

**PERSPECTIVES ON THE EFFECTIVENESS  
OF A ZIMBABWEAN YOUTH JUSTICE FRAMEWORK  
IN MEETING THE NEEDS OF BOTH YOUNG  
OFFENDERS AND SOCIETY**

**Sifiso Dzadya**

---

A thesis submitted in partial fulfilment of the requirements  
for the Degree of Master of Social Practice  
UNITEC New Zealand, 2016



## DECLARATION

**Name of Candidate:** Sifiso Dzadya

**This Thesis entitled:** Perspectives on the effectiveness of Zimbabwean youth justice framework in meeting the needs of both young offenders and the society. submitted in partial fulfilment for the requirements for the Unitec degree of:

Master of Social Practice

### CANDIDATE'S DECLARATION

I confirm that:

- This Thesis Project represents my own work;
- The contribution of supervisors and others to this work was consistent with the Unitec Regulations and Policies.
- Research for this work has been conducted in accordance with the Unitec Research Ethics Committee Policy and Procedures, and has fulfilled any requirements set for this project by the Unitec Research Ethics Committee.

Research Ethics Committee Approval Number: No UREC 2014-1031

Candidate Signature: S. Dzadya

Date: 29.02.2016

A handwritten signature in black ink, appearing to read 'S. Dzadya', with a horizontal line underneath.

Student number: 1384967

## **ABSTRACT**

There is growing evidence that Zimbabwean current youth justice is failing to meet the needs of the young people and their families. Trying to balance the welfare model and the criminal justice model in practice presents problems to a country already engulfed with political and economic problems that has brought the country onto its knees. This study explores the views or perspectives of youth practitioners regarding the effectiveness of youth justice in Zimbabwe. In order to place this research within the Zimbabwean context the participants are Zimbabwean living in New Zealand who have worked in Zimbabwe or New Zealand with young people in conflict with the law. The literature review put this study in a broader context by presenting a historical overview of youth legal system in Zimbabwe. The University of Zimbabwe is encouraging the researchers to focus on the topic. Zimbabwean youth legal systems, models, politics, international laws and practice is discussed and analysed in this study. The New Zealand historical legal context is also used to give the Zimbabweans the context in which the models that were suggested to be adapted by Zimbabwe were operating on.

To have a full picture of the problems in the youth justice in Zimbabwe, there was a need for the participants to define the word justice and law as to be able to evaluate whether there is justice in the Zimbabwean youth laws. However the findings indicated that different participants defined the word justice differently. To some, law and justice is one and the same thing but some see justice as independent from law as not all laws are just but because they are the laws have to be followed regardless of their unfairness or immorality. This ambiguity in definition of justice and law is also reflected in the related literature for the study.

The study showed that the context in Zimbabwe changed in terms of social structures, economic status and political climate. But the youth legal system remained the same, therefore resulted in application of non contextual youth justice models that are one shoe fits all and therefore Zimbabwean youth laws and court processes are analysed and discussed from historical to modern perspective with the focus of finding working solutions. The Zimbabwean legal system cannot be

discussed without looking at the history of its formation. Zimbabwean law has a parallel system, a constitutional law and customary law. The foundation of the Zimbabwean constitutional law is based on the Roman Dutch law which was brought to Zimbabwe from Cape of Good Hope during the time when Zimbabwe was colonised by Britain. This explains why people of Zimbabwe feel distanced from their own legal system. Constitutional Law is viewed as the law of the state enforced by the state to serve the interest of those in power rather than majority in Zimbabwe. Therefore reforms are suggested in this study so that the law will meet the needs of the public of Zimbabwe Constitutional. Laws can be changed over time to remain relevant to the changing context but not much has been changed in the Zimbabwean Constitutional Law from 1980 when the country gained its independence.

The Zimbabwean Youth Development Policy on paper reflects the positive move in meeting the needs of the young people. International laws like CRC, ACRWC, UDHR and Beijing Rules were adopted and rectified. But despite all these positive developments a gap still exist between practice and theory in Zimbabwean legal processes, resulting in a poor youth justice management system. This study will not provide the solutions to the problems but it will make suggestions for reform that the researcher hopes might provoke the interest for other researchers to embark on the subject. It is also hoped that the policy makers and the politicians might consider the recommendations in this research and other research papers to follow to make amendments in policies and laws that will benefit the young offenders in Zimbabwe. The research will also add to youth justice resources that are lacking in Zimbabwean libraries and on line. This explains why some of the literature used might be older, the researcher used what is available.

## **ACKNOWLEDGEMENTS**

I would like to extend my greatest appreciation to the following people who made this project possible. The participants, who sacrificed their weekends and evenings to give interviews, making it a priority in their busy schedules. Their enthusiasm and courage to be part of what they see as a positive step towards reforming the youth justice framework and practice for the benefit of the young offenders cannot be explained by words. The participants had a special attachment to this project, they owned it and they are all looking forward to seeing it completed and available online so that everyone can have access to it.

I would like to thank you the wives of the husbands that participated in this project for allowing me to have private and confidential discussions with their husbands. I greatly appreciate this, without their permission, this project would not have succeeded.

My sincere thanks goes to my supervisors: Dr Helene Connor, my Principal Supervisor and Ms. Sue Elliott, my Associate Supervisor who always made herself available to meet me and devoted her time to reading my work. Both of them supported this research in every stage by giving me positive feedback and constructive suggestions. Their empathy, patience and support during my injury in the middle of research, my sister's funeral and when my mother suffered from a stroke that left her partly paralysed were enormous.

I would like to acknowledge my work team leaders and colleagues who supported me throughout this journey. Ian Gabriath who consistently approved my leave when I needed time off to concentrate on my research project and encouraged me to keep on going even when it was tough. Paul Severn, who gave me an ear when I needed to talk and gave me the hope by just believing that I could do it. By simply asking me where I was with my project and asking me to talk to him when I needed to, gave me the motivation I needed to push to the next stage of the research project.

I would like to acknowledge my mother Sophy Madeya, and my late sister Grace Moyo nee Siziba and the whole Madeya family for their long distance support and encouragement. Grace wanted to be the first one to read the published thesis but passed away on the 12<sup>th</sup> April 2014. I also extend many thanks to my father in-law

Wilfred Dzadya senior for his wealth of experience in criminal and juvenile justice in Zimbabwe.

Last but not least I would like to acknowledge my family for their endless support, their resilience when tempers were high, and their inspirational words when I was feeling low, when I was not making any progress and their understanding when I simply had no time for them. I want to thank my husband Wilfred Dzadya Jr, my son Takudzwa and my daughter Nomvuyo Dzadya.

<b>TABLE OF CONTENTS</b>	<b>PAGE</b>
Title	
Declaration	i
Abstract	ii
Acknowledgements	iv
Table of contents	vi
List of Tables and Figures	vii
Abbreviations	viii
Glossary	ix
Prologue	1
<b>CHAPTER ONE: Introduction</b>	
Introduction	3
1.1 Methodological issues	4
1.2 Aims and objectives of the research project	4
1.3 Outline of the Research	5
1.4 Background Information	6
1.5 Traditional system versus modernisation in youth justice	13
Summary	15
<b>CHAPTER TWO: Literature Review</b>	
Introduction	16
2.1 Defining and Contextualizing Key Terms	16
2.2 History of Zimbabwean Constitutional Law	26
2.3 Parallel Laws	28
2.4 Discipline and Punishment	29
2.5 How is Zimbabwean Youth Justice Structured	29
2.6 Historical and Social Context of the New Zealand 's Legal and Penal System	47
2.7 New Zealand Legal Structure	52

2.8 The 1989 Children Young Persons and Their Families Act	58
2.9 Striking a balance between Justice and Welfare	59
2.9.1 What impact did reforms have on New Zealand Youth Justice	63
2.9.2 How does the Zimbabwean Practice compare with New Zealand Practice	64
Summary	67
<b>CHAPTER THREE: Research Methodology</b>	
Introduction	69
3.1 Qualitative Approach	69
3.2 Description of the sample and recruitment	70
3.3 Interview process	73
3.4 Focus Group	77
3.5 Data analysis	78
3.6 Ethics	79
Summary	80
<b>CHAPTER FOUR: Presentation of the research findings</b>	
Introduction	82
4.1 Discursive construction of the definition of Youth Justice	82
4.2 Limited public knowledge on Youth Justice	84
4.3 Problems in the legal framework	85
4.4 Lack of involvement of the victims and parents	87
4.5. Spirituality and youth justice	89
4.6 Law and politics	90
4.7 Police corruption and violence	93
4,8 Role of professionalism	94
4.9 Lack of Resources	96
4.9.1Changes in the community focus	98
4.9.2 What can be learnt from New Zealand Youth Justice	100
Summary	104
<b>CHAPTER FIVE: Analysis and discussion of data</b>	106

Introduction	106
5.1 How participants defined youth justice	110
5.2 Limited public knowledge on youth justice	113
5.3 Problems with youth justice framework	113
5.3.1 Spirituality and youth justice	115
5.4 Application of international laws	118
5.5 Lack of victim support	119
5.6 Politics interfering with law	120
5.7 Police misuse of power	121
5.7.1 Role of professionalism	123
5.7.2 Lack of resources	123
5.7.3 Changing focus	124
5.8. New Zealand youth justice	124
Conclusion	126
Recommendation	130
References	133
Appendices	149
<b>List of tables and Figures</b>	
Table 1	71
Table 2	72
Table 3	77
Fig 1	20
Fig 2	30

## Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
CRC	Convention on the Rights of the Child.
DCIZ	Defence for Children International in Zimbabwe
DPGZ	Dutch Project Group in Zimbabwe
FGC	Family Group Conferencing
ICCPR	International Covenant on Civil and Political Rights
PTDZ	Pre Trial Detention in Zimbabwe
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations Children's Emergency Fund
UPR	Universal Periodic Review
WHO	World Health Organisation
ZACRO	Zimbabwe Association for Crime Prevention and Rehabilitation of Offenders.
Zanu PF	Zimbabwe African National Union Patriotic Front.
ZCPEA	Zimbabwe's Criminal Procedure and Evidence Act
ZHRF	Zimbabwe Human Rights Foundation
Zimstats	Zimbabwe statistics

## GLOSSARY

Enkundleni	A place of meeting for important discussions
Ingozi	Spirit of revenge
Iwi	The clan
Kalanga	A Zimbabwean tribe found in Plumtree region
Karanga	A Zimbabwean tribe found in Masvingo region
Mai	Mother
Manyika	A Zimbabwean tribe found in Manicaland region
Muroora	Daughter in law
Ndebele	A Zimbabwean Tribe found in Matabeleland
Shangani	A Zimbabwean tribe found in Chipinge area
Shona	A Zimbabwean tribe found in Mashonaland
Tikanga	Values
Ubuntu	An African moral concept meaning I am because you are.
Vhenda	A Zimbabwean tribe found in Beitbridge region
Whakapapa	Genealogy
Whanau	Family
Zezuru	A Zimbabwean tribe found in the areas surrounding Harare region

## PROLOGUE

People embark on research projects because they are motivated to do so by different things including their personal interest and curiosity, work experience, public demand and corporate needs just to name a few. I was motivated by all of the above. I am a youth justice practitioner, working with young offenders under custodial supervision of Child Youth and Family which is a department under the Ministry of Social Development in New Zealand. Prior to joining New Zealand Youth Justice System I worked as a high school teacher for 14 years, teaching students aged between 14 and 17 years. I started my teaching career after graduating from The University of Zimbabwe with a Bachelor of Arts degree in 1995. My first job was in Bulawayo in Zimbabwe where I taught both at low and high decile schools. I then moved to Harare to Seke Three High School and later transferred to Morgan High School. My interest in juvenile justice developed when I was at Morgan High School as its sphere of influence was Acardia and Mbare, areas classified in Zimbabwe as the worst as far as youth criminal activities are concerned. It was so bad that I always preferred to drive in and out of the gate with my car windows closed and doors locked. For all the two years I worked in this school I dreaded walking out of the school gate in fear of being mugged or robbed by the young people. In August 2002 I moved to New Zealand to the South Island where I initially worked in a dairy farm in Invercargill for three months while processing a teaching registration certificate. It was a big change from the classroom environment to a milking shed, where swear words were used as a prefix and suffix of every instruction given. This prepared me well for my current job where “fuck you black bitch” may not mean anything more than a simple modest response to a greeting in the morning. In December of 2002 I moved to Christchurch where I immediately got a teaching job in Avonside Girls High and after two years I moved to St Bedes College in Red Wood. In 2008 my family moved to Taranaki and on my second day of arrival I got a teaching job in Patea Area School. Teaching in this school made me realise the need to look at the offending of the young people in a holistic way. As this town had no source of income except the school and the gas station, the young people indulged in criminal activities not by choice but as a way of survival. This is a place where I learnt that people are identified by the colours they wear rather than personal

identity. It was a time I thought of changing my career from teaching to be a youth justice practitioner and in 2010 I joined Youth Justice North in Auckland where I am working up to the present day. Risk assessment and providing interventions that reduce re offending is the main objective of the job. The challenge that youth practitioners are battling with is how to balance the social welfare models and criminal justice models in a way that young offenders are made accountable for their crimes but at the same time keeping them safe from any harm and caring for them. The interest of pursuing what works with the young people and what is not working made me think about the youth justice in Zimbabwe, my country of origin where youth crime is skyrocketing exacerbated by a political affiliated militia group commonly known as Green Bombers. The youth militia trained to deploy any sort of violence for adults' political gains in power. Over the years the country has lost fine statesmen at the hands of this youth militia called Green Bombers. Due to economic hardships in Zimbabwe young people find themselves in the streets and unemployed. In such a state they become so vulnerable to physical, sexual and psychological abuse to the extent that they can do anything to get the next meal. I realised that the youth commit crimes not because they were born with a recidivist gene but the environment they are brought in forces them to indulge in criminal activities. Reading the University of Zimbabwe Faculty of Law profile page, where the Dean of the Faculty Mr. Emmanuel Magade (2013) listed problems of juvenile justice in Zimbabwe as a current research focus, and Kubatana (2011) expressed the need for reform in juvenile justice models in Zimbabwe was the final push for me to take this study opportunity. As a member of the Ndebele group I grew up in the Matabeleland region, where many of my friends never lived with their parents for the majority of their childhood and this created a problem in the community. Grandparents were too old to provide effective parenting to their grandchildren. As a result such young people had a high rate in school dropouts and early pregnancies. This reduced their chances of getting meaningful employment as they did not have any qualifications. Most of them illegally crossed the boarder to South Africa in search of employment. Once in South Africa the drive to make money quickly to support their children left with frail grandparents in Zimbabwe drove them to be criminals. This might suggest there is correlation between the parenting style and increase in number of youth crimes.

# CHAPTER ONE

## Introduction

This research study investigates the effectiveness of Zimbabwean youth justice in meeting the needs of the young people in Zimbabwe. Information was drawn from interviews with youth practitioners with experience of the Zimbabwean youth justice system who are now living in New Zealand. The context will play a major role in this research project and this is the reason why the researcher chose to interview the participants that are Zimbabwean who have a full appreciation of the Zimbabwean context. The main purpose of this study was to highlight the problems as seen by Zimbabweans who have been exposed to New Zealand youth justice and come up with suggestions on how the Zimbabwean youth justice can be improved. The research will not make a direct comparison of Zimbabwean youth justice and the New Zealand youth justice as that might need a full paper on its own, but it will look at the models used in New Zealand that have got the potential of being adapted to Zimbabwean youth justice and explore ways of modifying it in the context. This research is expected not only to raise awareness of the need to change policies but also give the people of Zimbabwe evidence based possible models that have been tried and tested in New Zealand. It has to be noted that there is little recent research on this topic. Therefore the literature review draws upon the material which is available, some of it may appear outdated but that is what is available.

Youth justice is an area that has attracted very little interest from Zimbabwean researchers and politicians in the past. Not much research has been done in this area and the public knowledge of the Zimbabwean youth justice is very limited, only the professionals that worked in that area or similar departments can discuss eloquently about the youth justice framework and its application in practice (Lesizwe, 2004). Therefore the researcher explored the perception and experiences of the Zimbabwean professionals on how the current youth justice system in Zimbabwe meets the needs of the young people and their families. This is explored in order to come up with suggestions on how the system can be improved from the participant's point of view. This piece of work cannot reform the youth justice framework or practice but the researcher hopes that it can raise

issues that will motivate other academics to do more research on the topic and also politicians to consider the possibility of reforming the law and policies of youth development. The research questions paramount to this study are as follows: What is the participant's understanding of youth justice in Zimbabwe? How does Zimbabwean youth justice framework compare with New Zealand youth justice framework? Do they think anything should be changed in the Zimbabwean youth justice system and how? What are the contextual challenges that might hinder the reforms? The research project looked at the root cause of the inefficiencies of the youth justice in Zimbabwe as perceived by the participants. As the literature review indicates, in theory there is very little difference in New Zealand framework and that of Zimbabwe. The question is why there is a big gap in application of youth justice between Zimbabwe and New Zealand. The impact of the context on the delivery of effective youth justice was explored.

### **1.1 Methodological issues**

Qualitative methods were used to create an in-depth analysis of the impact of the Zimbabwean youth justice system and raise awareness of the circumstances of youth who are in conflict with the law in Zimbabwe. Through the use of semi structured narrative interviews with the practitioners who have been involved in the Zimbabwean youth justice system in the past 20 years and living in New Zealand, possible solutions were identified to bridge the gap between the status quo and desired practice. The interviewees were not only asked to relate their experiences but also to suggest ways of bridging the gap between practice and theory. A focus group made up of three Zimbabwean elders living in New Zealand and the researcher as part of the group discussed and clarified cultural issues that were raised in the interviews.

### **1.2 Aims and objectives of the research project.**

The research study was aimed at finding ways of narrowing the gap between youth justice practice and the theories underpinning the youth justice framework in Zimbabwe. Looking at the root cause of the inefficiencies or ineffectiveness of the youth justice in Zimbabwe as perceived by the participants, future researchers can focus on how the system can be modified. As the literature review indicates in theory there is very little difference in New Zealand framework and that of

Zimbabwe. The impact of the context is explored and how the models of law reform can be modified to suit the Zimbabwean context in a way that the young people will feel they are getting justice from the system.

### **1.3 Outline of the thesis**

This thesis is structured as follows: Chapter one provides the context of the research, starting with the demographic overview of Zimbabwe in relation to socio-economic profile of the country. An assessment of the employment rate and opportunities for young people in the country is highlighted in connection with an increase in youth crime. Other factors such as urbanisation, literacy level, brain drain and family structure will be briefly discussed to give the readers the context of youth justice in Zimbabwe. The impact of the brain drain and exodus of young parents to neighbouring countries and overseas will be highlighted in this chapter.

Chapter two consists of a comprehensive literature review and discusses the definition of youth justice and law and links it to the Zimbabwean context, the legal structure of Zimbabwean youth justice and the role of each element within it. This chapter also looks at the theories and models underpinning the youth justice framework in Zimbabwe. It will compare the framework with that of New Zealand which will help to analyse its effectiveness. The international laws that Zimbabwe signed and ratified will be explored in the context of current practice in Zimbabwe. The literature in this chapter will expose the gap between the current practice and desired practice therefore justifying the need for embarking on this research study.

Chapter three presents the research methodology, which covers the paradigm, approach and methods. It will discuss research design, methods of data collection, interviews, data analysis and ethical issues. The limitations of research and logistics of the project will be part of this chapter.

Chapter four will present the findings of the research from Zimbabwean professionals living in New Zealand and particularly in Auckland. It will cover the demographic details of the participants and their level of education. Themes that emerged from the interviews will be discussed at length.

Chapter five will provide the analysis and discuss the findings presented in the previous chapters. This discussion will be linked to the literature review and other issues of interest. Findings will be analysed in relation to the main research question. It will conclude the research and suggest what needs to be done in future to improve youth justice in Zimbabwe.

In this research the following words will be used interchangeably:

Youth and young people

Researcher and I

Youth justice and juvenile justice

#### **1.4 Background information**

To complete a comprehensive research on the effectiveness of youth justice in Zimbabwe there is a need to look at the context and how it impacts on youth development and youth justice. The demographic structure, family structure, parenting skills, literacy level of people in Zimbabwe, effects of urbanisation on families, how brain drain affect the development of young people, the structure of Zimbabwean legal system and the way people of Zimbabwe define youth and justice will be explored in detail in this study as the context plays an important role to youth development.

#### **Context**

According to Foucault (1977) discipline and punishment in any society is contextual and changes with changing culture and philosophies of the time. Penalties given depend on the societal forces and the political leaders of the time. Therefore looking at the history of the world's punishment and discipline, before 18<sup>th</sup> century punishment was a public ritual that required audience (Foucault, 1977). The kings used public executions as a way of re-establishing their power to the subjects and instil a sense of fear into the public and deter any potential offending from the subjects. In the 20<sup>th</sup> century this changed with the coming of the philosophy of imprisonment where it was seen as of public interest to remove the unfit and deemed dangerous from the eyes of the society and be locked away and be forgotten (Workman, 2011). Prisoners had no right at all, the main idea of

keeping them away from the society was not to rehabilitate them but to protect the society from the dangerous and unwanted people in the society (Foucault, 1977). The 21<sup>st</sup> century saw some philosophical changes from prisoners without rights at all to prisoners with a certain degree of rights. Therefore context plays a bigger role in understanding the application of law in any country (Workman, 2011). In Zimbabwean context some of the world suggested philosophies in youth justice cannot be applicable due to economic situation of the country. The country does not have the money to provide youth justice facilities that will promote sound rehabilitation programmes. This explains why some of the young people are found mixing with the adults in prison.

Zimbabwe is a land locked country, located in the heart of the southern Africa with a 2014 population estimate of 13,771, 721 of which 2 865 131 are youth (Zimbabwe National Statistics Agency (Zimstats), 2012). Zimbabwe covers a total area of 386,669 square kilometres (150,804square miles (Zimstats, 2014).It is surrounded by Botswana on the west, Zambia on the north, Mozambique on the east and South Africa on the south (Zimstats, 2012). The country is, distinctively divided into two major regions *Mashonaland* (Shona speakers) and *Matabeleland* (Ndebele speakers) (Zimbabwean culture, 2013). These two regions are further divided into eight political administrative provinces.

At present the country is engulfed in an AIDs pandemic virus, this has dramatically lowered the life expectancy. A 2012 census showed the total number of people killed by the Aids virus was estimated to be 64000 (Zimstats, 2012). The country has a death rate of 10. 62 deaths /1000 population and life expectancy of 55.68 years (Zimstats, 2014). Since the mid -1990s this has affected the distribution of population by age which has a negative impact on the country's economic development (Dominique & Wekwete, 1997).

The youth in Zimbabwe is estimated to be 22.3% of the total population and this age group falls under the ages of 15 to 24 years. This is the age group of significance importance in any country as they are the drivers of the country's future economy. Every country needs to invest significantly in developing this age group (Richards, 2011). The youth dependency ratio in Zimbabwe is too high compared to independent support. The youth dependency ratio according to 2012

statistics is 68.1 %. This suggests that most of the young people between the age of 15 and 24 are not employed. This discrepancy creates a problem in youth development as the adolescence is a stage where long lasting behaviours are learnt and sustained therefore very crucial in the stage of human development (Richards, 2011).

The country has transformed from having bigger families of 8-12 children to 3 children born per woman over 50 to 60 years (Zimstats, 2014). This compares well with fertility rate of women in developed world. The average school life expectancy is 9 years with the majority of the young people above 15 with developed reading and writing skills (Zimstats, 2014).

The literacy rate of the country stands at 83.6 percent, but this has dropped from the previous estimate of 93% in 2008 (Zimstats, 2014). This drop is due to the fact that people with degrees in Zimbabwe are one of the poor groups of population in Zimbabwe. Due to the collapse of economy, formal employment has dropped dramatically (Zhangasha, 2014). Informal sector is quickly replacing formal sector. The informal sector is run and controlled by those with political affiliation or by corrupt and uneducated people who become millionaires overnight through unlawful activities (Zhangasha, 2014). Therefore the value of education has been replaced by the philosophy of street wise survival which does not need any form of education (Zhangasha, 2014). The growing of informal sector in Zimbabwe comes with so much corruption that promotes black market and taxpaying avoidance. This reduces the country's potential revenue to already dwindling economy.

Zimbabwe uses three major languages, Shona with different dialects and Ndebele being the indigenous languages as well as English, being the official language (Zimbabwean Culture, 2013).

### **Brain drain and Labour migration**

The brain drain is worsened by the economic and social problems in the country as many professionals leave the country for greener pastures in neighbouring countries and overseas (Dutch project group of Zimbabwe (DPGZ), 2012). Ndebele youth are disproportionately represented in jails in Zimbabwe due to economic hardships that forces most of the young fathers and mothers to go to

South Africa leaving the children to be raised by relatives (Mutandwa & Sibanda, 2010). This creates a major social problem that might be contributing to the high rate of criminal activities among the young people in the region (kubatana, 2011).

It is estimated that out of 1 254 353 people that legally migrated to other countries and 8 916 are in New Zealand (Nango, 2011). The net migration rate reached 21.78/1000 population in 2014 (Zimstats, 2014). This is a significantly high number for a country like Zimbabwe. However these figures are based on legal migration but there are many people that cross the borders on a daily basis illegally and these numbers are difficult to estimate.

### **Urbanisation**

Urbanisation is the increase in the proportion of people living in towns and cities. People move from rural areas because of push factors like population pressure and lack of resources and employment, they move to towns because of perceived pull factors that might not be necessarily true (Munchie, 2004). In Zimbabwe people in rural areas often believe the standard of living in urban areas is much better than in rural areas. But this is not the case with current situation in Zimbabwe (Chirisa & Muchini, 2011). People also hope for better health care, education and more opportunities to make money either through formal employment or informal activities in the cities (Chirisa & Muchini, 2011).

In the 19<sup>th</sup> century the western world witnessed a rapid growth of urbanisation which was followed by a high number of rural/ urban migrations. This coincided with development of capitalism and rapid industrialisation (Muncie, 2005). The development of high mechanisation replaced agricultural workers in the rural areas and increased an urban manufacturing base. Unemployed farm workers could easily move to urban areas and get a job (Muncie, 2005). But in Zimbabwe the process of urbanisation did not follow the same trend. The swelling of population in urban areas did not correlate with the employment rate in the urban areas (Chirisa & Muchini, 2011). The growth of manufacturing base was very slow as the country was producing raw materials for the industries in the developed world (Chirisa & Muchini, 2011).

As mechanisation replaced human labour force in primary industries of agriculture mining and forestry, people drifted to rural areas where the land was too barren for any meaningful agricultural use. These people eventually drifted to town due to unbearable circumstances in the rural subsistence farming areas (Munchie, 2004). As more people moved to urban areas, the colonial government introduced anti urban migration laws. These laws controlled the movement of indigenous people to urban areas, only able bodied labourers were allowed to be in towns but only for the purpose of work and retire back in rural areas (Munchie, 2004). The government of the time put up policies and conditions that made it hard for married people to bring their families into urban areas. This status quo quickly changed in 1980 when the country gained independence and the anti urban migration laws and related policies and restricting conditions were lifted (Munchie, 2004). This meant that wives and children could join the husbands and fathers in urban areas. The laws on the house ownership changed and that meant the Zimbabwean indigenous people could own the houses in urban areas which brought stability and security of tenure to families wanting to live in urban areas (Munchie, 2004). In the last 33 years Zimbabwe has seen an increase of urban population from 1.9 million in 1982 to estimated 9.6 million in 2015 (Chirisa & Muchini, 2011 ).

In 1980 only 20% of the country's population was living in urban areas and 80% were in rural areas but as early as 1992 the figure had grown to 33% (Chikanza, 2002). The rural urban migration was estimated at an annual rate of 3,4% in 2010, which results in the swelling of the urban population to 38.6% in 2011(Chikanza, 2002). The demand for houses in low density suburbs increased and government responded by opening more land for the new stands (Chirisa & Muchini, 2011). In Harare this resulted in the growth of Hatcliff which initially was meant to house only 3000 families but currently it is housing up to 80 000 families. In Bulawayo this influx of population lead to the opening of land in Pumula South, Cowdry Park, Emganwini and other similar low density areas (Chirisa & Muchini, 2011). Initially the government was building the standard houses for the people in urban areas but as the pressure for the houses became unbearable for the government, people were buying stands and were allowed to build their own houses resulting in substandard houses being constructed and overcrowding (Chirisa & Muchini, 2011).

The seizing of the farms from white farmers worsened this situation as those who were working in the farming areas found themselves with no jobs and were forced by economic hardships to move to towns (Chirisa & Muchini, 2011). The young people after completing their high school also moved to urban areas in search of employment. The unemployment rate in urban areas was worsened by the total collapse of the farming sector in Zimbabwe (Chirisa & Muchini, 2011). This also meant that some of the manufacturing industries that depended on raw materials from agricultural sector had to close down. The banking sector also collapsed due to the high inflation rate and instability of the dollar, more people were out of the jobs. In every economic area the formal sector was quickly being replaced by informal sector in urban areas (Chirisa & Muchini, 2011). This was characterised by the rise of the black market and the use of multi-currency in Zimbabwe.

Young people quickly lost faith in the value of education as the city role models changed from being the lawyers, doctors and other professors in the town to become men with political patronage (Muncie, 2005). The rise of the overnight millionaires increased the number of the school dropouts to join the world of corruption and criminal activities. Urban areas provided the right environment for criminal activities therefore more young people moved from rural to urban areas to be engaged in prostitution, robbery, begging in the streets and any activities that are perceived as a quick way of making money (Crush & Tevera, 2010). Urbanisation weakened the sense of community among Zimbabweans and greater anonymity which is a perfect environment for criminal activities (Chirisa & Muchini, 2011). The system of dual economy that was inherited at independence became worse in big cities like Harare and Bulawayo, it has resulted in polarised growth and extreme levels of income (Chirisa & Muchini, 2011). On the other side a huge population that is very poor and living in less than a dollar per day, in shanty conditions of high density suburbs. The youth from these areas have got low self-esteem and this lowers their confidence levels as well as their abilities of coping with day to day challenges (Crush & Tevera, 2010). Individuals who perceive themselves negatively are more prone to participate in delinquent acts. The strain of financial burden is often used as an excuse by offenders to commit crimes such as theft, snatch thefts and housebreaking (Chirisa & Muchini, 2011).

## **Urbanisation and Parenting skills in Zimbabwe**

Tichatonga (1992) argues that the family child interaction is very important in the brain development of a child. But due to the pressures of urbanisation with low employment rate in Zimbabwe, parents spend much of the time away from the children as poverty stricken communities in urban areas survive by selling tomatoes on the streets (Coetzee, 2002). The parents are always stressed and confused and wondering where to get the next meal for the children. This leaves the parents with little time to interact with their children in a constructive way, to discipline, guide and monitor their children (Coetzee, 2002) Yet the family is the first socialisation institution that has a greater influence on what sort of character the individual will grow up to be and how they will cope with pressures of life (Tichatonga, 2002). Therefore in juvenile justice systems, lack of family involvement in a child's upbringing and poor child parent relationship result in poor attachment of the children to adults. This is a strong indicator for potential juvenile delinquency (Muncie, 2005).

It has also been noticed that the pressures of urbanisation has increased divorce rates and weakened the family structures that give support and counselling to young parents in the rural areas (Mooney, 1990). In urban areas life is very individualistic and stressful while in the rural areas it takes the whole community to raise a child. There is growing high number of married man with extra marital affairs called "small houses" in Zimbabwe (Chirisa & Muchini, 2011). This usually results in the wife and children being neglected by the father and left on their own to fend for themselves. This adds a lot of stress to the wife and in an effort to try and fend for the children will have less time to spend with the children (Chirisa & Muchini, 2011). Many of these mothers end up travelling to Mozambique and Dubai to order goods to sell in Zimbabwe hoping to make the meagre profit. This means the children are left unmonitored by an adult and they quickly resort to their peers devises and become more prone to delinquent. The mother might try to alleviate the poverty problem by renting out the matrimonial home and move to rent a smaller house (Nango, 2011). As most women in Zimbabwe do that as a first step to try and solve the problem of economic hardships and keeping the family together. But this means young people will be moved to small and

overcrowded areas which are usually characterised with poor living conditions with insufficient number of rooms (Patel, 1998).

The stress of living in such overcrowded area add stress to already stressed out children and end up finding comfort outside their homes in areas like shopping malls, bus terminus or the streets (United Nations International Children' s Fund(UNICEF), 2006). In these areas they mix with other young people from different ethnic backgrounds and it becomes easy to negatively influence each other (Out, 2005). The urge to fit in and try something new and provocative from peer group members in most cases result in young people being involved in criminal activities. The young people get into a habit of imitating a certain culture like "Punk" and other sub cultures found in the streets of Zimbabwe (Chirisa & Muchini, 2011). The young people join these sub cultural groups without even thinking about the pros and cons of it (Out, 2005). Once the young people join these sub cultural groups the advice from the parents becomes boring and out of fashion. The role models become their peers and they listen to the advice from the peers which are always a recipe for disaster (Chirisa & Muchini, 2011).

### **1.5 Traditional systems versus modernisation in youth justice**

Zimbabwe is a country that has strong traditional and cultural values, most of these values were not incorporated into the principles of legal modernisation (Bennet, 1981 a). Traditionally Zimbabwe had cultural structures and systems that guided young people into adulthood in a safe way. Aunts played a very important role of being counsellors and mentors for the girls and uncles to the boys (Lesizwe, 1997). There was a time when it took the whole clan to raise a child. But these structures have been taken over by forces of modernisation and eroded by socio economic development (Lesizwe, 2004). Urbanisation and globalisation has physically and socially removed these mentors from the communities leaving young people exposed (Zimbabwean Culture, 2013). The increased mortality rate due to the Aids pandemic and exodus of young parents to neighbouring countries in search of employment have left young people spatially and psychologically cut off from the elders. The country has seen an increase of the number of street kids due to the increase of the number of orphans in Zimbabwe (UNICEF, 2012).

The major problems the country's youth justice face today emanate from the incompatibility of the traditional values and the so called modern values (Bennet, 1981b). Yet the modern values do not meet the needs of the people in Zimbabwe and through time government systems have destroyed the traditional structures that kept the communities together (Rwezaura, 1993). According to the principles of community development, change is a process that cannot be imposed to people from outside influence but the change should be driven by the communities themselves at their own pace using the resources around them (Kretzmann & Mcknight, 1993). Therefore urbanisation was driven by the western world not Zimbabwean communities themselves (Patel, 1998). The conditions created by the effects of urbanisation robbed the people of the powers they had to manage their processes of change. This left the communities vulnerable and disempowered to control and influences the development of their young people (Maruta, 2010). This resulted in the problem we face today of high youth crimes and ineffective youth justice (Maruta, 2010). Industrialisation resulted in most of the males moving to urban areas leaving the mothers to raise the children on their own. This created problem to the male children who lacked a male role model in the family (Patel, 1998). Urbanisation saw a wave of both females and males moving from rural areas into towns but structures in towns were not supportive for a decent family to live (Weinrich, 1971). Overcrowding and loss of social fabric in community dignity and pride in identity created problems that resulted in a high crime rate (Patel 1998). Land redistribution and war vet malicious activities resulted in reduced food production (Ndakaziva, 2014). The development of "Green Bombers" a Zanu PF militia group started in the name of national service programme but in actual fact was a criminal apprenticeship for young people to commit horrendous political driven crimes (Meldrum, 2003). Economic meltdown and high unemployment rate saw a number of able bodied people leaving the country for greener pastures overseas, leaving children with grand parents or relatives. This resulted in high number of street kids (Todaro & Stilkind,1981). The education system in Zimbabwe is not relevant to the needs of the industries therefore the country produces graduates every year that graduate to the street as there is no employment for them (Ansell, 2002) . All the above are important factors that will be discussed in this thesis in relation to youth justice.

## **Summary**

The context of Zimbabwe is very important for this research project, as it is in the context that we can measure the effectiveness or non-effectiveness of the solution to a problem. Zimbabwe being a landlocked country means it has to rely on neighbouring countries like South Africa, Mozambique and Namibia for their export and imports. Therefore any souring of the relationship with these countries will negatively affect the country's economy. At the moment Zimbabwe is characterized by high dependence ratio and dwindling employment opportunities. This has resulted in mass migration of people from Zimbabwe to neighbouring countries and overseas in search of employment. The youth are the most affected population by the country's economic meltdown. High literacy level means people are educated to appreciate advantages of having smaller families and use of family planning methods. But the more educated the people become the more they demand better life for their families, therefore more people in search of better standards of living move from rural to urban areas and other countries. These changes bring positive and negative effects that affect the application of youth justice in Zimbabwe.

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **Introduction**

This chapter will explore the literature on Zimbabwean youth justice. It will define and contextualise the key terms and relevant theories used in youth justice in Zimbabwe. It will highlight any contradictions in the definitions and application of Zimbabwean youth justice laws. This is done to expose the weaknesses and strengths of the system and develop an understanding of the need for reform. It will look at the foundation of the country's legal system in comparison with that of New Zealand. This chapter will also articulate how the youth justice frame work is applied in practice and what loop holes have been identified by the previous researchers and the way forward. The literature review is done to show the gap in knowledge that justifies the need for the new research project and consideration of reform.

#### **2.1 Defining and contextualizing key terms**

Words can be defined differently by different people living in different areas, sometimes one word can mean different things depending on the context of its usage. Therefore the researcher saw the importance of defining the key terms as used in Zimbabwe at the onset of this chapter to avoid confusion and ambiguities that can arise from the readers. The research will discuss possible definition of the key terms but at the end guide the readers to the meanings of the terms as they are used in this research study.

#### **Definition of youth**

After over 18 years working with youth, I have realised that the word youth is defined differently by different people in different circumstances. The definition of youth is contextual therefore might differ from one cultural group to another, people find it easy to define what is a child and what is an adult, but when it comes to youth it depends on how the word is used in context. It is a word used in

everyday life without the thought of its definition. Only when people try to define it, do they realise the complexity of its meaning. Such words with ambiguous definitions people end up describing what it looks like rather than what it is. Munchie (2004) argues that there is no neutral English noun that can identify a period of youth with the same certainty and impersonality as in the word child or adult. A university of Zimbabwe lecturer Chirisa & Muchini (2011) asserted that in Zimbabwean context the word youth can be defined in three different ways, youth as age, as a stage of development or youth as an emotive term (Chirisa & Muchini, 2011). Therefore in Zimbabwe the definition of youth is contextual, it depends on the cultural norms, economic status and societal responsibilities, which makes it difficult to compare it with other countries where transition from being a child to a youth is determined by the number of years attained.

### **Youth as an age**

The definition of the word youth by age is the most widely used but if analysed critically has a lot of contextual controversies in Zimbabwe. Under Zimbabwean constitution the age of majority is 18 years and this means the age a person can enjoy certain rights like making a decision on family matters and voting rights. In Zimbabwean context these rights comes with responsibilities (Vengesai, 2014). A person can transition from being referred as a youth to adulthood if he is economically independent and can assume certain social responsibilities in the society. In the Ndebele culture one remains a youth until marriage, If the person does not get married and does not have the children of his/her own up to the age of 40 years, the elders of the community will start investigating the cause of not getting married or at least having a child (Chirisa & Muchini, 2011). This is usually resolved by giving the person children from relatives to parent and a partner selected by relatives so that can assume some adult responsibilities. Looking after oneself only is not considered enough responsibility to be called an adult. Therefore a person cannot be called an adult because they are above 18 or be called a youth because they are below 18 (Chirisa & Muchini, 2011). In Zimbabwean context one cannot be called an adult and allowed to make decision without the consent of adults while economically fully dependent on the parents (Chirisa & Muchini , 2011). The age of 18 does not only contradict the cultural norms but also the period of education and training that gives a person that

economic independence in Zimbabwe is more than 18 years. Therefore the age of 18 is seen as the voting age but one remains being called a youth until the time that they will be independent financially (Chirisa & Muchini, 2011). Therefore the term youth in Zimbabwean context cannot be restricted to less than 18 years of age; it also overlaps to those above 18 years (Vengesai , 2014).

### **Youth as a stage in personal development**

Youth also refers to a transitional period from childhood to adult hood. It is a period of significant change in the development of a person that needs a lot of guidance and adjustment. It is a period when physical body development out -strips the emotional maturity (Nango, 2011). This period is associated with a lot of confusion and mixed feelings which usually result in young people becoming detached from their parents and other adults and trust peers more for advice and approval (Chirisa & Muchini, 2011). This is the stage where young people engage and experiment in high risk behaviours. It is a stage where there is a move from childhood dependence to adulthood autonomy (Becroft, 2004). It is a very crucial time as during this stage attitudes and values become anchored to ideologies and remain fixed in this mould for the rest of adulthood (Munchie, 2004). The challenge in Zimbabwe is that youth is not supported by economic independence therefore it might continue up to 30 years (Chirisa & Muchini, 2011).

### **Youth as an emotive term**

In most cases when people talk of youth, they will be describing what is lacking and what is not rather than what it is. The word youth in general speaking is associated with juvenile, immaturity, deficiency, vulnerability, neglect and deprivation (Chirisa & Muchini, 2011). In the adult view more often youth are seen in terms of its destructive capacity rather than in terms of its great potential to act as an agent for growth and prosperity. Therefore youth can be described as idle, aimless and potentially threatening individuals or as self- sufficient independent from adult support (Muncie, 2004).

Whatever the definition used, the common denominator of all of them is subordination to adults. This is very important to Zimbabwean customary law. Some of the international laws and how the western defines youth contradict

Zimbabwe's customary values (Rwezaura, 1993). When people move from rural to urban areas they gradually lose that connection with village elders who are the custodians of these customary values. In urban areas not all fully understand the constitutional law or principles of United Nations Convention of the Rights of the child (UNCRC) therefore in that confusion, young people quickly develop their own sub culture usually referred to as "street" or "punk" culture that put more emphasis on the rights of the youth than responsibilities of the youth (Patel, 1998). It is a culture that puts more emphasis on the youth knowing all and adults knowing nothing (Chirisa & Muchini, 2011).

### **Legal terms**

Legal terms are often misunderstood by the general public, as they are not used in our daily social communications. Most of the legal documents are written in old English that is no longer used on a daily basis. It is a specialised language that cannot be easily interpreted by the non legal professionals. The legal terms mixes languages in a way that Latin terms can be used in English court (Chirisa & Muchini, 2011). Therefore it is important for the researcher to give the definitions' of the legal terms used in this research. In this paper the term youth will refer to adolescents, young adults and juveniles between the ages of 14 to 24 years of age

### **Law versus Justice**

Laws are societal rules and regulations or guidelines that are put together by the social institutions to govern the behaviours of that particular society. Laws must be obeyed by all. They set up standards, principles and procedures that must be respected and followed by all (Hart, 1992). But justice is a concept based on natural laws of morality, righteousness, ethics and equality. This concept is based on the notion that all individuals must be treated the same and equal regardless of gender, creed and ethnicity (Harris, 2002).

Figure 1. Symbol of Justice (Marci, 2005, P12).



Other countries like the United State of America use a blindfolded woman (as in the image above) to symbolise justice ideology. The scales represent equality to all in front of the law. The sword depicts the coercive power of the legal courts through punishment to those who dare to break the law (Marci, 2005). According to the principles of natural law theory, law cannot be separated from morality and justice. Justice is based on moral principles of natural law, which have higher status than any human made rules and regulations (Wild, 1953). Any man made law that does not follow or contradicts the principles of natural law is considered invalid and considered not a law at all (Madhuku, 2010).

The positivist theory opposes the natural law theory and asserts that law is law regardless of whether it is just or unjust. It continues to argue that law is one thing and its goodness or badness is another (Hart, 1958). Therefore justice is a separate entity from law. That is why in the world there is immoral law and bad law but because it is a legal law enforceable by the state, then it has to be followed and respected (Madhuku, 2010).

Plato argues that narrowing the meaning of justice to only mean simple two things as above is not adequate for the concept of justice. He believed justice is a wider concept. It is not about individualistic principles but about the virtues of the society as a whole. (Plato as cited in Wild, 1953)

The researcher was aware that the participants are strongly influenced by their experiences, personal interest and the level of their education in the articulation of youth justice definition. But what became clear from these definitions was Zimbabweans see youth justice in different ways. Punishment is seen as the justice, the “eye for an eye and tooth for a tooth” concept of justice. It is more of paying the wrong doing through punishment than rehabilitation. Plato cited in Hart (1958), defines justice as:

The quality of soul in virtue of which men set aside the irrational desire to taste every pleasure and to get a selfish satisfaction out of every object and accommodated themselves to the discharge of a single function for the general benefit” (Hart , 1958, p84).

Therefore justice as seen by Plato is for the good of everyone not for an individual. When justice principles become individualistic then it ceases to be justice. Justice is based on moral foundations and moral concept is based on how good you treat others (Hart, 1992).

It is generally accepted that justice is fairness and fairness lies at the core of justice where ever justice is tried to be defined. Oxford English Reference Dictionary, 2003. Cited in Madhuku (2010) defines justice as just conduct and fairness, while Black Law Dictionary 2004 cited in Hart (1992) states that justice is the fair and proper administration of law. So in this case justice is external to law and it can be used to evaluate whether there is justice in the way laws are enforced to the society. In the case of Zimbabwe, the ruling party’s ideologies of total control have replaced the principles of justice (Lesizwe, 2004). Justice which is supposed to be the standard measure of the proper delivery of law in Zimbabwe has been totally undermined and instead the interest of the president and his allies is now the standard of measure of delivery of law (Saki & Chiware, 2007). Judges have to make decision that is in line with the interest of the government to avoid persecution or dismissal (Saki, & Chiware 2007).

In Zimbabwe justice at the moment is seriously compromised. Constitution has been amended more than 26 times since the country’s independents in 1980 (Vengesai, 2014). All these amendments had nothing to do with human rights let alone the rights of the young people but only to strengthen the powers of the ruling

party (Vengesai, 2014). Therefore based on Plato's definition of justice, it can be concluded that there is a need for reform in Zimbabwean youth justice. According to Madhuku (2010) Justice is difficult to define; people end up describing what it looks like rather than what it is.

It is generally accepted that even though law is not justice but most laws were derived from the principles of morality. Law is meant to safe guard the behaviour of humans by enforcing morality. Most legal rules are developed to meet the needs of moral principles and by doing that they achieve the ends of justice (Hart, 1958). But in some circumstances laws are developed to save the interest of a certain class or individuals at the expense of others, which is when the law becomes unjust and morally wrong. But this does not mean it is no longer a law to be followed. Justice is not only a fundamental aspiration of a legal system but also an external standard or yardstick used to evaluate the law. The concept of justice is independent from law. (Wild, 1953). If there is a discourse in definition there will be discourse in application too (Madhuku, 2010). Therefore reformations should start from defining youth justice term and from the definition, then the framework can be modified guided by the common definition.

### **Humanity (*Ubuntu*)**

In Zimbabwe they apply the concept of *ubuntu* in the processes of customary law. *Ubuntu* is an African concept which simply means I am because you are. It is the concept that holds together the moral fabric of African societies. In this concept every human being has the potential of being human through the balancing of the pillars of humanity, which are communal responsibility, to be integral part of the eco-system, sharing natural resources with current and next generation, fairness to all, compassionate and respect of human dignity. These values identify individuals as people in the community (Desmond Tutu, cited in Battle, 2009). The strength of an individual depends on the strength of others (Battle, 2009). An individual is an integral part of the whole community, a wrong doing by an individual becomes the responsibility of the whole community to correct it. The success of an individual is seen as the success of the whole community. The concept of *ubuntu* emphasises the collective responsibility of the community in building a society with good moral values (Battle, 2009). The Zimbabwean

constitutional youth justice processes does not involve the communities the young people come from. Therefore the use of concept of *ubuntu* is not applied or recognised by the constitution, this denies the young people justice. This concept of *Ubuntu* is not unique to African cultures but also common in other indigenous cultures of the world. Hart (1992) argues that when people are faced with problems, they realise that the strength of one is not sufficient to make the necessary changes, but the human virtue that will bond together society for the common goal. Justice is described by Plato as not a mere strength but a harmonious strength, not the right of the stronger but the effective harmony of the whole (Hart, 1992).

For the purpose of this project we will define justice as an external to law in order to evaluate whether there is justice in the way Zimbabwean legal system deals with young offenders. But before we do that it is prudent to look at the history of Zimbabwean legal system. As some of the problems faced by the youth justice system in Zimbabwe today, are embedded on the social and economic pressures and foundations of the country's legal history (Madhuku, 2010). According to Madhuku (2009) laws are the expectations of the society on how the members of the communities should behave. These expectations are developed from ethical principles of the people in question. The problem comes in when laws are developed based on the perception of the outsiders who have different customs and traditions to those that the law is saving as is the case in Zimbabwe (Alemika, 1998).

This explains why the modern theories of youth justice in New Zealand are moving away from concentrating on the young offender but instead looking at the whole society. This led to the passing of Child Youth and Family Act of 1989. As the young people are the product of their environments, whatever behaviours they display they have learnt from the communities they live in. A young person is an individual mirroring the habits of the adults in their community (Richards, 2011). A young person's brain is born with billions of neurons, but it is the experience of social interaction and communication that activates the brain to either its full potential or a compromised state that leads to negative behaviours (Perry, 2000).

## Customary Law

The customary law in Zimbabwe refers to those unwritten customs and practices of the tribes of Zimbabwe. These were in practice since time immemorial; they are based on traditional values of the tribes. For a custom to be a law, it has to be reasonable, certain and should be recognised by the state (Bennett, 1981b).

Customary law is based on traditional values or African philosophy which has been developed over time from the community's wise decision usually driving from the elders (Muna, 2011). Therefore its pragmatic and relevant to the people, it strengthens the families and communities at large, it fosters the spirit of accountability, forgiveness, healing and restoration of the damaged relationship (Muna, 2011). It resembles most of the characteristics of what is called restorative justice today. African philosophy is not and was not a law but a code of conduct and tradition guiding the behaviour of members of the community (Machakanja, 2010). It has to be taken into consideration that the traditional communities who developed these customary codes of conducts were not feudal state but federal communities scattered in all 10 provinces of Zimbabwe. Even though each community was hierarchically structured lead by the chief who presided all the dispute settlement with the help of the headman and elders of the community, each community was totally independent from the one next to it (Madhuku, 2010). Therefore codes of conduct also differed in interpretation and application from one community to another (Madhuku, 2010).

The challenge comes to when these fragmented customary codes of conduct are being harnessed to national law. In order to do that a lot of work has to be done in research and consultation of community elders in these 10 different provinces (Muna, 2011). These codes of conducts according to Desmond Tutu cited in Battle (2009) are based on the concept of *Ubuntu* which has been discussed before. The World Health Organisation (WHO) also recognises some cultural values as universal in all communities (Schwartz, 1994). These are based on the four dimensions of health which is social, physical, emotional and mental. It is argued that the community is considered healthy if these dimensions are balanced (Schwartz, 1994). Therefore committing a crime offset this balance in all cultures.

In Zimbabwe constitutional law arresting the perpetrator and putting them in jail is the response to the crime but in customary law this only deals with physical part of the crime and the other three areas or impacts are totally ignored (Cobbah, 1987). This according to the Cobbah (1987) is a process that is punishment driven and does not focus on the holistic picture of the act of committing the crime. It concentrates on the deeds rather than a person. Therefore there is no justice in such a narrowly focused system (Schwartz, 1994). In customary law all four dimensions are addressed to restore what was there before the crime (Muna, 2011). A crime takes away dignity, destroys trust and relationships among the communities. Victims will be mentally, physically and emotionally affected by it. Their wellbeing will be affected by lack of sleep because of fear, over obsessive about the security of their home and surroundings and sense of loss (Research & Advocacy, 2009). The customary way of dealing with this is through mediation and the use of community elders as councillors for both the victim and the offender (Muna, 2011). These counselling sessions by the community elders has a therapeutic effect to both offender and victim. These therapeutic interventions are seen as part of the process of restoring the emotional and mental aspect (Lesizwe, 2004). But in the youth justice courts in Zimbabwe the victim is not even involved in the processes of youth justice system (Research and Advocacy, 2009).

### **Constitutional law**

Constitutional law in Zimbabwe refers to a codified body of law which defines the relationship of different entities within the state, namely the executive, the legislature, and the judiciary (Madhuku, 2010). It is a body of judicial precedent that has gradually developed through a process in which courts interpret, apply and explain the meaning of particular constitutional provision (Madhuku, 2010). The Zimbabwean current constitution is the product of the Lancaster House Agreement of 1979. It was meant to be transitory piece of legislation which will change after the attainment of independence, peace and stability and home grown constitution was expected to be developed (Saki and Chiware, 2007). Over 34 years the constitution has been modified 20 times as mentioned earlier on, but still largely resembles that of 1979 in many sections except in those sections that were modified for political reasons. Any modification done in the past had very little to benefit the public but the ruling party and its policies (Madhuku, 2010). To fully

understand the Zimbabwean constitutional law, one has to look at the foundations of it from historical perspectives to current perspective. As some of the problems the country faces today emanate from the foundation of Zimbabwean constitutional law (Madhuku, 2010).

## **2.2 History of Zimbabwean constitutional law**

Zimbabwe's legal system foundation is based on the law of Cape of Good Hope applying on the 10<sup>th</sup> of June 1891 (Madhuku, 2010). It was law imposed by the Dutch people after colonizing the Cape of Good Hope in South Africa. This law was largely based on the Roman Dutch law which was basically the infusion of ancient Roman law and medieval Dutch law (Lee, 1910). These two laws infused when Romans conquered and occupied under the emperor Julius Caesar an occupation that lasted for five hundred years (Lee, 1910). The Romans brought with them their customary law but did not impose it to the Dutch people living in Holland at the time but through process of assimilation and integration, two laws infused together and by 17<sup>th</sup> century it was called Roman Dutch law (Lee, 12013). In 1652 Jan Van Riebeeck and his group of settlers took charge of the Cape of Good Hope. They brought with them the law that they introduced to the colony as it applied at that time in Holland, which was Roman Dutch Law and all the legislation in force at the time (Lee, 1910). In 1795 British conquered the Dutch and took over the Cape of Good Hope. But the Roman Dutch law remained the law of the colony (Lee, 1910). This law was taken to other British colonies like Zimbabwe, Botswana and Namibia. The reason why the British adopted this Roman Dutch law was because it was the most structured law at the time and was written into one encyclopaedia collection called Corpus Juris Civilis in AD 533 by Emperor Justinian (Madhuku, 2010).

Therefore When the Roman Dutch law was modified in the British colonies like Zimbabwe the modification infused more of British customary laws and very little of Zimbabwean customary law was considered, only in issues of property inheritance, child guidance and in marriage (Madhuku, 2010).

### **Post independence legal reformations**

As noted above the Zimbabwean current constitution is the product of the Lancaster House Agreement of 1979. Whereby the Zimbabwean independence constitution was agreed on and signed by the representative of British government and the Patriotic front leaders led by the current president of Zimbabwe Robert Mugabe. As discussed before it did not incorporate any African values in it except in issues of marriage, property inheritance and child guardianship. It was meant to be a transitory piece of legislation. Ordinary people of Zimbabwe do not have a say in the constitution of their country (Saki & Chiware, 2007). The President and his cabinet impose the constitution to the people. Therefore law in Zimbabwe is not about the expectation of the majority but of the ruling party. A law is a law as long as it does not provoke the interest of the ruling party (Saki & Chiware, 2007). Such laws are not just laws (Anthony, 2011).

After 1980 when the country became independent, 34 years on, the public was hoping to see the changes in the legal system. The changes that people hoped would cater for the needs of the public in Zimbabwe (Vengesai, 2014). But unfortunately not much has changed in the youth justice legal framework. Whatever changed was to strengthen the absolute powers of the ruling party (Vengesai, 2014). The youth justice institutions are still as they were if not worse than before independence. Before independence young people above 16 were forced to join the military for no pay in a programme referred as Call Up (Zimbabwe business law Handbook, 2012). The young people were abused in the war front without the acknowledgement of the parents. Today 34 years on, the young people are taken from the streets because they are not employed and considered dangerous to the public (Nango, 2011). These young people are promised jobs but unfortunately they find themselves part of the notorious militia group, Green Bombers (Meldrun, 2003). These young people are used to commit horrendous crimes to the public including rape and massacring innocent people

which is still happening up to today (Universal Periodic Review (UPR), 2013). These young people are the machinery of Zanu PF Party which suppresses any opposition to the ruling party (UPR, 2013).

### **2.3 Parallel Laws**

The pluralism of the Zimbabwean legal system of having a constitutional law that is running parallel to customary law, present problems in both theory and practice (Madhuku, 2010). These parallel systems present a paradox that causes confusion in application and lack of confidence to the whole legal system by the people of Zimbabwe (Marius, 2001). The two systems have got different principles and processes; they define some of the words like youth differently. In the African youth justice courts the definition that is followed is that of constitutional law (Madhuku, 2010., Wieland, 2005)., where the word youth is used to define the age attainment in terms of number of years rather than to be seen as a processes of brain and social development that takes place over a number of years. As we have seen in the above paragraphs, Zimbabwean customary law graduating from childhood to youth is a process not an event, age does not matter much, what is important is whether the young person is responsible enough to be called a youth or an adult (Saki & Chiware, 2007). This ranges from the age of 7 to 13 children and 14 to up to 35 youths. But under the constitutional law youth is between the ages of 14 to 17 years of age. 18 years is the age of majority in Zimbabwe, once children turn 18 are considered as adults and it creates a paradox in Zimbabwean culture (Madhuku, 2010).

The fact that constitutional law does not take into consideration that young people develop at different rates, largely influenced by the way they are socialised leads to the application of youth justice that does not look at the underlying causes of the criminal act. The justice system is more concerned about the deeds rather than the needs of the young offenders. It is a punitive justice system which has been proven that it does not reduce recidivism but instead increase it (Kubatana, 2011). This explains why young people who go through the process of youth justice end up being the most infamous serious offenders in their adult life (Kubatana, 2011., Wilson, 1960). Youth justice system at the current situation can be equated to University of crime as these young people graduate to be highly

skilled criminals and recidivism becomes part of their daily trade (Mutandwa, 2012). Consedine (2009) argues that if other sectors like schools and hospitals failed as the way youth justice is failing to achieve its major goals of reducing recidivism among the young people the doctors and the teachers will be sacked from their jobs.

#### **2.4 Discipline and punishment**

Foucault (1977) describes discipline as a method or techniques used by those in power to control the operation of a body. Use of force and coercion is the punishment of body and soul that is used in controlling the individual movements, behaviour, experiences of space and time. This is done through morning military drills and by time tabling all activities. The whistle is used to change the programme activity. The prisoners walk in a single file and in most cases chanting a slogan or singing a song approved by the guards. Discipline is in most cases associated with physical body exercise. It is believed that the level of discipline separates an individual from the mass (Foucault, 1977) Discipline sets up the standard of what is normal and what is wrong as this quotation below puts it:

Disciplinary power has three elements: hierarchical observation, normalising judgement and examination. Observation and the gaze are key instruments of power. By these processes, and through the human sciences, the notion of the norm developed (Foucault, as cited in Workman, 2011, p1).

Discipline takes away individual freedom and replaces it with rehabilitation and reformatory controls. This form of discipline is widely used in prisons without this it cannot be manageable how prisons and youth residence can be run in modern world (Foucault, 1997).

#### **2.5 How is the Zimbabwean youth justice structured?**

To have a full understanding of the justice system, it is prudent to look at the whole Zimbabwean justice structure of which youth justice is part. If there are defects in the whole then there can be no perfections in the part (Becroft, 2007). The whole justice system is made up of the hierarchical elements as follows: the

Supreme Court, high court, the magistrates' courts, the youth courts, the system for the administration of the courts, the office of the Attorney General and associated public prosecutors, and the legal professionals (Madhuku, 2010). It must be noted that the youth court is one of the specialised courts that deal with the young offenders only. But if the young offenders commit the crimes that are classified as adult crimes then there will be referred to criminal justice court (Vengesai, 2014).

This structure is the important part of the application of justice; the non-effectiveness of any of the elements in this structure will affect the smooth delivery of the rule of law in Zimbabwe and have a negative impact on justice. Such structures ensures that there is checks and balances in the practice of each element (Madhuku, 2010). For the purpose of this study youth court is the area of interest. If the youth court procedures are not effective then the whole justice system will not be effective in meeting the needs of both the young offenders and the society as whole.

### **Youth court**

In the previous sections we have seen that in theory there is a separation of youth court in Zimbabwe, meaning there is a separate justice system for young people from the adult system. But separation of the youth court from adult court procedures is more rhetoric in the international arena (UNICEF, 2012). The demarcation line of the jurisdiction between the youth court and the adult criminal court is porous and blurred in practice (Wieland, 2005). Young people who commit crimes of treason, rape and murder are treated like adults and tried in adult courts regardless of age and circumstances (UPR, 2013). Children who commit so called adult crimes are denied the free bail as per section 135 of the criminal procedure and evidence Act. Diaz (2014) describes this as the "adultification" of the juvenile justice system. Youth court in Zimbabwe is seen as an extension of the adult court. Therefore in practice there is the overlapping of the adult court process to youth court. Young offenders denied their rights to be treated as children by subjecting them in more severely and more like adult offenders (UPR, 2013). This is a negligence of the country's responsibilities to be abided by United Nations

Convention on the Rights of Children (CRC) and African Charter on the Rights and Welfare of the Child (ACRWC).

### **Development of the Youth Justice models**

The models used in the legal system of dealing with the young offenders worldwide evolved over time (Lynch, 2010b). These models were mainly determined by how the society perceived the young offenders and their criminal behaviours as well as the offences at that particular time (Lynch, 2010b). This perception is largely influenced by the historical context on which the laws on juvenile justice were developed (Lynch, 2010c). The turning point of the philosophy of youth justice was in the 20th century in the western world (Watt, 2003). The philosophy promoted the positivist approach in Britain and America that shifted the youth justice paradigm worldwide. It was the time when the approach to youth offending shifted from arrest and punishment to care and protection (Alemika, 1998). It was realised that young people who commit crimes are in need of care therefore their welfare should be taken into account rather than to focus on the deeds they turned the focus on the needs (Fisher, 2013). Models are developed and re modified and new approaches are introduced as per perception of the society at the time (Pratt, 1992). Over the years the world has transitioned from more punitive models where young offenders were treated like objects with no rights at all to more child centred models where the voice of the young offenders and their families are paramount to correcting the offending behaviours (Watt, 2003).

### **Models of youth justice used in Zimbabwe**

In Zimbabwe the youth justice models old or new, has its origins in western criminological research and debate (Vengesai, 2014). Whether these youth justice laws have any relevance in the context of Zimbabwean communities is the issue of concern. Therefore to comprehensively cover the development of youth justice in Zimbabwe and its impact to the people of Zimbabwe, it is important to acknowledge the role played by colonisation and post colonisation policies in Zimbabwean youth justice. Zimbabwe was not left behind in the western world changes of youth justice philosophy, as it was heavily influenced by the British policies at the time. In order to focus on what is lacking and what can be modified

and how, there is a need to understand the theories underpinning the Zimbabwe Youth Justice framework.

In Zimbabwe “*doll incampax*” rule was applied where by the young people below seven years were given immunity and between the ages of seven to fourteen are considered incapable of doing wrong unless there was an evidence to the contrary (Madhuku, 2010). Young people above 14 years of age were tried and convicted as adults (Vengesai, 2014). This led to the application of dual legal instruments in Zimbabwean youth justice, children’s protection and adoption Act (chapter 33) and the criminal procedure and evidence Act (chapter 57).

Youth justice model in New Zealand was developed to acknowledge that crime is not a rational freewill to young people but children are so vulnerable that a model that combines the welfare needs and at the same time making young people accountable for their crimes was necessary ( Watt,2003)

### **Criminal Justice model**

This model of juvenile justice emphasise more on the protection of society or the maintenance of stability rather than the protection of individual rights in the society let alone the rights of young people (Wordes, 2014). Young people are considered mature and to rationalise what they do, therefore are made to be accountable of what they have done (Aptel, 2010). The primary goal of this model is to punish for the offence committed. It is more retributive and reparative, calling for more punishment of the offender than reformative and rehabilitative (Day, 2003). Young offenders are treated the same way as adults, they are tried in adult courts convicted and punished like adults. The age of young people offers no exoneration (Lynch, 2010b). In practice it is the model that mostly prevails in Zimbabwean youth justice (Vengesai, 2014).

According to Kaseke (1993) criminal justice is the main model that guides practice in Zimbabwe, the criminal justice model is complex in its definition as it has got many different values of which some of them are conflicting in practice (Wheeldom, 2014).The Criminal justice model can be divided into two sub models, the conflict model and the consensus model. The conflict model puts more emphasis on offending not the offender, equality of sanctions rather than

individual treatment and rehabilitation (Watt, 2003). But the question is whether the model delivers justice or injustice to the young people of Zimbabwe? According to McVie (2011) the major setback of this model is its failure to look at the underlying causes for criminal behaviour. Stories from youth professionals in this project will discuss their views on how this model is applied in Zimbabwe from Zimbabwean context.

### **Consensus Model**

The consensus model assumes that members of the society also take an active part in controlling crime. Public and other agents work together to come up with the interventions that are well thought through and agreed upon by everyone (McVie, 2011). It is a systems model approach where all components work together in a harmonious way to come up with fair sentencing of individual crimes. Kaseke (1993) has already indicated that in the Zimbabwean youth justice system, the consensus approach is in place in theory but in practice the judges and prosecutors totally ignore the reports written by the social workers and psychologist. The parents have got no place in the youth justice court.

### **Social Welfare Model**

The Welfare model was developed after the society realised that young people are the product of their environment. The criminal behaviour of young people might results from undesirable upbringing and environment (Paton, 2005). Welfare model has its foundations on the philosophy of "*parens patriae*", an English law doctrine that put the responsibility of protecting the young offenders in courts to the state. It is the duty of the court to protect the vulnerable children (Becroft, 2004). The focus of courts shifted from accountability and punishment to care and protection of the young people (Paton, 2005). This means the young offenders were treated the same way as neglected children, therefore ministry of social development took the responsibility of these young offenders instead of corrections department (Jefferson & Lavern, 1998). The focus of the professionals in New Zealand was in their needs rather than their deeds (Watt, 2003).

This thinking also led to the establishment of the youth court in Zimbabwe (Muthandwa & Sibanda, 2010), even though in Zimbabwe the processes of

change are not well documented as in New Zealand. With time the international laws evolved, countries realised that the welfare model on its own does not address the offending behaviour of the young person therefore reforming the youth justice was imperative (Watt, 2003).

This social welfare model sits at the opposite end side of the criminal justice model; it holds that criminal behaviour displayed by the young people is influenced by many factors. Therefore dealing with the offending behaviour without looking at the causes of that behaviour might be unjust to the young people (Brown, 2002). The socio-economic situation, parenting skills, societal norms and values might all contribute to young people engaging in criminal activities (Brown, 2002). Social welfare model put more emphasis on care and protection rather than accountability and punishment, their needs rather than their deeds (Wheeldom, 2014).

McVie (2011) argues that both criminal justice and social welfare pose a lot of controversy when applied in practice. These models by themselves are not comprehensive enough to deal with criminal behaviour in a holistic way that will bring justice to the young offenders and the community. There is a need to find a balance between these two models and this need has seen New Zealand reform its youth justice policies in endeavour to find the balance. The research project will show how these models are applied in Zimbabwe and how a justice system is maintained in Zimbabwean context.

### **Restorative justice**

Restorative justice is defined as an approach to correct the wrong doing that brings together those most affected by the wrong, the offender and the victim in a face to face well managed and facilitated meeting (Consedine, 2009). The purpose of this meeting is for the offender to acknowledge the harm done and consider redressing the damage in the best possible way and putting strategies in place to avoid the same mistake happening again (Skelton, 2002). Zimbabwe's customary and traditional technique of dealing with offenders whether they will be an adult or a young person resembles the principles of restorative justice (Vengesai, 2014). The community courts and village chiefs or headmen in Zimbabwe use different techniques with the applications that are beyond the criminal justice system

(Madhuku, 2010). In Zimbabwean traditional context once the crime is committed and reported to the local chief, the chief send out a word to each headman of the offender and the offended to bring them to “*enkundleni or Dare*” (community meeting place) on the date and time given by the local chief (Battle, 2009). The headman of the offender will bring meat in the form of a goat or sheep and some traditional locally brewed beer for the shared meal after the meeting (Bennet, 1981). Both Headmen do not only bring the affected people in the crime but parents and other representatives of that village. The crime is not only committed against an individual but against the whole community (Bennet, 1981). This kind of meeting facilitate the mediation between the two affected communities and ways of restoring what has been lost is discussed and a time frame to pay reparations is determined and agreed on by both communities. After the mediation both communities will shake hands and share the meal (Weinrich, 1971). This is a sign that whatever the grudge that was between the two parties has been amicable resolved as long as the offender and his/her community will pay the reparations to the offended (Battle, 2009). To make sure these reparations are paid there are paid through the chief and if there is a delay the chief should be informed well on time and the chief in turn informs the victim’s headman who also passes the message to the victim’s family (Bennet 1981). In rare cases where the offender and his people breach the agreement then the case will be reported to the police and criminal justice will be applied (Battle, 2009) . This has an adverse effect to the offender as this will mean the offender no matter how trivial the case may be, there will be a permanent criminal record. In some cases where there is no need to pay the reparation the young person is given a number of canes agreed on by the group in the meeting (Battle, 2009). The crime will be minor but the caning in front of everyone by your own people brings such a humiliation that is believed to deter the young offender to re-offend. Therefore restorative justice has always part of the customary way of dealing with crimes even though it was never called restorative justice (Vengesai 2014). Therefore the indigenous people’s restorative justice is seen as an old wine in a new bottle. The practice is old but what is new is the term restorative justice (Consedine, 2009). The only difference now is that modern theorists are advocating for it to be adapted to the criminal justice law that is recognised by the state and should be added to constitutional law (Consedine, 2009).

## **International Laws adapted by Zimbabwean Legal system**

Several international treaties have been signed and ratified in trying to answer the question of justice to all, but for the purpose of this project we will only discuss pieces of international legislation that has relevancy to the youth justice in Zimbabwe.

### **The Universal Declaration of Human Rights (1948)**

The Universal Declaration of Human Rights (UDHR) (1948) was the first international rule that addressed the specific rights of human beings. Even though it did not cover specifically the rights of young people, but it can be argued that young people are part of the larger group of human beings therefore it was easy for other legislations or treaties to be developed on the basis of this declaration (Vengesai 2014).

### **The International Covenant on Civil and Political Rights (1966)**

The International Covenant on Civil and political Rights (ICCPR) of 1966 was the first treaty in article 14 that had a regulation with reference to the administration of youth justice (Vengesai 2014). It has to be noted that there are three major developments that were seen in the youth justice world wide as far as youth justice was concerned and this practically shaped the foundations of the welfare model. Theoretically these are the five major milestone of the ICCPR of 1966.

- 1) Capital punishment was prohibited in youth justice system for anyone under the age of 18
- 2) It provided the separation of the young people from adults in the places of detention
- 3) It speeded up the time the young people spend in police cells waiting for trial.
- 4) It regulated the young person's circumstances to be taken into consideration in youth justice system.
- 5) It provided that the youth court procedures must promote meaningful and rehabilitation programmes in the disposition (ICCPR, 1966).

These five points will be very important in the analysis of Zimbabwean youth justice system as these changes lead to the establishment of a discrete children's court based on the principle that young people need protection rather than punishment in correcting their deviant behaviours (Mutandwa, 2012). These realisations led to the separation of children's court from adult court in Zimbabwe (Vengesai 2014). In New Zealand that was followed by the establishment of 1974 Children and young person Act which was a super imposition of England's 1969 Children and Young Person Act which was never implemented in Britain in practice (Bala & Bromwich, 2002). Theoretically this developed further not to look at the basic care and protection of the young person but also considered the interest of the young person as the first and paramount (Lynch, 2010c). This bill changed the way society viewed the young people. It was not about doing what the adults think was right for young people but this gave young people the voice in the whole arena of youth justice (Watt, 2003). The youth justice legal system was becoming more children centred theoretically and young people were no longer passive participants but active partners (Lynch, 2010c). It cannot be denied that the 1974 act offered a more compressive approach but in practice Watt (2003) argues that it was little more than clarification and assimilation of existing practices and was criticised later for being more reactive than being proactive. But nevertheless it offered the important key areas of youth justice framework innovation of the time (Watt, 2003).

### **The Beijing rules**

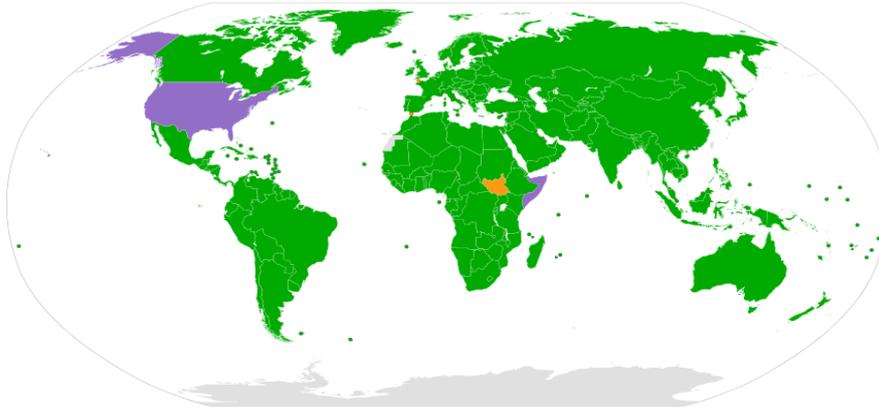
The Beijing Rules that was adopted by the United Nations General assembly in 1985 put more emphasis on the need for diversion of young offenders from the formal criminal justice proceedings and the need to detain them only as a measure of the last resort and for the shortest period of time (Beijing rule, 1985). But it was not a convention therefore not legally binding. The UN had to come up with something similar which will have a legal force (Bala & Bromwich, 2002).

### **The CRC**

This shift in philosophy led to the passing of the treaty of CRC of 1989. Article 37 and 40 of this treaty was the first milestone in the development of youth justice framework as it was the first document to move from generalisation of the rights of

children to be more specific on the rights of children in conflict with the law. It also set the specific standards of treatment of young people who have committed crimes (Kaime, 2009)

Figure 2. 1989 CRC Signatories (Kilbourne, 1996).



Key

	CRC country Status
Green	Parties to the convention
Purple	Only signed, but not ratified
Orange	Did not sign the Convention

The above map shows that Zimbabwe was one of the many countries that were parties to the convention but the question is did the country honour the convention in its practice? The CRC Convention forbids capital punishment for children. In its General Comment 8 (2006) the Committee on the Rights of the Child stated that there was an:

Obligation of all state parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children Article 19 of the Convention, states that state parties must take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence(CRC, 1989).

It guaranteed young offenders the right to be protected against torture, inhuman or degrading treatment, capital punishment and life imprisonment. It bars unlawful arrest or arbitrary deprivation of liberty. Imprisonment of young offenders should be used only as a last resort and for the shortest possible time. It also lays down conditions for the arrest, detention, and imprisonment of young offenders such as respect for the children's inherent dignity, separation from adult offenders while in custody, maintaining contact with the family, access to legal assistance, access to court and quick trial (Odhiambo, 2005). The separation of the adult justice system with the young people was hence internationalised and was incorporated in international human rights law (Odhiambo, 2005). UN treaties were accepted by many countries except Somalia as shown on the map because the country was ravaged by war and part of the United States only signed it but did not ratify it (Eze, 1998). There was a fear by Americans that CRC was taking away the powers from the parents and guardians of raising their own children the way they see it fit (Odhiambo, 2005., Kilbourne, 1996). Zimbabwe in practice did not honour the CRC as Kaseke (1993) revealed that in Zimbabwe children are still subjected to various forms of child abuse. Children are still tortured in jail and sometimes unlawfully arrested. The CRC is criticised for not making explicit reference to corporal punishment (Kaime, 2009). Zimbabwe together with other countries like Canada, Australia and the United Kingdom rejected the committee's interpretation of prohibition of corporal punishment. Therefore in countries like Zimbabwe UN conventions and treaties are nice to have on paper but in practice they are totally ignored (Vengesai, 2014).

### **African Charter on the rights and Welfare of the Child of 1990**

The African states adopted the CRC of 1989 and formed the African Charter on Rights and Welfare of the children (ACRWC) in 1990. The purpose of this was to develop a framework of administering the juvenile justice under international laws that will have relevancy to African states (Odhiambo, 2005). As it was argued that the CRC was religious based and its principles were Eurocentric as African states were not represented in the drafting of CRC (Jacobs, 2001). Therefore African state came up with modified version of CRC. Africa is the only continent that attempted to modify the CRC and have regional specific child rights instrument even though ACRWC is criticised for being more skewed towards general justice

and not specific on the rights of young offenders (Odhiambo, 2005). This generalisation also creates problems in practice. It undermines the commitment of members of African states to effectively protect young offenders in practice (Vengesai, 2014). The ACRWC did not reflect the specific needs and uniqueness of young people in Africa but it was more of the duplicate of the CRC (Odhiambo, 2005). This also contributes to the current problems of Zimbabwe's youth justice.

### **Capital Punishment**

Capital punishment was a common way of discipline in the 18<sup>th</sup> century worldwide, corporal punishment and executions was used to re establish the King's power over his subjects. Therefore it was done in public and audience were important part of the process (Foucault, 1977). The methods of punishment and discipline evolve with time and in most western countries the 20<sup>th</sup> century saw some changes in the philosophy of punishment and discipline. Philosophers like Foucault (1977) saw the importance of the interaction of power and body of knowledge that relates to the nature of humans and their behaviours. This body of knowledge set up the expected behaviours and a set of principles, Therefore any behaviour is measured against the norm. Some countries in the developing world did not change at the same rate as the developed countries. Therefore methods of punishment and discipline should be discussed in context (Workman, 2011)

Zimbabwe's youth justice still uses the corporal punishment. Young people can be given a sentence of whipping called cuts. But this contradicts the international laws as is considered an act that is degrading and humiliating the young person (Vengesai, 2014). The Act of whipping contradicts Article 37(a) of the CRC and Article 17(2) of the ACRWC. These Articles state that "torture, cruel, inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment are prohibited".

Zimbabwe has a dual legal system, under the international laws that the country has domesticated; the corporal punishment in youth justice is prohibited. But under section 20(3) (a) of the Children's Act and section 353 of the Criminal Procedure and Evidence Act, judicial corporal punishment is allowed (Vengesai, 2014). This is a serious contradiction of the laws in Zimbabwe as the discretion is left to the judge whether to respect the provision of the CRC and ACRWC or the

latter (UNICEF, 2012). The lawyers in Zimbabwe have criticised the use of cane in the youth justice system but these lawyers are not constitution makers, this use of cane will still remain as an option in disposition in the youth justice courts (Hatchard, 1991). The Non Governmental Organisations and other human rights activist have pointed out that this use of cane does not only humiliate the young offender but also the officers who have the duty to administer those cuts to young people. They point out that this can have a psychological effect to the officers who continuously administer the whipping (Hatchard, 1991). It is a procedure that is degrading to both the punished and the punisher alike. It causes the executioner to stoop to the level of the criminal. It is likely to generate hatred against the prison regime in particular and the system of justice in general

Harchard (1991) argues that the use of cane in Zimbabwean youth justice inflict pain and human suffering that is barbaric in its nature and dehumanise the young people. This in most cases is also abused by the officers in detention centres and police (Kaseke, 1993). The police assault young people on arrest before they are proven guilty. In some cases the witnesses are also assaulted to give the information. This is gross violation of Human rights and it creates animosity between the state and the public. Justice is seen as saving the interest of the state against the dignity and human rights of the public (Pre –trial Detention in Zimbabwe, 2013). But according to Article 17(1) of ACRWC and 40(1) of CRC the fundamental purpose of the youth justice is to reinforce accountability and responsibility in respecting human rights and freedom of others. How can adults expect young people to value human rights while their rights are violated by those who are in a position to protect them? Becroft (2004) argues that any kind of punishment does not correct deviant behaviour but it increase recidivism among young offenders. It's not about getting tougher but it's about getting smatter when dealing with young offenders. According to Justice Dumbushena as cited in Hatchard (1991), the corporal punishment of young offenders is counterproductive as it breeds resentment and hostility towards the society and jeopardise any attempt of social adjustment. He continues to argue that any law that promote institutionalised violence inflicted by humans to other humans is unjust law and need to be reformed. Corporal punishment is a stumbling block in the evolving

standards of decency that mark the progress of a maturing Zimbabwean Society ( Dumbuchena as cited in Vengesai (2014).

The fact that the judicial team in the supreme court condone the corporal punishment in youth justice in Zimbabwe can be adequate evidence that Zimbabwean legal system of dealing with young offenders need to be reformed to meet the needs of the young people. Vengesai (2014) describes the laws that deal with young people in Zimbabwe that are contradictory. This confuses the practitioners in implementation of these laws with conflicting objectives and this result in ambiguity in practice (Defence for children international, 2001). The country needs a framework that will promote rational sentencing policies which will promote rehabilitation accountability and the wellbeing of young people (Fisher, 2013). Whipping does not in any way meet the three above instead it violates the country's obligation under CRC and ACRWC (Vengesai, 2014).

### **Detention**

According to Children's Act section 84(1) a young person suspected to have committed a crime should not be detained in either police cells or detention centres unless there is no available remand home (Pre trial detention in Zimbabwe (PTDI), 2013). Such statement that leaves the powers to the discretion of the people handling the case can be a subject of abuse and misinterpretation that might results in the abuse of these children in conflict with the law. Vengesai (2014) describes Children's Act as flawed piece of legislation in that it justifies juvenile detention on the grounds that there is no suitable remand home available. It puts the rights of children in conflicts with the law in precarious circumstances. It has to be proven that a young person if given a free bail will not be a threat to the community (Vengesai, 2014). In Zimbabwe due to economic hardships the alternatives homes or facilities are not many, very few people are prepared to foster young people in conflict with law (UPR, 2013). This might be due to the fact that there is not much assistance from the government to help fostering families. Most help comes from non Governmental organisation like Save the Nation, Christian Care and Phumuza (Defence for Children International, 2001). In other countries like New Zealand the nongovernmental organisations are funded by the government which is not the case with the Zimbabwe's situation. There is also a

cultural belief that fostering a young offender not of your blood relation might bring a bad omen to the family (Ingozi) (Zimbabwean Culture, 2013).

The Criminal Procedure and Evidence Act also gives the judges the ability to release young offenders on free bail if they did not commit crimes classified as adult crimes, for example rape, murder and treason (Vengesai, 2014). The prison Act state that if a young offender is detained in prison, they should be kept in separate holding cells from adult prisons but in reality a 15 year old boy was found mixed with adults in pre trial detention in Zvishavane prison by Zimbabwe Association for Crime Prevention and rehabilitation of the offender (ZACRO) in 2014, proving that young people are mixed with hard core offenders including sexual offenders (Vengesai, 2014). This young person was therefore in prison more than three months awaiting trial. This was a direct violation of section 17 of the Children's Act which state that pre- trial detention of young person's should be less than 7 days. This mixing of children with adults in most cases results in the physical or sexual abuse of the young person by the adults (Kaseke, 1993). The overcrowding of cells worsens the poor condition of the detention cells and robs the young offender the right to health (UNICEF, 2006)

To some people in Zimbabwe this might sound as if is the problem of those with children in conflict with the law but in reality this is more than the family problem, but national, if not regional problem. As McLaren (2000) argues that there is a crisis in Juvenile Justice at international level, but people are too busy with their daily routines and personal interest that they totally ignore the youth justice crisis. There is a need for Zimbabwean politicians to take a look at the nation's youth development policies and interventions to those children who are in conflict with the law (UNICEF, 2012). Our youth justice system at the moment are more like criminal high schools where the children are prepared through incarceration and ineffective interventions for graduation to a tertiary criminal world ( McLaren, 2000).

### **Legal aid**

According to Kaseke (1993) young people in conflict with the law in Zimbabwe struggle to get any legal representative. Only those who commit what is classified as adult crime in theory are eligible for legal representation. But in reality the legal

aid lawyers are only based in Harare which means those who are out of Harare do not have access to the free legal representative (UPR, 2013). Vengesai (2014) argues that these lawyers are not only representing young offenders but they also carry out their normal duties of taking civil cases. Therefore this might mean representing young offenders might be at the bottom pile of the lawyer's list, moreover there are only 15 of the lawyers who are specialist in the youth court in Zimbabwe. Due to this shortage of lawyers, most young offenders in all ten provinces of Zimbabwe fail to get a legal representative, without a legal representative their fate is left in the discretion of the judges of which some are corrupt (UPR, 2013). This results in a long wait for the young offenders in police cells before trial. Justice delayed is justice denied. Only parents with money can afford to hire a legal representative but the poor and marginalised suffer the consequences (Vengesai, 2014). Young offenders who are eligible to legal aid are those who are tried in district court, those who are tried in youth court are not eligible to any legal representative at all (Pre Trial Detention in Zimbabwe, 2014). The social workers and psychologists complete a background check report that highlights the circumstances that might lead a young person to offend. These reports are put in the file of the young offenders. But in court it is up to the judge to use that report or not, even though in some cases there will be valid circumstances leading to offending. These other professionals can only assist the judge to reach an informed decision but cannot represent a young person in court as social workers or psychologists are of no match to the judge in terms of legal knowledge and status in court of law. Therefore this leaves the judge with absolute power in deciding the fate of the young person (Muthandwa & Sibanda, 2010). The lack of a legal representative in the courtroom is a breach of Article 40(2) (b) of the CRC and Article 17(2) (c) of the ACRWC. According to the above, Zimbabwe has got an obligation to provide legal representative to young people in conflict with the law (DCI, 2001). This lack of legal representative results in some of the young offenders serving for crimes they did not commit. Some they are given longer sentences that do not correlate with the gravity of the crime (Mutandwa & Sibanda, 2010).

UN does not have the legal force to enforce these international laws to the countries that choose to break them. Therefore UN committees are seen by the

people of Zimbabwe as toothless dogs (Vengesai, 2014). CRC has an independent monitoring body that all countries should submit human rights reports for scrutiny but the last time Zimbabwe did this was 1996. Thereafter the country has refused to submit the report, following the accusation by the CRC committee of Zimbabwe legalizing corporal punishment, capital punishment and life imprisonment without the possibility of release and indeterminate sentencing (Vengesai, 2014).

Kaseke (1993) revealed that Zimbabwean youth justice models tries to balance the need to protect the society against young criminals and the need to pay special attention to the personal circumstances of the offender with a view to promoting the young person's wellbeing, but the disposal is always skewed towards protecting the society with more retribution and reparation in its outcome. This is a direct violation of the Convention.

Section 111B of the Constitution of Zimbabwe states that any convention, treaty or agreement acceded to, concluded or executed by or under the authority of the president with foreign states or organizations;

- 1) Is subject to approval by parliament and
- 2) Shall not form part of our law unless it has been incorporated into the law by or under an act of parliament (Constitution of Zimbabwe, 2005).

Therefore according to the above it can be argued that Zimbabwe is not bound by any conventions or treaties they signed unless that piece of international law is legislated by parliament into the local statutes of Zimbabwe. Therefore it's very difficult for nongovernmental organisations working in Zimbabwe to argue the case of the abuse of children's right basing their argument on these international laws. As such argument can be dismissed on the basis of Section 111B. Zimbabwe needs to reform section 111B by amending the constitution so that international laws are not merely theoretical guidelines that have no legal enforcement in Zimbabwe (Vengesai, 2014). To do this the politician and the majority of parliamentarians should support these constitutional changes. Judiciary team have got no mandate to change the constitution.

## **Collective responsibility**

The justice processes should not be the responsibility of the state only but the community, families and education centres should be active participant in the process of correcting the wrong done by the young person. Collective approach has been used in countries like New Zealand and the results are showing a reduction in recidivism. Zimbabwe's legal system needs to involve the parents and the victims in the processes of youth justice (UPR, 2013).

## **Parents**

The involvement of parents in the youth justice processes is what is missing in Zimbabwean youth constitutional law. The parents and the victims are not active participants of the whole process (UPR, 2013). Dealing with the children in isolation of the communities and families they come from has proved to be catastrophic both in education and corrections systems (Kubatana, 2011). Youth justice is about correcting the behaviour of the children but this cannot be effective if the input of the parents and the community that the young offender comes from is totally left out (Maxwell & Morris, 2002). The rehabilitation and detention centres are not a permanent stay to the young people, therefore if background issues of young people are not properly addressed, this young person on release will go back to environment with all the crime triggers unsolved (Anthony, 2011). Triggers should be identified, as to come up with effective strategic intervention. Professionals alone cannot do this without the corporation of the parents as they do not have the closeness and attachment the young person has with their parents (Watt, 2003). Parents need to be effectively involved in the process as to have the ownership and power in correcting the behaviour of their children (Becroft, 2007). New Zealand through The Children, Young Persons and Their Families Act 1989 has reached a milestone in trying to give the power back to the family. This act Revolutionizes New Zealand youth justices, established an innovative set of principles and procedures to govern the response to young offenders, and to manage the role of the state in the lives of young people and their families. The founding objective of the legislation is to promote the well-being of children, young persons, and their families and family groups. The Act seeks to empower families and communities, rather than professionals, in deciding the best

measures to respond to offending behaviour in children and young people (Watt, 2003).

### **Victims**

This is an area of concern in Zimbabwe's current youth justice system, the victims are not involved in the process. Once the investigation is complete and arrest made, the victim is no longer included in the process (Vengesai, 2014). What happens to the young offender after the arrest will be left to the victim's imagination. The offender might not meet the victim face to face therefore the young person never realises the full impact of his/her offence has had on the victims. The Victim will be still aggrieved even after the arrest (Machakanja, 2010).

A young person can be charged and made accountable by the state by sending the young offender to rehabilitation centre or prison but this means nothing to the community that was offended (Machakanja, 2010). When the young person comes out, they will face the wrath of the society. In this case the young person has to pay reparations to the community. If the fine was paid in courts the money would have gone to the state coffers and the offended gets nothing, Therefore double punishment is not justice at all (Machakanja, 2010).

### **2.6 Historical Social and Context of New Zealand's Legal and Penal systems**

Foucault (1977) argues that legal systems are developed to make power operate more efficiently through the use of punishment and discipline. The concept of discipline changes with change of time and power relations therefore are contextual. New Zealand legal system is not exceptional, it has been influenced and shaped by the processes of colonisation (Workman 2011). The history of the world legal system has seen the power changing from public execution to rehabilitation, the infliction of pain to the body to a holistic approach that combined the soul and body:, where methods of punishment was driven by the will of effective control of the subjects by those in power to be driven by the will for the welfare of the offenders. To the incorporation of human science knowledge where an offence is investigated in context. The circumstances leading to the crime are investigated before giving a judgement. A relationship between power and

knowledge determined the form of punishment as explained by the quotation below:

The power and techniques of punishment depend on knowledge that creates and classifies individuals, and that knowledge derives its authority from certain relationships of power and domination. The body is arranged, regulated and supervised rather than tortured. At the same time, the overall aim of the penal process becomes the reform of the soul, rather than the punishment of the body. Eventually, the concepts of the individual and the delinquent replace the reality of the body as the focus of attention, but the body of the criminal still plays a role. If anything can be seen as constant in the work, it is the idea that the body and punishment are closely linked (Foucault 1977, P 7).

Therefore when looking at the history of New Zealand legal system, context plays a very important part. As like in Zimbabwe foreign legal system was imposed in the country that had indigenous people who had their own Maori traditional legal system. There was a change of power therefore this period witnessed the criminalisation of what was considered a norm in the past. This changed the demographic ethnic proportions of prisoners in prisons. Therefore it will be prudent to look at the context of New Zealand legal system as from the 19<sup>th</sup> century to the 21<sup>st</sup> century.

In the 19<sup>th</sup> century the Maori people who are indigenous people in New Zealand had a low level of offending rate (Durie, 2007). Statistics shows that there were more Europeans in New Zealand prison than Maori but this gradually changed over the years from 2.3 percent of Maori prisoners in 1872 to 8,9 percent of Maori prisoners in 1948 (Durie, 2007). The rise of Maori prison according to Pratt (2006) was due to criminalisation of the Maori resistance to the processes of colonisation and assimilation.

Characteristic of the period 1860 – 1900 was Maori resistance to land encroachment; Maori challenge to crown sovereignty, which led to passive resistance and in some cases to aggressive confrontation. In turn this led to the imprisonment of Maori men,

women and children, deportation to the Chatham Islands, suspension of the right of fair trial, threats of the death penalty and many were imprisoned illegally. Political protestors who fenced their land in protest were jailed indefinitely (Workman, 2011, p 6)

### **Maori Urbanisation**

Urbanisation of Maori people in New Zealand was similar to that of indigenous people in Zimbabwe, but the intensity of the impact was different. In 1950s New Zealand underwent a massive demographic restructuring where Maori families moved from rural areas to urban areas. As we have seen in earlier chapters that the movement of people from rural to urban areas was happening worldwide due to the change in labour demands and industrialisation (Workman, 2011). But in the case of New Zealand as it was in Zimbabwe the loss of land and mana (status) in the society forced people to move to urban areas. They had no alternative like in other countries but circumstances forced them to do so, as was the only option left for their survival (Durie, 2007)).

The impact of Maori urbanisation created a lot of problems for them that some of those problems contributed to the high rise of criminal activities among the Maori people, up to today Maori people are disproportionately represented in New Zealand jails and youth justice residence( Durie, 2007) .

It was an inextricable drift, painful to witness. Maori Whanau slipped through the inadequate caring networks provided by the state –they were strangers in the new world, disconnected from the old. The Maori population changed from being 80% rural in 1940 to some 80% urban by 1986(Workman, 2011., P 7).

This movement affected Maori type of life and exposed them to urban forces as Durie (2005), quoted by Workman (2011) describe it in the quotation below:

They shifted from extended to nuclear families (government paper-potting prevented Maori aggregations ), from support networks to relative isolation , from family bonds to bonds with disaffected others, from a secure place in a community to a place that could be hostile to brown faces, from a place where one was a leader to a

place where one worked for the boss, from a place where community values were internalised to a place where all sanctions came from outside and were enforced by police (Durie, as cited in Workman, 2011., p8).

Therefore the offending of Maori young people can be linked to both economic and colonisation processes that left them disadvantaged and at a state of despair. The Maori people did not only lose land but the language, culture and *tikanga* (values). They lost their identity and were immersed in the urban culture that they had little understanding of it. Workman (2011) argues that being immersed in urban culture that was not familiar to them partly caused the problem of high offending rate but also on the other hand the unequal treatment and lack of employment opportunities left the Maori young people and adults with no escape from the poverty. Those Maori people in urban areas who tried to maintain their Maori traditions and identity were seen as a threat to a so called homogeneous community and labelled as high risk underclass (Pool, 1991). Pratt (1992) argues that a just legal system brings stability, equality and social cohesion but in the case of New Zealand the legal system of the time had crushing conformity and strong social control that brought about fear of being different and risking to be rejected by the newly created New Zealand homogeneous society (Pratt, 1992).

In most cases when people talk of the legal system they usually restrict it to lawyers and courts. It cannot be denied that the courts in New Zealand's legal system are playing a very important role but legal systems have many other significant parts that play significant roles in New Zealand (Becroft, 2004). The history of New Zealand's legal system is not all that different from Zimbabwe's legal history. There are so many similarities than differences in the foundations of the two country's legal system and its context.

New Zealand legal system has its foundations based on English common law (Watt, 2003). But unlike Zimbabwe, New Zealand has made some progress in developing their unique court systems and models that recognise the customary laws of Maori which are the indigenous people of New Zealand and cooperated them to their informal justice system (Lynch, 2008). Even though the common law still resembles some British policies it has made a great progress in distancing it

from United Kingdom in some aspects of common law, particularly youth justice. New Zealand's legal system also has a statute law which is a constitutional law made by members of parliament (Watt, 2003).

### **New Zealand Constitutional Law**

A constitutional law is very important in New Zealand's legal system as it defines the principles on which the legal system is based. It is the foundation of the legal system; it sets up the most important institutions of government, states their principal powers and makes broad rules about how those powers can be used (Watt, 2003). The New Zealand constitution is drawn from the rule of law and a number of important statutes, judicial decisions, and customary rules known as constitutional conventions. Constitutional conventions are rules that have become established by frequent use and custom (Kuper, 2010)). The New Zealand constitution is composed of different important documents and these are the Constitution Act 1986, the New Zealand Bill Of Rights Act 1990, the Electoral Act 1993, the Treaty of Waitangi and the Standing Orders of the House of Representatives (Becroft, 2004).

### **The Treaty of Waitangi**

The treaty of Waitangi was signed between the Maori chiefs and the British crown in 1840. It plays a very significant role in New Zealand legal system. It is a constitutional document that ensures the interest of both parties is considered in the delivery of law in New Zealand (Kuper, 2010). It is a major document that protects the living Maori culture in the country's legal system. The actions and decisions by the Executive are guided by the principles of the treaty of Waitangi (Becroft, 2004). The right to equality before the law found in the article 3 of the treaty are largely protected under the New Zealand Bill of Rights Act and Human Rights Act. Under the Treaty of Waitangi Act 1975, any Maori may take a claim to the Tribunal that he or she (or the group to which he or she belongs) has been prejudicially affected by any legislation, policy or practice of the Crown since 1840. The Waitangi Tribunal provides a forum for the hearing of historical and contemporary grievances regarding breaches of the Treaty of Waitangi (Watt, 2003).

## **2.7 New Zealand Legal Structure**

New Zealand's legal structure is divided into three hierarchical branches; these are The Legislature, The executive and the judiciary. The New Zealand Parliament has developed from the British parliamentary system known as Westminster system of government (Spiller & Boast, 2001).

### **The Legislature**

This is a group found at the highest level of New Zealand legal structure. It is a law making group, composed of parliament, Governor – General, members of parliament and selected committees. The legislature examine, debate and vote on bills which then are approved by the Governor General and become Acts of law (Spiller & Boast, 2001).

### **The Executive**

This is the second group in the New Zealand legal hierarchy; it is composed of the Cabinet Ministers and the public sector. The Executive decides policies, draft bills, enforce and administer Acts of law. Their role is mainly to initiate the drafts and administer the approved law by The Legislature group (Becroft, 2004).

### **The Judiciary**

This is the group that is composed of the judges, their main function is to hear and decide cases by applying relevant law to facts and review decisions of the administrative bodies (Greville, 2001).

The three groups have got separate roles and powers but this is not absolute, each branch can check on the other so that there is no group that has absolute powers to act unconstitutionally (Greville, 2001).

### **The New Zealand youth justice models**

New Zealand's youth justice models can be divided into classical and contemporary ones. The traditional youth justice models were not different from the adult corrections models (Lynch, 2010c). The young person was trialled in adult courts, convicted and punished like an adult regardless of age and circumstances (Watt, 2003). The crime was seen as a rational act of free will

therefore punitive measures were applied to children and adults alike. The classical models focused on the punishment of the offender rather than rehabilitating and reforming the offender (McElrea, 1993). But for the purpose of this study the researcher is more interested in the current models than the historical models of New Zealand. The researcher is more interested in the development of the Welfare model in the 20<sup>th</sup> century and the developments of the acts that have seen the welfare model changing with each reform to be the best in the world like what it is today. The focus will also be on how New Zealand tries to balance the justice model that calls for young people to be accountable for their crimes with the welfare model.

### **Welfare model**

The Welfare model in New Zealand like in Zimbabwe came about as a result of the theorist ideologies of the 20<sup>th</sup> century. This model is different from other models as it puts the interest of the young person at the centre of practice. It has strategies and policies that promote a care based approach (Spiller & Boaster, 2001). The offence committed by a young person is not looked at in isolation but in relation with the upbringing environment of the young person. As (Watt 2003) argues that a young person is a product of his/her environment. Any efforts to correct the wrong doing of the young person should take a holistic approach. The professionals look at the factors that lead to a young person to commit a crime. This model looks at the offender not only as a criminal but as a child in need (McElrea, 1993). The welfare model has its foundations based on the positivist philosophy of criminology which asserts that young offenders commit offences as a result of factors beyond their control (Watt, 2003).

The welfare model gives priority to the protection and rehabilitation of young offenders than punishment (Watt, 2003). This model in New Zealand has proved to be working well in care and protection settings but when it comes to youth justice setting it is not adequate on its own (Jefferson & Lavern, 1989). While it is generally accepted that young people commit crimes due to circumstances beyond their control, they also need to be accountable of what they have done (Lynch, 2010 b). They need to take responsibility in what they do and initiatives on how they will control their desires to commit crimes in future. Therefore there was

a need to balance the welfare model and other models that will hold young people accountable (Becroft, 2004). In New Zealand in endeavour to do that, several acts and bills have been passed, but for the purpose of this study, only few that has got a significant role in the modification of the welfare model will be discussed.

### **Acts that promoted the Welfare model**

The Child Welfare Act of 1925 was very significant in the development of New Zealand youth justice system as it marked the pendulum swing of youth justice from the more punitive classical approach to a 20<sup>th</sup> century positivist welfare approach (Greville, 2000). The 1925 Child welfare Act was the first piece of legislation in New Zealand to fully embrace the welfare model. The act focused on re-defining the delinquent as a child in need rather than a criminal (Watt, 2003). It was a legislation that broke away from British influence and adopted the more liberal welfare based philosophies of American policy makers. This act advocated for better provision for maintenance, care and control of young people under the protection of the state (Joseph, 2001). It also commits the state to provide rehabilitation through training and educating the neglected and young offenders. This was the legislation that formalised the Children's courts. This act dominated the welfare model for 50 years until 1974 where a new act was introduced (Watt, 2003).

### **Children and Young Persons Act of 1974**

To some people at the time the Children and Young Person Act of 1974 was regarded as the updating of the 1925 Child Welfare Act but this introduced a new approach in New Zealand youth justice welfare legislation( Joseph, 2001). This bill was influenced by the 1969 English Children and Young persons' Act. This bill for the first time put the interest of the young person at the centre of practice. It legally separated children from young people in definition which was confusing in practice as there was no clear cut definition (Lynch 2010c). According to The Children and Young person's Act of 1974, children were defined as those under the age of 14 years and young people were those that were above the age of 14 but below 17 years of age. It also added some innovative strategies by formalising diversionary methods through the introduction of Children's Boards and Youth Aid police. It also attempted to reform the children's court (Greville, 2000)

## **Diversion**

Diversion was the epitome of the 1974 Children and young Person Act, court appearance was intended to be of last resort. The process was to go through the consultation of Children's Board and Youth Aid consultation before the formalisation of any case (Spiller & Boast, 2001). Therefore it was meant that some minor cases would be dealt with informally and saves the young person the embarrassment of appearing in court and having a criminal record. But when this bill was put in practice it presented the system with so many problems that resulted in the objectives of the bill failing (Becroft, 2004) The consultation process and youth Aid informal assistance failed to act as a gate keeper in the prosecution process (McElrea,1993).

Watt (2003) argues that this bill offered the welfare model a more comprehensive approach even though it is argued that it was more assimilation and clarification of the existing bill and it was also criticised for being more of a reactive bill than being proactive (McElrea, 1993). Police did not develop confidence in the diversion process therefore in most cases tended to bypass the youth Aid and Children's Board and make an arrest. The professional power in balance became so apparent that the police instead of liaising with the Children's Board they only referred the cases to the Board that they already made a decision that is not warranty an arrest in their opinion (Watt, 2003).

The failure of the diversion processes meant that more young people would appear in court, Which was contrary to the welfare model strategy The rehabilitation programmes recommended by the court was criticised for being too intrusive (Kuper, 2010). It has been felt that the judge had absolute power on the outcome of the young offender and parents being eliminated in the process turning to be passive participants in the whole process (Watt, 2003). Therefore the interventions that were put in place by the court system failed to rehabilitate young people (Becroft, 2004)

The police had too much power and control of the justice system, act as gate keepers of the court system, despite the fact that the bill stated that the court should decline to hear any cases that do not come through a Children's Board except to only cases classified as adult crimes like murder and rape (Watt, 2010).

It was undermined by the police and the court systems. This resulted in more young people appearing in court even for trivial issues which resulted in the increased likelihood of recidivism due to stigmatisation of court appearance (Becroft, 2004).

This led to what English practitioners called 'Mars Bars kids' - young people who had been committed into custody for shoplifting chocolate" (Watt, 2003, p 15). Therefore the Act's assertion that court should be used as a last option became a theoretical rhetoric. In practice the police did what was easier for them not what was good for young people and their families (Ministry of Justice, 2010). Police disempowered the social workers by holding exclusive information, this resulted in failure of involving the families and the community as whole as the link between the families and the police is the department of social welfare, which its existence had a little significance to the police prosecution and court systems (Borissenko, 2015). The court procedures are dominated by the specialised legal language that resulted in technical elimination of the parents and young people in fully participating and understanding the procedures and the meaning of the court outcomes as explained by the quote below (Borissenko, 2015).

"Young people and their parents felt neither able to participate in the proceedings nor even understood them properly. One boy told them he had been 'abolished and discharged" (Morris & Young, 1987, p 101).

### **Justice Model**

The justice model promotes the principles of accountability, it emphasise that the young person should be held accountable for the crimes they commit. The model asserts that the punishment given out for the crime should be proportionate to the crime committed and has retribution as its primary goal (Lynch, 2008).

"In some respect the justice model is an inversion of welfare ideals, focusing on offending, not the offender, responsibility and free will, not determinism, determinant sanctions rather than indeterminate rehabilitation" (Watt 2003, p19).

This primary objective of the justice model is based on the fair treatment to all under the law. The model does not dispute that young people have got the rights and needs but it also says the society has to be treated fairly by punishing those who offend fairly (Lynch, 2010 b). The society should not be deprived their rights to be protected from criminal behaviours because the perpetrators of the crimes are young people that have care and protection needs. This model asserts that punishment should be determined by the gravity of the crime not by the needs of the offender as in welfare model (Brown, 2002).

New Zealand youth justice system has been struggling to balance between the justice model and welfare model in practice (Brown, 2002). There is a lot of research material that suggest that it is not only unjust but also unrealistic to deny that young offenders are the products of their upbringing and environment. Therefore it should be noted that when they offend they bring with them into the justice system unresolved care and protection which are at the root of their offending (Brown, 2002). But this does not mean they should not be held accountable for their crimes they have committed. These young people can be disadvantaged by their upbringing but it is argued that there is an element of personal choice therefore they need to face sanctions for their offending behaviour (Lynch, 2008). Therefore it's easy to talk of welfare model and justice model in theoretical terms but in practice youth justice system does not fit perfectly into either of the two models (Kuper, 2010). The critics of this model point out that it lacks substantive justice by ignoring the causes of the crime totally. Critics like (Workman (2011) believe social background play an important part in the justice system therefore ignoring it and putting more emphasis on equal punishment for equal crime might be unjust to the young offenders. Some critiques believe the justice model was re- introduced due to the collapse of economic boom, trying to reduce the money spent in welfare model rehabilitation programmes as explained by the following quote: "While prosperity cultivated optimism and rehabilitative philanthropy,(the belief in the inherent good of people) the recession and resulting loss of funds to pay for rehabilitation programmes led to calls for returns to 19<sup>th</sup> century classicism" (Watt 2003, p5) .

Even though the youth justice model is being criticised it has motivated international thinkers to look at the new ways of reforming the youth justice

approach (Lynch, 2010 b). In New Zealand it led to the development of 1989 children, young person and their families act. This Act brought a paradigm shift in New Zealand youth justice, it allows for accountability and its due process to operate within social welfare model (Borrissenko, 2015).

## **2.8 The 1989 Children, Young Persons and their Families Act**

In 1980s it became clear that the juvenile Welfare approach and justice approach in practice had contradicting objectives. Therefore there was a need to come up with an Act that will modify the 1974 bill to make it more relevant and applicable to modern New Zealand (Lynch, 2010 c). The 1989 Children, Young Persons and their Families Act had the objectives that were trying to cover the contradictions of the welfare and justice models (Lynch, 2010 c). The objectives of the 1989 Children, Young Persons and their Families Act are stated below

Criminal proceedings should not be used if there is an Alternative means of dealing with the matter.

Criminal proceeding should not be used for welfare purposes.

Measures to deal with young offenders should strengthen family Groups and foster their skills to deal with offending by their children and young people.

Young people should be kept in the community as far as is consonant with public safety.

Age is a mitigating factor when deciding on appropriate sanctions.

Sanctions should promote the development of the youth and be the least restrictive possible.

Due regard should be given to the interests of the victim.

The child or young person is entitled to special protection

During any investigation or proceedings (Watt, 2003., P 20).

This bill brought about a new paradigm in youth justice in New Zealand. This act introduced new dimensions in the field of youth justice, despite codifying the statutory principles and objectives it came up with specific youth justice principles that are different from those of care and protection (Ministry of justice, 2010 ).It is an act that separated the youth justice from care and protection in principle. This bill put the New Zealand youth justice at a different level in comparison with other countries. The act has adopted some elements of the welfare approach by

“..allowing a court to find a child in need of care and protection if he /she committed an offence that raised concerns for his /her wellbeing” (Watt, 2003., p 20).

Today New Zealand is one of the countries that are leading in youth justice models partly because of the uniqueness of the principles and procedures in this Act. It introduced the contemporary approach to youth justice that did not only put the young person and their families at the centre of practice but also went a long way in striking a balance between justice and welfare model (Lynch, 2010 c).

## **2.9 Striking a balance between Justice and Welfare**

The 1989 Act try to balance the welfare and justice models by principles that embrace justice approach and at the same time consider the care and protection needs of the youth offenders (Lynch, 2010b). The act has the objectives that promote the wellbeing of children and their families. Accountability is at the centre of practice in this act but this does not mean their needs will be neglected (Watt, 2003). This approach resulted in separation of the youth justice residence from purely care and protection residence. The youth justice residence use the justice model while as the care and protection uses a welfare model (Lynch, 2010c). The Act does not only focus on their needs but also their deeds. To separate the justice from welfare model a separate criminal jurisdiction was established in the District court (Becroft, 2004). This bill even though it removed the use of Children’s Board and Youth Aid consultations, it maintained the approach of diversion with a different approach (Ministry of justice, 2010).

## **Diversion in the Children, Young Persons and their Families 1989 Act**

The principles of diversions in this act were not only maintained but also strengthened by acknowledgement of the damage that is done to young people by court processes that result in increase in re offending. It makes it clear that the court appearance should be a last resort (Borissenko, 2015). A family group conference (FGC) should be held first where the family and the young offender have a say. This resulted in 84% of young offenders being dealt with out of court. The police are given the mandate powers to decide which case renders diversion and which one deserve prosecution (Ministry of justice, 2010). This has been criticised as diversion has not seen as the responsibility of the police as quoted below:

The central duties of the police are the prevention, detection and control of criminal behaviour. The normal outcome of successful police action is a prosecution. To ask the police to act as the main agency for keeping young people out of court creates a conflict in the various roles to be played by an individual police officer and may lead to conflict with his or her colleagues (Watt, 2003., p 21)

Even though the concerns were raised at the launch of this act that too much power of diversion procedures were given to police whose main professional objective is to make an arrest therefore contradictory to diversion approach. It has proven that it worked very well and up to 76 %of young offenders were dealt with by informal police diversion strategies (Borrissenko, 2015)

## **Family Group Conferencing**

A Family Group Conference (FGC) is a special meeting when the young offender, the family, victims, social worker, youth advocate, police, the FGC coordinator and other interested people like teachers and psychologist can attend (Lynch, 2010c). In the FGC the professionals come in a very different role from that they play in conventional court. They are present not to dominate the discussion or decision making process in the FGC but only to give advice and support to both the victim and the young offender (Lynch, 2010c). More emphasis in this meeting is put on

diversion approach and everyone has a say. The main objective of this meeting is to make the young person who has offended take responsibility of what he/she has done; it's about accountability and moving forward in correcting the wrong that has been done (Lynch, 2010 c). The young person is expected to learn from their mistake by discussing the reasons why they have offended and the people in the FGC meeting come up with the possible solutions to help the young person turn his/her life around (Watt, 2003). The plan will be drafted and finalised by this group. Various Programmes can be recommended in terms of life skills educational or employment opportunities. The critics thought the 1989 bill has failed to come up with cultural sensitive objectives by removing Youth assessment panels. But the bill came with Family Group Conferencing (FGC) approach which is more family oriented. The 1989 Act moved towards restorative justice by involving the victims (Borrissenko, 2015). Family Group Conferences (FGC) are lynch –pins of the New Zealand youth justice system:

Their purpose is to make such decisions, recommendations and plans as are thought to be necessary or desirable in relation to the child or young person in respect of whom the conference was convened They lie at the heart of the New Zealand procedures: both as a pre –charge mechanism to determine whether prosecution can be avoided (accounting for approximately 40% of all FGCs), and also as a post-charge mechanism to determine how to deal with cases admitted or proved in the Youth Court (Morris & Young, 1989., p 177).

The FGC offers a forum for the mediation process between the victim and the offender and their families, as in restorative justice processes (Morris & Young 1989). Family Group Conferences attempt to address these issues and offer a forum for the mediation of concerns between the victim, the offender and their families with the aims of achieving reconciliation, restitution, and rehabilitation. The New Zealand FGC has proven so successful that other countries have adopted the procedures (Becroft, 2004).

### **Empowering Victims and the offender**

The FGC invites the victim to have a say in the diversion strategies of the young offenders but previously the victim was not involved in any procedures of correcting the behaviour of the young person all was left in his/her speculation(Lynch, 2008). The victim has to be satisfied by the outcome of the meeting in terms of offending behaviour interventions. In the past the young person was more of a passive participant in the whole justice process of which the young offender saw himself as a victim of the adult system. But by bringing the victim in FGC the young people are made to realise that they are the causes of distress to those they offend (McElrea, (1998).Therefore young offenders might be remorseful and take the interventions seriously. To support young people the Act removed the word Juvenile as was always associated with delinquency therefore stigmatising the young offenders. The stigmatisation can possibly cause the young person to behave as stigmatised (Borrissenko, 2015).

### **Maori cultural sensitivity**

In the FGC meeting the Maori protocols and procedures are respected, the community leaders and families have got more influence on the outcome of the meeting. Therefore through the FGC processes the Maori cultural needs and values are met which was previously lacking and inadequate in the previous acts (McElrea, 1998). The statistics has shown that more than 50% of young offenders are of Maori origins therefore the involvement of *Whanau*, and *iwi* in repairing the harm caused by the offence gives the system the cultural flavour (Watt, 2003). The place of meeting is usually familiar territory to the offender and their families, it can be a local Marae or Child and Youth Residence. The involvement of the community elders promotes cultural diversity which was lacking in previous acts that were more of a reflection of British or American philosophers (McElrea, 1998).

### **Restorative Justice**

The 1989 Children, Young Persons and their Families Act adopted many processes that fit restorative justice even though in the act there is no mention of restorative justice term and the policy makers of that time never contemplated a

restorative justice approach (Consedine, 2009). But most of the features of FGC are reflecting the restorative justice principles. Restorative is defined as a way of thinking about the crime and responding to it in a different way (Gelsthorpe, 2002). Therefore involving the victims and empowering both the young offender and the parents fall under the restorative justice technique (Gelsthorpe, 2002). The principles of restorative justice are aligned with traditional way of settling differences in Maori culture. It has been Maori traditional values of reconciliation, reciprocity and Whanau (family) involvement in any settlement of wrong doing (Watt, 2003). The major objective of the restorative process is to restore what has been damaged. It can be a relationship or damaged property in either way there is a loss of something that needs to be restored (Consedine, 2009)

As the 1989 Children and Their Families Act adopted a different system to restore and deliver justice to a young offender which is welfare model and the justice model. The New Zealand Restorative Trust (2000) as cited in (Watt, 2003) argued that there is no way that restorative can be described in one way but it involves multi- disciplinary approach that reflects the principles of restorative justice. The application of restorative justice in New Zealand began with the introduction of FGC which was mainly the process for young offenders, but in 1990s that process was adopted by the adult corrections process. Still it was never termed restorative until the sentencing Act 2002, Parole Act 2002 and the Victims' Rights Act 2002 were the statutory legislations that formally recognised restorative justice process in the criminal justice system (Gelsthorpe, 2002).

### **2.9. 1. What impact did reforms have to New Zealand youth Justice?**

The new models called for the evidence based practice that looked at offending behaviour in a holistic way. The Maori concepts of justice were incorporated in the mainstream justice (Lynch, 2010 c). Through the treaty of Waitangi the principles and processes that were in line with Maori customs and culture that has the foundations in Aotearoa (New Zealand) traditions and values were recognised (Watt, 2003). But at the same time they were modified to suit the modern needs of the communities. The new models were concerned about the fundamentals of life which are offender's wellbeing, *Whanau* or *Whakapapa* (family or genealogy), collective responsibility and following the traditional conflict resolution protocols

(Watt, 2003). The use of restorative justice has covered the aspects of wellbeing which can be further split to social, mental, physical and emotional (Lynch, 2010c). Therefore whatever intervention of young offenders should balance these four pillars of wellbeing. The new models empowered the families to be able to come up with solutions to their own problems. The restorative justice in New Zealand today allows indigenous participants to discuss their *Whakapapa* in the FGC meeting (McElrea, 1998). In most cases the victim and the offender discovers they belong to the same *Whakapapa* therefore the meeting ends up being more family focused. The discussion goes beyond the crime committed and reparation but also strengthens the relationship between the offender and the victim. The two affected parties might leave as friends through the discovery of this relationship (McElrea).

The new models do not only invite the *Whanau* to FGC meeting but also give them the opportunity to participate in decision making. For the *Whanau* to participate fully in the FGC meeting they need to be well informed by the facilitators and given the time to digest and ponder over the matter before the meeting (Ministry of justice 2010). This give the *Whanau* time to seek for advice from the expert if they wish to and reach an agreement at their own pace. The *Whanau* are empowered to make the decision therefore also take the collective responsibility to make sure what they have agreed on is carried through (Becroft, 2004). Through the incorporation of restorative justice in new models of youth offending the payment of reparation has proved to be effective in deterring the young offenders in re-offending. In New Zealand this can be achieved through community work, payment of money, letters of apology and attending a drug and alcohol clinic (Becroft, 2004).

### **2.9.2 How does the Zimbabwean practice compare with New Zealand Practice?**

The actual practice in Zimbabwe is contrary to the principles of the child centred models that are applicable in New Zealand (Zimbabwe Human Research Forum (ZHRF), 2006). Therefore the research will help to expose the gap between practice and theory and come up with suggestions on how to cover the gap. International models have been suggested as guides for a new Zimbabwe Youth Justice Framework. Restorative justice, the diversion model, the participatory

model and multi- agency approach models are of interest in reformation of Zimbabwean youth justice (Machakanja, 2010. Muthandwa & Sibanda, 2010). But the stumbling block is how to adapt and apply these models in the Zimbabwean situation with its purposely misleading economic growth and political situation that leaves the people of Zimbabwe in despair and in survival mode (Research and Advocacy, 2009). This research will help to explore whether restorative justice is needed in Zimbabwe as proclaimed by Muthandwa & Sibanda, (2010) that after all the atrocities of political violence, to reduce the perpetual youth violence in the name of revenge we need restorative justice. Society need to take ownership of their justice system (Bala, & Bromwich, 2002, Skelton, 2002). Restorative justice will encourage the internalizing need for rehabilitation and reform rather than revenge (Machakanja, 2010). It could provide a healing process for the victims and recovery pathway for the offenders (Gelsthorpe, 2002., Skelton, 2002., Hallett, Murray & Punch , 2003., Parton, 2008). The question is can restorative justice combined with other models help improve youth justice in Zimbabwe? How effective will the use of the diversion sentencing in relieving the overcrowded institutions? What kind of community based programmes can be used in the deposition in juvenile courts in Zimbabwean current economic situation? (James, 2013). Will this encourage the society to be proactive in the development of the youth in Zimbabwe? (Kaseke, 1993). A comprehensive model will provide the holistic approach to the needs of youth development (Muncie, 2005).

Given the above and acknowledging that the Zimbabwe's youth justice needs to be reformed, the goal of this project is to explore the contradictions and confusions and come up with recommendations for modifications of the current youth justice framework. The framework needs to be compatible with political, socio-economic and cultural values of the community (Nelson, 1984. Mazibuko, 2000). Models can be adapted across cultures but there is a need for careful modification of these models to meet the needs of particular communities (Richard, 2011. Lesizwe, 2004). If international models are imposed in a certain culture without careful consideration and proper alignment to the customs and values of that particular culture, there is a danger of creating an ambiguous and paradoxical youth justice system with little relevance to the people it serves (Admassu,1997., Bottoms, 2002., Worrall, 1997). Therefore the literature review

highlights the need to reform the models used in Zimbabwe so that new models can be developed that will deliver fair and consistent justice to young people. At the moment with current models and practice there is no justice but more punitive and retributive legal system that has no relevance to Children's rights (Kaseke, 1993).

### **New Zealand Practices**

What pioneered the 1925 Child Welfare Act in New Zealand? What was the first piece of legislation to embrace the Social welfare model? Zimbabwe was not left far behind in these changes as both New Zealand and Zimbabwe were under British colonial rule therefore largely influenced by British common law (Watt, 2003). It was at the time of the onset of international human rights regime. The atrocities of the Second World War made the world realise the importance of having the universal rules as far as the right of humans were concerned. This led to the creation and adoption of Universal laws and according to Odhiambo (2005) the perfect models at that time had two functionalities:

- 1) To enforce societal norms, defined by Hoghuhi (1983) as a set of behavioural expectations, rules or guidelines shared by an identifiable social group. But in the case of Zimbabwe the groups were the colonial masters who had nothing in common in terms of customs and traditions with the indigenous people in Zimbabwe.
- 2) To reinforce and protect the status quo in which children are treated as suspects all the times.

More youth justice models were developed in countries like Britain, France and Germany (Doolan, 2003). In Zimbabwe there are two models in use up to today, which are: youth justice under the Criminal Procedure and evidence Act (chapter 57) similar to criminal justice in New Zealand and the Social Welfare model under the children's protection and adoption Act ( chapter 33) (Kaseke, 1993). Earlier in this chapter we have seen that marrying these two models in practice creates controversy and contradictions (Kaseke, 1993).

The needs of the youth appear to be overlooked in the current youth justice by the social and behavioural scientist in modern Zimbabwe (Universal Periodic review

(UPR), 2013). The country needs to have a proper structure of dealing with young people at this stage. Being left to their own devices at this stage might create a problem in the future for these young people (Research and Advocacy, 2009).

In the current socio-economic environment young people find themselves struggling for survival. Young people cannot be expected to be rational and morally upright when they are deprived of the basic needs (UNICEF, 2012). It is important to understand the context which youth justice in Zimbabwe operates in. Some of the crimes committed by young people should be rationalised within the Zimbabwean context even though are morally wrong (UPR, 2013).

Zimbabwe's youth justice needs to have a paradigm shift in youth justice innovations. There is a need to come up with youth justice principles that are separate from prison system and social welfare care and protection of children (Vengesai, 2014). Youth justice should have policies that support accountability of the young people without victimising or stigmatising the individual but only the act of committing the crime (Paton, 2005). Any sanctions used on young offenders should promote their development rather than hinder it (Ministry of Justice 2009). The youth development policies should incorporate the ways of rehabilitating the youth in conflict with law (Hoghuhi, 1983). Youth should pioneer their development rather than the adults always dictating what the youth should do and how (National Youth Policy, 2013).

## **Summary**

Zimbabwe youth justice frame work is not all that different from that of New Zealand except that New Zealand in theory has at an advanced stage of development. Different models have been tried in New Zealand and modified where it is necessary to suit the changing times and perception of the people at the time. They have modified the Children and Young Person Act of 1974 to Children Young Persons and Their Families Act of 1989, which has got so many principles resembling restorative justice. This Act introduced the use of FGC in the process of youth justice that brought the involvement of parents and the victim. Zimbabwe youth justice theoretically is still using the Children's Protection and adoption Act (chapter 33) and Criminal Procedure and Evidence Act(chapter 57)These two legal instrument when put together have contradicting objectives

that cause a lot of problem in practice. But the Zimbabwean customary law apply the principles of restorative justice. This kind of restorative justice in Zimbabwe is not well documented because it is not in the constitutional law therefore not recognised by the state. International laws were ratified by Zimbabwe but their principles not followed in practice. In Zimbabwe it is not only the problem of models of youth justice but also the culture of professionals and the economic status of the country that does not support effective reforms. The New Zealand current youth justice models if adapted by Zimbabwe need to be modified to suit the context.

# CHAPTER THREE

## RESEARCH METHODOLOGY

### Introduction

Chapter three discusses the methodological approach of the research project. An interpretive and transformational methodology was used, informed by a qualitative paradigm. Semi-structured interviews and focus group methods used to collect data are discussed in detail in this chapter. Three tables used provide statistical representation of relationship in terms of their perception on the effectiveness of youth justice in Zimbabwe. The tables are used to compliment other tools used in this research. Finally the analyse of data is discussed and the ethical issues that I encountered during the whole process are highlighted

### 3.1 The Qualitative paradigm and a qualitative Approach

Qualitative paradigm positions the researcher at a point of listening to other people's point of views and piecing together an overall narrative about their experiences and perception. I used qualitative approach to collect data through semi structured interviews and focus group (Bernard, 2010). Subsequently this involved the narration of lived experiences, opinions and behaviours which lead to the construction of the themes from the stories as they were told (Delowski, & Barroso, 2003). These processes assist in expanding knowledge in an area of interest and later translate the findings in a narrative layout (Savin-Baden & Major, 2013). The themes that emerged from the interview discussions directed the focus on solutions of the problem as seen by Zimbabweans. Therefore these stories and solutions are subjective, as experiences might be different from one participant to another (Bernard, 2010). The researcher utilised the benefit of a qualitative approach as the information is richer and has a deeper insight into the phenomenon under study (Bernard, 2010). My interviews also included collecting demographic data of the participants, which included the sex, age group, and ethnicity. This information is important in analyzing experiences of these professionals and helped to come up with more effective solutions (Bernard, 2010). As young people are the products of their environment, to put strategies to deal with young people's criminal behaviours without taking into consideration

other factors contributing to such behaviour might not help much. The aim of carrying out a qualitative research study is to put youth justice possibilities of reform into context. The researcher is aware that this project on its own cannot lead to needed changes but as Bernard (2010) suggests qualitative data exposes people in different experiences, the processes leading to individual change in both behaviour and perception. The process of exploring the possibilities of reforming the youth justice framework has the potential of leading to a change in attitude. The narration of the perception of the Zimbabwean professionals is providing insight to social context and capacities that need to be developed in order to reform the Zimbabwean youth legal system. Getting involved in the qualitative data collection the researcher realised that the professionals had a lot of potential of developing their insights. According to theories of community development, changes are more effective and meaningful to the community if the change is driven from the bottom upwards (Florin & Wandersman, 1990).

### **3.2 Description of the sample and recruitment**

I used a purposive sample technique to recruit my two groups of participants (DePaulo, 2000). Purposive sampling is commonly used in qualitative research methodology (DePaulo, 2000). The participants were selected based on whether their background, experience and knowledge fit the objectives of the research (DePaulo, 2000). It is important for researchers in their research design to determine the characteristics of the sample size and subsamples when selecting their participants (Bernard, 2005). This might include location, culture, and political affiliation (Patel, Doku, & Tennakoon, 2003). The sample size was sufficient to cover the heterogeneity of the different aspects of the population of Zimbabwe (Fereday, & MuirCochrane, 2006). Twelve participants were considered as an adequate sample for this qualitative research project (Patel, Doku, & Tennakoon, 2003). I used quota sampling to ensure that I got both balance and diversity in the sample. It was convenient to recruit the first people that were available (DePaulo, 2000). There were 15 people initially invited to take part in the research project but 12 participants were interviewed. Two Social workers pulled out pointing out that the research question was too difficult for them as they became social workers here in New Zealand and never worked in this role in Zimbabwe, therefore their knowledge of Zimbabwean youth justice was limited. One psychologist agreed to

take part but when it came to fixing the interview dates he kept on making excuses of him not being available until the researcher gave up. The researcher intended to interview six participants from Matabeleland and six from Mashonaland. But in reality the researcher ended up having a different composition as shown on Table one below after the researcher realised the importance of having at least one representative from each ethnic group.

Table 1. Ethnicity of participants

Ethnic group	Number
Shona (Makaranga tribe)	2
Shona (Mazezuru tribe)	4
Ndebele tribe	2
Shangaani tribe	2
Samanyika	2

Participants were to be divided according to geographical regions of Matabeleland and Mashonaland. This enabled me to compare the difference of the perception from these two regions after being exposed to New Zealand culture and the New Zealand justice system. It will also show whether the differences between these two cultural groups still existed strongly or if they have been diluted. Dividing the participant's into two groups did not work well as the researcher discovered that among the *Shona* people, the different dialects made a huge difference in the way people view their world around them.

Therefore the researcher saw it imperative to divide the *Shona* participants according to dialects. Among the *Ndebele* there are other sub languages like *Kalanga*, *Vendha* and *Tonga* but these people use *Ndebele* as their common vernacular language and the *Ndebele* culture is the dominant one across the region therefore the researcher did not find much difference in their perceptions and experiences. To have an uneven number of participants from all ethnic groups was based on availability of the participants from each group. Some ethnic groups

are harder to find in New Zealand than others. The researcher thinks it's a fair representation of the Zimbabwean population considering that 75% of the population are *Shona*, 20% are Ndebele and 5% other minority ethnic groups like Shangaani, Tonka, Venda and white people in Zimbabwe. These ethnic groups have got sub cultures that are peculiar to their region (Zimbabwean culture, 2013). Therefore the interview data collected covers the perception of people from wider geographical regions and with different political party affiliations.

*Table 2. Age range of participants*

<b>Age Range</b>	<b>Number</b>
36-45	6
46-55	6
56-65	0

The age range of the participants in this research is very important as most of the Zimbabweans immigrated to New Zealand after the 2000 Zimbabwean economic meltdown (Zimstats, 2012). The age range between 36 to 55 means that the youngest in the group left the country 10 years ago at the age of 26 years old. This age in Zimbabwe means that the participants were already working at the time of emigrating Zimbabwe for at least five years. This is consistent with the New Zealand immigration Point system, as most Zimbabwean's gained more points in qualifications and work experience to be given a citizenship (M.Dube, Personal communication, December 10.2010). All participants were located in Auckland at the time of interviews and 90% of the people interviewed were living in East Auckland where the researcher lives. It was easy to access them at the meeting place of their choice. Some meetings were done after work or on weekends.

I used my network of contacts and a snowballing technique to introduce me to the participants with the experiences I wanted. I informally invited them to be part of this project before they formally agreed. Through community based forums, gatherings and the telephone I introduced myself and my research project. From my knowledge of the Zimbabwean community in New Zealand I was aware of a

number of professionals with work experience in the youth justice system in Zimbabwe and New Zealand.

### **3.3 Interview Process**

Interviews can be formal or informal. A formal interview can use a detailed set of semi-structured questions while informal an interviewer has a very small set of open ended questions and has flexibility to pursue ideas raised (Abercrombie, Hill, & Bryan, 2006). But the element of bias and social dynamics between the interviewer and interviewee may affect the credibility of the data. Therefore it is important for the interviewer to approach the project from a neutral point of view and interviewee to be honest in answering the questions. Interviews give face to face contact that gives the opportunity for the interviewer to collect data from all forms of communication, as some of the depth meaning of what is being said can be in the body language rather than the verbal words (Abercrombie, Hill, & Bryan, 2006). Setting the time and date of the interviews proved to be a challenge as most of the participants accepted to be interviewed were males and married. There were cultural issues surrounding the women of my age having a private meeting with other men in the absence of the husband or the wife of the participant. So to follow the cultural process I had to ask for permission to talk to the husbands from the wives or my husband would arrange the appointments on my behalf. There was an issue of getting approval from both partners of the interviewee and the researcher. The researcher noticed that among the Shona participants it was paramount for male participants to know that the researcher is married. This was made clear on the onset of the initial introductions.

Ambuya munonzi amai ani' (Madam what is the surname of your husband) before we go any further because I might know him so that we can arrange when to meet (Participant 1, personal communication, October 1, 2014).

In Shona culture women command more dignity among the male counterparts if she is married. A married woman is not addressed by her first name, her first name becomes a taboo and she is called by her husband's surname for example

the researcher was addressed as Mai Dzadya which means the same as mother or Mrs Dzadya. It is a way of showing respect and at the same time to keep other men away from her as that means she is already taken (Zimbabwean Culture, 2013).

You are introducing yourself by your first name, does it mean you do not have a husband or a child in your life (Participant 2, personal communication, July 23.20 14)

Mai Dzadya could have been comfortably replaced by Mai Takudzwa which is the name of the researchers first born. This shows how difficult it could be for a single woman to interview married men. This challenge is not only from men but it also became apparent that other women feel threatened by a woman arranging to meet with their men without going through them.

Madam if you want to make an appointment with me you should be accompanied by your husband if married, if not then you have to talk to my wife and she will arrange the date we can meet you (Participant 3, Personal communication, July 09. 2014).

It was clear that the issue of privacy was going to be a challenge right from the onset of the research interview preparations. As most of the potential participants were married males and being interviewed by a woman even though also married was a complicated process. There was a process of convincing the partners that there is a need for privacy with their husbands. It prolonged the processes but was not a surprise to the researcher as she is part of that cultural group. The researcher fully understood the cultural implications for putting the interest of the partners first if one has to get information from the participants

Listen Mrs. Dzadya tell your husband to ring me on Sunday then we will arrange the time and place to meet (Participant 4, personal communication, August 10. 2014).

This also indicates that these male participants in recognition of my husband they wanted to involve him in the process, even though not being present in the actual interview but should personally permit for his wife to have a private discussion with other men. Meeting in a public place was not favoured by most of the wives of the

husbands I interviewed. They preferred for me to go to their matrimonial home or they come to my place. Participants tend to give more when they feel comfortable and relaxed (Johnson & Turner, 2003). Then while the wives of the husbands being interviewed were having a chat with my husband, I then got a chance to move outside or in a free room to do the interviews. This also made the men I interviewed feel that the meeting has the blessing of my husband. All the participants I approached for the first time without the background work of my husband all declined to take part.

The power imbalance between a women and male counter parts was very apparent to some participants. Some men preferred to prescribe their notes and at the end of the interviews printed the notes and again went through those notes checking time and again with the researcher whether she understood the point or language used. The researcher also noticed that even though the power imbalance was skewed towards the male counterparts but it was not out of rudeness but out of caring nature of mainly Shona male to their female counter parts. All participants were given the opportunity to be interviewed in their own language but all preferred English as it is the formal language of Zimbabwe. The participants felt comfortable making jokes or any other social interactions in their Shona or Ndebele languages but when it came to professional talk where they were required to be formal, they automatically switched to English. This was understandable as in Zimbabwe all formal communication is in English.

The interviews were inductive, developing from specific to generalized experiences (Johnson & Turner, 2003). This was achieved through the use of open ended questions, use of encouragers and prompts, use of leading question where necessary and removing all communication blockers like making assumptions, finishing the sentences for the participants and negative body language and power imbalances(Johnson & Turner, 2003). I double checked with the participants my understanding of what they meant in order to come up with correct themes.

It was easy to develop a rapport with the *ZeZuru* and *Karanga* participants after the initial introduction. The *Karanga* were also different from other groups in the way they wanted to verify whether the researcher is getting their point. In

Zimbabwe the *Karanga* region has the highest academic level of achievement. It is referred as the country's brain tank. Therefore it did not surprise the researcher that all participants interviewed from this region are masters or PHD degrees holders. Therefore the researcher was aware that there can be power imbalance between the interviewee and interviewer. All *Karanga*s interviewed preferred to prescribe their own notes rather than the researcher taking notes. Some were using Samsung tablets that converted all scribbled notes to printable text, at the end of the interview they printed the transcript and gave it to the researcher.

The researcher noticed that it was not easy to develop a rapport with *Manyika* participants; they were more reserved and did not want to give more than what has been asked. The responses the researcher got from the participants from Matabeleland was different, all of them interviewed were comfortable with addressing the researcher with her first name. *Shangaan* participants were very different from the rest as the initial appointment was to be done formally by visiting them at home and introductions were made in the presence of the wife. The husband was quiet most of the time and the wife was asking the researcher some questions. When the wife was satisfied she looked at the husband with much respect and said *Sheeu* (king) I think this is your area of interest you can help *muroora* (daughter in law). The husband thanked the wife for breaking the ice and he started asking his own questions about the project. There was still that element of convincing the wife first before the husband can formally agree to take part in this research project. But once that first process was done the husband was free to come and meet the researcher either in her home or at his home (Zimbabwean culture, 2013).

Table 3: level of education

Number of Participants	Level of Education
2	PhD
5	Masters degree
3	First degree
2	Diploma

The researcher noticed all participants had tertiary qualifications either obtained in New Zealand or overseas. Most of the participants were more qualified and experienced in the field of youth justice than the researcher. The logical explanation for high level of academic qualifications among the participants is that all interviewed are Zimbabwean first immigrants to New Zealand, therefore they were given the immigration entry to the country through point system based on the amount of money you are bringing to invest in New Zealand or on academic qualifications and work experience. Zimbabweans did not have money to invest in New Zealand therefore the only way they could have scored highly in points was through qualifications and work experience. This explains why among African communities Zimbabweans were never given the refugee status in New Zealand. Helen Clark who was the Prime minister at the time of the influx of Zimbabweans in New Zealand running away from the atrocities of Robert Mugabe urged employers to employ Zimbabweans to the job of their skills if their qualifications are from the recognised University by NZQA. Some government sectors and companies recruited straight from Zimbabwe the people with the skills they wanted in New Zealand. This explains the huge difference between the Zimbabwean communities found in New Zealand and those in the countries like United Kingdom where there was no screening based on the skills and qualifications.

### 3.4 Focus group

Focus groups are not random discussion but they are structured discussions on a specific topic. They evoke thoughtful responses in a relaxed and informal

conversational manner (Morgan, 2013). The focus group consisted of Zimbabwean community elders recruited because of their in depth Zimbabwean cultural knowledge and their position in the Zimbabwean community living in Auckland. There were four of them including the researcher and all were from different ethnic groups of Zimbabwe. It was a well- balanced group as there was a representative from *Shangani*, *Zezuru*, *Karanga* and *Ndebele* groups. In this project the focus group only focused on cultural themes that came up from interview data. The researcher was part of this focus group not only as an interviewer but also as a mediator, recorder, facilitator and contributor. The researcher was also aware that within that focus group there were different strength and values but all the viewpoints were given the same considerations. According to Krueger & Casey (2000) the problem with a focus group is that group familiarity can restrict deep disclosure and dominant voices can overshadow the individual viewpoints. The researcher noticed that at the start of the discussions the members of a group had diverse opinions on what was culturally acceptable but through challenging each other in a respectful and professional way, the individual opinions converged to group common acceptance. As Morgan (2013) argues that opinions are constantly being challenged through social discourse.

### **3.5 Data analysis**

Thematic analysis technique was used to identify patterns and meanings in the data. Inductive semantic and realist approaches were very useful in this analysis (Krippendorff, 2004). Documentation of research is a very important primary component of the interview research process. This involves keeping a clear and detailed record of all data gathered during the interviews in the form of transcript, audio recording and notes. I transcribed the interviews and then read the collected data to familiarise myself with the data. This data was collected over the period of three months in Auckland from the professionals that have worked with the youth either in Zimbabwe or in New Zealand. I coded the data by identifying important features that might answer my research question (Bernard, 2010). I regrouped the identified codes to create themes or meanings of the relevant data (Neuendorf, 2001). Data analysis is a continuous part of the research process that can extend indefinitely and involves coding, exploring and organizing the data collected (Savin-Baden, & Major, 2013).

I met with my supervisor to discuss the emerging themes from the interviews. I sent the transcript to my participants for them to read. Some participants when reading their transcript added more information to it. Some raised concerns on cultural aspects and this was modified accordingly, this meant refining, splitting them or discarding them totally (Neuendorf, 2001., Denscombe, 1998). The next step was defining and naming the themes identified according to the scope and the focus of each theme (Bernard, 2010). The final stage of my analysis involved weaving together the analytical narrative and data extracts, and contextualizing the analysis in relation to existing literature. (Fereday, & Muir-Cochrane, 2006. Antony, Onewuebusie, & Nancy, 2007., Bernard, 2005). The whole process was not be a linear progression but it was be a recursive process with forth and backward analysis (Bernard, 2010).

### **3.6 Ethics**

The Ethics application was submitted to the Unitec Human Research Ethics committee at Unitec. The research proposal met the Ethics committee criteria. The major ethical issue was to make sure confidentiality is paramount to my study as the people of Zimbabwe have been subjected to such enormous violence that they have become suspicious of everyone. For them to contribute freely without fear of retribution, I had to make sure that their names were protected by using pseudonyms. The important issue with the group of my participants was the way I handle the information. The participants were promised that all the information recorded on audio tape was only to be used for the purpose of this project only and was to be destroyed after the project (Unitec Research Ethics Committee, 2010). The fact that I am a youth justice practitioner dealing with the issues of criminal youth justice and having access to confidential information on a daily basis in my job gave me a certain degree of credibility to the participants. People usually develop trust if the person has a professional know how in the field of research (Bernard, 2005). In most cases, the goal of finding out about people is best achieved when the relationship of interviewer to interviewee is non-hierarchical and when the interviewer is prepared to invest his or her own personal identity in the relationship (Bernard, 2005., Bryman, 2001). Therefore all the participants were given the identity and the profile of the interviewer before they signed the consent forms. I had the contacts of reliable counsellors in case some

of my participants became upset by the process, I could quickly get some help from professional counsellors. Being a Zimbabwean, it helped me to easily develop a rapport with the participants.

As the two major ethnic groups of Matabeleland region and Mashonaland region might not want to open up about their experiences with the law issues especially if they feel you are not part of their ethnic group. This was solved by the fact that I came from Matabeleland region and by marriage I am also part of the people in Mashonaland as my husband is from the Mashonaland region. Therefore the tribal differences would not have applied to me, I could speak fluently both languages and very conversant with cultures and protocols of both sides. The interviews were done at the participant's place of choice. In other towns in New Zealand it could have been difficult to find people from Matabeleland with the experience and professions that my research project was looking for as they are few. But in Auckland I had already identified desired participants before starting the project. Therefore all the interviews were face to face, eliminating the confidentiality complexities of using telephone, Facebook and emails. The issue of sensitivity around public participants disclosing confidential information to a third party can be a problem. This is why I chose face to face semi structured interviews rather than bringing everyone to a focus group discussion. I deliberately eliminated the use of survey as body language communicates more than the verbalized words, for example they smile when happy and smile when angry which is referred to as a "fuck off smile". Politeness is paramount in Zimbabwean culture and showing emotions is seen as a weakness. If not familiar with their body language, Zimbabweans are good at saying things that they think the researcher wants to hear but that will not be necessarily the truth, it is a skill developed by our forefathers in dealing with prejudices and over the years it became embedded in cultural norms of the Zimbabwean culture. Therefore being part of them I knew when to stop or pause and reflect.

## **Summary**

The research study used qualitative approach to collect data from the Zimbabwean that are living in New Zealand who have worked with young people in Zimbabwe and have also worked in similar environment here in New Zealand.

Interviewing the Zimbabwean put the study in the Zimbabwean context. The participants were selected in a way that all the regions of the country are covered and Zimbabwe has got sub cultures with the Zimbabwean culture. These sub cultures are based on the geographical regions and languages spoken. Interviews were to be handled with much care as participants were mainly males and it was not easy for a woman to interview man. Therefore several protocols had to be followed which made it very difficult to follow these cultural protocols and at the same time maintain the confidentiality of the data collected. Partners of the participants and that of the researcher played a greater part in making the interviews a success. Even though they were not involved in the interviews itself but played a major role in the background. The researcher did not spend much of money in this research as cultural Zimbabweans love to meet in their homes and a guest to their homes should not bring any food or drink. That is seen as rudeness, therefore a researcher was treated as a guest and it was the responsibility of the participants to feed the researcher. Focus group was used to help the researcher with the analysis of cultural issues raised by the participants.

## **CHAPTER FOUR**

### **Presentation of the Findings**

#### **Introduction**

This chapter will set out the research findings of this research study. The themes in brief were discursive construction of the definition of youth justice; limited public knowledge on youth justice models; problems of parallel legal system (customary and constitutional law, lack of involvement of victims and parents; role of spirituality; politics interfering with law; police corruption and violence within the Zimbabwean context; role of professionalization; lack of resources and misguided community focus. Findings from the interviews will present individual perceptions and the findings from the focus group will present the general collective cultural perspectives of the participants. The researcher interviewed twelve people and all interviewed indicated that the Zimbabwean youth justice needed to be reformed in both framework and practice.

#### **4.1 Discursive construction of the definition of youth justice**

The participants defined youth justice differently, ranging from a simple statement to a well elaborated definition that covers legislation, procedures and institutions. The participants' response to the question of the definition of youth justice is consistent with what the literature review pointed out. Different people defined youth justice differently. These differences might have been due to different levels of education, life experiences and personal perceptions. Participant one defines youth justice as follows:

Youth justice refers to the fundamental body of legislation, norms, standards, procedures, mechanisms and provisions, institutions and organisations applicable to the youth. The justice system in general includes effort to address the root causes which bring children in conflict with the law, develop methods for prevention and explore strategies for rehabilitation and re-insertion

(integration of the same into society)( Participant 1,Personal communication, August 1, 2014).

While participant five sees youth justice simply as meaning disciplining young people away from home. Participant eleven describes it as part of the law that is used to correct the wrong doings by the young people. The participants viewed young people in conflict with law as rational human being who makes wrong choices recommitting a crime and therefore have to be punished for what they have done. The following quotations show how other participants further define youth justice:

Youth justice refers to youth being disciplined away from home or detained at a youth centre, for months or a few years depending on the charges (Participant 5, Personal Communication, August 2.2014).

Youth justice is part of the law that we use for young people who are in conflict with the law (Participant 11, Personal communication, August 20.2014).

Participant 7 when asked to define youth justice gave a historical definition rather than the current definition. The participant elaborated by saying the youth justice was there when they were growing up. But now there is nothing as the current government has allowed all the youth justice institutions to deteriorate. It was very interesting to note that for some participants, justice during their time meant being punished for what they have done. Participant 7 defined youth justice as follows:

Youth justice was called juvenile justice before independence, we knew then that if you do crime you will be arrested and given a cane every morning. The maximum cane to be administered for one offence was three canes and one cane a day. Once the cane processes is over then justice has been done (Participant 7, Personal Communication, August 10, .2014)

Participant 7 asserted that even though he does not believe in excessive punishment; still believes the cane works in disciplining the young people today. This Participant gave an example of when his daughter was in conflict with the law in New Zealand and she went through the youth justice systems in New Zealand. Participant seven claimed there was no justice in the way New Zealand dealt with his daughter.

His view was that the system in New Zealand was too soft for young African children. Therefore according to participant seven he sent the young person back to Zimbabwe to be disciplined by the relatives using the cane as he elaborates it in the following quotation:

When I was disappointed by the lack of justice in the New Zealand system I send my child back to Zimbabwe to my relative that is an ex policeman to deal with her in a Zimbabwean way of disciplining the young person. Here I feel there is too much political correctness and young offenders are treated like victims rather than offenders. This does not teach them a lesson (Participant 7, Personal communication, August 10.2014).

#### **4.2 Limited public knowledge on youth justice**

The study findings revealed that the participants believed that most of the Zimbabweans have very limited knowledge of youth justice. Participant 1 described how people in Zimbabwe talk of the offending of the young people without mention what might cause the young person to behave that way. This is elaborated by participant one in the following quote:

In Zimbabwe we normally talk a lot about the offending of the young people, this population group is always characterised with rebellious behaviour. But very few people have taken their time to think about why the young people become rebellious or engage in criminal activities (Participant 1, Personal communication, August, .2014)

Participant 4 asserted that most people will find it easier to discuss adult justice than youth justice. The participant explained that most of the issues regarding the young people are very sensitive and confidentiality and name suppression is more emphasised for young people than adults. Participants explained lack of information in the following quotations:

Very few people know much about youth justice and its processes. People talk about adult corrections system and its injustices very eloquently but when it comes to young people, we have very little information (Participant 3, Personal communication September 1, 2014)

When we were growing up we knew there were juvenile centres where young people with extremely challenging behaviour were taken to but we did not really know much about what they do with them there, that information was not available to us (Participant 6, Personal communication 2. 2014)

Not much has been publicised on youth justice in Zimbabwe, maybe because it deals with the young people therefore it's not a priority to the adult world (Participant 10, Personal communication, August 20.2014).

### **4.3 Problems in the legal framework**

Participants had mixed perceptions of the youth justice framework in Zimbabwe, even though all participants agreed there is a problem in Zimbabwean youth justice. The argument raised by the participants was whether the problem was based on the legal framework or practice. Some participants saw the problem as in the foundations of the legal framework. These participants claimed that if there are to be any positive changes in the Zimbabwean youth justice, there is a need to revise the legal framework itself. The participants asserted that the legal framework guides the practice; if the framework is not relevant to the current situation then it cannot be expected to have a relevant practice. The following quotations explain the views of the participants:

The problem with Zimbabwe's youth justice legal framework is that it does not incorporate customary law in dealing with young offenders, this creates a problem to us the indigenous people and our children (Participant 4, Personal communication, September 11. 2014).

Traditionally we Zimbabwean had our own way of dealing with deviant behaviours of our youth. But the constitutional law in Zimbabwe take precedents over our customary law (Participant 9, Personal communication, August 02.2014).

Some participants on the other hand believed there is nothing wrong with the framework as it compares well with the international frameworks but they see the problems rooted in the application of the framework. Therefore these participants advocate for changes in the way professionals practise rather than changing the framework. The following quotations explain how the participants view the problems of youth justice:

Zimbabwean youth justice framework has a very good structure that compares well with international standards, but the problem comes to its application in Zimbabwean context (Participant 3, Personal communication, August 06. 2014).

I don't think there are major problems in the framework because in theory it is not very different from New Zealand but the context makes it hard to apply it as intended to. (Participant 1, Personal Communication, August 02.2014)

From these above it is clear that the participants are not satisfied with the current youth justice system. Whether the framework is to be blamed or practice either way it seems that Zimbabwean youth justice need to be reformed

## **Parallel legal system**

The participants all agreed that even though the constitutional law in Zimbabwe is taking precedent over the customary law, Zimbabweans still apply the traditional ways of dealing with their young offenders especially in rural areas as elaborated by the following quotes:

When all modern ways of dealing with my juvenile child failed I resorted to the traditional way and I sent her to the rural areas and it worked, my daughter was reformed (Participant 12, Personal communication, 10. 2014).

Certain aspects of our cultural laws cannot be defined by western law. Therefore we see the constitutional law in Zimbabwe as foreign to us, saving the interest of only certain clique of the population (Participant 8, Personal communication, August 09. 2014).

This was also supported by the focus group which asserted that there are some issues that the constitutional law cannot deal with effectively. Under customary law the traditional leaders and elders in the community resolved the disputes involving young people in their community. The outcome of the traditional justice system had a huge positive impact to the young people. The processes were within the Zimbabwean context and young people and their families easily identified with these processes. These traditional processes involved not only negotiations and counselling but a controlled form of corporal punishment. According to the focus group the use of corporal punishment is not negative if done under a controlled environment; it becomes detrimental when applied excessively.

### **4.4 Lack of involvement of the victims and parents**

All participants raised the problem of not involving the victims in the process of correcting the young offender. This exclusion of the victim in the process of correcting wrong doings by the young person was criticised by all participants. They asserted that the victim cannot move on and forgive when not involved or

informed on what is happening with the offender. Victims will remain aggrieved as one participant put it in the following quotation:

Serving a sentence in jail or rehabilitation centres mean nothing to me as a victim. The offender has to come back from jail and mediate with me and ask for forgiveness then we can close the case. Without the mediation a case remains unsolved in our customary law (Participant 3, Personal communication, August 15. 2014).

Some participants pointed out the reparations in Zimbabwe do not go to the victim but rather to the state, therefore the victim does not recover what he/she has lost. This according to participants creates a problem as pointed out by participant eleven in the following quotation:

Under constitutional law if one steals my two chickens and is caught by the police, he/she will go to jail for a certain period of time but that does not pay me what I have lost. He/She will come back from jail but as a victim I will still be aggrieved for the loss. That is when we Zimbabwean bring in customary law where the offender has to pay the victim what he/she has lost (Participant 11, Personal communication, August 20. 2014).

Participant six gave an example of what he considers as justice, where customary way of dealing with the offenders was applied and the outcome was satisfactory to everyone. Participant six talks of using the traditional way of dealing with issues of young people committing the crimes. These principles are similar to those of restorative justice, even though participants never referred it as restorative justice but talked of customary or traditional way of doing things. Participant six tells his story in the following quotation:

Three young people stole the money that I gave to my mother in the rural areas. The case was dealt with under the customary way of dealing with the young offenders in our community. These children were reported to the headman by the owner of the local

store when they were buying shoes and clothes for themselves. The headman called a village meeting and asked the parents to bring their children with them. In this meeting the kids were interrogated by the members of the community including their parents until they told the truth. My mother never realised that her money was missing until the young people started confessing. The community including the parents and my mother who in this case a victim came up with the plan of making these young people accountable for the crime they committed. It was a plan that was seen as reasonable and acceptable in that community (Participant 6, Personal communication August 06.2014).

#### **4.5 Spirituality and youth justice**

All participants interviewed expressed their concern in the constitutional law that does not incorporate spiritual beliefs in correcting the offending behaviours of the young people. The following quotes explain how the participants value the spiritual powers in youth justice:

Constitutional law does not fully work for us, how constitutional law based on western values can define the role of African spirits in correcting youth deviant behaviours” (Participant 5, Personal communication August , 02. 2014).

Zimbabweans are spiritual people under customary law deviant behaviour can be attached to evil spirits or as a sign that there is something wrong with the doings of the adults therefore the spirits are not happy and communicate with the people through a young person who becomes deviant to the community he/she lives in. This can be corrected by appeasing the spirit and adults to reflect on what they might have done wrong to anger the spirits. The court of law cannot correct that by taking away the young person (Participant 10, Personal communication, September 21.2014)

In our customary law the deviant behaviour of a young person can be caused by many things but to correct it will take the whole society to do it, we use a multi- dimensional approach. We look at the parenting skills, role models resources and involvement of the spirits (Participant 5, Personal communication, September 09.2014).

The focus group elaborated the assertion of participant 5 by saying traditionally disciplining of the children in Zimbabwe was attached to the spiritual interventions. It is believed that if a young person commits crime against another human being the whole clan will be punished by the (Ngozi) a spirit of revenge. This spirit can only be appeased by paying reparation to the offended and a successful mediation. As the punishment was for the whole clan, the whole clan were actively participating in the correction of the negative behaviour of their children. It is believed that Ngozi will punish the offender by bringing a curse to the whole family. The person who has committed the crime will watch each of their relatives suffer until death and if a settlement is not done on time the offender will be the last one to die. This is meant to inflict the maximum punishment to the offender seeing all relatives perishing because of the offences one has committed. This deterred the young people from committing crimes against the public.

#### **4.6 Law and politics**

Participants raised concerns about Zimbabwean law that is not separated from politics. Politician appears to be above the law and participants pointed out this as the biggest problem of Zimbabwean legal system in general, as explained by the participant 11 below:

Zimbabwean legal systems in application are not free from politics. Law cannot be separated from the politics. Those who belong to the ruling party are immune from the law, no matter what crime they commit (Participant 11, Personal communication, August 20.2014).

Participant eleven talks of young people raping and mutilating civilians during the election campaigns. This is a militia group that has terrorised the country, started as a political youth movement that turned to a group of specialised criminals. These young people regardless of the crimes they commit nothing is done to them because there are the green Bombers the Zanu PF militia. The purpose of this group was originally to torture the people of opposition party to that of Zanu PF. It was a way of instilling fear to the people and courting them to vote for Zanu PF. But unfortunately this wave of violence did not end after the elections but continued to spread to all communities even in the strong hold of Zanu PF supports. Participant one asserted that the Green Bomber activities have spiralled out of control. The young people have been given the criminal apprenticeship and when they were released to the public, become tertiary offenders of the country.

Participant four questions the credibility of the whole legal system if it's applied selectively. He continues to say justice is about equality and fairness, if this lack in the whole legal system how can we expect to have justice in practice. The participants assert there is no justice in the way the country deals with young people as explained in the quotations below:

The law in Zimbabwe pursues the interest of those in power therefore the public have lost trust in the whole legal system (Participant 4, Personal communication, August 11. 2014).

Politics and its involvement in legal processes degenerate law and order in Zimbabwe. The Green Bombers are a politically motivated group that are responsible for so many crimes in the country. This group is trained and funded by politicians to suppress any opposition through the use of excessive force, which sometimes result on death (Participant 3, Personal communication, August 15.20 14).

Participant 3 elaborates the quotation above by saying Zimbabwe needs an independent legal system divorced from biased politics, a legal system that can hold political leaders accountable. But unfortunately law makers in

Zimbabwe belong to the ruling party, the members of the political opposition parties have very little influence in the parliament as they are always outnumbered by the ruling party members in parliament. He continues to say the laws they make are to save their political interest therefore such laws cannot be expected to be just to the public. The following quotation also shows how the political leaders fail to be good role models to the young people:

Adults are supposed to promote good values to the younger generation but it's us adults who teach them to be violent. Our political leaders in Zimbabwe are like a chicken that eats its own eggs. Corruption has eroded the concept of *ubuntu* in a way that children no longer trust adults. In the past it took the whole community to raise a child, but today no one can be trusted around the children. This make it hard if a community lives in fear of their own people. (Participant 10, Personal communication, August 19. 2014)

Participant 8 elaborated the politics interfering with law by saying in most cases Attorney General has got more powers than Ombudsmen. The attorney general is the custodian of the law and stands for the state. But the Ombudsmen is the officer for public justice. So if the public is unhappy with the way justice is carried out, the case is taken to the office of Ombudsmen who has fewer powers than the attorney general. The power inequalities of these two nominees of these two opposing offices create a problem as stated by the participants below:

The problem we have in Zimbabwe is that both the Ombudsmen officer and attorney general are nominated by the president. The attorney general turned to save the interest of the president against the public, so there is no way the president can choose a strong person with strong work ethics. But instead Ombudsmen is someone who pays allegiance to the ruling party, so there is no impartiality in his investigations of injustices. This creates a

serious problem in the application of the law (Participant 8, Personal communication, August 19. 2014).

The participant elaborated the above by saying that, the president selects the Attorney general, who is the custodian of the law, the legal person for the state, therefore protects the ruling party in Zimbabwe and in most cases belongs to Zanu PF party. While Ombudsman is for the public, his role is to audit and make sure the laws are just. In Zimbabwe this person is usually a Zanu Pf member and a personal friend to the President. Therefore participant 8 sees the whole system as a farcical.

Participants one blames the government for the justice systems and procedures to be followed of which many have no direct benefit either to the young offender or victim as explained below:

The bureaucratic and lethargy within the government mechanism makes the uptake and follow up slow. These delays mean the young person can spend more time in the cells waiting for the processes that will not help him/her (Participant 1, Personal communication, August 01. 2014).

#### **4.7 Police Corruption and violence**

All participants interviewed talked about the corruption of the police that denies the young people any form of justice as explained by the quotations below:

The method that the police use in arrest and the way they get the information from the young people is unjust; there are no checks and balances on how the police operate. This creates a huge problem for our system (Participant 1, Personal communication 02. 2014).

Police corruption results in children being abused during the arrest and in police cells. The police use violence to obtain information from the young people who are suspected to have

committed the crime and potential witnesses to those crimes. Young people are starved, tortured humiliated in the hands of police in the cells (Participant 6, Personal communication August 06.2014).

The police through their corruption and violent methods of dealing with the young people have failed to create a relationship with the younger generation. The young people who could have witnessed the crimes are afraid to come forward with the information as the police will treat them the same way they treat the suspect (Participant 2, Personal communication, August 12.2014).

The Participants pointed out that charges of offences that proceed to the court system are those for which the accused are unable to pay bribes to police. This means the bribing take place between the arrest and police detention. It happens before the court. The dockets disappear before the court day and without a docket the young offender cannot be put on trial regardless of the gravity of the crime.

#### **4.8 Role of professionalism**

Professionalism has been described by the participants as having negative and positive impacts to youth justice system. Participants asserted that over professionalization of dealing with young people takes away the responsibility of parents in playing their role in the disciplining and upbringing of the young person:

Professionalism can also be a problem as every problem is dealt with by professionals. Some issues concerning young people can be dealt with in the community by the members of the extended families very effectively. But due to the growth of professionalism everything is handed to professionals, this creates a problem on its own as they will need ongoing clients to justify their job existence. It also takes the responsibility from the parents to

discipline their own children (Participant 6, Personal communication, August 06. 2014).

The young people deal with different professionals who come and go in their lives. But a young person needs to have an adult that will be there for them for a long time as to develop the attachment. The young people develop a behaviour problem if they do not develop an attachment to any adult they can trust. To have justice in the way we deal with our young people we need to look at early interventions that will teach young parents parenting skills to reduce the syndrome of leaving everything to the professionals (Participant 2, Personal communication, August 09. 2014).

Participant 6 is concerned about the way everything is left to professionals. He says the professionals are paid to do what they do, if more young people are properly rehabilitated and get out of the system and do not offend then it will mean there will be fewer jobs for those professionals that are involved. Participant 2 view too much of professionalization of dealing with young people as dangerous to their development as behaviours of lacking empathy and remorse can be caused by lack of attachment to an adult in early years of their brain development. This according to participant is caused by lack of the constant and consistent presence of a loving adult in the lives of the young people.

Professionals are used in the processes of youth justice for example the probation officers which are housed in the ministry of Labour and social welfare(the equivalent in New Zealand is MSD) The mandate of probation officers is to research the background and circumstances of the youthful offender in terms of sentencing. The probation officers are trained sociologists or psychologists who are supposed to be adequately armed with the necessary skills and tools to make appropriate recommendations to the court. The probation officer's report is held in high esteem by the court. Without it the court will not sentence a youthful offender (Participant 8, Personal communication August 19. 2014).

Participants also talked of the positive side of involving professionals in the dealings of youth justice. They pointed out that many young people are failed by the system because are not represented at court by professionals who are experts in the justice system. The quotation below explains how participant one views the lack of legal representation in the youth court:

Lack of youth legal representation denies the young people justice. Children are no experts in the law and are unaware of the same. Non availability or lack of legal support in most cases results in high miscarriage of justice. Magistrate is given the absolute powers in sentencing, the report from the probation officer might be overlooked by the judge or be a subject of misinterpretation. (Participant 1, Personal communication , August 01. 2014).

From these assertions above the participants concluded that the correction of young people's offending behaviour should not be left to the professionals only but also the communities where these children come from. The young people's behaviours are the reflections of the behaviours of the adults in their communities. On the other hand the young people need the intervention of the experts in order for them to get fair justice. Therefore participants believed youth justice is a multidisciplinary field that needs the skills of both parents and professionals who work together with interest of the young person.

#### **4.9 Lack of resources**

All the participants I interviewed talked of economic meltdown as a cause of youth justice degradation. The participants asserted that when things are tough young people tend to be neglected:

Due to the economic meltdown of the Zimbabwean economy the youth justice is almost non-existent. The police cells are dilapidated and inadequate which results in overcrowding and

starvation in police cells (Participant 9, Personal communication, August 02.2014).

The participant above continued to say arrested young people are mixed with adult offenders in the cells where the conditions allow the adult inmates to sexually and physically abuse the young people. He said the lack of resources also result in young people starving in the police cells. Economic meltdown has been the push factor for the professionals to emigrate for over 20 years. He pointed that young people spend too long waiting in the police cells because there are not enough probation officers to complete the background investigation for the young person. Skilled personnel have migrated to other countries for greener pastures, leaving Zimbabwe with a skeleton service. The ones that are remaining are so de-motivated by their low wages that they are very slow in processing each case at the detriment of the young person in police cells:

Some of the young people arrested in the rural areas fail to attend court on time because they will have no transport to take them to the nearest court. Therefore these young people will be left in police cells under harsh conditions for a long time (Participant 7, Personal communication, August 10. 2014).

The interviewee above continues to say that if it was not for the problem of centralisation and bureaucracy all the districts will be running their court cases, but at the moment all the courts are situated in large towns, making it difficult for those in rural areas or small towns to travel. It is difficult for the government to transport the young offenders to courts let alone the relatives to support a young person:

If sentenced to rehabilitation centres, there is also shortage of resources and skilled professionals which mean the young people are no longer getting the life skills or tertiary qualification they are supposed to get. It is more of contain and control rather than rehabilitation, as effective rehabilitation need resources that the country at present cannot afford. This makes the situation worse

as institutionalisation increases deviant behaviours through learning from each other (Participant 10, Personal communication 19. 2014).

The interviewee elaborated his assertion above by saying youth justice residences are supposed to be rehabilitation centres that transform the behaviour of the young person. Also some participants argued that at the beginning of Mugabe's rein, he adopted a very good policy for young people when schools like Chindunduma High in Mashonaland Central, Jason Ziyaphapha high in Matabeleland South and many others of that nature were built in different areas in Zimbabwe. According to participants these schools provided education with productive curriculum where the young people were taught agricultural skills and produced 30% of their food in the school farms. By the time they finished high school were already hands on in different trades. Participants continue to say that training colleges were set up to continue the training for practical subjects up to a diploma level. But this was quickly abandoned due to lack of funding. Participants asserted that after independence the donors poured a lot of money in these programmes to help the setting up hoping these programmes will reach the level of self-sustainability but due to poor management of our political leaders that stage was never reached. When the donors pulled out these schools reverted back to be just ordinary schools providing the academic curriculum that had very little relevancy to the Zimbabwean economy. Participants said today the young people graduate from the universities to join others in the streets or in shanty towns of illegal gold panning. In youth justice centres same applies, young people used to be engaged in meaningful trades that will open job opportunities when discharged but today all machineries are too old and most of them no longer work anymore. Participant 10 concluded by saying we cannot talk of youth justice in Zimbabwe while we are failing to provide the basic necessities of life to these young people.

#### **4.9.1 Changes in the community focus**

The social fabric of the country has changed with economic hardships, political instability and the mass movement of the highly skilled people to

other countries looking for jobs. The focus of the communities has changed from hardworking to cutting corners in every business transaction. This has resulted in a negative impact to the country as the quotation below shows:

The spirit of working hard has been replaced by the spirit of cheating and stealing or the use of any means that will give the person money quickly (Participant 5, Personal communication, August 25 .2014)

The people in Zimbabwe are over reliant on overseas relatives who remit the money in Zimbabwe to support their relatives. This has created a gap in attitudes of Zimbabweans living in Zimbabwe and those overseas when it comes to work attitudes and ethics, as elaborated by the quotation below:

The present social context in Zimbabwe promote deviant behaviours, the disintegration of family fabric due to 'diasporas' influx has broken the communities' responsibilities and reduced the population of Zimbabwe to be consumers of South African and Chines products. There is a tendency of overreliance on market products instead of producing some of the products locally. This might be due to the fact that the money they spend most of them comes from overseas, therefore easy money to get and spend it even where they can save it (Participant 12, Personal communication , September 10. 2014).

Participant 12 said almost every family in Zimbabwe have one or more members working overseas. Those few working overseas always remit the money back home to sustain or support the relatives in Zimbabwe. The participant asserted that even though this is done in good faith by those overseas, it has robbed the population of Zimbabwe living in Zimbabwe the skills of being creative and working for themselves. As they wait to be given the money by those overseas, this has destroyed the ability for the communities to sustain themselves.

Participant 3 also blames the wrong role models in Zimbabwe that become millionaires through corruption and indulging in criminal activities as the following quote reveals:

The role models are the people of political inclination who became rich overnight through unscrupulous means. These role models are people of no cultural values or norms who become prominent due to criminal activities (Participant 3, Personal communication August 15.2014).

Other participants also commented that the young people cannot be expected to be crime free while the politicians are encouraging that behaviour by promoting corruption. They continued to say professionals who have spent much of their time and money in education are the poorest people in Zimbabwe. But thieves and thugs are the ones that drive nice cars and build mansions. Participants argued that the young people are the product of their environment therefore they tend to normalise criminal activities because that is what they see from the adults.

#### **4.9.2 What can be learnt from New Zealand Youth Justice?**

All the participants agreed New Zealand youth justice models can be used in Zimbabwe with some modification. There was no doubt to all the participants that New Zealand youth justice system is more advanced than that of Zimbabwe but it is not a perfect system either. It has some strength and weaknesses. Participant 9 recommended the way the government in New Zealand support the youth in engaging in different skill based training programmes

New Zealand government has put more community based programmes to try and prevent the young people from engaging in criminal activities. These include free education for the youth through youth guarantee programmes pioneered by Manukau Institute of Technology and other colleges. This keeps the youth occupied and give them the opportunity to acquire industrial skills

that will increase their opportunities in finding an employment.  
(Participant 9, personal communication, October 10. 2014).

Participant 3 talks about the use of FGC and how it promotes restorative justice and cultural identity through family participation in dealing with young offenders.

The use of FGC in New Zealand youth justice does not only keep the family in loop of what is happening to their children but it also help the families to be involved in decision making. The intervention plan that is agreed on incorporates the cultural values and community aspirations. The involvement of the victim to come to face to face with the offender in a controlled environment brings a closure to both parties. The offender gets the opportunity to apologise to the victim, usually through the letter that the young offender writes prior to the meeting (Participant 9, personal communication, February 10. 2015).

Participants also talked highly of New Zealand Youth Justice Court processes. As Participant 5 asserted:

I really like the way the Youth Court works with Family Group Conference in coming with outcomes of the offenders The judge does not have absolute power in making decision but his decision will take into consideration of what has been agreed in the FGC. The first priority of Judges is to keep the young offender out in the community unless if the public safety is at stake. The youth court judges and the FGC are guided by CYF Act of 1989, which state that the young person should be made accountable for their own actions in a way that does not compromise their wellbeing and safety. They focus in repairing harm by integrating the offender back to the community and this quicken the process of restoring the relationships that have been affected by the act of offending

Participant 4 asserted that even though The CYF Act of 1989 introduced a lot of principles that resembles restorative justice, it is still far from meeting the needs of the young people. Youth justice is still run and managed by Child youth and family which is an organisation for social workers. In theory they say there is a separation of the youth justice from care and protection but in practice it is run basically the same way by the people with same skill base as those in care and protection. This identity problem in practice creates inefficiencies in the system that fails the young people. The system is also accused of being too punitive, criminalising minor offences which can be dealt with in the community.

Participant 1 sees the problem embedded in the recruitment and retaining the good staff in the youth justice residence as explained by the quote below:

Social work training does not equip social workers to deal with the deeds of these young offenders but their training framework is more on the dealing with the needs of the young people than the deeds. This mismatch in skills sometimes results in youth justice residences running like care and protection residences. The young people might be fed and contained but without any sound rehabilitation plans it means the offending behaviours are still not adequately addressed (Participant 1, personal communication, October 10. 2014).

Participant 4 continued to elaborate that the plans the case leaders write after the initial assessment are more of care plans than behaviour and rehabilitation plans. The participants argued that the care plans that the youth workers are given do not meet the needs of rehabilitation which are safety, security and success, referred as 3Ss of practice but the needs of care, containment and control referred as 3Cs of practice. The 3Cs are more of care and protection needs, therefore not addressing the offending needs of the young people.

The issue that was highlighted by most of the participants was that other professionals employed as youth workers, working on the floor in the youth justice residence have degrees and other higher qualifications in mental health, psychology, criminology and education. They have valuable skills to deal with the

deeds of the young offenders but currently even though employed on the bases of their qualifications, their skills base is less valued by the organisation as compared to their counterparts' social workers. This according to participants is due to the fact that youth justice is run by Child Youth and Family(CYF) under the Ministry of Social Development , CYF is a predominately social work department and most people in the management position have social work background therefore bound to recognise their own more than those from different fields

Participant five asserted that the inequalities of the youth justice professionals is evident in unequal pay scale with their social worker counterparts for the same job, being named differently for the same type of a job, the so called youth workers regardless of the skills they have, are being treated as of less importance by the department yet their contributions are enormous to the management of the behaviours of the young people. The importance of youth workers is elaborated by the quotation below from participant 6:

Those who work face to face with the young offenders are the people who drive the youth justice practice, always on the forefront. Their assessment on the behaviour of these young people is individualised and based on what they observe as they work with the young people all the time. They see the changes and triggers of the events on daily bases but these are the people who are valued less regardless of their knowledge and skills they bring in the organisation. This create a problem in practice when people with relevant degrees are undermined by the organisation yet are the people that always pull their theoretical knowledge to manage the young people safely, provide variety of the programmes in the units for the young people and do individual assessment for these young people on daily bases (Participant 6, personal communication, September 20. 2014).

Participant 6 continued to assert that youth workers in youth residence due to time constraints as they have to supervise the young people every time of their eight hour shift, they do not have time to plan and put together clinical programmes that addresses the offending behaviour. Therefore to occupy them they provide

programmes that are physical in nature or electronic games and DVD to fill in the time. These programmes are good for the young people but not enough for changing behaviour.

Participant 9 questioned the value of the work done by the case leaders in meeting the needs of the young people and described them as paper pushers that has got no much of a significance in change of behaviour as explained by the quotation below

It appears the work done by the case leaders who are referred as clinical team do not provide clinical programmes at all in practice. The young people need motivational programmes that will lead to change of behaviour. The Clinical team are based in the remote offices from the young people and rely on the feedback given by the youth workers on the behaviour of young people. Youth workers in most cases are overwhelmed by the work as they hardly get the time to be in the office to write key work reports. Therefore some reports are not completed on time or not at all (Participant 9, personal communication, September 15, 2014).

When the participants were asked whether youth justice can be better under the corrections department, all participants said CYF is a better organisation to run it but just need to change some of the jobs to focus more in meeting the needs of the young people rather than having a department of case leaders who are highly recognised by the department in the youth justice residence but who turn to be paper pushers who tick the boxes in the comfort of their offices. Participants asserted that most of the plans are copy and paste with no relevance to the young people in question. The participants said this fails the young people under youth justice systems, as a result the youth justice residence in New Zealand are currently seen as a specialised colleges that graduate the young offenders to tertiary criminal university which is the prison. Participant 4 concluded by saying if Zimbabwe is to adopt the New Zealand models it has to guard against these loophole in the New Zealand system.

## Summary

The research findings have expressed concerns about the Zimbabwean youth justice framework and practice. Limited public knowledge of youth justice in Zimbabwe meant that even though the young people are abused in the system very few people will know about it. This makes it difficult to raise the momentum needed to push for changes when just a few understand what youth justice is all about. The framework, in the views of the participants, needs to be modified within the context of Zimbabwe. Constitutional law at the moment is not relevant to the people of Zimbabwe. The traditional law is also criticised for incorporating capital punishment. What is needed is a law that will incorporate the good of both constitutional and customary laws. The right of the children complies with the international laws and as a country it is very important to comply with these international laws for transparency and the good of children who cannot defend themselves. The constitutional law recognises the rights of the young people as stipulated by the children's' charter. The principles of Zimbabwean traditional justice which is similarly called restorative justice today should be incorporated to modern Zimbabwe justice. This will give the country a collective responsibility of correcting the wrong behaviours of young people in society. Some of the participants felt that many people in Zimbabwe might lack motivation for developing themselves by embarking on community projects that will bring income to the households. This perceived lack of motivation could also be looked at in terms of lack of autonomy and opportunities. The findings also gave an insight of the loophole in the New Zealand system that need to be avoided if Zimbabwe adapt the New Zealand youth justice models.

## **CHAPTER FIVE**

### **DISCUSSION, ANALYSIS OF DATA AND RECOMMENDATIONS**

#### **Introduction**

In this chapter the researcher will use thematic analysis techniques to code the data according to meanings and patterns. Realistic approaches will be applied in analysing the data. The chapter will provide discussion and a detailed analysis of the findings linking them to the literature review. It will endeavour to answer the question “How effective is Zimbabwe’s youth justice in meeting the needs of the young people and the community at large”. The research findings have shown that there are a number of loopholes in the system of youth justice in Zimbabwe supported by literature review. The semi structured interview method and focus group that was used to give advice on cultural themes coded from the interviews will be discussed and analysed in detail. The data from interviews and audio recordings will be woven together in this chapter including the researcher’s personal observations. Conclusions will be drawn as to whether more research on ways of improving youth justice and its effectiveness in meeting the needs of the young people is needed.

#### **5.1 How participants defined youth justice**

The most important thing for me as a researcher was to know how the participants defined the term ‘youth justice’ at the onset of the interviews. Therefore I asked the participants their understanding of youth justice at the start of the interviews. This was important for me as a researcher in understand their thinking paradigm in terms of the subject in question. I realised that even though the definitions of the participants differed most of them confused the concept of youth justice with youth law. These two words during the interviews were used interchangeable by the participants. Participants’ definition of justice was intertwined with the law, this is common when people are talking in general terms usually talk of justice as not a separate entity with law. As Madhuku (2010) argues that to be able to assess whether there is justice in the way Zimbabwe’s legal system deals with young offenders there is a need to separate law from justice in definition. Some laws can be unjust but remain being laws to be obeyed and enforced by the state. Some

participants defined youth justice as a punishment the young people get after committing the crime. Foucault (1977) state that punishment deters a potential offender in committing a criminal offence. This was the definition that was widely used in the early 18<sup>th</sup> century. But with the development of human science knowledge this kind of definition was criticised for focusing on the deeds rather than the needs.

As in this definition above youth justice has got nothing to do with the development of the young person through rehabilitation and sound life skills programmes, but is about punishment and disciplining the young person and from my experience with Zimbabwean way of discipline is to inflict pain through use of cane or other punitive methods. According to Foucault (1977) human science knowledge has brought a lot of changes in the way the society view crime and punishment. Trial and sentencing are no longer aims at inflicting the pain to the body, but to correct the wrong doing and rehabilitate the person. However in other countries like Zimbabwe torture is still traceable as it might be difficult for the guards and police that were brought up and general trained to use force and inflict pain in the body of the offenders imagine what a non-corporal punishment would be. From my experience and that of the interviewees in the study of working with the young offenders punitive measures tend to harden the young people rather than reforming them. Therefore from this definition above there is no justice in the way the young people in conflict with the law are handled in Zimbabwe. As participants have asserted that Young people are being detained for months to few years depending on intensity of the alleged crime.

But detaining the young person for what they did without looking at the underlying factors of the offending behaviour is seen as not fair to the young people and therefore not just by the youth justice activist like Kaseke (1993). The participants also asserted that the police tortured the young people and witnesses alike during and after the arrest. This means the young people get punished even before they are proven guilty. The study has shown that, in the youth justice framework in Zimbabwe, these definitions sit in the criminal justice model that presents ambiguities when mixed with social welfare model in practice. This explains why Kaseke (1993), a principal social worker, is the major critic of the Zimbabwean youth justice and advocate of reforms.

One participant out of 12 expressed difficulties in defining Zimbabwean youth justice as she felt there was no justice in the way young people in conflict with law are treated. The young people in Zimbabwe are treated like adults in police cells and prisons, therefore the participant saw it prudent to only talk of Criminal Procedure and Evidence Act (chapter 57) rather than youth justice. Therefore this points out that according to the participant there is no justice in the dealings of the Zimbabwean legal system with young people. It was clear that Youth justice is a concept that needs to be explored further if more effective models are to be promoted.

At the end of the interviews the researcher concluded that youth justice in Zimbabwe needs some reform in both the framework and practice. As the participants have argued that the Zimbabwean framework has some elements that are good but just need to be modified to suit the current context. In practice it needs a total change that will turn around the youth justice system that does not serve the needs of the young people to a system that put the needs of the young people at the centre of practice.

In the literature review it was noted that Plato has argued that the meaning of justice is broader than only paying the debt and telling the truth. I also feel the same with the definitions given by some of the participants as shown by the quotes above. Justice is more than punishing or disciplining the young people away from home. Most of the definitions given by the participants in this study were too narrow in scope for the concept of justice. Therefore there is a need to educate the public, including professionals such as the participants in this study, on what the word might mean in a broader sense. The focus group pointed out that it might be helpful to involve the traditional leaders especially the village chiefs in coming up with a definition of justice that is based on local customary values and principles. This will put the definition in the Zimbabwean cultural context. Madhuku (2010) argues that under the customary law even though not recognised by the state, justice is not an individual term but a wide concept that refers to the virtues of the whole community. That is when the traditional concept of “*Ubuntu*” comes in, meaning ‘I am the person because you are’. Plato in the literature review supports this approach by giving an all-encompassing definition of justice as below:

The quality of soul in virtue of which men set aside the irrational desire to taste every pleasure and to get a selfish satisfaction out of every object and accommodate themselves to the discharge of a single function for the general benefit (Plato as cited in Hart, 1958., p84).

In simple terms this might mean justice is not about the benefit of an individual, but it is about the good of the whole society. Punishing the young people away from home does not repair the damage or restore the relationship between the offender and the victim to what it was before the crime. The young offenders are the products of their environment therefore to deal with the young offender alone without addressing the negative factors in the environment they grow up in, will not change them much as they will go back to the same community. Whatever intervention to be applied should be all encompassing in the community. The interventions should deal with the forces of the community that lead to young people into committing crimes.

Another customary phrase that is normally used in the village court to the offender and supporting community is '*Inhlanzi yinhlanzi ngamanzi*' ( a fish is a fish because there is water) This simply means if you live by the virtues of the community you will be strong but if you live by individual principles and values you are likely to fail. A fish outside water will die as the person without the community support will never grow to his/her full potential. This emphasises that a crime is not done to an individual but to the whole community. That is why it takes the whole community to correct the wrong that was done by an individual in customary law. The focus group suggested the traditional ways of dealing with young offenders use the concept and techniques of restorative justice and this concept is usually not included whenever the word justice is defined.

The major problem that surfaced in the interviews is that the majority of people I interviewed mixed the law with justice in definition despite being asked about the concept in different ways. This showed how difficult it was to measure the effectiveness of a concept that has ambiguous meaning to the public.

Justice as seen by Plato is as for the good of everyone not for an individual. When justice principles become individualistic then it ceases to be justice. Justice

according to Madhuku (2010) is based on moral foundations and moral concepts are based on how well you treat others. But in Zimbabwe as the research findings have shown, justice at the moment is seriously compromised, the constitution has been amended more than 26 times since the country's independence in 1980 (Madhuku, 2010). All these amendments had nothing to do with human rights let alone the rights of young people but only to serve to strengthen the powers of the ruling party. Therefore based on Plato's definition of justice, it can be concluded that there is a need for reform in Zimbabwe's youth justice systems to ensure the principles of justice are served.

The researcher was well aware that project that evaluates the effectiveness of justice system in Zimbabwe will be challenging. If the concept cannot be simply defined then it creates a problem in its application.

## **5.2 Limited public knowledge on youth justice**

The study has shown that most of the participants had limited knowledge about youth justice in Zimbabwe even though they had worked within the system. This was highlighted in the methodology chapter where the researcher was finding it difficult to recruit women social workers, as they claimed the subject was too complex for them or simply did not have interest on the subject. Only two women participated, some Zimbabwean women approached by the researcher declined to participate and referred the researcher to their husbands. When asked whether there was a reason for this, most of them pointed out that they knew nothing about Zimbabwean legal system let alone the youth justice. This indicated that Zimbabwean women lack information on youth justice and this might cause a lot of problems. These were professionals I was talking to who were unaware what Zimbabwean youth justice was all about. The researcher concluded that if Zimbabwean professional women are lacking information about their country's youth justice, nothing better can be expected from the non professional women of which the majority are living in rural areas. Zimbabwe's public knowledge about the general legal system is so limited, let alone youth justice. Despite reading the court cases in the media which the majority of people in the rural areas do not have access to, there is no way the public can have that information. Due to name suppression and some sensitivity in handling the cases of young people the

information is not accessible to the media either. Therefore the majority of the public are ignorant of its existence.

For youth justice systems to be reformed there is a need for the all of the public to have the knowledge of the existing processes in order to suggest any changes that will be beneficial to the system. But if people are not aware of what is there it is difficult for them to recommend changes. The study findings have shown that the legal issues are usually left to the parliamentarians, with very little publication about Zimbabwean legal processes. That knowledge according to the participants is specialised and only accessible to those in legal profession like lawyers' judges and probation officers.

After starting this research project I visited Zimbabwe and realised that there were only two places where I could get the Zimbabwe's legal information, in the law library at the faculty of law at the University of Zimbabwe or Trade Gold legal resources centre in Bulawayo city centre. Both of these areas are not public domains, you have to be enrolled with the Faculty of Law to use the law library and at the Trade Gold resource centre or you need to be a lawyer or studying in a similar field to gain access to that information. Therefore this means for the general public there isn't much information for them. The only information they get is of small number of cases that are reported in the local newspapers or local television news. Media reports in Zimbabwe are government controlled and highly censored therefore most of the reports concentrate on the nature of the offence and very little if not none on the legal procedures or justice or injustices in the handling of the case.

All people interviewed raised the issue of very limited information about youth justice in Zimbabwe. Youth justice is starting to be a topic of interest to Zimbabwean scholars recently as Magade (2013) urges the students of legal studies to turn their research focus on youth justice. Magade (2013) asserted that the University of Zimbabwe in the faculty of law there is a shortage of youth justice literature. As more upcoming researchers focuses on the youth justice, publicity might be expected to increase. This might raise the public awareness of issues pertaining the youth justice system and hoping that awareness might eventually lead to reforms that will improve the system.

Kaseke (1993) Mutandwa (2012) and Vengesai (2014) are the main authors that provide the majority of information about youth justice in Zimbabwe. These authors might have been drawn to this topic because of their professions; Kaseke (1993) is a principal social worker and works closely with young offenders and the probation officers. Mutandwa (2014) is a lawyer who became interested in youth justice after working closely with young people in the youth court. Vengesai is a law student and his research is current therefore might have been motivated by the nongovernmental and Zimbabwe faculty of law campaign on more research on youth justice. The gap in terms of years between Kaseke's work written in 1993 and the later writers like Mutandwa (2012) and Vengesai (2014) is nearly 20 years. However interestingly problems raised in 1993 are the same problems faced by the youth justice system in 2012 and 2014. This means nothing much has improved in the youth justice system in Zimbabwe, the only hope now is that students of the legal studies are being encouraged by the Dean of faculty of law to focus on the youth justice (Magade, 2013). The term youth justice is starting to be used in discussions dealing with young offenders by some few lawyers, while in the past juvenile justice was widely used.

The study findings have shown that this is a stigmatising word as in most cases in daily use, juvenile is always followed with delinquency. As Lynch (2008) argues that, whenever this term is used the young offenders are being stigmatised and become the victims of public perceptions rather than the offenders. Some nongovernment organisations like UNICEF and DPGZ are helping in raising public awareness of the problems faced by young people in conflict with the law in Zimbabwe by organising and facilitating information workshop on the youth justice. The interesting thing is that the above 40 years of age participants described with much detail how the young offenders were punished in the juvenile delinquency centres 35 years ago but did not know much about the legal procedures and laws of youth justice at the time. To some of the participants it appeared youth justice meant juvenile delinquency which was responded to by punishment. The researcher concluded that 35 years ago most of the participants were the youth themselves, so they were being told what will happen to them when they commit crimes. Which might have been the tool used by the schools and parents to deter the young people in engaging in criminal activities. More-over the country has

been engulfed by economic problems that the majority of people might be more concerned about means of survival than the justice of the young offenders. Another explanation might be that international journalists are banned in Zimbabwe and the local media operators are heavily under government scrutiny. If the local newspaper reports anything negative it will be totally banned.

### **5.3 Problems with youth justice framework**

The study findings have shown that there is a problem with the youth justice framework that does not include the principles of customary law. This concurs with Vengesai (2014) that Zimbabwe's laws after several years of independence still expose residual traits of the process of transplantation of historical disempowerment and colonial takeover. Madhuku (2010) asserted that Zimbabwean's constitutional law is still based on the combination of Roman Dutch Law and British common law, the only customary law that is incorporated in the constitution is in issues concerning marriage, property inheritance, child adoptions and guardianship. Youth justice laws do not incorporate any of the Zimbabwean traditional or customary laws that are deep rooted on people's traditional principles, developed by the people of Zimbabwe based on moral and African philosophical values of the time. This does not serve the country very well, instead it alienates the indigenous Zimbabweans from the constitutional law of their country. If the framework does not meet the needs of the people that is supposed to be serving, then justice does not exist in that system. Therefore youth justice laws need to be reformed in Zimbabwe.

Any reforms to be done need to start with the foundation principles of the legal system. Suggestions have been made to improve the youth justice framework in Zimbabwe by copying the models used by the other countries in the western world. Participants see value in using New Zealand as a role model in reforming Zimbabwean youth justice. But focus group in their analysis challenged simply copying of the models as this might create a contextual problem. Durie (2007) argues that even though the framework of New Zealand youth justice is seen by the western world as one of the best, it seems somewhat irrelevant to the people of Zimbabwe. As a youth practitioner with a lot of experience in youth justice I realised that these participants were looking at the framework of youth justice in

Zimbabwe with the western world perception, not taking into consideration that Zimbabwe has a different context from that of New Zealand. As some of the participants argued there is not much difference between the youth justice framework and that of New Zealand as both reflect the influence of Britain common law. But Zimbabwe's economy, political climate, social structures, customs and traditions that are based on the African philosophy is different to that of the New Zealand. Therefore what might appear to be working in New Zealand might not work so well in a different context. The fact that the framework looks similar to that of New Zealand whilst there are so many disparities between the two countries is a problem on its own. Therefore it can be prudent to say that Zimbabwean youth justice needs to be reformed as to meet the current needs of the people of Zimbabwe.

The participants has also put more focus on the need to incorporate the customary way of dealing with young people in conflict with the law, but from my experience as a youth justice practitioner, this on its own cannot solve the problem. It is generally accepted that traditional laws of dealing with young offenders on their own might no longer be adequate but marrying the modern and traditional ways of dealing with the young offenders might result in developing more effective models that will appeal to the communities of today.

According to Mazibuko (2010) the social and economic structures have changed over time, young people have a different culture from that of their grandparents. The communities evolve with time developing new cultural concept and moral values, modifying or completely casting out those that are no longer relevant to them. Cultural concepts and values change with time. Therefore whatever reforms, it should be taken into consideration that any customary concept that is incorporated to youth justice laws should be relevant to the communities of today not historical communities (Ministry of Justice 2009). Therefore I suggest that if any new models are to be introduced there should be a systematic adaptation that will consider all the contextual factors and modify those models to suit Zimbabwean environment.

## **Degeneration of *Ubuntu***

As discussed, *Ubuntu* is an African philosophical concept based on traditional moral values that put emphasis on that an individual is a product of the environment. Literally it means I am because of you. Desmond Tutu (1999) state that *ubuntu* has been allowed to degenerate among the African societies, adults are no longer role models of the young generation but role models are criminals that can make millions over night through illegal means. *Ubuntu* has been allowed to degenerate to the point that a culture of rebellion among the youth is becoming the dominant culture in Zimbabwe (Nango, 2013). Part of this degeneration of *Ubuntu* is caused by forces of urbanisation and greed. People are becoming more individualistic that community values are becoming gradually replaced by individual values (Tutu, 1999). *Ubuntu* held people together and it took the whole community to raise a child, therefore the interventions for juvenile delinquency was communally administered (Battle, 2007) . Moral values were enforced by any adult in the community who witness the wrong doing. The communities need to bring back the values of *ubuntu*, and reinforce it in daily activities of the young people (Tutu, 1999). The question now is how we restore the “*Ubuntu*” values to the modern communities. If incorporated to national law, is it going to be relevant to the young people of today or it will be another imposition of the older society’s values to the younger generation?

### **5. 3.1 Spirituality and youth Justice**

The study findings have revealed that the customary law in Zimbabwe links justice processes to spiritual interventions. Therefore for the Zimbabwean indigenous people, the current youth justice systems are based on the constitutional law that does not recognise the spiritual role in correcting the behaviours of the young offenders. This is therefore considered inadequate for the people of Zimbabwe.

The focus group elaborated the above by saying traditional disciplining of the children in Zimbabwe was attached to the spiritual interventions. It is believed that if a young person commits crime against another human being the whole clan will be punished by the (Ngozi) a spirit of revenge which supports the notion of community involvement in restoration of order in the community. This spirit can only be appeased by paying reparation to the offended and a successful

mediation. As the punishment was for the whole clan, the whole clan were actively participating in the correction of the negative behaviour of their children. It is believed that “Ngozi” will punish the offender by bringing a curse to the whole family. The person who had committed the crime will watch each of the relatives go through pain that leads to death and if a settlement is not done on time the offender will be the last one to die. This is meant to inflict the maximum punishment to the offender seeing all relatives perishing because of the offences that have been committed. This deterred the young people from committing crimes against the public.

Whether this is a myth or not, it is a strong belief among Zimbabwean communities, people are forced to confess their unknown crimes because of the “Ngozi”, which can only be stopped by paying reparations to the offended. But this can also be argued that punishing the innocent because one member of the clan has offended deny people their rights to fair justice. According to the focus group strong message that is being converged by the concept of spiritual revenge is that committing a crime does not only upset the relationship of the living but also of the spirits as well. Therefore the young person before committing the crime should not only think about the living but the dead that can see you in hidden areas and darkness. The spiritual justice does not need witnesses, one can manage to escape the human justice system but no one can cheat the spiritual justice system. This has led to so many people coming forward and confessing their crimes even if not arrested. It is a powerful tool in African societies as a whole to keep young people away from crimes.

### **How does the Zimbabwean current frame work affect Practice?**

According to participants the loopholes in the framework are causing many inconsistencies in practice. The study has shown that the people of Zimbabwe are discontent in the practice of youth justice, pointing out ambiguities in the youth justice acts that result in different interpretations of law therefore creating inconsistency in practice. As Madhuku,( 2010) argued that, If one thing is defined differently by the state from what the society perceive, then contradiction will occur which in the case of Zimbabwe, resulted in the communities having their own unwritten and not recognised by the state way of dealing with their own offenders.

The communities carry out their justice processes in their villages. Even though this process is not recognised by the state but this does not stop communities having their traditional courts where traditional models are used. But because it's not enforced by the state it's not uniform across the country. Which also creates a problem in its application as there is no check and balances it might result in miscarriage of justice. To me as a researcher I see it as a double punishment, the offender will be punished by the state and later on the communities will carry out their own justice processes based on customary law. An offender even after serving a sentence is expected to come back to the community and go through the mediation processes and pay the victim what has been damaged by the offender's action of committing the crime. The focus group in their analysis agreed with the participants on the need to incorporate the indigenous way of dealing with the young offenders in the constitution if justice is to be observed under constitutional law.

Having worked in other countries with similar background like Zimbabwe, I have noticed Zimbabwe is not alone in this problem of having a legal system that is alien to the customary values of its people. All former colonies are struggling to reform their legal system to make it more relevant to the people rather than having a legal system that resembles the legal system of European laws. This was also the case with New Zealand Children and the Young Person Act of 1974; which was seen as a "racially repressive piece of legislation" which has no relevancy to the indigenous people (Watt, 2003). New Zealand has gone a long way in cooperating the Maori traditional models in youth justice.

In the literature review (Murphy, McGinnes & McDemott, (2010) talked of an effective youth Justice system as one that addresses risk factors in all facets of the environments of young people through collaboration with a range of community agents including schools, indigenous and other minority communities and NGOs. Government effort is required to encourage community participation in program design and delivery. This process is not easy; it might take a long time and need both human and material resources. But if a law is no longer meeting the needs of the society then has to be reformed or discarded completely and new laws need to be enacted. The criticism of the 1974 act led to 1989 reviews of the country's laws of dealing with the young offenders in New Zealand which saw the

passing of Child Youth and Family Act of 1989 (Watt, 2003). This act empowered the families and victims in participation in the youth justice processes through FGC meeting they can make decisions on strategies for correcting the wrong that has been done by the young person. Therefore Zimbabwean laws must not be static they have to change with changing times. The political and economic climate of the country at the moment will be receptive to any reforms that will reduce long detention periods of young people. This will be due to the fact that jails are flooded and inmates are starving. Therefore any changes that will reduce the concentration of the inmate will relieve the stressed system.

There is no doubt that the Zimbabwean state is failing to sustain its youth justice load at the moment, as evident from the conditions of the detention centres and miscarriage of justice (Vengesai, 2011), (Muthandwa, (2012) and Kaseke, (1983). Therefore responsibilities need to be decentralised to increase the efficiency of the system. To do this, there is a need to strengthen family engagement in processes of correcting the negative behaviour of their children. If families are proactive in finding solutions to these problems there will be a shared responsibility between the state and the families. The increase of community placement will reduce overcrowding in detention centres.

#### **5.4. Application of international laws**

Zimbabwean youth justice laws were not left far behind from the western world. But the difference is that there is a contradiction of theory and practice in Zimbabwean youth justice system. In theory youth justice in Zimbabwe is very progressive but in practice retrogressive. The literature review has indicated that Zimbabwe has signed, rectified and domesticated into national legal framework most of the major UN conventions and Bills that protect young offenders like UDHR, ICCRP, CRC, and ACRWC. Participants asserted that by merely looking at the framework of youth justice in Zimbabwe one might think the rights of the young offenders are highly protected. But when one visits the detention centres and prison it's a different story. All these international laws are not respected in practice. Zimbabwe's legal system consist of the constitution, the children's act, the criminal Law, codification and reform Act, the criminal procedure and evidence Act, the prison Act as well as the legal Aid Act (Madhuku, 2010). These entire

legal instruments have made a great progress to incorporate the provisions of Article 37 and 40 CRC and Article 17 ACRWC. The study findings has shown that these are on paper, in practice the rights of the young people as stipulated in these legal instruments are not always granted to them. This shows that domesticating the international laws to national legal system is one thing and implementing it is another. Therefore Zimbabwe's youth justice framework needs adjustment to meet the needs of the 21<sup>st</sup> century but a lot of work has to be done in the implementation of these laws.

### **5.5 Lack of Victim support**

The literature review has revealed that in other countries youth justice gives both the victims and offenders equal importance in the legal processes of correcting the wrong done by the young offender. This has been seen in New Zealand where the victim plays an equally important role in FGC meetings and is equally consulted during the court proceedings. The study findings has shown that in Zimbabwe the victim is only important in the investigation process but not in the sentencing of those who offended them. After the arrest the victim will never be consulted or informed about what happens with the offender or the outcomes of the court proceedings. Therefore the participants felt that at the end of the day the victim will still be aggrieved even after the offender has done his time in youth detention centres. If reparations are paid they do not go to the aggrieved victim but they go to the state and nothing goes to the victim to restore what has been lost. The study findings have shown that this area needs to be revisited in order to devise processes that will recognise the victim in all stages of youth justice processes. The research findings give a comparison of the customary law and constitutional law in dealing with the young offenders. A victim will be emotionally and physically affected by the crime committed against him/her. The crime might offset the balance of the wellbeing through living in fear and lack of trust of the people around him or her. The research study has shown that the victims need to be taken care of by the justice system by making sure they get the right counselling and community support. They also need reparation to be paid for what they have lost to restore what was there before the crime. The participants indicated that in the current system in Zimbabwe a victim of crime also becomes the victim of the legal system. By not informing the victim of what is happening to the offender after

arrest leaves the victim in limbo and speculating on what might be happening to the offender. Not to be informed make the victim live in perpetual fear, not knowing when the offender will pounce again. But under customary law the victims, parents and mediators work together to correct the offending behaviour of the young people. Therefore under customary law there is the involvement of the whole community not only of the offender but that of a victim as well. The offence is committed against the whole village therefore it will take the whole village to correct it. From the study findings it can be concluded that Zimbabwe needs to come up with a model that is similar to that of New Zealand FGC. This will not only involve affected communities but will also enhance and harness the indigenous techniques of resolving the dispute in an amicable way that will have a long lasting effect.

### **5.6 Politics interfering with Law**

Eighty percent of the participants proclaimed the Zimbabwean law is not divorced from politics, which is a significant number. Political giants seem to be above the law, as long as the crimes are committed in the name of the ruling party. This according to the participants creates problems when it comes to just application of laws. Participants explained how the political leaders recruit young desperate people from all over the country and train them as militia called Green Bombers. This shows how complex is to improve youth justice in Zimbabwe. If adults are training young people to be criminals then how can young people expected to reform. If the young people commit crimes under these circumstances they cannot be blamed but the adults who train them are the ones that are responsible. In this case the participants asserted that crimes committed under these circumstances the offenders becomes the victims of the environment. Therefore punishing the young person for turning out to be a criminal due to the forces that has no control over is not justice. If reforms are to be effective the behaviours of adults should first change, politician should lead the programmes that will develop the country and train the young people to be productive citizens.

Muthandwa (2012) asserted that delays of the young people court case hearings because of too many bureaucratic steps in the system that delays the whole process and keep the young people in police cells longer than necessary was of

concern supporting the points raised by most of the participants. In addition as noted by Kaseke (1993) in the police cells where these young people are detained awaiting a trial are subjected to all sorts of torture and abuse. When the political heavy weights are fighting the youth suffers more as is the age group that is used for campaigns and organising rallies. Youth from opposition will clash and crimes will be committed. The arrest will only be done to those who do not belong to the ruling party. These young people can be detained for a long time without a trial. Some can be executed without being trialled. Therefore there is no justice in such situations where the dignity of a young person is stripped up to the extent that they are punished before the conviction. Some cases will wait for some months because the trial docket is missing in the file. The shortage of social workers in Zimbabwe makes it difficult for the investigations to be completed on time and this delays the whole processes. The researcher also wonders whether the delays by the probation officers are due to shortage of social workers or the resources for the probation officers to travel to parents of the young offender and make necessary assessments. But because the government cannot pay even the existing ones properly, they are demotivated and this results in underperformance. This is also supported by (Kaseke, 1993) who pointed out that those assessments completed by probation officers are not taken seriously by the judges in some cases they do not even read them. Therefore the probation officers might feel no urgency in completing an assessment that will not be used anyway by the judges in determining the outcome of the young offender. The participant continues to say justice delayed is justice denied, when these young people are finally sentenced they have suffered a lot of abuse in the police cells by the police or other adult inmates as they are mixed with all the countries' criminals in these cells. This can be considered as punishment before the trial. Yet according to the constitution a suspect remains innocent until proven guilty. But all these problems raised in this study remain unresolved as the legal auditing processes are not efficient.

### **5.7 Police Misuse of Power**

The research findings have revealed that the police and public in general in Zimbabwe do not have a cordial relationship. Kaseke(1993) stated in the literature review that police are seen as the state machinery with no interest to

public dignity, rights, and security. This might be the reason why they take it in their hands to torture the suspects and witnesses alike. Foucault(1977) in his analysis of torture and discipline said power and punishment cannot be separated. Punishment is used to impose authority and control over the subjects by those in power. Therefore even though the police are the custodian of the law, torturing the offenders and witnesses is used as a strategy for the state to control the nation. The concern of the participants was that corruption is systemic from the top to the bottom of government departments, the police are left to their devices without proper auditing. If one is robbed of justice at the grass root level, reporting it to a higher level is considered by the participants as a waste of time. Mutandwa (2012) has demonstrated in the literature review that through corruption the court processes those who cannot bribe police to ignore the case. The participants see the arrest and court processes as for the poor. As long as one is rich in Zimbabwe he/she is above the law but justice should not be applied selectively.

#### **5.7.1 Role of professionalism**

Forty percent of the participants interviewed talked about the lack of professionalism for the youth justice workers. They said this is caused by employing unqualified people to work in youth justice residence. The limited knowhow limits the application of youth justice models in a proper way. It is also caused by unethical practice by probation officers, psychologist and to some extent by the lawyers. This lack of unprofessionalism robs the young people of a fair justice system According to participants most of injustices in the youth justice system is caused by lack of professionalism in the legal system. But as a Zimbabwean who lived and worked in the system, to say the lack of efficiency in the youth justice processes is caused by shortage of qualified people in the department is incorrect. There are so many loopholes in practice that makes the system ineffective, as mentioned above lowly paid workers, corruption and also employing the people who are loyal to the ruling party but not necessarily competent in the job. Otherwise Zimbabwe is very rich in highly qualified human resources. Some of the people that are employed as probation officers are taken on the basis of whom they know rather than whether they can do the job

properly. This is the reason why some of the reports are done in the comfort of their offices with no background research at all as mentioned by Kaseke(1993). It might be cheaper for them to make a report in the office than to travel to the young person's parents or caregivers (Kaseke, 1993). This I think might give the explanation of having reports that are copied and pasted. In my experience I have seen the lawyers get frustrated of seeing reports in the docket that are identical to each other. The only thing that will be different is the name of the young person and date of birth. But in some cases these can be similar too. I should think the lawyers who are supposed to read these reports do not do so for those reasons and they sometimes do not take them seriously. Therefore it seems these reports are documents nice to have in the docket but do not add any value. The participants asserted that some documents take a long time waiting for the probation reports which might take too long to be completed. Without this report the young person cannot appear in court as it is the pre requisite for the court process even though the judges do not hold any high value of them.

### **5. 7.2 Lack of resources**

Participants talked about the shortage of resources as a cause for lack of innovative programmes that can transform the country's youth justice. This might also be the cause of overcrowding in detention centres and starvation. Participants recommended the Zimbabwean youth development policy, but they said it is only good in paper but is not supported by the economy. Therefore all the goals in the youth policies cannot be achieved due to shortage of money, young people who are suppose to be in training colleges are in the streets of urban areas. The researcher noticed that the participants became very emotional when talking about the sufferings of the young people in the streets in urban areas.

### **5.7. 3 changing focus**

As (Nango, (2011) has argued that the focus and culture of the young people have changed over time. In the past years the role models were medical doctors, university professors and professional people. High academic achievement was associated with success and good life. But this has changed, the study has

revealed that role models of the young generations are the people of no moral compass, those who are able to make quick money regardless whether it is ethical or not. The professionals are the poorest people in Zimbabwe surviving on meagre government salaries while in the other hand people who engage in criminal activities drives the latest cars and living in mansions in the porch suburbs of Harare. The participants asserted that education in Zimbabwe has no value as those who pursue formal education graduate to the streets to sale phone network airtime for survival as there are no jobs in the market. According to participants young people no longer value education but turn their focus to the criminal world for survival and status, but this type of flamboyance does not last long. The study has demonstrated how the concept of *ubuntu* has been lost and replaced by the concept of survival of the fittest. Young people are no longer keen to work hard but keen in learning all the tricks to make money quicker and easier regardless of whether it is ethical or unethical. Black market dealership has replaced formal trade creating a chaotic situation in Zimbabwe which only benefits people of thuggish calibre as described by UPR (2013). Based on the study findings, young people are motivated to commit crime by the current societal forces. It will take the country a long time to change the present role models and their psychology. There is a need to restore order in Zimbabwe, restore the integrity of humanity and ethical values as it was in the past.

### **5. 8 New Zealand youth justice**

The study findings have confirmed that New Zealand youth justice has made a lot of progress in reforming the youth justice both in theory and practice. The Participants agreed New Zealand models have gone a long way to integrate Maori customary principles and practices into constitutional law. But the system is far from perfection as shown in chapter four. Therefore if Zimbabwe has to reform its youth justice models of youth justice using New Zealand models as a guide has to modernise the youth justice to correct the discrepancies of skill base mismatch, irrelevant programmes and identity crisis. As Workman (2011) pointed out that the major setback of the detention centres and prisons in New Zealand is the dominance of psychologist professionals. This limit the scope of using human science knowledge in reducing recidivism. But the system needs to draw its employees from different disciplines of human sciences.

The separation of youth justice from Ministry of Social Welfare department might not be necessary but the department might need to reform in a way that professionals are recognised for their skills needed to manage the behaviour of the young people. Assessment of Social workers of the care and protection needs is equally important but there are other behavioural assessments that are equally essential in correcting the behaviours of the young offenders (Workman, 2011). Collective responsibility and multi disciplinary approach is necessary as the recognition of all set of skills and qualifications by the employer is needed to rehabilitate the young offenders. Participants said the key is plans should be used and evaluation of those plans should be done in shorter intervals than to live it forever. Assessment and plans cannot be effective if are done by the people sitting in the offices and see the young person twice a week for less than 10 minutes or never the whole week (Workman (2011)). Therefore the plans that result from this practice are called rote plans that never save any purpose in practice but only to decorate the files to meet the demands of the auditing systems that has nothing to do with rehabilitating the young people (Workman, 2011). As an experienced youth practitioner who worked in both Zimbabwean system and New Zealand I agree with the participants who were convinced that adaptation of the models should be done with moderation as to perfect the gaps that New Zealand youth justice is still having. Therefore this means that Zimbabwean Youth Justice System must not be completely discarded but it needs some reform that will improve the outcomes of the young people.

## CONCLUSION

The study revealed that both the theory and the practice within the Zimbabwean youth justice are problematic. There is a need in Zimbabwe to divide the reform strategies into two categories, one that seeks to reform the models and the other that seeks to change the practice culture. The current models used are not in context with the country's customary, cultural, and economic status. So when applied in practice it presents contradictions that result in so many inconsistencies and injustices.

The criminal justice models and social welfare models are the major models used in Zimbabwe and both have contradicting objectives. While the social welfare of the young person is important, being accountable to their own actions is equally paramount, marrying these two models in a way that promotes justice is a challenge in Zimbabwe at present. Whatever the reform, it should put the young person's welfare needs at the centre of practice. Lack of involvement of the community and victims in the processes of youth justice makes the whole system alien to people that is supposed to serve. The study finding revealed the majority of people in Zimbabwe might have limited knowledge of their constitutional law, let alone the youth justice.

The system lacks a community panel system that can be used as the first point of call in the youth justice processes. The panel that will assess the offences and make a decision whether it can be dealt with in the community level or need to be referred to youth court. This will help to reduce the load to already overwhelmed judges, avoid stigmatisation of minor cases, reduce waiting time in police cells and encourage the use of incarceration as a last resort.

Zimbabwe has a parallel legal system, the constitutional law and customary law, but only constitutional law is recognised by the state. The constitutional law that take precedent over the customary law is based on Anglo Roman Dutch law and has no community connectedness. It is viewed by the people of Zimbabwe as the law of the state and therefore run their own parallel legal system that is based on

Zimbabwean traditional values and African philosophy. These are in the form of village and community courts chaired by the Headman or the chief. The parallel legal system creates injustices to the young offenders as this might mean being trialled twice for one single crime. The young people do their time in Juvenile Justice Centres but when they are released they are trialled again under customary law and have to pay reparations to restore what has been lost by the offending act. The study findings assert that this problem might be solved if the customary legal system can be incorporated to the Constitutional law of Zimbabwe. The definition of Youth might be revisited to incorporate customary values. The youth legal system also needs to comply with International laws, as in practice the country still includes corporal punishment in their sentencing.

The study also revealed that in Zimbabwe there is no post custodial support of the young offenders. They come out of custody with very little or no skills at all, this reduces the chances of getting any employment to support themselves. There is no follow up plan to support them in the community but instead they face stigmatisation and unemployment. Therefore these young people find themselves back in the street doing crimes again for survival.

Lack of professionalism in the youth justice system by those who work with young people causes so many inefficiencies in practice. Therefore more training of multi-disciplinary team might be needed to improve youth justice practice. There is a need to assess the skill base of the employees that work with incarcerated young people and those in the community in order to deliver sound and well informed rehabilitation programmes. To be able to do that successfully the study reveals there is a need for a multidisciplinary approach which can be improved by employing people from different faculties of Social Sciences. This according to the study findings will reduce the overloading of judges and Social Workers who are overwhelmed at the present time and their skills base do not fit well the desired youth justice framework. The problem identified by the study is that other faculties that can contribute more in rehabilitation and motivational programmes that will reduce recidivism in most cases are not highly valued in the Youth Justice Systems. If employed they will be ranked lowly and paid less than their counterparts Social workers even all will be holding first or better social science degrees that are more relevant in behaviour management and delivering

motivational programmes. This de-motivates employees and affects their potential work output which result in ineffective programmes that increase recidivism. It has been also noted that there is over professionalization of disciplining the young people which also create a problem. Young people do not have much time to create a rapport with professionals who come and go. The role of aunties and uncles should be re-instated as per traditional custom.

The study also highlighted the need to divorce politics from youth justice policy making and practice. This might improve the auditing process and reduce the power imbalance between the Attorney General and Ombudsman. There should be a system of checks and balance to guard against mixing the young people with adults in prison which result in all kind of abuse to the incarcerated young person.

The economic meltdown created the mass migration of the adults to overseas countries in search of employment and this created a problem as children were left behind to raise themselves or with grandparents who are too tired for effective parenting. This problem affected the girls more than the boys as they become more vulnerable to adult sex predators and early pregnancies. This creates a vicious cycle of poverty and increase the youth crime rate. The majority of people in Zimbabwe have been disappointed and tortured by the failing economy in a way that few are motivated to work hard. The focus has changed due to lack of opportunities most people focus on activities that will quickly give them money regardless of whether it is legal or illegal. Professors and doctors are no longer role models but instead successful criminals are admired by the young people. As this will be the only avenue to get them out of the street.

The study has shown that Zimbabwe youth justice need to be reformed and there is a lot that can be learnt from the New Zealand system. The way Maori models were incorporated to the youth justice processes and how the Children and Family Act of 1989 changed the focus of youth justice to involve the families which lead to the start of Family group conferencing that did not only include families but the victims as well are good examples. To come up with a better system Zimbabwe need to look at every model to be adapted with Zimbabwean context in mind. Even though suggestions has been made that New Zealand youth justice models

can be used, the study findings indicates New Zealand youth justice has made some progress in modifying their models but still have some gaps and loopholes that need to be covered for it to be better. Therefore Zimbabweans could use the New Zealand models to adapt but should not be used in total as no system is perfect, what works well in New Zealand might not work so well in Zimbabwe.

The study identified a number of historically similar experiences between Maori people and Zimbabwean indigenous people; both lost their land, dignity and were left with eroded traditional justice system. The only difference is that in Zimbabwe the indigenous people responded differently to the forces of colonisation. The indigenous languages and traditional justice system remained active in the villages up to today, regardless of not being recognised by the state. These traditional methods incorporate principles of restorative justice, therefore Zimbabwe need to incorporate these traditional strategies to the country's constitutional law for a sound reformation. Zimbabweans are spiritual people therefore the role of spirituality in their legal system plays a very important part, therefore need not to be ignored. At present New Zealand youth justice models are considered one of the best because it incorporates the principles of restorative justice to a certain extent, through the use of FGC. They recognise the role of spirituality to the indigenous people and Katekia (prayer) opens the FGC. The study findings points out that even though Zimbabwean traditional strategies are valuable, reforms should not solely be based on traditional values as those historical values might not serve today's younger generation very well.

There is a need to balance the traditions and modernisation for the reforms to be successful. Ideas for reform should not only come from professionals and politicians only but from the society at large including the young people themselves. The study has suggested the enhancement of the youth justice in Zimbabwe through combining current youth justice polices with an education curriculum that addresses contemporary society needs, in a dwindling economy that will produce a fair and equitable justice system for young people. The education system in Zimbabwe can be modified as it does not align with the present economic context so well. The study findings have shown that Universities continue to produce graduates with skills that are almost inapplicable to the

current's economy. The country does not need graduates that are groomed to be employees while 80% of the industries have closed and relocated to other countries where there is political and economical stability. The country needs people with skills for entrepreneurship to create employment for themselves. Youth development policies have been modified over the years but due to the interference of politics to the youth development projects, the whole process in practice has proved to be a very expensive and unfruitful attempt.

The land is abundant after some of the white farmers left the country for greener pastures overseas but the challenge is that political climate at the moment does not support those with farming skills but land is given to those with strong political affiliation. This creates a problem as the political affiliated are not always having the right attitude and desired skills. The youth unemployment continues to swell.

This research project helped to give the people from Zimbabwe the platform to say what they think about youth justice in Zimbabwe and how they think it can be modified. In the study they have revealed the loopholes in the justice system were identified as early as 1993, but very little has been done to improve the way the young people and their families are dealt with in the legal system. They hope if more research can be done on the Zimbabwean youth justice, this might motivate the advocates and politicians alike to focus on what needs to be changed in the system. The behaviour of the young people mirrors the behaviour of the adults in the community they live in. Therefore the offending of young people reflects the failings of the communities they come from. The society should take a collective responsibility to reduce youth offending and recidivism. To change the youth justice system in Zimbabwe, active participation of the parents' communities, professionals, politicians and youth themselves will go a long way to alleviate the problem.

## **. Recommendations**

- There is a need for evidence based policy formulation that take into consideration the empirical evidence of what works and what does not work, guided by the cost- benefit analyses rather than by political convenience.

- Tertiary response to youth offending should emphasize more community based programmes than incarceration by having informal procedures for minor offenses; in fact incarceration should be used as a last resort to reduce the opportunity of stigmatization of minor offenses.
- Youth Justice should be taught in schools and Universities and a qualification to be offered with equal weighting as psychology, education, and Social work.
- The judges that work in youth courts should be exempted from taking other civil cases so that they concentrate on youth offending cases and speed up the process to avoid young people waiting a long time in police custody or detention centre.
- As a last resort where custody is required, appropriate institutional and post release therapy must also be provided in order to effectively reduce re offending of young people.
- Have a balanced panel that will assess the offence of a young person and make a judgment on whether it can be dealt with in the community or needs to go through criminal proceedings.
- Develop structures that are flexible and culturally appropriate which will promote the use of formal and informal local resources to alleviate economic problems and resolve family difficulties in caring, controlling and protecting young offenders.
- Youth justice is about rehabilitating the young offenders, effective intervention result in behaviour change, if there is no change of behaviour it means the young person was not rehabilitated. Therefore youth justice organizations need to look at the skill base of their employees, to make sure young people

are not only contained in youth facilities but empowered with the skills they will use when released.

- Youth justice processes need a multidisciplinary approach therefore employees should be from different faculties of Social Sciences.
- The employees with the same level of education and experience should be treated with the same level of importance and be given equal pay to avoid demotivating others that bring highly valuable skills to the organization but paid less because of the organisational politics and fights for dominance of one profession.
- There should be a clear cut criterion for hiring those working with the young people in conflict with the law that is based on performance, level of skills, attitude and experience.
- Develop models of practice that will put the interest of the young people at the centre of practice not the interest of the politicians.
- The term juvenile should not be used in Zimbabwean youth justice as this stigmatizes young people and instead of seeing themselves as trouble makers to the society, they see themselves as victims of the system.
- Adopt and modify the use of Family and Group Conferencing concept as used by New Zealand today.
- Strengthen the power of Ombudsman versus Attorney general and improve auditing processes of legal systems.
- The system should empower both the victim and offender by involving them in the decision making process with the aim of reaching the common ground on just outcomes.

Umuntu ngumuntu ngabantu  
(I am what I am because of those around me)

Gavi rakabva kumasvuvuriro  
(A child is the product of the environment)

## REFERENCES

- Abercrombie, N., Hill, S., & Bryan, S. T. (2006). *Dictionary of Sociology*, 5<sup>th</sup> ed., London: Penguin Books.
- Admassu, T. (1997). *Reforming Juvenile Justice Legislation and Administration in South Africa*, policy development officer: UNICEF Seminar South Africa.
- African Charter on Human and peoples' Rights (ACHPR), (1981). O,A.U. Doc CAB (LEG/67? 3 rev. 5,211. L.M. 58.
- Alemika, E.E.O. (1998). *Introduction to OSITA C. EZE, Human Rights and Social Justice: An African Perspective Empowerment & Action Research Centre, Annual Lecture series No 4.*
- Ansell, N. (2002). 'Secondary education reform in Southern Africa and the needs of rural girls: pronouncements, policy and practice' *Comparative Education* 38(1) 91-112
- Anthony, D. (2011). *On the Connection between Law and Justice*, Faculty Working Papers, Paper 2, Retrieved from:  
<http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/2>.
- Antony, J., Onewuebuze, 1., and Nancy, L., Leech 2. (2007). *Quality & Quantity, Call for Qualitative Power Analyses*, 41:105-121 © Springer.
- Aptel. C.(2010). *International Criminal Justice and Child Protection*, in S. Parmar, M, J. Roseman., S. Siegrist and T. Sowa (Eds.), *Children and Transitional Justice: Truth Telling, Accountability and Reconciliation*, UNICEF, pp67-114
- Bala, N., Bromwich, R.J. (2002 ). 'An International Perspective on Youth Justice', in Bala, N., Hornick, J.P., Snyder, H.N., &Paetsch, J.J.(eds.). *Juvenile Justice Systems: An International Comparison of Problems and Solutions*. Thompson Educational Publishing, Toronto.

- Barbra, O.(1999). Group rights in post –apartheid South Africa: The case of the traditional leaders, *Journal of legal Pluralism* 44: 73-103.
- Battle, M. (2009). *Reconciliation: The Ubuntu Theology of Desmond Tutu*, Pilgrim Press. ISBN 978-8298-1833-8.
- Becroft, A.(2004). "Youth Justice in New Zealand: Future Challenges" - paper delivered 17 - 19 May 2004, New Zealand Youth Justice Conference "Never Too Early, Never Too Late" - Wellington.
- Becroft, A.(2007). *Youth Justice: Collaboration –by definition collaboration for Success conference*, Wanganui.
- Beijing Rules, (1985). *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*. Retrieved on 20.11.2015 on <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>
- Bennet, T. W. (1981a). *The International and comparative law, quarterly* Vol 30, no 1 pp 59-103, Cambridge University Press. – <http://www.jstar.org/stable/759375>.
- Bennet, T. W. (1981b). *Conflict of Laws — The Application of Customary Law and the Common Law in Zimbabwe*. *International and Comparative Law Quarterly*, 30, pp 59-103. doi:10.1093/iclqaj/30.1.59.
- Bernard, H. R. (2010). *Analyzing qualitative data: Systematic approaches*. Thousand Oaks, CA: Sage.
- Bernard, H. R. (2005). *Research methods in anthropology: Qualitative and quantitative approaches* (4th ed.). Walnut Creek, CA: AltaMira Press.
- Bhandari. D. R. (1982). *Plato's Concept Of Justice: An Analysis*. J.N.V. University.
- Borissenko, S. (2015). *Merchants of hope : The youth court, New Zealand law society*. Retrieved on 15.12.2015, at <http://www.Law Society.org.nz/law talk/issue 871/merchant of hope.the youth court>

- Bottoms, A. (2002). On the decriminalization of English Juvenile courts in Muncie at el (ed.). Youth justice Critical readings, Sage publishers, London.
- Brown, J, M.(2002) . Care and Protection is about Adult Behaviour (Ministerial Review into the Department of Child Youth and Family Services, New Zealand.
- Bryman, A. (2001). Social Research Methods, Oxford University Press.
- Bueren, G. V., (2006). Article 40: Child criminal justice, Leiden: Nijhoff.
- Chikanza, M. (2002) Urban challenges in five Southern African countries: Zimbabwe.
- In Nomdo, C & Coetzee, (eds.), Urban vulnerability: Perspectives from Southern Africa, Disaster Mitigation for sustainable livelihoods programme. 63-72. Periperi PublicationCape Town.
- Children Protection and Adoption Act. (Chapter 33), (1972). Zimbabwe, Government Printers, Harare. Retrieved from:  
[http://www.childsrights.org/html/site\\_fr/law\\_download.php?id=285](http://www.childsrights.org/html/site_fr/law_download.php?id=285).
- Chirisa, I & Muchini, T (2011). Youth Unemployment and Peri- Urbanity in Zimbabwe: a snapshot of lessons from Hatcliffe. International Journal of Good Governance volume 2, no 2.2, Quarter 11 ISSN:0976-1195.
- Cobbah ,J. A. M. (1987). African Values and the Human Rights Debate: An African Perspective, 9 HuM, RTS.Q, 309,328-29. The Johns Hopkins University Press. Retrieved on 10.08.2014 at:  
[http://hmb.utoronto.ca/HMB303H/weekly\\_sup/week-02/Cobbah\\_African\\_values.pdf](http://hmb.utoronto.ca/HMB303H/weekly_sup/week-02/Cobbah_African_values.pdf).
- Coetzee, E (2002)., Urban vulnerability: A conceptual framework. Nomdo C & E Coetzee (eds.). Urban vulnerability : Perspectives from Southern africa Periperi Publication : Cape Town.
- Consedine, J. (2009). Restorative Justice –Parallel System, not an Adjunct, MAP

January 22 Newsletter. No 105, New Zealand.

Constitution of Zimbabwe,( 2005). Parliamentary Monitoring Trust of Zimbabwe.

Retrieved on 02.8.2015 at

[www.pmtz.org|info@pmtz.org|pmtzimbabwe@twitter](http://www.pmtz.org|info@pmtz.org|pmtzimbabwe@twitter)

Convention on the Rights of Child (1989). United Nations Office of High

Commissioner for Human Rights: Retrieved on 28 .09.2015 at

[http://www.childrensrights.ie/sites/default/files/submissions\\_reports/files/UNCRC-CRC1989\\_0.pdf](http://www.childrensrights.ie/sites/default/files/submissions_reports/files/UNCRC-CRC1989_0.pdf)

Criminal Procedure and Evidence Act (Chapter 57), (2004). Zimbabwe

Government Printers, Harare. Retrieved from:

[http://www.parlzim.gov.zw/attachments/article/95/CRIMINAL\\_PROCEDURE AND EVIDENCE ACT 9\\_07.pdf](http://www.parlzim.gov.zw/attachments/article/95/CRIMINAL_PROCEDURE_AND_EVIDENCE_ACT_9_07.pdf).

Cross, E. (2015). Zimbabwe declining Economy: An analysis.

New Zimbabwe .com. Retrived on 14.09.2014 at

<http://www.politicsweb.co.za/news-and-analysis/zimbabwes-declining-economy-an-analysis>.

Crush, J., & Tevera, S. (2010). Zimbabwe's Exodus: Crisis, Migration, and

Survival. African Books Collective. Indicators for Children's Rights

(2010), Zimbabwe Country Case Study. Retrieved on 13 June, 2015.at

[http://www.childwatch.uio.no/cwi/projects/indicators/Zimbabwe/ind\\_zim\\_intro.html](http://www.childwatch.uio.no/cwi/projects/indicators/Zimbabwe/ind_zim_intro.html)

Day, A. (2003). The Victorian Juvenile Justice Rehabilitation Review, Australian

Institute of Criminology, University of South Australian.

Defence for Children International, (2001). Juvenile Justice: the unwanted Child of state Responsibilities Geneva: Defence for Children International 1.

[https://www.defenceforchildren.org/files/gabriella/ResearchMCR\\_alternativesToDetention](https://www.defenceforchildren.org/files/gabriella/ResearchMCR_alternativesToDetention).

- Delowski, M., & Barroso, J.(2003). Classifying the findings in qualitative studies. *Qualitative Health Research* 13: 905–923.
- Denscombe, M. (1998). *The Good Research Guide*. Buckingham. Open University Press.
- DePaulo, P. (2000).“Sample size for qualitative research.”  
<http://www.quirks.com/articles/a2000/20001202.aspx?searchID=215035&sort=5&pg=1>.
- Diaz, S.(2014). Ending Adulthood on the one size fits all approach to Juvenile Justice.
- Dominique.M., & Wekwete,N. (1997). *The Socioeconomic and Demographic Situation of Adolescents and Young Adults in Zimbabwe Further Analysis*. Calcuton, Maryland: Macro International Inc
- Doolan, M. (2003). Restorative Practices and Family Empowerment: both and/or either/or ?. *Family Rights Newsletter*. London: Family Rights Group.
- Durie, H. E. T. ( 2007) “The study of Maori offending”, A paper presented to the NZ Parole Board Conference.
- Dutch project group Zimbabwe (DPGZ), (2012). Contributing to Legal Aid for Detained Juveniles in Zimbabwe. Lawyers without Borders, Harare  
<http://www.advocatenzongrenzen.nl/media/ThirdDraftProjectPlanZimver10June2012.pdf>.
- Edlin, D. E. (2006). Judicial Review without a constitution, *Polity*(Palgrave macmillan journals) 38 (3): 345-368.
- Eze. O. (1998). *Human rights and Social Justice: An African Perspective* 30 Empowerment & Action Research Centre, Annual Lecture, Series No 4.
- Fereday, J., & Muir-Cochrane, E. (2006). Demonstrating rigor using thematic analysis: A hybrid approach of inductive and deductive coding and theme development. *International Journal of Qualitative Methods*, 5(1), Article xx. Retrieved 07 June 2014 from:  
[https://www.ualberta.ca/~iiqm/backissues/5\\_1/PDF/FEREDAY.PDF](https://www.ualberta.ca/~iiqm/backissues/5_1/PDF/FEREDAY.PDF).

- Fisher, K.J., (2013). *Transitional Justice for Child Soldiers: Accountability and Social Reconstruction in Post-Conflict Contexts*, Palgrave, Chapters 2 ('The Difficult Reintegration') and 8 ('Distinctly Girl Soldiers').  
[http://www.unicef.org/policyanalysis/files/Juvenile\\_justice\\_16052011\\_final.pdf](http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf).
- Florin, P., & Wandersman, A. (1990) Sense of community in the urban: A catalyst for participation and community development. *American Journal of community environment psychology*, 18 (1) 55-81.
- Foucault, M. (1977). *Discipline and Punish: the Birth of the Prison*, New York: Random House
- Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press). 75.
- Gelsthorpe, L. (2002). *Restorative Justice, The last vestiges of Welfare in Muncie, J at el(ed.)*. *Youth justice Critical readings*, Sage publishers, London .
- Greville, M. (2000). *Features. An overview of New Zealand Law*. Retrieved on 26.09.2015.from  
<http://www.11rx.com/features/nz.htm:#The%20New%Zealand%20systems>
- Hallett C., Murray, C & Punch, S. (2003). 'Young People and Welfare: Negotiating Pathways' in C. Hallett and A. Prout (eds) *Hearing the Voices of Children: Social Policy for a New Century*. Routledge Falmer, London.
- Hatchard, J. (1991) "The Fall and of the Cane in Zimbabwe " *Journal of African Law*, vol. 35, no 1/2, Recent constitutional Developments in Africa.
- Harris, P. (2002). *An Introduction to law*, fifth edition. Butterworths. London.
- Hart, H. L. A. (1992). *The concept of law*, Revised edition. Oxford University Press.

- Hart, H. L. A. (1958). Positivism and the separation of law and morals, *Havard law Review*, vol 71, no 4 pp 593-629. Retrieved: On 25 june 2014, at <http://www.jstor.org/discover/10.2307/1338225?sid=21105738310751&uid=2&uid=4&uid=3738776>.
- Hoge, R. D.(2001). *The Juvenile offender: Theory, research and application*. Boston: Kluwer.
- Hoghuhi, M. (1983). *The Deliquent: Directions for Social Control* London: Burnet Books, London.
- Jacobs, B. J. (2001). The Evolution of U.S. "Criminal Law" in 6(1) *Issues of Democracy* page, vol 6 No. 1, page 15.
- James, L at el. (2013). *Journal of Theoretical and philosophical criminology*, vol 5(1) 96-98. Public access academic e- publication.
- Jefferson, S., & Lavern, (1989). *The Care and Protection Provisions of the Children Young Persons and Their Families act (1989)*. Revisited, New Zealand LawSociety Seminar, August 1995.
- Johnson, B., & Turner, L. (2003). Data collection strategies. In A. T. Tashakkori, C (Ed.), *Handbook of Mixed Methods in Social and Behavioural Research*. Thousand Oaks.
- Joseph, P. A. (2001) *Constitutional and administrative law in New Zealand* (2<sup>nd</sup> ed)
- Kaime, T.(2009). 'The Foundations of Rights in the African Charter on the Rights and Welfare of the Child: A Historical and Philosophical Account' *African Journal of Legal Studies*, 119-136.
- Kaseke, E. (1993). Juvenile justice in Zimbabwe: The need for Reform, *journal of social Development in Africa* 1993) 8, 1, 11, 17.
- Kilbourne, S. (1996). United States Failer to ratify the UN Convention on the rights of the Child: Playing politics with children 6 , *Transnational Law and Contemporary problems*.
- Kretzmann, J. P., & McKnight, J. L.(1993). *Building Communities from the inside*

Out: A Path Towards Finding and Mobilizing a Community's Assets.  
Evanston,IL: Institute for Policy Research.

Krippendorff, K. (2004). Content analysis: An introduction to its methodology (2nd ed.). Thousand Oaks, CA: Sage.

Krueger, R. A., & Casey, M. A., (2000) Focus Groups . A Practical Guide for Applied Research (3<sup>rd</sup> Edition) Thousand Oaks, CA: Sage Publications.

Kubatana Archive, (2011). Child justice in Zimbabwe, Defence for Children International Zimbabwe.Retrieved On 27 April 2014  
from:[http://www.kubatana.net/Html/archive/chiyou/111123dciz.asp?sector=LEGISL&year=2011&range\\_start=61](http://www.kubatana.net/Html/archive/chiyou/111123dciz.asp?sector=LEGISL&year=2011&range_start=61)

Kuper, S. (2010) An immature step backward for New Zealand's youth justice : A discussion of age of criminal responsibility, University of Otago, New Zealand.

Lee, R.W. (2013). An introduction to Roman-Dutch Law/ General Introduction, Oxford University Press.  
[http://en.wikisource.org/wiki/An\\_Introduction\\_to\\_Roman-Dutch\\_Law](http://en.wikisource.org/wiki/An_Introduction_to_Roman-Dutch_Law).

Lee, R.W.(1910).The history of the Roman Dutch Law, Journal of the society of comparative legislation, new series, vol. 10, no 2 pp261-268.Oxford University, Press.  
[http://archive.org/stream/introductiontoro00leeruoft/introductiontoro00leeruoft\\_djvu.txt](http://archive.org/stream/introductiontoro00leeruoft/introductiontoro00leeruoft_djvu.txt)

Leighton, P. (2004). "Corporal Punishment" - expanded version of entry for Mary, Bosworth (ed) Encyclopedia of Prisons and Correctional Facilities (Newbury, Park: Sage). Available, <http://paulsjusticepage.com>> Criminal Justice Ethics > Penology

Lesizwe, T. (2004). Civil Society and Justice in Zimbabwe, Proceedings of a

symposium held in Johannesburg, 11-13 August 2003, Pretoria:  
Themba

Lesizwe . T. 1997. Breaking the Silence-Building True Peace: A Report on the Disturbances in Matabeleland and Midlands 1980 to 1988, Harare: Catholic Commission for Justice and Peace in Zimbabwe & Legal Resources Foundation.

Lynch, N. (2010b). Changes to Youth Justice, New Zealand Law Journal 121-160.

Lynch. N. (2010c). A change in the law for children, young persons and their Families ( Youth Court Jurisdiction and orders) Amendment Act 2010. New Zealand Family Law journal 6(10): 289-293.

Lynch. N. (2008) The rights of the young person in the New Zealand youth justice family group conference, University of Otago, New Zealand.

Machakanja, P. (2010). National healing and Reconciliation in Zimbabwe: Challenges and opportunities Institute for Justice and Reconciliation Africa Programme, Zimbabwe Monograph series no. 1. Retrieved from: <http://www.ijr.org.za/publications/pdfs/IJR%20AP%20Monograph%20%20Zimbabwe%20WEB.pdf>.

Madhuku, L. (2010). An Introduction to Zimbabwean law, faculty of law, University of Zimbabwe, Weaver press, Harare.

Magade, E. (2013). Faculty of Law, University Of Zimbabwe, Mount Pleasant, Harare. Retrieved from: <http://www.uz.ac.zw/index.php/faculties/law>.

Marci, H. (2005). God vs The Gavel “The symbol of the judicial system seen in courtrooms throughout the United States, is blinded folded lady justice, Cambridge University press.

Marius. P.(2001). It’s a Black Thing: Upholding culture and customary law in Society founded on non –racialism. South African Journal on Human Rights 17, pp 364- 403.

- Maruta, S. (2010). Community development in Zimbabwe: Role and Situation of Community based organisation, Southern Institute of peace building and Development, Ruwa, Zimbabwe.
- Maxwell, G., & Morris, A. (2002). 'Juvenile Crime and Justice in New Zealand', in Bala, N., Hornick, J.P., Snyder, H.N., & Paetsch, J.J. (ed.).
- Mazibuko, F. (2000). Global Conference: poverty Social Welfare and Social development Challenges for the 21<sup>st</sup> century, Cape Town, South Africa.
- McElrea, M ( 1993) The youth court in new Zealand: A new model of justice, Legal Research Foundation, Auckland.
- McLaren, K. (2000). Tough is not Enough – Getting Smart about Youth Crime'. Ministry of Youth Affairs, Wellington, New Zealand.
- McVie, S. (2011). Alternative models of youth justice: lessons from Scotland and Northern Ireland, Journal of children's services vol. 6 no 2. Emeralds Group Publishing Limited.
- Meldrum, A .(2003). Living in fear of Mugabe's green bombers, The guardian, Kuwadzana. Harare retrieved 20 July 2014.
- Ministry of Justice,(2010) (Family Group Conference , retrieved on 16.12.2015 at <http://www.justive.govt.nz/youth/family>- group conferencing.
- Morgan, D. L., (2013). Focus group as Qualitative Research: Planning and research design for focus groups. Sage publishers
- Mooney, G. (1999). Urban disorder. Pile S, C Brook and G Moony. (eds)., Unruly

Cities. Routledge: London.

Morris , A., & Young. (1987). Juvenile Justice in New Zealand: Policy and Practice. Study Series 1. Institute of Criminology, Wellington

Murphy, P., Mcqinnes & McDemott, T. (2010). Effective Practice in Juvenile Justice, Review of effective Practice in Juvenile Justice. A report for the Minister of Juvenile Justice, Noetic Solutions Pvt Limited, ABN 87 089 132 024, Australia

Muthandwa, C. (2012). Research partnership programme Danish Institute for Human Rights(DIHR).Denmark, Justice for children Trust, Zimbabwe

Muthandwa, C., Sibanda, S. (2010). Juvenile Justice Handbook, Justice for Children Trust, Harare.

Muna.,N.(2011). African Customary Law, customs and Women's Rights, Cornell Law faculty publication 187, Retrieved from:  
<http://scholarship.law.cornell.edu/facpub/187>.

Munchie, J. H. (2004)., Youth and Crime, (2<sup>nd</sup> Edition ) SAGE Publication Ltd:London

Muncie, J. (2005).The globalization of Crime control, the case of youth and juvenile justice.Neo liberalism policy convergence and international conventions. Theoretical criminology, SAGE publications London vol 9 (1) 35-64.

Nango, (2011). The youth and unemployment in Zimbabwe, Retrieved from:

[http://archive.kubatana.net/docs/cact/nango\\_youth\\_unemployment\\_brief\\_111230.pdf](http://archive.kubatana.net/docs/cact/nango_youth_unemployment_brief_111230.pdf)

National Youth Policy, (2013). Ministry of Youth Development, Indigenisation and Empowerment, Zimbabwe. Retrieved on 23.03.2015. From

<http://www.myiee.gov.zw/index.php/news/27-zim-asset-young-people-in-perspective>

- Ndakaziva, M. (2014). "Bippers won't stop assets seizure: Chinamasa". Daily News Live, Retrieved On 8 June 2014., on:  
[http://www.zimbabwesituation.com/news/zimsit\\_bippas-wont-stop-assets-/seizure-chinamasa](http://www.zimbabwesituation.com/news/zimsit_bippas-wont-stop-assets-/seizure-chinamasa)
- Nelson, B. (1984). Making an Issue of Child Abuse and Neglect: Political Agenda Setting for Social Problems. Chicago, University of Chicago Press.
- Neuendorf, K. (2001). The content analysis guidebook. Thousand Oaks, CA: Sage.
- Odhiambo, O. G.(2005). The Domestication of International Law Standards on the rights of the Child with Specific Reference to Juvenile Justice in the African Context.
- Out, N. (2005). Ethnicity and Crime, Behaviour Redefined. African Journal of Criminology and justice studies (AJCJS) vol 1 no 2.
- International Covenant on Civil and Political Rights (1966). United Nations General Assembly Resolution 2200A (XXI), Retrieved on 18. 05. 2015 at <http://www.cirp.org/library/ethics/UN-covenant/>
- Parton, N. (2008) 'The change for children ' programme in England : Towards the 'Preventive Surveillance State', Journal of Law and Society, 35(1), pp.166-187.
- Patel, M., Doku, V., and Tennakoon, L.(2003). "Challenges in recruitment of research participants."Advances in Psychiatric Treatment.  
<http://apt.rcpsych.org/cgi/content/full/9/3/229>
- Patel, D. (1998). " Some issues of Urbanisation and Development in Zimbabwe" Journal of Social development in Africa 9,2 17-31.
- Paton, R. (2005). Tensions in Youth Justice: Young Offender in Need of Care and Protection - LLM Research Paper, Victoria University.
- Perry, B.D.(2000). Traumatized children: How childhood trauma influences brain development: In the journal of the California Alliance for the mentally ill 11:1,48-51.

- Pratt, J, (2006) "The Dark Side of Paradise. Explaining New Zealand's history of high imprisonment", *British Journal of Criminology* 46, 541-560.
- Pratt, J, (1992). *Punishment in a Perfect Society- The New Zealand Penal System 1840-1939*, 245, Victoria University Press, Wellington.
- Pre Trial Detention in Zimbabwe, (2013). An Analysis of the criminal Justice System and conditions of pre-trial detention, Report produced by Zimbabwe Lawyers for Human Rights, Law society of Zimbabwe and the community Law Centre of the University of Western Cape.
- Pool, I, (1999) *Te iwi Maori Auckland*: Auckland University Press, 123,154, 182, 197.
- Research and Advocacy, (2009). *Transitional justice in Zimbabwe: A pilot survey of the views of activists and Victim*, RGU Publications.
- Richards, K. (2011). Trends and issues in crime and criminal justice no 409, Australian Institute of Criminology.
- Rwezaura, B. (1938). *Traditionalism and Law Reform in Africa* 539, Paper presented at a seminar jointly arranged by the Fundamental Rights and Personal Law research Project, Centre for Applied Social Sciences, and the Department of Law, University of Zimbabwe.
- Saki, O & Chiware, T. (2007). *The Law in Zimbabwe*, Hauser Global laws school program, New York, 10012-1099.
- Sargiacomo, M. (2009). Michel Foucault, Discipline and Punish: The Birth of the Prison. *Journal Of Management And Governance*, 13(3), 269-280
- Savin-Baden, M. & Major, C. (2013). *Qualitative Research: The Essential Guide to Theory and Practice*. London: Routledge.
- Schwartz, S. H. (1994). Are there Universal Aspects in the structure and contents of Human Values. *Journal of Social issues*, 50(4). 19-45.

- Seymour, J.A. (1976) Dealing with offenders in NZ: The system in evolution, Auckland Legal Research Foundation.
- Skelton, A. (2002). "Restorative Justice as a Framework for Juvenile Justice Reform: A South African Perspective "British Journal of Criminology 496-513.
- Spiller , F. & Boast, A (2001) A New Zealand legal History (2<sup>nd</sup> ed) Brookers, Wellington.
- Tichatonga, N. J. (1992). A decade of educational expansion in Zimbabwe: Causes, consequences and policy contradictions. Journal of Negro Education 61(1): 78- 89
- Todaro, M., & Stilkind, J. (1981). City Bias and rural neglect: The Dilemma of urban Development . The population council, New York.
- Tutu, D. (1999). No future without forgiveness. Image. Pilgrim Press. ISBN-0385-49690-7
- United Nations International Children's Emergency Fund, (2012). Global initiative to end all corporal punishment of Children, Zimbabwe- Country Report.
- United Nations International Children's Emergency Fund, (2006). Orphans and other vulnerable children and adolescent in Zimbabwe: A study on street children in Zimbabwe- Country evaluation Report. Retrieved from [www.UNICEF.org/infobycountry/Zimbabwe-statistics.html#89](http://www.UNICEF.org/infobycountry/Zimbabwe-statistics.html#89).
- Unitec Research Ethics Committee, (2010). *Ethical standards for conducting research at Unitec*: Supplemented by Helen Gremillion. Powerpoint presentation. Auckland, NZ: Author.
- Universal periodic Review (UPR), (2013). Zimbabwe, Defence for children international. Retrieved at 14.03.2013 From:  
<http://www.crin.org/resources/treaties/CRC.asp?catName=International+Treaties&flag=legal&ID=6>

- Vengesai, S. (2014). Juvenile Justice in Zimbabwe: A contradiction Between Theory and Practice: An analysis of Zimbabwe's compliance with Article 37 and 40 CRC and Article 17 ACRWC, Tilburg University.
- Watt , E.( 2003) A History of Youth Justice in New Zealand. Youth Court Web site, Retrieved on 12.09.2014, at: <http://www.justice.govt.nz>.
- Weinrich, A. K. H.(1971). Chiefs and Councils in Rhodesia: Transition from Patriarchy to Bureaucratic Power, Retrieved from: <http://www.everyculture.com/To-Z/Zimbabwe.html#ixzz3P1RzMmFA>.
- Wheeldom, J. (2014). Theoretical Criminology, Ontology, epistemology, and irony: Richard Rorty and re-imagining pragmatic criminology. Sage Publish, Norwich, University, USA Retrieved on 23.03.2015 at: <http://tcr.sagepub.com/content/early/2014/08/12/1362480614545676>
- Wieland. L. (2005). The role of the courts in the conflict between African Customary Law and Human rights' South African Customary law and Human rights' South African Journal on Human Rights 21: 241-277
- Wild, J. (1953). Plato's modern enemies and the Theory of natural Law. Chicago: University of Chicago Press.
- Wilson, G. (1960) . "An African Morality "in Simon Ottenberg and Phoebe Ottenberg(eds.), Cultures and Societies of African, New York: Random House.
- Wiredu(ed.) , A companion to African Philosophy, Oxford: Blackwell Publishing, pp. 396-403.
- Wordes, S. M. Jones,(2014). Trends in Juvenile Detention and Steps Toward Reform,60:6, Crime and Delinquency.
- Workman, K. (2011) Rethinking Crime and Punishment, A paper presented at the Australian & New Zealand Association of Psychiatry, Psychology and Law(ANZAPPL New Zealand) and the Royal Australian & New Zealand College of Psychiatrists(Faculty of Forensic Psychiatry) Conference

“The Rising Punitiveness”, 17-19 November 2011 Wellington, New Zealand.

Worrall, A. (1997). *Punishment in the Community: The Future of Criminal Justice*, London, Longman.

Zhangasha, W. (2014) Local Education system in doldrums, Zimbabwe independent, Newspaper Retrieved on February 21.2014., at <http://www.theindependent.co.zw>. 20/02/21. Education system-doldrums.

Zimbabwean Culture, (2013). *Cultures of Zimbabwe*, Retrieved on:

<http://www.everyculture.com/To-Z/Zimbabwe.html>

Zimbabwe Human Rights Forum, (2006). *Exploring Transitional Justice Options in Contemporary Zimbabwe*. January 2006, Harare: Zimbabwe Human Rights NGO Forum.

Zimbabwean National Statistics Agency, (2012). *Census Preliminary Report*,

Causeway, Harare Retrieved from:

[http://unstats.un.org/unsd/demographic/sources/census/2010\\_PHC/Zimbabwe/ZWE\\_CensusPreliminary2012.pdf](http://unstats.un.org/unsd/demographic/sources/census/2010_PHC/Zimbabwe/ZWE_CensusPreliminary2012.pdf)

Zimbabwean National Statistics Agency, (2014). *Census Preliminary Report*,

Causeway, Harare Retrieved from:

[http://unstats.un.org/unsd/demographic/sources/census/2010\\_PHC/Zimbabwe/ZWE\\_CensusPreliminary2012.pdf](http://unstats.un.org/unsd/demographic/sources/census/2010_PHC/Zimbabwe/ZWE_CensusPreliminary2012.pdf)

Zimbabwe business law handbook, (2012). *Strategical information and basic laws*,

International Business USA. <https://books.google.co.nz/books>

Zimbabwe Maps,(2014), *Zimbabwe ethnic regions and Political inclination*,

Retrieved from:

<http://www.worldatlas.com/webimage/countrys/africa/zw.htm>

# APPENDICES

## Appendix 1



**Dear Sifiso**

Your file number for this application: **2014-1031**

Title: **Parents and Practitioner Perspectives on the effectiveness of the Zimbabwean Youth Justice Framework of Practice in meeting the needs of both young offenders and Society**

Your application for ethics approval has been reviewed by the Unitec Research Ethics Committee (UREC) and has been approved for the following period:

Start date: **26.6.14**

Finish date: **26.6.15**

Please note that:

1. The above dates must be referred to on the information AND consent forms given to all participants.
2. You must inform UREC, in advance, of any ethically-relevant deviation in the project. This may require additional approval.
3. Organisational consent/s must be cited and approved by your primary reader prior to any organisations or corporations participating in your research. You may only conduct research with organisations for which you have consent.

You may now commence your research according to the protocols approved by UREC.

We wish you every success with your project.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'G. Whalley'.

Gillian Whalley  
Deputy Chair, UREC

cc: Helene Connor  
Cynthia Almeida

## Appendix 2



### Participation Consent Form: Interviews

Perspectives on the effectiveness of Zimbabwean youth justice framework in meeting the needs of both young offenders and the society.

I have had the research project explained to me

I have read and understood the information sheet given to me.

I am over 18 and not in active crisis.

I understand that the interview will be audio recorded.

I understand that my participation in the research study is completely voluntary.

I understand that I may give consent but then withdraw this consent up until two weeks after I have received a transcript of my interview.

I am under no obligation to disclose information I do not want to.

I may also request the deletion of some pieces of the interview if I am uncomfortable with their inclusion in the research.

### Records

I understand that:

Everything I say is completely confidential

The information I give will be de-identified, and the recording deleted following the completion of the transcript.

Transcript and other records will be kept secure for a period of six years after which they will be destroyed.

## Support

I also understand that:

I can stop or pause the interview at any time.

Decline to answer any question,

I may choose to have a support person present if this would be helpful to me.

## Consideration

I have had an opportunity for my questions to be answered.

I have had time to consider everything and give my consent to be a part of this project.

If you have any queries about the research, I can be contacted on:

Tel+64 211160900 or 0064 9 5335275. I can also be contacted by email on [wsdzadya@xtra.co.nz](mailto:wsdzadya@xtra.co.nz)  
or [Sifiso.Dzadya@cyf.govt.nz](mailto:Sifiso.Dzadya@cyf.govt.nz).

You may also contact my supervisors:

Sue Elliott, contact: email [selliott2@unitec.ac.nz](mailto:selliott2@unitec.ac.nz).

Helene Connor, Contacts: email [hconnor@unitec.ac.nz](mailto:hconnor@unitec.ac.nz)

Participant Signature \_\_\_\_\_ Date \_\_\_\_\_

Name of Participant \_\_\_\_\_

Project Researcher \_\_\_\_\_ Date \_\_\_\_\_

Name of Researcher \_\_\_\_\_