017.

<sup>19</sup> Interview with a social worker at Nakambala Approved School 21<sup>st</sup> July 2017.



the facility for over 24 months. Hence the duration of stay for juveniles was from one to 24 months. As good behaviour is one of the factors that can determine the early release of a juvenile offender from a training school, consideration should be given to keeping juveniles who are difficult to reform for a longer period of time as the process of rehabilitation is gradual. However, as the sample of juvenile offenders revealed that none of them was at the institution for more than two years, this simply meant that if more juvenile offenders were brought to the institution and went beyond 45 in number as set by institutional staff, those who went to the institution earlier may have to be released even if they have not reformed and completed their 3 year stay at the approved school. Section 78 of the Juveniles Act (1956) states that a full approved school order expires after a period of three years. However, it would appear that Nakambala was slowly moving away from making sure that juvenile offenders reform by the end of their stay to maintaining a balance on the number of juvenile offenders that the institution can cope with financially. Hence the tendency of releasing unreformed juvenile offenders in order to give chance to the new ones entering while constantly checking on the number that the institution can manage to sustain.

According to Bloch and Flynn (1956), when juvenile offenders commit serious crimes and are moved away from their communities where there are no suitable community facilities or measures to deal with their needs, they are committed to training schools. The function of the training school is that of rehabilitation, re -education and treatment of a delinquent youngster so that he is able to return to the community and be able to adjust to its demands for conformity. In this regard, if unreformed juveniles are released from a training institution like Nakambala just for the sake of giving chance to new entrants to meet the institutional budget, then this defeats the whole purpose of the existence of the institution.

#### **5.4.2 Recreational, Educational and Vocational Activities Offered**

When asked on what recreational programmes were offered at the Nakambala Approved School, the caregiver had this to say

*There are not enough recreational activities at the school but the ones which are provided are ball games such as football and volleyball. There is also a need for a television set in order to show the juveniles some educative programmes that may help to reform them.<sup>20</sup>*

---

<sup>20</sup> Interview with a social worker at the Nakambala Approved School, 21<sup>st</sup> July 2017.

When asked a similar question on educational and vocational programmes, the care giver had this to say:

*Educational and vocational programmes offered include carpentry, tailoring, bricklaying. In terms of academics, some juveniles whose level of education is unknown are mixed in a classroom and taught reading and writing skills. Others, whose school details are clear, are taken to Ndeke Basic School, which is just close to the institution, to continue with their education.<sup>21</sup>*

When asked on what recreational activities they are exposed to at the institution and if they were content with them two participants out of the 12 expressed displeasure in the recreational activities at the institution by indicating that the school only offered football. They called for the introduction of other games such as basketball, netball and volleyball. However, one juvenile offender noted that everything was alright in terms of the programmes offered at the school while the rest of the nine participants remained quiet even after rephrasing the question.

When asked on what educational and vocational activities they are exposed to at the institution and if they were content with them, nine of the twelve juvenile offenders had this to say:

*Pano pa skulu pali tailoring, carpentry, skulu ya mu class na bricklaying. Manje bvuto ni yakuti ba punzisi sib a fakila nzelo ku nchito yabo kaili bama bwela bokolewa penangu. Ma tools yo sebensesa ni ya ngono na ma programme futi niya ngono kaili vinangu ve tinga fune ku chita monga welding, plumbing, electrical engineering na mechanics palibe pano.<sup>22</sup>*

This is translated as

The school offers tailoring, carpentry, academics and bricklaying but our supervisors are not serious with their work as they come for work drunk sometimes. Materials to use in these sections are also limited. There are limited programmes offered too as some of the trades some of us are interested in such as welding, plumbing, electrical engineering and mechanics are not offered.

---

<sup>21</sup> Interview with a social worker at Nakambala Approved School, 21<sup>st</sup> July 2017.

<sup>22</sup> Discussion with juvenile offenders undergoing rehabilitation at Nakambala, 21<sup>st</sup> July 2017.

However, the remaining three juveniles did not comment on this.

On the part of recreation, as only two juvenile offenders were not satisfied with recreational programmes offered at the institution, this seems to suggest that juvenile offenders are reasonably content with the football games they are offered.

Secondly on the part of educational programmes, Bloch and Flynn (1956) indicated that the academic programme should be geared to the special needs of delinquent children. Since most delinquent children have school problems, great care is called for in gearing the academic programme to the juvenile's readiness for learning. The logic here is that school progress has meaning for the future of these children and it may serve to reduce their sense of difference from other children. From the response of the care giver on the academic's part where he mentioned that some juveniles whose level of education is unknown were mixed in a classroom and taught reading and writing skills, it gave a clear indication that learning by juveniles was not effective as juveniles at different levels of education had different levels of understanding hence mixing them in a class would not help in gearing them for effective learning. Furthermore, the majority nine of the twelve juveniles, on the aspect of academics showed discontent with the care givers as they were not always available and lacked seriousness.

Lastly, on the part of vocational programmes, Bloch and Flynn (1956) clarified that vocational programmes should teach healthy work habits and attitudes. Delinquent children must be helped to utilize all possible opportunities for building their smashed or non-existent self-esteem to give them a sense of mastery of themselves and their capacities as well as to help them to move into the community with usable skills. Nine out of the twelve juvenile offenders complained that the vocational programmes introduced to them at Nakambala were very limited and that other programmes they were interested in such as welding, plumbing, power electrical and mechanics were not offered at the school. This data thus suggests that it is very difficult if not impossible for juvenile offenders to reform and go back to the community with a skill they lacked interest in.

### **5.4.3 General Living conditions**

On the general living conditions at the institution, the caregiver interviewed had this to say,

*Generally speaking, feeding is not a problem with the current number. The bed spaces are also enough. But the juveniles have a tendency of destroying the beds. The school has therefore embarked on making metallic beds which can last longer. Fights among the juveniles are there but they have currently reduced. Sanitation is very good but sometimes the juveniles sell off the groceries they are given hence end up using pieces of mattresses and papers in place of toilet paper which blocks the system.<sup>23</sup>*

When asked about the general living conditions, ten juvenile offenders from the two focus group discussions responded that groceries and clothing were inadequate and that there was also a shortage of mattresses and blankets. Due to this shortage, some juveniles shared one bed. This, in turn, resulted in rape cases in some instances as well as arguments and bullying. These also mentioned that case workers were not always available and sometimes they would come for work drunk. However, two juvenile offenders out of the total twelve that were interviewed mentioned that there was no television set at the institution for them to watch educative programmes but generally all other things were alright.

Juvenile offenders needed to be adequately taken care of whilst undergoing rehabilitation in order to ensure reasonable level of reform. Hence caregivers responsible for the welfare of juvenile offenders at the institution need to be available when required to look into the various needs of juvenile offenders.

#### **5.4.4 Follow- ups**

When the juveniles are released, follow- ups are supposed to be made by the case workers in order to keep track of their behaviour after the reform process. The social worker interviewed at Nakambala made the following observation:

*No follow ups are made because there is lack of resources at the district level to give to the boys as start-up capital to buy instruments to use for their newly acquired life skills. Hence we get discouraged to make follow ups. Some boys come from distant places hence this makes it difficult for us to make follow*

---

<sup>23</sup> Interview with the social worker at the Nakambala Approved School 21<sup>st</sup> July 2017

*ups in the various districts because even officers in the various districts lose touch with the juvenile offenders who get discharged from here.*<sup>24</sup>

As follow-ups on juveniles who are released from the institution are not done, it is hard to know whether juveniles re-integrate well in their communities or relapse into crime. This is so given that there is loss of communication after the release of a juvenile between the social welfare officers from the various districts where juvenile offenders come from and care givers at Nakambala.

## **5.5 Summary**

Regarding the current situation of delinquency among juveniles in Chirundu, the study established that juvenile delinquency is high owing to factors such as poverty, unemployment as well as the aspect of broken homes. It has further been emerged that the main offences among juveniles in the district include theft, assault and defilement.

On the treatment of juvenile offenders during arrest, trial and after-court disposition of their cases, there is some evidence that during the arrest of juvenile offenders, there existed some forms of police brutality towards juvenile offenders which is not in line with article 16 of the ACRWC which stresses on the importance of protecting children against all forms of inhuman and degrading treatment such as torture and physical and mental injury. Furthermore, diversion was rarely considered under the juvenile justice system in the district. Bail for juvenile offenders with minor offences was rarely considered as parents, guardians and probation officers were not usually present to facilitate their release after arrest.

This is contrary to section 59 of the Juveniles Act cap 53 of the laws of Zambia which sanctions the release of juvenile offenders with minor offences on bail. Juvenile offenders and adult criminals are not separated while detained in police cells and when being conveyed to court. During trial, however, juvenile and adult offenders do not mix and the court process is handled in a child friendly manner. On court disposition of juvenile cases, a custodial order is seldom imposed on a juvenile offender which is in line with the provisions of international legal statutes such as UNCRC and the Beijing rules that stress that institutionalization of juvenile offenders should be a matter of last resort. Non-custodial orders such as community

---

<sup>24</sup> Interview with the social worker at the Nakambala Approved School 21<sup>st</sup> July 2017.

service and probation are often considered and followed accordingly just as is the case in Sweden.

As for the treatment of juvenile offenders undergoing rehabilitation at Nakambala Approved School, it appears that caseworkers are not always available to look into the welfare needs of juvenile offenders at the institution. Financial constraints have resulted in institutional staff releasing unreformed juveniles to create space for new comers so as to maintain a healthy balance on the number that institutional funds can manage to support. There is evidence that juvenile offenders are not content with the educational and vocational programmes offered at the institution and that follow-ups on juveniles released from the institution are not done hence making it very difficult to track progress with regards to skills they were taught while at the school.

## **CHAPTER SIX: ETHICAL ASSESSMENT**

### **6.1 Introduction**

The fourth objective of this study was to ethically assess the treatment of juvenile offenders in Chirundu District and at the Nakambala Approved School. The purpose of this chapter is to reflect on the data from an ethical standpoint so as to elicit insights that can be used in practical judgements about the treatment of juvenile offenders under the juvenile justice system and what should be done about it. The theoretical framework for making an ethical assessment comprised virtue/care, deontological and justice ethical theories. This chapter will now apply these theories to the research findings.

### **6.2 The Virtue Ethical perspective**

In virtue ethics, the primary focus of ethics is the character of a person. Character traits are developed through training and the acquisition of good moral habits. This is done in the communities in which people live. As people grow and mature, their personalities are deeply affected by the values that their communities prize, by the personality traits that their communities encourage and by the role models that their communities put forth for imitation. Velasquez (2009). This study showed that male juveniles were moved to the adult male cell to join with adult offenders because the juvenile male cell lacked running water. Similarly, female juvenile offenders were mixed with female adult offenders in the only adult female cell at Chirundu police. The mixing of juvenile offenders and adult offenders in detention facilities does not help juvenile offenders to reform as their conduct can be influenced by the bad moral habits of adult offenders. Velasquez (2009) further states that juvenile's developmental stage and malleability make them particularly vulnerable to criminal socialization when incarcerated with adults. Generally sensitive to peer pressure as a group, juveniles confined in the adult cells are especially likely to engage in violent behaviour and to develop identities linked to domination and control. While confined in adult facilities, these juveniles lack models for building a positive identity, honing productive life skills, and solving problems and disputes. Rather, they spend considerable amounts of time with experienced adult offenders, who may pass along new methods and techniques related to criminal activity and the avoidance of detection. Juvenile offenders may also adopt violent practices to mask their vulnerable status. In order to survive the violence they encounter in adult facilities, juveniles may attempt to fit in to the inmate culture by accepting violence as a part of daily life and, thus, becoming even more violent. Additionally, as juveniles are not

fully matured physically, cognitively, socially and emotionally, they risk being abused physically and sexually by the adult offenders. Juveniles are less capable of protecting themselves from sexual advances and assault because they lack the experiences to cope in predatory environments, and expressions of fear may be taken as indications of weakness.

Therefore, to facilitate ease of reformation of juveniles in conflict with the law, agents in the juvenile justice system need to promote the separation of juvenile offenders from adult offenders throughout the entire process of the juvenile justice system to avoid corrupting the character of the juvenile offenders. The separation is also encouraged by international legal statutes, in sections 37b of the UNCRC and rule 13.4 of the Beijing rules, as has been seen in the previous chapter.

### **6.2.1 The Ethics of Care perspective**

The ethics of care is a form of virtue ethics that focuses primarily on fostering the flourishing of human relationships and dependencies. Caring involves comprehending and being attentive to people's need for care and being taken care of as well as the carer's ability to meet the needs of the one cared for. Barnes (2012) argues that care in this context entails awareness and responsiveness to vulnerability in the power relationships between carer and care receiver. In this study, care givers include agents in the juvenile justice system such as the police, probation officers and magistrates who need to care for the care receivers who are the juvenile offenders. This is because juvenile offenders who come in conflict with the law are a particularly vulnerable group on account of their mental and physical immaturity. They thus need to be protected during the processes of arrest, trial and after-court case disposition. There is evidence in this study that juvenile offenders are sometimes subjected to forms of humiliating and degrading treatment by police at the time of arrest. Furthermore, the care givers Nakambala Approved School are not always available to respond to the psychological and physical needs of the juveniles. This is contrary to the focus of the ethics of care.

### **6.3 The Deontological perspective**

In applying deontology to the aspect of the treatment of juvenile offenders in the juvenile justice system, Immanuel Kant, in his second formulation of the categorical imperative reminds us of the difference between persons and objects. People have an absolute value, worth or dignity as rational beings. He highlights this in his second formulation of the categorical imperative by stating: 'Act in such a way that you always treat humanity whether



in your own person or in the person of any other, never simply as a means but always at the same time as an end.’ Kant further implores people to promote their capacity and that of others through education for example.

In the study, eight out of the sampled 12 juvenile offenders, when asked on their experience with police officers at the point of arrest responded that the police officers subjected them to humiliating and degrading physical treatment by slapping and dragging them as they were being arrested for having committed various offences. This is a clear violation of the dignity of the juvenile according to the second formulation of the categorical imperative which promotes the dignity of humanity. Agents of the juvenile justice system which includes police officers need to treat juvenile offenders with respect throughout the entire process of the system, as they are rationally immature beings who do not fully understand the implications of their actions when they offend.

With respect to the promotion of juveniles’ rational capacity through education that is implied by the second formulation of the categorical imperative, it was found out that juvenile offenders at the Nakambala Approved School expressed a lack of satisfaction with the limited educational and vocational programmes offered at the institution and further stated that the available programmes which included academics, carpentry, tailoring and bricklaying lacked adequate tools and attention from care givers. Furthermore, they called for the introduction of other skills such as welding, plumbing, mechanics and electrical engineering that were not being offered at the institution. The lack of diversity of educational and entrepreneurial vocational skills from which juvenile offenders could choose from is a failure to uphold what is implied by the second formulation of the categorical imperative that urges us to promote people’s rational capacities through education. Care givers at the institution need to provide juvenile offenders with a wide range of educational, vocational and entrepreneurial subjects to meet a wide range of educational and job training needs of the juvenile offenders. This is what enables juvenile offenders to increase their chances of employment and become valuable members of society upon their release and avoid recidivism.

#### **6.4 The Justice Ethical perspective**

In applying the justice ethical theory to the aspect of the treatment of juvenile offenders in the juvenile justice system, the formal principle of justice will be used to assess the findings as devised by the philosopher Aristotle that individuals should be treated equally unless they

differ in ways that are relevant to the situation in which they are involved. The material principle of justice, which is a principle that highlights factors that allow for a difference in the distribution of justice, will also be used to show why juvenile offenders need to be treated differently from adult offenders. Lastly, restorative justice, one of the components of justice will also be used in the assessment of the findings of this study.

With regard to distributive justice, research has shown that juvenile offenders below the age of 18 cannot take full responsibility for their actions because of their state of mental immaturity. This state of mental immaturity is what warrants them to be treated differently as compared to adult offenders in the juvenile justice system. In this way, the formal principle of justice is applied. The material principle of justice is applied by stating the category in which mentally immature juvenile offenders fall in order to justify unequal treatment in their favour which is vulnerability. In this study findings, juvenile offenders are humiliated by police and treated like adult criminals at the point of arrest. They are also mixed with adult criminals in adult police cells as well as when being conveyed to court. This is contrary to the understanding of traditional justice. Juvenile offenders need to be treated differently from adult offenders by agents in the juvenile justice system because they are vulnerable persons who are usually emotionally imbalanced. They need to be handled professionally in order to ensure treatment measures that will help to reform them rather than punitive measures. Juveniles thus need to be specially treated and protected from the rigours of the criminal justice system until they are old enough to take full responsibility for their actions.

With regard to restorative justice, there is need to recognise that it is a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have inflicted the harm must be central to the process. This implies that parties to a conflict are active to resolve it within themselves with the help of a mediator. However, it has been noted in this study that juvenile offenders who committed minor offences such as stealing from motor vehicles and stealing food stuffs were detained and had to wait to be taken through the formal justice process. These offenders needed to be diverted from the formal justice system immediately after arrest. This would ensure restorative justice processes of victim-offender mediation, reparation and restitution as also encouraged by the Beijing Rules 11.1 to 11.4. In this way, restorative justice provides a good way of making a juvenile offender accountable for his

wrong act. Juvenile justice agents are thus urged to consider diversionary measures in the juvenile justice system for minor offences committed by juvenile offenders in order to best resolve them from within the community by affected parties by applying the principle of restorative justice.

## **CHAPTER SEVEN: SUMMARY, CONCLUSION AND RECOMMENDATIONS**

### **7.1 Summary**

This study has assessed the treatment of juvenile offenders in the juvenile justice system in Zambia from an ethical point of view. The study presented an introduction of the paper. It also presented the background of study, statement of the problem, the aim of the study, objectives, research questions, significance of the study and methodology. The literature was reviewed from relevant books, journals and the internet regarding the treatment of juvenile offenders in various juvenile justice systems of different countries across the world.

The ethical theories used in the ethical assessment of this study have also been explained and discussed. These are virtue and care ethics, deontological and justice ethical theories. The methodology involved was of a qualitative design with an ethical component. Methods employed included in-depth interviews, observations and focus group discussions. Findings of the study were related to the literature review in that some positive and negative aspects of the treatment of juvenile offenders in the Zambian juvenile justice system were similar to those in the various international countries highlighted in the literature review. An ethical evaluation of the findings was also done by applying the above mentioned ethical theories to the findings of the study.

### **7.2 Conclusion on findings**

This study has concluded that there exist forms of poor treatment of juvenile offenders in the Zambian juvenile justice system as evidenced from the case of Chirundu District and Nakambala Approved School where juvenile offenders are mistreated by police officers at the point of arrest and those with minor offences are deprived of the option of bail. Juveniles in conflict with the law are also made to mix with adult offenders in detention facilities thereby learning bad practices that would hinder the process of reform. Diversionary measures are also rarely considered and institutionalized juvenile offenders are not given the necessary attention and equipment to use in order to assure quick reformation. Furthermore, some juvenile offenders are released from the training school before reforming in order to give chance to new cases.

### **7.3 Conclusion on Ethical Assessment**

Virtue/care, deontological and justice ethical perspectives provide juvenile offenders and agents in the juvenile justice system that include the police, social welfare officers and court personnel with insight into various aspects of ethics as regards the treatment of juvenile offenders in the juvenile justice system. Virtue ethics focus is on building a good character in a suitable environment whereas care ethics focusses on maintaining the flourishing of human relationships by encouraging vulnerable juvenile offenders to be cared for by the stronger agents of the juvenile justice system. Deontological ethical theory, on the other hand focuses on the wrongness of the poor treatment of juveniles in failing to uphold their dignity and rational capacity for development. Justice ethical theory reminds agents in the juvenile justice system of the need for unequal treatment of juvenile offenders as distinct from adult offenders due to their mental and physical vulnerability. Lastly restorative justice gives an insight of the need to explore diversionary measures such as victim-offender mediation, reparation and restitution for juvenile offenders with minor offences.

#### **7.4 Recommendations**

In view of the findings of this particular study, the following recommendations were made

- There is need for ethical awareness raising among police officers, court officials and social welfare officers about the rights and procedures with regards to the treatment of juvenile offenders in the juvenile justice system
- Government in partnership with NGO's should consider building more juvenile detention facilities in the country while maintaining existing ones in order to avoid the mixing of juvenile and adult offenders during pre-trial detention.
- Section 59 of the Juveniles Act of Zambia should be amended to make the release of juveniles on bail a mandatory requirement even for juveniles who commit serious offences unless the detention of the juvenile is proved to be in his or her interests.
- The police should, as soon as possible, inform the juveniles' parents/guardians and any responsible person of his or her arrest in order for the quick processing of the option of bail.
- The practice of diversion should be strengthened to avoid the formal justice process for juvenile offenders with minor offences. Diversion programmes should thus be expanded by training the appropriate role players, supporting service providers, developing guidelines for diversion as well as implementing standards for diversion programmes.
- All personnel, that is, probation officers, court personnel and detention officers should be trained to ensure that they are fully informed about the laws concerning juveniles.
- Government in partnership with NGO's should increase funding to juvenile rehabilitation institutions so that services such as education, health and vocational training are made available and effectively administered to juvenile offenders to ensure that international standards are met.

## REFERENCES

- Alder, C. and Wundersitz, J. (1994) *Family Conferencing and Juvenile Justice: The way forward or misplaced optimism?* Canberra: Australian Institute of Criminology.
- Andersson, S. (2011) *Alternatives to Custody for Young Offenders: The National Report on Juvenile Justice Trends*, Stockholm: Hillerbake Publishers.
- Athanassoulis, N. *Virtue Ethics*. IEP [http:// www.iep.utm](http://www.iep.utm). Virtue (accessed on 18-05-16)
- Banda, D. (2010), *A Critical Evaluation of Juvenile Access to Justice in Zambia*, Lusaka: UNZA Press.
- Barnes, M. (2012). *Care in Everyday Life: An Ethic of Care in Practice*, Bristol: Policy Press
- Beauchamp, T. and Childress, J. (2009) *Principles of Biomedical Ethics*, New York: Oxford University Press.
- Blakeman, I. (2009) *The Youth Justice System of England and Wales*, Fachu: Tokyo Publishers.
- Bloch, H. and Flynn, F. (1956) *Delinquency: The Juvenile Offender in America Today*, New York: Random House.
- Centre for Law and Justice and Cornell Law School. (2014). *Handbook on Juvenile Law in Zambia*, New York: Avon foundation for women
- CSO. (2012). *Country Report*, Lusaka: CSO.
- DCI. (2011). *Juvenile Justice*, Ontario: Blacksworth.
- Dey, M. (2014). Juvenile Justice in India. *International Journal of Interdisciplinary and Multi-disciplinary Studies*, vol 1, no. 6, pp. 64-70.
- Feinberg, J and Gross, H. (1991). *Philosophy of the Law*, Boston: Wadsworth Publishers.
- Gallinetti, J. and Kassan, D. (2006). *Child Justice in South Africa: Children's Rights*

*under Construction*, Western Cape: Open Society Foundation.

Gillon, R. (1994). *Principles of Health Care Ethics*, Oxford: Oxford University Press.

Goswami, S. and Mehra, N. (2004). *Juvenile Justice System in the United States and India:*

*Modern Scenario and Needed Modifications*, Ohio:

American Research Institute for Policy Development.

Gottesman, D. and Schwartz, S. (2011). *Juvenile Justice in the United States of America:*

*Facts for Policy Makers*. Columbia: Columbia University Press.

Hagen, B. (2013). *Juvenile Justice in the U.S*, Chicago: Logan Sport.

Hoffmann, S. and Baerg, C. (2011). *Juvenile Justice in Ghana*, Accra: Commonwealth Human Rights Initiative.

James, B. (2012). *Juvenile Justice Systems in SADC countries:*

*Activities from 2005 to 2011*, Pretoria: Woodsreed.

Jiyuan, Y. (1998). *The Ethics of Confucius and Aristotle: Mirrors of virtue*, Hawaii: University of Hawaii Press.

*Juveniles Act Cap 53 of the laws of Zambia* (1956)

Kaime, T. (2009). *African Charter on the Rights and Welfare of the Child: A Socio-Legal Perspective*, Pretoria: ABC Press.

Kariuki, J. (2010). *Towards a Child Rights Approach: A Comparative Analysis of the Juvenile Reform Process in Kenya and South Africa*, Budapest: Central European University.

Malaba, C. (2010). *Juvenile Justice in Uganda*, Kampala: Kerient Press.

Moore, M. (2010). *Review of Ugandan Remand Homes and the National Rehabilitation Centre*, Kampala: OYBC Press.

Mumba, D. (2011). *The Juvenile Justice System in Zambia vis-a-vis the International protection of Children's Rights*, Lusaka: UNZA Press.



- Mushitu, C. (2011). *Child Justice Forum: How it has overseen the implementation of the transformation in the Child Justice Administration in Zambia*, Lusaka: UNZA Press.
- Nash, R. (2013). *Life's Ultimate Questions: An introduction to Philosophy*, Boston: KBCH.
- National Institute of Justice (2012). *Juvenile Crime, Juvenile Justice: The Juvenile Justice System*, Washington: National Academy of Sciences.
- Nyantakyi, M. (2013). *Rethinking Juvenile Justice in Ghana: Proposing Practical Measures through a Child Rights Based Approach*, The Hague: Institute of Social Studies.
- Pollock, J. (2004). *Ethics in Crime and Justice*, Belmont: Wadsworth.
- Potkanski, M. (2001). *Juvenile Crimes in Austria and Sweden: Challenges of and Policies of Tracking Youth Crime*, Stockholm: Eagle Eye.
- Ramirez, F (2008). *Juvenile Delinquency. Best Practices and Promising Approaches*, Les cruces: GP/Solo Press.
- Reyneke, M. (2011). *Process and Best Practices at One Stop Child Justice Centres in South Africa*, Cape Town: Kempt Press.
- Robins, S. (2009). *Juvenile Justice in Sierra Leone, Tanzania and Zambia*, Pretoria: ISS Publication.
- Robson, C. (2007). *How to do a Research Project*, Malden: Blackwell Press.
- Sander, S. *Care Ethics*. IEP <http://www.iep.utm.edu/care> (accessed on 18-04-17)
- Scott, E. and Steinberg, L. (2008). *Rethinking Juvenile Justice*, Cambridge: Havard University Press.
- Simaluwani, E. (1997). The Criminal Process in Juvenile Courts in Zambia. *Zambia Law Journal*, vol. 29, pp.71-78.
- Taylor, L. (2002). Teaching Philosophies Reconsidered. *International Journal for Academic Development*, vol 23, no. 5, pp. 12-25.

The National Academic Press. (2001). *Juvenile Justice in the United States*, Washington: Word Wall Publication.

UN. (2003). *World Youth Report*, Vienna: UN Publication.

UN. (2006). *Handbook on Restorative Justice Programmes*, New York: UN Publication.

UNCRC. (1989).

UNICEF. (2005). *Child Justice in Zambia*, Lusaka: UNICEF

UNICEF. (2007). *The Rights of Children in Conflict with the Law*, Podgorica: Montenegro.

UNICEF. (2009). *Working with Children in Conflict with the Law: A Summary for Professionals in the Child Justice System in the Eastern Caribbean*, Barbados: Christ Church.

Velasquez, M. *Philosophy: A Text with Readings*. 2009, Boston: Wadsworth Cengage Learning

WHO. (2005). *Health and Human Rights*, Copenhagen: DK Publishers.

**APPENDICES**

**APPENDIX 1**

**INTERVIEW SCHEDULE FOR A SOCIAL WORKER AT  
NAKAMBALA APPROVED SCHOOL**

1. What is your gender?  
Male [ ] Female [ ]
2. How old are you [ ]
3. What is your position at this institution?.....
4. How long have you been working at this institution?.....
5. What recreational activities are offered at this institution?.....  
.....
6. What educational and vocational programmes are offered at this institution?.....  
.....
7. What are the sources of income for the  
institution?.....  
.....
8. a. Are the sources of income mentioned in Q7 sufficient to sustain the institutional  
needs? Yes [ ] No [ ]  
b. Give reasons for your answer.....  
.....  
.....
9. How many juvenile offenders is the institution currently  
accommodating?.....
10. What is the capacity of children that the institution is supposed to  
accommodate?.....
11. How long is a juvenile offender expected to be here in order to reform?.....  
.....
12. What can you say about the general conditions of living at the institution?.....  
.....  
.....
13. a. Do the juvenile offenders who pass through this institution, reform by the end of  
their stay? Yes [ ] No [ ]  
b. Give reasons for your answer.....  
.....  
.....
14. a. Are there any follow ups that are made on juveniles released from the institution?  
Yes [ ] No [ ]  
b. Give reasons for your answer.....  
.....

**APPENDIX 2**

**FOCUS GROUP DISCUSSION GUIDE FOR JUVENILE OFFENDERS  
AT NAKAMBALA APPROVED SCHOOL**

1. a. How long have you been at this institution?  
1 to 6 months [ ] 7 to 12 months [ ] 12 to 24 months [ ] over 24 months [ ]
2. Do you understand why you are here? .....  
.....  
.....
3. What recreational activities are you exposed to at this institution? .....  
.....  
.....
4. a. What educational and vocational programmes are you offered here? .....  
.....  
.....  
b. Are you content with these programmes? Yes [ ] No [ ]  
c. Give reasons for your answer.....  
.....  
.....
5. What is your comment about the general living conditions at the institution? .....  
.....  
.....  
.....
6. How available are the care givers to attend to your various needs at the institution? .....  
.....  
.....
7. What changes would you like to see in the running of this institution? .....  
.....  
.....
8. Are there any good things you like regarding the treatment you receive from care givers and fellow peers at this institution? .....  
.....  
.....
9. What are the things you dislike regarding the treatment you receive from care givers and fellow peers here? .....  
.....

**APPENDIX 3**

**INTERVIEW SCHEDULE FOR A POLICE OFFICER- CHIRUNDU**

- 1 What is your rank at this police station? .....
- 2 What is your gender?  
Male [ ] Female [ ]
- 3 What are the common offences among juveniles in Chirundu? .....  
.....  
.....
- 4 How do you handle juvenile offenders during arrest and investigation process?  
.....  
.....  
.....  
.....
- 5 What is the kind of transport used to take juvenile offenders to court? .....
- 6 Are juvenile offenders separated from adult offenders during;  
a. Detention Yes [ ] No [ ]      b. conveyance to court Yes [ ] No [ ]  
    c. Court process Yes [ ] No [ ]
- 7 Give reasons for your answers in Q6.....  
.....  
.....
- 8 a. Are there separate cells for the detention of juvenile and adult offenders?  
Yes [ ] No [ ]  
b. Explain your answer.....  
.....  
.....
- 9 In most cases, how long are juvenile offenders detained in the police cells pending  
court proceedings? .....
- 10 a. Is diversion process considered when handling juvenile offenders who have  
committed minor offences? Yes [ ] No [ ]  
a. Give reasons for your answer.....  
.....  
.....

**APPENDIX 4**

**FOCUS GROUP DISCUSSION GUIDE FOR JUVENILE  
OFFENDERS DETAINED IN POLICE CELLS IN CHIRUNDU**

1. How long have you been detained in this facility?.....
2. What kind of offence did you commit?.....
  
3. a. Were your parents or guardians notified of your arrest by police? Yes [ ] No [ ]
4. b. Give reasons for your answer.....  
.....  
.....
  
5. a. Was a Social Welfare Officer/Probation Officer present to witness your arrest?  
Yes [ ] No [ ]
- b. Give reasons for your answer.....  
.....  
.....
  
6. a. Have you appeared before the court? Yes [ ] No [ ]
- b. Give reasons for your answer.....  
.....  
.....
  
7. a. Are there any good things you liked about the way police officers, probation officers and the magistrate court personnel treated you? Yes [ ] No [ ]
- b. Give reasons for your answer.....  
.....  
.....
  
8. a. Are there any bad things you noted regarding the treatment from police officers, probation officers and magistrate court personnel? Yes [ ] No [ ]
- b. Give reasons for your answer.....  
.....  
.....

**APPENDIX 5**

**INTERVIEW SCHEDULE FOR A SOCIAL WELFARE OFFICER IN  
CHIRUNDU**

1. What is your rank in this organization? .....
2. What is your gender?  
Male [ ] Female [ ]
3. What are the main causes of juvenile delinquency in the district? .....  
.....  
.....
4. a. How often are you notified when juvenile offenders are arrested by the police?  
Very often [ ] Often [ ] Not often [ ] Not notified at all [ ]  
b. Give reasons for your answer.....  
.....
5. a. How frequent do you conduct inspections in juvenile detention facilities in the  
district? Very frequent [ ] Frequent [ ] Not Frequent [ ] Not at all [ ]  
b. Give reasons for your answer.....  
.....  
.....
6. a. What is your basis for recommending for a custodial order to be given to a juvenile  
offender in court? .....  
.....  
.....  
b. How frequent do you recommend for this?  
Very frequent [ ] Frequent [ ] Not Frequent [ ] Not at all [ ]
7. What measures have you put in place to effectively supervise juvenile offenders given  
non-custodial orders such as
  - a. Probation.....  
.....  
.....
  - b. Community service.....  
.....  
.....
8. Do you consider diversion when handling juvenile offenders in the juvenile justice  
system? Yes [ ] No [ ]  
b Give reasons for your answer.....

**APPENDIX 6**  
**INTERVIEW SCHEDULE FOR A MAGISTRATE COURT**  
**OFFICIAL IN CHIRUNDU**

1. What is your rank? .....
2. Station.....
3. What is your gender?  
Male [ ] Female [ ]
4. Number of years in service  
Less than 10 years [ ] Between 10 and 20 years [ ] Above 20 years [ ]
- 5 a. How frequent are juvenile cases heard in court?  
Very frequent [ ] Frequent [ ] Not Frequent [ ] Not at all [ ]  
b. Give reasons for your answer.....  
.....  
.....
- 6 a. Are juvenile and adult cases heard in the same court room at the same time?  
Yes [ ] No [ ]  
b. Give reasons for your answer.....  
.....  
.....
- 7 a. Are social inquiry reports detailed enough to ensure that the welfare needs of juvenile offenders are considered when disposing their cases in court?  
Yes [ ] No [ ]  
b. Give details for your answer.....  
.....  
.....
- 8 If the answer to Q7 (a) is in the negative, state whether this has a bearing on providing a suitable court order for a juvenile offender in court  
.....  
.....  
.....
- 9 State the circumstances under which custodial orders are given to juvenile offenders in court.....  
.....  
.....
- 10 State the circumstances under which non-custodial orders are given to juvenile offenders in court.....  
.....  
.....
- 11 State the types of non-custodial orders that the court considers for juveniles in conflict with the law.....



.....  
.....  
12 a. Is there any special training that you have undertaken with regards to the handling  
of juvenile offenders during the court process? Yes [ ] No [ ]

b. Give details for your answer.....  
.....