AN EVALUATION OF THE CHILD JUSTICE SYSTEMS DEALING WITH CHILDREN IN CONFLICT WITH THE LAW

A THESIS SUBMITTED IN FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF
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ABSTRACT

The main purpose of this study was to evaluate the child justice systems dealing with children in conflict with the law. The research venue was the C-Court at the Katutura Magistrate Court and the duty stations of the key informants were in Windhoek.

The researcher used qualitative and quantitative research approaches in conducting the study. The qualitative research approach applied the summative evaluation and the quantitative method utilized the survey design. A structured questionnaire was administered with 70 respondents at the Katutura Magistrate Court to obtain detailed knowledge of the specific needs of children.

The data captured from the questionnaires were analyzed using the statistical package for social sciences (IBM SPSS Statistics - 19). Results are presented in frequency tables, bar charts, pie charts and other forms of graphs for interpretation.

The findings for the quantitative approach were based on the extent and distribution of the problem such as the protection of the rights of children during arrest, detention, screening and rehabilitation offered by the diversion programs.

In-depth interviews with the 20 key informants were conducted because of their expertise in child justice and the power they wield in decision making. Data was gathered through a semi-structured interview guide. A tape recorder and field notes were used.
A profile of the personal information of a child in conflict with the law reveals that boys are more likely to commit crime than girls aged 14-17 across four cultural and ethnic groups: Damara/Nama, Afrikaans, Oshiwambo and Otjiherero. They were mostly out of school and repeat offenders. Generally all crimes committed had a bias towards meeting the economic needs of the child offender.

The services available for children in conflict with the law were found not to be adequately aligned with the United Nations Convention on the Rights of the Child. Detention was invariably applied at the expense of alternative measures to deal with children in conflict with the law. Several children were detained with adult offenders and in addition there were limited opportunities for assessment before the first court appearance. Cases were not speedily finalized or held “in camera”. Services to children in conflict with the law are provided in a fragmented manner and the Inter-ministerial Committee on child justice which is supposed to coordinate services is not fully functional.

The study recommends that minimum guidelines be developed for the pre-trial process on how children should be treated during assessment, arrest, detention and pre-trial diversion. The development of a structure for child justice is imperative as well as the enactment of the Child Justice Bill. Programmes on resilience should be offered to boys so that they can acquire skills and capabilities on how to deal with life’s difficulties. Multi-model crime prevention strategies at primary, secondary and tertiary levels, with the involvement of the parents should be offered to children. The extension of restorative justice approaches should be supported. Finally capacity building of key stakeholders should be prioritized to give sufficient backing to the activities leading to the achievement of the recommendations made.
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A special thanks to all respondents who availed themselves for the interviews and provided invaluable information for this study.

Thank you all.
DECLARATION

I, Ingrid Celeste Feris, declare hereby that this study is a true reflection of my own research, and that this work, or part thereof has not been submitted for the degree in any other institution of higher education.

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Ingrid Celeste Feris
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<td>COLS</td>
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<td>MGECW</td>
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<td>MOJ</td>
<td>Ministry of Justice</td>
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<td>Ministry of Safety and Security</td>
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<td>Pre-trial Community Service</td>
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<td>UNCRC</td>
<td>United Nations Conventions on the Rights of the Child</td>
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<td>UNICEF</td>
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CHAPTER 1

INTRODUCTION AND ORIENTATION TO THE STUDY

1. Introduction

The Ministry of Justice (MOJ) in Namibia coordinated the drafting of a Child Justice Bill in 2002, as no legislation was in existence that specifically deals with children in conflict with the law. The Child Justice Bill is in line with International Standards and addresses the particular needs of children in conflict with the law (Draft Child Justice Bill, 2002). The Child Justice Bill is not yet enacted and there are no clear guidelines or procedures and policies to direct the dealings with children in conflict with the law (MGECW, 2008). The researcher acknowledges the importance of legislation to address children in conflict with the law, therefore discussions will deal with it accordingly.

The United Nations Convention on the Rights of the Child is a framework on how the rights of children should be upheld and respected. According to Hodgkin and Newell (1998), special protection measures should be provided for children involved in the system of Administration of Juvenile Justice according to Articles 37 and 40. Such children should not be deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings. Children should not get capital punishment and life imprisonment, and they must be able to recover psychologically and be reintegrated in society. In accordance to these measures, an assessment was done in
Namibia (Hoff, 2009) on the current status of the Child Justice Program in all 13 regions in Namibia. The constraints eminent were the following:

- Diversion Programs are facilitated only in Windhoek and not in the other regions because Youth Officers are not equipped with the necessary skills to facilitate the Life Skills Program which are needed to apply this program;
- Screening is done daily in Windhoek, however in the other regions it is executed once a week due to shortage of social workers, and the area is vast for one social worker who is sometimes responsible for the whole region;
- There is no coordination amongst the stakeholders, and no Child Justice Forums exists that could be used as a platform to address problems;
- Referrals to other regions is a quandary; repeat offenders are common and are often school drop outs whose needs are not met with the current diversion programs;
- A lack of identity documents make it difficult to ascertain the age of the children as some are older than 18 years and do not qualify for the program;
- Children are detained in the same cells as adults.

The status of legislation on Child Justice in Eastern and Southern Africa served as directives of best practice for Namibia. The rational for this study lies in the concern whether or not qualitative and effective services are provided to juvenile offenders by the existing systems in Namibia during the pre-trial stage. These systems are the Ministry of Justice C/O Office of the Prosecutor General and Lower Court – magistrates;
Ministry of Safety and Security (Police); Ministry of Gender Equality and Child Welfare; Ministry of Education and Ministry of Youth, National Service, Sport and Culture. An evaluation of the existing program needs to be done to ascertain the quality of the existing services.

2. Statement of the problem

Children in conflict with the law refer to anyone under the age of 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence (UNICEF, 2006) and these children are the focus group for the research. According to Macroibin (2008) child protection systems have different aspects such as a Legal and Policy framework; Inter-sectoral collaboration; Standards of Care; Infrastructure; Processes; Human and financial Resources; Externalities; Research, Data Analysis, Monitoring and Evaluation. Namibia lacks these frameworks which create problems when dealing with children in conflict with the law.

Numerous studies have shown that a functional child justice program is a key factor in the protection of children in conflict with the law. Super (1993) conducted a study at the then 8 Prisons in Namibia which highlighted a lack of services to children who committed crime. This study concluded that there is a need to have a program for children in conflict with the law as their rights were not upheld as set out in Articles 37 and 40 of the United Nations Convention on the Rights of the Child. Children were detained for long hours in cells without the knowledge of the parents, and even 93%
were not represented by a lawyer during the trial. They were not separated from adults, therefore 31% suffered physical, emotional and sexual abuse. The entire sample came from low income families which could be related to education, crime and poverty.

//Gora Basen Consultancy (2002) conducted a study on process mapping that highlighted concerns regarding pre-trial diversion. The Prosecutor General (PG) gave permission for the implementation of the Child Justice Program in 1994. Following that decision, the Child Justice Program is not officially sanctioned. The Child Justice Program could be overlooked or become redundant with the absence of policy guidelines/legislation. Children were still detained with adults, especially in rural areas. Older offenders abused the system by using juveniles to commit crime, with the possibility of cases being withdrawn.

The development of protocols to guide prosecutors, magistrates, police officers and social workers were recommended. Further, capacity development should include human resource development, technical assistance and skills training. No evidence exists to prove that these recommendations were implemented.

Proper structures for Child Justice are not in place, therefore the different systems work in isolation and there is no platform for stakeholders to budget together for activities. The Ministry of Youth, National Service, Sport and Culture (MYNSSC) was the only ministry that received N$5 400,000 for the 2008/9 financial book year for Juvenile Justice (MGECW, 2008).
However, the assessment done in November 2009 by the Ministry of Gender Equality and Child Welfare indicated that, except for Windhoek, no diversion programs were in place for juvenile offenders in other towns of Namibia. The coordination gap is heightened by the fact that the Inter-ministerial Committee on Child Justice (IMC) is not fully functional. The Inter-ministerial Committee is also responsible to lobby and advocate for law reform to address shortcomings (Hoff, 2009).

The researcher is concerned as the Child Justice Program was implemented with the aim to protect the rights of children in conflict with the law. To ensure that no child falls between the gaps, it is imperative to establish a system of mutual beneficial collaboration. The focus area for the researcher is to evaluate policies, guidelines, standards for juvenile justice, knowledge about the needs of juvenile offenders in the system of justice; facilities needed for young offenders; educated staff to deal with the specialization of young offenders and coordination and networking. All these areas constitute the concerns there are in the field of juvenile justice.

3. Aim of the study

The overall aim of this study is to evaluate the quality of services provided by the systems to juveniles and this will be a baseline for the development of policies, guidelines and law reform. The specific objectives are as follows:

- To identify the needs of children in conflict with the law;
• To explore service gaps and support required for children in conflict with the law from the different systems that provide such services and support;

• To evaluate the current available services for children in conflict with the law;

• To determine how the coordinating Ministries support and protect the rights and well being of children in conflict with the law;

• To identify the gaps for effective implementation of the Child Justice Program (including guidelines for service delivery); and

• To emphasize the need for the implementation of legislation for children in conflict with the law.

4. Significance of the study

The study aims to inform stakeholders and policy makers about the needs and rights of juvenile offenders in order to prioritize the implementation of a specialized juvenile justice system that would include the following components:

• Legal and policy framework: Enactment of the Child Justice Bill and national guidelines/standards to provide practical detail for implementation and the link with child protection;

• Inter-sectoral cooperation/coordination: Revival of the Inter-ministerial Committee to ensure proper coordination and networking amongst stakeholders. The leading ministry responsible for the coordination of the Child Justice Program should be identified. The role of non-governmental organizations and that of stakeholders should be clarified;
• Service delivery: Provision of a variety of alternatives to institutional care such as diversion programs and programs to repeat offenders that is tailor made. The responsible system to facilitate pre-trial community service should be identified. The condition in the cells to be improved and juveniles to be separated from adults. Programs to be facilitated to inmates.

• Resource allocation: Provision of sufficient human and financial resource allocation

• Capacity Building: Continuous training to stakeholder and the development of information and educational materials (training materials/manual).

• Integrated information management system to enable effective monitoring, analysis, map the flow of children through the justice system, and provide qualitative and quantitative data on the juvenile justice indicators. Research to evaluate the child justice program and to identify best practices.

5. Theoretical framework

The Ecological System Theory of Urie Bronfenbrenner forms the basis of the theoretical framework of the study in order to evaluate the systems dealing with children in conflict with the law. "Ecological systems theory is an approach to study human development that consists of the scientific study of the progressive, mutual accommodation, throughout the life course, between an active, growing human being, and the changing properties of the immediate settings in which the developing person lives, as this process
is affected by the relations between these settings, and by the larger contexts in which
the settings are embedded" (Voydanoff citing Bronfenbrenner, 1989).

This theory uses different types of relationships and surroundings of a person to help
explain their development. It is broken down into different layers of the child's
environment which are the microsystem, mesosystem, exosystem, macrosystem and
chronosystem. The structures interact within and between layers. The theory points out
that while relationships close to the child have a direct impact, the other outside factors
also have a powerful impact on the development of the child. The microsystem consists
of the activities and interactions in the person's immediate surroundings/environment.
The structures inside this system include family, neighbourhood, school, peer group, or
childcare environments. The relationships inside the micro system have bi-directional
influences. Other individuals in the micro system affect the quality of the two-person
relationship, such as the mutual support between two parents in child-rearing roles. The
mesosystem is the direct connection between a child’s home and school which are the
immediate environments. A child's education and learning depends upon the teachers'
knowledge, and the parents of the child, as they have an equal responsibility to assist the
child in learning and becoming educated. The exosystem is the environment that only
indirectly affects the individual. Exosystems can support both formal (organisations
such as child welfare services, the adults' workplace that paid sick leave) and informal
environments. The informal part of the exosystem affecting children is the social
network of their parents -friends and extended family. The macrosystem is the outside
level that does not contain a particular subject, rather a variety of influences such as
laws, customs, resources and cultural values. The exosystem, mesosystem and the microsystem are all affected by the macrosystem. The fifth system that was later added is the chronosystem which is the patterning of environmental events and transitions over the course of life (Bronfenbrenner, 1986).

The size of an individual’s microsystem changes every time the person obtains or let go of life roles or surroundings. These changes are crucial to the child’s development, such as starting school, getting married, starting a first job, having children, moving house/countries, getting divorced, retiring. Life changes are enforced from external environments, however, these changes can also occur from inside the individual. This is because humans are able to choose, alter and construct several of their own settings and understandings. As a result, in the ecological systems theory, an individual’s development is not determined by environmental factors or internal character. People are products and creators of their own environments. Therefore, both people and their surroundings form a system of mutually dependent effects. The ecological system is an active system which is constantly developing (Bronfenbrenner, 1986).

In reflection to the principles and philosophy of the Ecological Systems Theory, the researcher included questions about where the child stayed during and before the time of arrest and the involvement of the parent/guardian during the attendance of a diversion program. This information is needed to determine what the influence between the child and his support system is. The educational levels of the children were ascertained as well
as the reason why they did not attend school. The cultural groups involved in criminal activities were also identified to understand how this macrosystem influenced the child.

The other part of the theoretical framework of this study was the Child Rights Based Approach. This approach is based on the key rights as set out in the United Nations Convention on the Rights of the Child that protect the rights of children and set standards for judicial dealing with juvenile offenders. The Child Rights Based Approach requires the implementation of the International Standards at all levels. Attention was also given to aspects such as non-discrimination, best interest, implementation/resources, life, survival and development of children who come in conflict with the law (Wernham, 2004).

6. Ethical issues

Information on the goal of the investigation, procedures to be followed during the investigation and possible advantages were given to participants, their parents and respondents to obtain informed consent/voluntary participation through consent letters that were signed by their parents. The researcher safeguarded the privacy and identity of respondents and acted with the necessary sensitivity where their privacy is relevant to ensure not to violate their privacy/confidentiality that contributed to validity. The analysis of data and results of the study were reported correctly. To ensure credibility the researcher spent sufficient time with the participant/respondent and established rapport, facilitated comfort and increased the willingness to make known sensitive information (Rothmann, 2000).
7. Definition of key terms

The following core concepts are defined to provide a mutual understanding when working in this specialized field of social work. It provided stakeholders with a specific vocabulary to prove their efficacy in this field.

**Act orientation place** the emphasis on the crime, on the action performed, rather than the person who performed it. Appropriate disposals will be decided upon which have regard to the act rather than the actor.

**Adaptable procedure** is when there is no fixed procedure. Procedure is adaptable to the case/issues being discussed. The hearing is conducted by a tribunal rather than a court.

**Adversarial procedure** is a traditional focus on legal battles between the defence and prosecution lawyers in an effort to find the truth.

**Assessment/screening** is the process of evaluation of the child, his/her home circumstances and the circumstances surrounding the commission of the offence.

**Capacity** is when a person has the mental abilities required by the law to be held responsible and liable for his unlawful conduct.

**Children in conflict with the law** refers to anyone under the age of 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence.
**Delinquency** is behaviour against the criminal code committed by an individual who has not reached adulthood.

**Deprivation of liberty** is defined as being “any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which the person is not permitted to leave at will, by order of any judicial, administrative or other public authority”.

**Diversion** involves the referral of cases away from formal criminal court procedures where there is enough evidence to prosecute/the channelling of cases away from the mainstream criminal justice system into programs that strengthen and support the child’s growth, impart skills and instil ethics and responsibilities in the child.

**Doli Incapax** assumes that under a certain age children are incapable of knowing right from wrong and therefore cannot be held criminally responsible for their actions.

**Due process** is the adherence to a fixed procedure to ensure that all accused persons are treated in the same manner. It is the conduct of legal proceedings according to established principles and rules which safeguard the position of the person charged, that must includes stages of judicial process prior to charge and to a system.

**Economic crimes** are non-violent crimes committed for financial gain.

**Formalism** is a sombre procedure in a courtroom which is adhered to, that purportedly reflects and reinforces the serious nature of matters being raised. Lawyers wear gowns and magistrates preside and direct proceedings.
**Informality** is when the hearing will take place in an informal atmosphere and any representative will not be robed. There may be a round table discussion of the alleged offending event and possible solutions. All parties, including the young person and parents are encouraged to speak.

**Inquisitorial procedure** is a non-confrontational approach to fact finding that will be preferred without confrontation. Each party will be encouraged to verbalise their account/views.

**Legalism** is an emphasis on formal justice, legal procedure and legal representation to ensure that all young people who come before the courts are treated equally and fairly. The presence of lawyers is important in order to provide and articulate voice for the defendant and to advise on and explain legal matters.

**Multi disciplinary approach** is when various professionals may be present, although lawyers will generally not be required. Other professionals may take part in the hearing such as social workers, teachers, psychologists and youth workers in order to discuss solutions to the alleged problem behaviour.

**Net slackening** refers to the diversion of cases that were supposed to proceed to court but did not happen because of the social and economic status of the defender. It means that diversion can sometimes be abused to the benefit of certain groups in society who has influence to evade the criminal justice system.
Net-widening occurs when diversionary options substantially widened the net of the jurisdiction of the court. This net-widening occurs when the exact goals of the program are not entirely clear and explained.

Proportionality is to ensure fairness and consistency, and the defendant should be sentenced in proportion to the seriousness of the offence.

Person orientation means to focus on the person throughout the proceedings. The emphasis is upon the actor rather than the crime committed.

Responsibility of any person aged 7 or above in the country is presumed capable of forming the level of culpability (mens rea) required for the crime and should therefore be made to face up to the effects and full consequences of his/her behaviour.

Resilience is the ability to bounce back after stressful events, the ability to cope with crisis.

Restorative Justice means the promotion of reconciliation, restitution and responsibility through the involvement of a child, the child’s parent, family members, victims and communities.

Retributive Justice is seen as a punitive approach where someone in authority seeks to determine who is to blame and what punishment the person deserves.

Reasons for offending are investigated in order to provide suitable intervention. The young person’s capability/capacity to form the required level of culpability is considered
along with a number of concerns related to the young person’s welfare and upbringing. Potential solutions are suggested.

**Tailor made** disposal is primarily to fit the needs of the offender rather than to reflect the seriousness of the offence. Emphasis is placed upon what kind of intervention is needed to help the young person desist from negative behaviour patterns. Sentences should be aimed at the need to reform and reflect the idea that young people can move away from criminal behaviour.

**8. Summary**

This chapter provided the background information to the research study, the research problem, aim and objectives as well as definitions of key concepts. The significance of the study was presented and a theoretical framework for the research is formed. Chapter two provides a comprehensive summary of the various literature sources that were consulted.
CHAPTER 2

LITERATURE REVIEW ON THE EVALUATION OF SYSTEMS DEALING WITH CHILDREN IN CONFLICT WITH THE LAW

1. Introduction

This chapter reviews literature relevant to the subject under study. The researcher ropes in theories and models to assist in gaining an in-depth understanding of the root causes of criminal behaviour among children and the identified challenges in delivering justice to juvenile delinquents. Literature reviewed gives an in-depth insight into what has been previously established in as far as the delivery of justice to child offenders is concerned. Literature also gives suggestions with regard to national and international declarations and provisions that set out to protect children’s rights.

This chapter comprises of two sections. Section I focus on the juvenile and will include information such as knowledge about childhood, child development, juvenile delinquency, the protection of juvenile offenders, the rights of juvenile offenders, restorative and retributive justice and diversion programs. Section II comprises the systems dealing with child offenders such as the justice-, welfare- and the law enforcement systems.
SECTION I

THE JUVENILE

2. The History of Juvenile Justice

The history of juvenile justice will be portrayed in this section by reflecting on juvenile justice development in Europe, North America, New Zealand, Africa and specific focus on Namibia where this study was conducted.

According to Bartol (2005) the second shift during 1967 in social policy in the United States of America was spearheaded by a series of presidential commissions studying the broad problems of crime and violence. Major strategies were recommended such as running away from home, diversion of youth, extension of due process rights to juveniles, deinstitutionalization and decentralization of control of juvenile proceedings and care. These strategies resulted in the enactment of the Juvenile and Delinquency Prevention Act in 1974.

In the past 20-30 years, many parts of Western Europe and North America observed responses regarding the differentiation of responses to criminal offences committed by children. Western countries realized the need that children who committed crime should be treated differently than adults because of their immaturity, vulnerability and diminished responsibility. It is also believed that young persons are more susceptible to positive influence than adults (Hill, Lockyer, & Stone, 2007).
Transferring youth to criminal courts often has unintended consequences. Bartol (2005) indicates that data from Pennsylvania showed that juveniles who were tried in criminal court received harsher sentences than their juvenile court counterparts. Transferred juveniles were also more likely to reoffend while awaiting trial because they were released on bail while waiting further proceedings. If they had not been transferred, many of these youths would have been detained pending their delinquency hearing and/or adjudicated more quickly. Those juveniles who were transferred, convicted and incarcerated were released while they were in their late teens or early twenties, often without having received adequate rehabilitative services. Juvenile systems offered better treatment than what is offered during the short stays in jails and prisons. Attention was directed to the legal rights of juveniles, and their decision-making abilities.

Law reform initiatives in Africa on the other hand, were initiated by social problems such as poverty, lack of employment opportunities, lack of infrastructure and resources, high debts, war and armed conflicts and the HIV/AIDS pandemic. Sloth-Nielsen & Gallinetti. (2004) discussed juvenile justice developments in Ghana, South Africa, Uganda, Kenya, Zambia, Nigeria and Malawi. Ghana was the first African country to ratify the United Nations Convention on the Rights of the Child on 29 June 1990. Child rights regulations were passed in 2002.

South Africa started in 1997 with the law-making process. The Child Justice Act was enacted in 2010 following years of lobbying. South Africa developed ninety five
standards for diversion practice such as minimum norms and standards for diversion and pamphlets (Sloth-Nielsen & Gallinetti., 2004).

Uganda brought its laws in line with the United Nations Convention on the Rights of the Child. The Children’s Statue of 1996 contains both child protection issues and child justice issues. Diversion is not specifically legislated for and diversion occurs within the very limited scope allowed by the Act (Sloth-Nielsen & Gallinetti., 2004).

The Children’s Act 2001 of Kenya introduced a new legal framework for dealing with children and their rights, including children in conflict with the law. However, the Act does not include diversion, nor did the repealed Kenyan Children and Young Persons Act. The Act provides for a range of options by ways which the court may deal with juvenile criminal proceedings, particularly in relation to alternative sentences. A National Council for Children’s Service was established that had a wide range of functions and powers (Sloth-Nielsen & Gallinetti., 2004).

Zambia doesn’t have facilities for children awaiting trial. Many children also do not have birth certificates and when they are 17 years old, it is difficult to confirm that they are juveniles and they are consequently treated as adults. Children were beaten and raided by police officers who arrested them, inmates who imprisoned them or who shared their cells. Boys faced detention for minor offences. The Ministry of Justice (Attorney General, prosecution services) decentralised the process to the regions (Sloth-Nielsen & Gallinetti., 2004).
In Nigeria the Nigerian Human Rights Commission, Constitutional Rights Project, UNICEF, Penal Reform International initiated the child justice project by doing a study in six geopolitical zones and considering remand homes. Approved schools and young people detained in prisons and police cells. The National Working Group on Juvenile Justice Administration was formed and draft concept paper developed. A guide for trainers and a manual for law enforcement officials were drafted. All this happened before the enactment of the Nigerian Child Rights Bill. In most parts of Sub-Saharan Africa, underage sex is described as ruining, whose penalty is death. Girls usually buy protection from the law by offering themselves to corrupt policemen (Sloth-Nielsen & Gallinetti, 2004).

Malawi does not have a specific law for juvenile offenders. The Children and Young Persons Act of 1969 is the main Act for child justice and child care and protection. The Act focuses more on punishment than the rehabilitation of child offenders. The Child, Care, Protection and Justice Act replaced the Children and Young Persons Act, 1969. The judge chairs the process since 2000 (Sloth-Nielsen & Gallinetti, 2004).

In 2001 the Children’s Bill 1999 in Ireland was enacted as the Children’s Act 2001. This Act enabled courts to place children who have been assaulted, who are at risk in the care of or under the supervision of regional Health Boards. The Act proposes three sites for the incarceration of children. Existing Reformatory and Industrial Schools were known as Children Detention Schools for juveniles, managed by the Department of
Education. Detention Centres accommodated children between 16 and 18 years convicted of a criminal act (Hill et al., 2007).

In Sweden, children under 15 years of age are not subject to legal sanctions. Sweden does not have special youth courts. All cases of crime by young people aged 15 and over are prosecuted in the same criminal courts used for adults, in a similar legal process. The five sanctions that can be imposed for young offenders who were found guilty are a fine, conditional sentence, probationary sentence, imprisonment and youth custody (Hill et al., 2007).

In New Zealand the model exists where the government ministry of Child, Youth and Family deal directly with provision of child welfare, protection and youth justice services.

Namibia embarked on a law reform process similar to that of South Africa. In 1994 a Juvenile Justice Forum was established, consisting of government line ministries, NGO’s and individuals, and by 1999 almost every region had its own Juvenile Justice Forum. In 1995 the Legal Assistance Centre through its Juvenile Justice Program, started with pre-trial diversion (Sloth-Nielsen & Gallinetti, 2004).

Namibia became independent in 1990, and also signed the United Nations Convention on the Right of the Child. The Committee was concerned about the system of juvenile justice in Namibia and the conformity with the United Nations Convention on the Right of the Child, Articles 37 and 40. A study of young offenders in the then eight prisons was done to examine the need for a specialized Child Justice Program. The results
showed that the majority of young offenders were aged between 16 and 18 years; 66% were illiterate; 63% were serving prison sentences for economic crimes; the average sentence imposed was 18 months; 44% appeared without their parents/guardians. The study further revealed that the average duration of incarceration in either prison or police cells prior to conviction was 90 days. These juveniles were in constant contact with adult inmates and at times shared their cells. This resulted in 31% to be sexually, physically and emotionally abused by adult inmates.

The Child Justice Forum was established in 1995 and the Prosecutor General (PG) gave permission for diversion of petty crimes. The Child Justice Project (CJP) of the Legal Assistance Centre (LAC) was also launched. This project developed information and educational materials on child justice and trained many stakeholders. In 1997 the PG gave permission for the decentralization of the child justice program. The Inter-ministerial Committee on Child Justice (IMC) was established in 1997 and the Ministry of Justice was the chairperson. In 1998 the Child Justice Program Namibia under the Ministry of Justice was commissioned, although it ended in July 2004 when the funding cycle from the Austrian Development Cooperation came to an end. During this period stakeholders received intensive training on child justice, conducted in collaboration of the Child Justice Program of the Legal Assistance Centre. Social workers also conducted the assessment of children at the court, with the social workers from the Ministry of Health and Social Services (MOHSS) being involved since the inception of the program. Through this program the Child Justice Bill was drafted. Meetings were held with Ministers and Permanent Secretaries to discuss the program and the Child
Justice Bill. Studies that were undertaken investigated process mapping; structures, roles and responsibilities and the development of an implementation framework of the Child Justice Act in the Ministry of Justice.

The study on Process Mapping was done to create a picture of activities that take place from arrest to reintegration and the challenge is to decide how many tasks and details should be included. Systematic thinking is important to analyse the complexities in service delivery and the process as well as the identification of constraints. Many key stakeholders render services in a fragmented manner with very little coordination in place. Stakeholders also experienced problems with the flow of information from the Inter-ministerial Committee to Non-governmental Organizations and Ministries, and a lack of commitment was observed. The Child Justice Program is not officially sanctioned and can be overlooked or become redundant with the absence of policies, guidelines and legislation. Strengths of the Inter-ministerial Committee were committed members, regular meetings or discussions and a fixed chairperson. Weaknesses identified were that there were no operational guidelines, there was a lack of clear roles of members and the structure of the Inter-ministerial Committee was not clear. The lack of legislation, guidelines and policies on the hierarchical structural settings resulted in conflicting operational interventions.

The researcher agrees with //Gora Basen Consultancy (2002) that juvenile justice is a very specialized field and interventions should be in the best interest of the child. Stakeholders involved in juvenile justice should have a sound knowledge of the field to
be able to make decisions at all levels in the best interest of the child (//Gora Basen Consultancy, 2002).

Findings of the study on structures, roles and responsibilities indicated that juvenile justice services were fragmented and uncoordinated due to the absence of an identified and agreed upon lead ministry. Role players were not clear about their roles and it could have a negative effect on the sustainability of the program. The formation of the Inter-Ministerial Committee (IMC) was arranged by the Ministry of Justice in April 1997 and these meetings were chaired monthly by the Special Advisor to the Minister of Justice. The lack of legislation, guidelines and policies on the hierarchical structural settings resulted in conflicting operational interventions. The Inter-ministerial Committee played a pivotal role to monitor, evaluate, lobby and advocate the child justice program. The Inter-ministerial Committee was supposed to provide guidance to ensure that there will be uniformity in all 13 regions regarding children’s rights and access to services.

The //Gora Basen Consultancy (2002) further pointed out that the diversion programs lacked specialized staff and that diversion was not fully understood by service providers. Diversion could infringe on the “due process rights” which included the rights to remain silent, right to call and cross-examine witnesses, right to privacy and presumption of innocence until proven guilty.
The study on the development of an implementation framework of the Child Justice Act in the Ministry of Justice came up with the following conclusions (Muntingh, Hamutenya and Kamwanyah, 2006):

- Due to the high risk areas for child rights violations, inter-sectoral cooperation was needed,
- Policy and procedure development were vital for the following priority areas: arrest procedure; assessment of arrested children; minimum standards for diversion; procedures and processes for the child justice court; minimum standards for the detention of children in prisons; police cells and facilities; monitoring and evaluation; dealing with children as victims and child consultation.

The Ministry of Gender Equality and Child Welfare (MGECW) was formed in 2004 with the mandate to take the responsibility of child welfare services, early childhood development, gender equality and community development. The Child Welfare Directorate, responsible for child welfare services employed social workers in order to take sole responsibility of the assessment of juvenile offenders in 2007.

The Child Justice Program of the Legal Assistance Centre conducted the diversion program until 2004 when it was handed over to the Ministry of Youth, National Service Sport and Culture (MYNSSC). The financial cycle from the Austrian Development Cooperation to the Child Justice Program of the Legal Assistance Centre ended in 2006 (Muntingh et al., 2006).
An assessment done in 2009 by the Ministry of Gender Equality and Child Welfare (MGECW) on the current status of the Child Justice Program in all 13 regions of Namibia had the following conclusions (Hoff, 2009):

- Diversion Programs were facilitated only in Windhoek and not in the other regions because Youth Officers were not equipped with the necessary skills to facilitate the Life Skills Program.
- Screening was done daily in Windhoek, however in the other regions once a week due to shortage of social workers, and the vastness of the geographical area.
- No coordination amongst the stakeholders or Child Justice Forums existed,
- Referrals to other regions were a quandary.
- Repeat offenders were high and often school drop outs whose needs were not met with the current diversion programs.
- A lack of identity documents made it difficult to ascertain the age of the children, as some were older than 18 years and did not qualify for the program.
- Children were detained in the same cells as adults

Annual reports from the Legal Assistance Centre (LAC) showed the following statistics of children screened on the next page. (Legal Assistance Centre, 2000 - May 2005).
### Table 1: Number of children screened from 2000 – May 2005

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of children screened</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>518</td>
</tr>
<tr>
<td>2001</td>
<td>630</td>
</tr>
<tr>
<td>2002</td>
<td>405</td>
</tr>
<tr>
<td>2004</td>
<td>207</td>
</tr>
<tr>
<td>January till May 2005</td>
<td>88</td>
</tr>
</tbody>
</table>

Source: Legal Assistance Centre

A report from the Ministry of Safety and Security - Correctional Services (2009) indicated the number of children who were sentenced for common crimes such as stock theft, housebreaking, assault (GBH), theft and rape.

### Table 2: Number of children who were sentenced from 2003 - 2009

<table>
<thead>
<tr>
<th>Year</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of children</td>
<td>62</td>
<td>37</td>
<td>45</td>
<td>69</td>
<td>21</td>
<td>90</td>
<td>67</td>
</tr>
</tbody>
</table>

Source: Ministry of Safety and Security – Correctional Services

The Bridge, a Welfare Organization in Mariental, (in the south of Namibia) who facilitated diversion programs for juveniles, was established in 1991. Literacy and formal education classes as well as a library at Hardap Prison were introduced. Services focused on counselling, a paralegal who visited the cells, facilitation of a Life Skills Program, tracing of the family of the prisoner and a halfway house that was a temporary shelter for prisoners who have just been released (Super, 2003). The program came to an end in 2009 due to a lack of funding.
Change of Lifestyle Home Project (COLS) was a “place of safety” to child offenders who had been detained in the cells. The core funder of the project was the United Nations Children’s Fund. Change of Lifestyle Home Project closed down in 2006 due to lack of funding.

The section that follows presents information on children in conflict with the law, the developmental phases of children, their needs and the specific legal processes.

3. Understanding children in conflict with the law

The definitions of a child and children in conflict with the law are dealt with before the developmental phases are discussed.

3.1 Definition of a child

Article 1 of the Convention on the Rights of the Child describes a child as a human being below the age of eighteen years, unless majority is attained earlier (United Nations Convention on the Rights of the Child excerpt).

The Children Status Act, 6 of 2008, defines a child as a person who is under the legal age of majority. The age of majority according to the Age of Majority Act, Act 57 of 1972 is 21 years old. The Prisons Act 17 of 1998, the Draft Child Care and Protection Bill, The Criminal Procedure Act (51 of 1977) and The Children’s Act (33 of 1960) describes a child as a person under the age of eighteen years old.
Burkino Faso set their age at 20 years and Bolivia between birth and 21 years (Hodgkin and Newell, 1998).

The Committee on the Rights of the Child noted the contradictions in National legislation with respect to the definition of the child (First, Second and Third Namibia Country Periodic Reports on the implementation of the United Nations Convention on the Rights of the Child and two Optional Protocols, 1997-2008, 2009). The Committee concluded that the Child Care and Protection Bill be enacted and all legislation to be in line with the definition of a child.

3.2 Children in conflict with the law

There is consensus in the literature that children in conflict with the law should be treated different than adults because they are far more vulnerable than adults to the negative effects of imprisonment and for this reason detention of children should be avoided wherever possible. Children are also prone to influence since they have not completed their emotional and physical development. A child is more vulnerable to the brutalisation that arose from contact with the criminal justice system, including arrest, detention, formalised court procedures and imprisonment, than an adult (Currie & De Waal, 2005).

Young people are more likely than adults to become victims of crime, and they might be less able than adults to recover as they have not yet developed the coping mechanisms which come with life experience. Young people in general were less likely than adults to report their experience as a crime. Those young people were more deeply affected, or
those who fail to recover after a few days were a concern. They might not receive the support they needed as it might be missed or neglected. When they are noticed, the initial harm from the crime might be exacerbated by an inappropriate response or poor quality of support from their family, community, professionals and the criminal justice system itself. These adults might not remember at times that the best interests of the young person were of cardinal importance. Re-victimization could result if the young person was not believed, not understood and potentially forced into an adult world of legal proceedings, where they relived the crime during court proceedings. With timely and appropriate assistance and support, young people could recover and had an opportunity to lead happy and fulfilled lives (Wallis, 2010).

In order to get a human science perspective on children in conflict with the law it is necessary to include the developmental phases of children in this chapter. This knowledge base contributes to an understanding of the different needs of the child in the different developmental stages. It is also of assistance when children should be referred to diversion programs appropriate to the developmental stage.

4. The developmental phases of children

The growth of children is divided into cognitive, affective and physical/motoric development (Kluckow, 2004).

- Cognitive growth centres on how the mind works as children grow;

- Affective growth centres on the self-concept and the development of social, emotional and personality characteristics;
Physical and motor growth refers to the physical development of the body and the development of skills necessary for the use of all these parts.

Gladding (2000) stated that the Developmental Theory is more concerned with longitudinal expression of career behaviour and more inclined to highlight the importance of the self-concept. Career development was believed to be the process of the implementation of the self-concept. The views of people of who they are, were reflected in what they do.

Vocational development unfolds in five stages and each contains a developmental task to be completed. The first two stages and its sub stages are applicable to this study. The first stage is growth, from birth to the age of 14 years. Children form a mental picture of themselves in relation to others. They become oriented to the world of work. According to Gladding (2000), self-concept develops through the identification with key figures in the family and the school. Needs and fantasy are central in this stage. Interest and capacity become more importance with the increase of social participation and reality testing. Behaviours that are learned are associated with self-help, social interaction, self-direction, industrialness, goal setting and persistence. The sub stages are: Fantasy is between 4-10 years and the main focus is role playing and fantasy. Interest is from 11-12 years where likes are dominant of aspirations and activities. Capacity is from 13-14 years and abilities, job requirement and training are pertinent.

The second stage from the age of 14-24 involves a general exploration of the world of work and the specification of a career preference. Children are involved in self-
examination, role try-outs and occupational exploration at school, involvement in leisure activities and part-time work. This stage has 3 sub stages, being tentative (15-17 years), transition (18-21years) and trial (22-24 years). The Tentative sub-stage (15-17 years) focus on needs, interests, capacities, values and opportunities, tentative choice that are made and tried out in fantasy, discussions, courses and work. Children identify possible appropriate fields and levels of work (Gladding, 2000).

During the developmental assessment, the social worker focused on the strength of the child, with the focus on four core values, namely belonging, mastery, independence and generosity. The developmental theory highlights the core value of mastery.

Childhood development theories explain how and what children learn and how they use this to grow. Some theorists believed that all people learn and grow in the same way, irrespective of their age. Others believe that learning takes place in stages with specific developmental tasks that need to be acquired at each stage in order for the person to make a healthy transition to the next stage.

Freud was convinced (as cited in Santrock, 2008) that the problems of children were the results of experiences early in life. People developed according to psychosexual stages, and when children grew up, their focus of pleasure and sexual impulses shifts from the mouth to the anus and eventually to the genitals.

Adult personality was determined by the way they resolved conflicts between sources of pleasure at each stage and the demands of reality. If a person had a traumatic childhood
and fails to resolve a psychosexual stage, the person would need to work through this unresolved stage later in life (Gladding, 2000).

Erikson (as cited in Santrock, 2008) stated that people develop in psychosocial stages. The primary motivation for human behaviour is social and reflects a desire to affiliate with other people. Developmental change occurs throughout the life span, emphasizing the importance of both early and later experiences. Erikson outlined eight different stages that were important in the development of personality. At each stage, a unique developmental task confronts individuals with a crisis that must be resolved. This crisis is a turning point marked by both increased vulnerability and enhanced potential. The more successful an individual resolves the crisis, the healthier his development will be (Santrock, 2008).

The eight personality developmental stages of Erikson (as cited in Santrock, 2008) are the following:

- Trust versus mistrust is the first psychosocial stage, which is experienced in the first year of life. Trust in infancy sets the stage for a lifelong expectation that the world will be a good and pleasant place to live. After gaining trust in their caregivers, infants begin to discover that their behaviour is their own. They start to assert their sense of independence or autonomy.

- The second stage of development is autonomy versus shame and doubt, which occurs in late infancy and toddlerhood (1-3 years). If infants are restrained too
much or punished too harshly, they are likely to develop a sense of shame and doubt.

- The third stage of development is initiative versus guilt, which occurs during the pre-school years. As preschool children encounter a widening social world, they face new challenges that require active, purposeful behaviour. Children are asked to assume responsibility for their bodies, their behaviour, their toys, pets and they can also take initiative. Feelings of guilt may arise if the child is made to feel too anxious.

- Industry versus inferiority occurs in the primary school years. Children’s initiative brings them in contact with a wealth of new experiences. As they move into middle and late childhood, they direct their energy toward mastering knowledge and intellectual skills. At no other time is the child more enthusiastic about learning than at the end of early childhood’s period of expansive imagination. The danger is that the child can develop a sense of inferiority, feeling incompetent and unproductive. According to Muller (2004) children at this stage can master formal skills of life such as being able to relate with peers, reading and mathematics.

- During adolescent years individuals are faced with finding out who they are and where they are going in life. It is called identity versus identity confusion. Adolescents are confronted with many new roles and adult statuses – vocational and romantic. If adolescents don’t adequately explore many roles and define a positive future path, then identity confusion reigns.
• During the early adulthood years individuals experience intimacy versus isolation. Individuals face the developmental task of forming intimate relationships. If the young adult forms healthy friendships and an intimate relationship with another, intimacy will be achieved, if not, isolation will result.

• Generativity versus stagnation occurs during middle adulthood. Generativity refers to a concern for helping the younger generation to develop and lead useful live. The feeling of having done nothing to help the next generation is stagnation.

• Integrity versus despair is experienced in late adulthood. A person reflects on the past. Through many different routes, the person may have developed a positive outlook on most or all of the previous stages of development. If so, the person’s review of his/her life will reveal a life well spent, and the person will feel a sense of satisfaction and integrity will be achieved (Santrock, 2008).

Children actively construct their understanding of the world and go through four stages of cognitive development. Two processes underlie this cognitive construction of the world, namely organization and adaptation. To make sense of our world, we organize our experiences, separate important ideas from less important ideas and connect one idea to another. People adapt and adjust to new environmental demands. Piaget has four stages of understanding the world, each stage is age-related and consists of a distinct way of thinking, a different way of understanding the world. The child’s cognition is qualitatively different in one stage compared with another. During the sensory-motor stage which is from birth to two years, infants construct an understanding of the world
by coordinating sensory experiences (seeing and hearing) with physical and motor actions. The preoperational stage between two to seven years, children begin to go beyond simply connecting sensory information with physical action and represent the world with words, images and drawing. Preschool children still lack the ability to perform operations, which are internalized mental actions that allow children to do mentally what they previously could only do physically (Santrock, 2008). They are also egocentric and are unable to separate their own perspective from that of others. They are primarily concerned with their own actions and may not be able to answer questions about other people. They also don’t have the ability to solve problems logically. They cannot reverse an action and focus on one aspect of a problem. Connected events are seen as unrelated, and they have a problem to understand the concept of cause and effect. Actions will be seen in isolation without a perception of the sequence between them (Muller, 2004).

During The concrete operational stage from seven to eleven years, children can perform operations that involve objects and they can reason logically as long as reasoning can be applied to specific or concrete examples. Concrete operational thinkers cannot imagine the steps necessary to complete an algebraic equation, which is too abstract for thinking at this stage of development (Santrock, 2008).

The child is less egocentric and understands the perceptions and beliefs of others. The sequence of events is better understood. However, they still have difficulties to answer
abstract and hypothetical questions, such as the why-question to which they normally reply as: “I don’t know” (Muller, 2004).

The formal operational stage appears between eleven and fifteen years and continues through adulthood. Individuals move beyond concrete experiences and think in abstract and more logical terms. As part of thinking more abstractly, adolescents develop images of ideal circumstances. They might think about what an ideal parent is like and compare their parents to this ideal standard. They become more systematic when solving problems and develop hypotheses about why something is happening the way it is and test these hypotheses (Santrock, 2008).

Muller (2004) agrees that a child in this age is capable of formal operations and to deal with objects that have never existed. The child can manipulate it by using arbitrary rules. Their thinking is more logical and can make the connection between cause and effect. They can also distinguish between various incidents and can communicate it as such.

Scientifically studies focus on only what can be directly observed and measured. Development is observable behaviour that can be learned through experience with the environment and that is continuing. Behavioural approaches according to Santrock (2008) are the following:

- Pavlov’s Classical Conditioning where a neutral stimulus (ringing a bell) acquires the ability to produce a response originally produced by another
stimulus (food). Many of our fears may result from classical conditioning such as the fear of being dogs from being bitten.

- Skinner’s Operant Conditioning is when the consequence of a behaviour produce changes in the probability of the behaviour’s occurrence. He also emphasized that development consist of the pattern of behavioural changes that are brought about by rewards and punishments.

- Bandura’s Social Cognitive Theory focuses on behaviour, environment and cognition which are key factors in development.

- Maslow’s hierarchy of needs (as cited in Santrock, 2008): People have certain needs which are unchanging and genetic in origin. These needs are the same in all cultures and are both physiological and psychological. According to his hierarchy the lower level basic needs have to be satisfied before progressing on to meeting higher levels of growth needs. Once these needs have been reasonably satisfied one may be able to reach the highest level called self-actualisation. He distinguishes between two general categories of motives namely deficiency motives and growth motives. Deficiency motives refer to the first four levels of the need hierarchy, which are physiological, safety, affiliation (love and belonging needs) and self-esteem. Growth refers to self-actualisation needs that are aesthetics, understanding and knowledge. Maslow believed that when people are not able to fulfil these needs they become emotionally and mentally unstable.
The holistic approach could be linked to the Gestalt Theory. The Gestalt Theory emphasizes how people function in their totality. The role of the social worker is to create an atmosphere that promotes the exploration of a client on what is needed to grow and recognizes patterns in his/her life. The focus is on the current situation, where the present tense is always used to address someone directly, focusing on how and what rather than why and clients are asked to convert questions into statements (Gladding, 2000).

Other theories that could also be used are Behavioural, Cognitive and Reality Theories. The three main approaches for Behaviour Therapy are the stimulus-response mode, (application of classical conditioning by learning through the association of two stimuli) Applied Behaviour Analysis (is based on operant condition focus on how individuals operate in the environment and they are rewarded of punished for actions) and Social Cognitive Theory (people learn new knowledge and behaviour by observing other people and events).

Cognitive Restructuring is a process whereby clients are taught to identify, evaluate and change self-defeating or irrational thoughts that negatively influence their behaviour. Reality Theory emphasizes choices that people can make to change their lives. It focuses on the fulfilment of psychological needs, the resolution of personal difficulties, and the prevention of future problems (Gladding, 2000).
5. Juvenile delinquency

According to Finckenauer (2000), juvenile delinquency consists of criminal behaviour that includes rape, robbery, arson, theft and drug related crime. Juvenile delinquency also includes a host of misbehaviour such as habitually disobedient or habitually and voluntarily truant that is called juvenile status offenses. These offenses are unique and specific to juveniles. The challenge is whether juvenile courts should retain, limit or give up its jurisdiction over this peculiar class of offenses. Status offenders have special needs, and they engage in behaviour which leads to more serious delinquency.

Similarly Hirschi (2004) defines delinquency by acts and the detention of which is thought to result in punishment of the person committing them by agents of the larger society. Psychological definitions of delinquency include conduct disorder and antisocial behaviour. Conduct disorder is a diagnostic term used to represent a group of behaviours characterized by habitual misbehaviour such as stealing, setting fires, running away from home, skipping school, fighting, being cruel to animals and frequently telling lies. Anti-social behaviour is more serious habitual misbehaviour, especially a behavioural pattern that involves direct and harmful actions against others.

The legal definition for juvenile delinquency is that the juvenile who committed an act defined by law as illegal and who is adjudicated delinquent by an appropriate court. This would occur after the juvenile pled guilt. New and innovative correctional methods are needed to continue and even accelerate the decline in juvenile criminality. The younger a child is when s/he becomes involved in delinquency, the more likely they are
to continue this type of behaviour and they could become seriously delinquent (Bartol, 2005).

According to Pitts (2001) delinquency is only one element of a much larger syndrome of anti-social behaviour. The Cambridge Study found that children aged between 8 and 10 years and who were convicted, were rated by their primary-school teachers as troublesome and dishonest (45%) against 14% who were not subsequently convicted. At 14 years it appears that all the convicted offenders were rated by their teachers as aggressive and frequent liars.

In adolescence, the convicted boys drank more beer, got drunk more often, smoked cigarettes, gambled more heavily, and engaged in unprotected sex. They appeared to get on less well with their families and were more likely to live away from home. Violent crime involvement increases with age, whereas property crime involvement tends to decrease. Juvenile delinquency is overwhelming male dominant behaviour.

An assessment conducted by Swartz at the Windhoek Magistrate’s Court indicated that the Nama/Damara, Afrikaans and Oshivambo language groups were prevalent (Swartz, 1998). Another study conducted by the Ministry of Gender Equality and Child Welfare (2002) on the phenomenon of street children in Namibia coincide that children of these language groups were prominent living on the streets (MGECW, 2002).

According to Hill et al. (2007), peer association and neighbourhood norms in certain areas may encourage endemic crime almost regardless of family circumstances. Conversely many young people whose parental or substitute care is problematic, had the
personal and or environmental strengths to avoid engagement in crime. It is common that children and young people who have serious family care problems become offenders.

The factors contributing to delinquent behaviour from a social work point of view according to Hirchi (2004) are as follows:

- **Social class:** Juvenile delinquency cuts across social class, but it seems that the most serious and pervasive offending occurs among lower-class youth. Middle class youth, even if they are involved in serious crimes, commit fewer offenses than do working and lower class youth. The police and the courts confirm that most sociological and common-sense theories of crime are committed by the lower-class boy. He is more likely to be sent to juvenile court, more likely to be convicted, and more likely to be institutionalized if convicted than the middle class boy who committed the same crime.

- **Attachment to parents:** Control Theory assumes that the bond of affection for conventional persons is a major deterrent to crime. The stronger this bond, the more likely the person is to take it into account when and if he contemplates a criminal act. The capacity to form attachments to others may be generally impaired so that the child who feels nothing for his parents is less likely to feel anything for anyone else. In Cultural Deviance Theory, lack of attachment to the parents merely increases the probability that the child will be exposed to criminal
influences, that he will learn the attitudes, values and skills conducive to delinquency.

- Attachment to the school: The school is a manifestly middle-class institution and delinquency has long been considered a predominantly lower-class phenomenon, the major lever for prying open the secrets of the school in the production of delinquency has been to assess its impact on the lower-class child. This approach has two major forms. In the first form the lower-class boy’s day to day experience in the school is shown to be unpleasant, degrading and demoralizing. The middle-class teacher tends to punish the fidgety, unambitious and dirty lower class boy. Children from classes above him dominate extra curriculum affairs, refuse to date him and refuse to admit him into their cliques. The lower-class boy faces a problem of adjustment to the degree to which he values middle-class status.

- Education: Juvenile delinquents are not usually good students. If in school at all, they miss many days, are frequently late when they do attend, and simply do not do very well. Many have some kind of learning problems which is compounded by their truancy, tardiness and inattention. The grades of delinquents are usually below average, and they are often either far behind their classmates or have dropped out of school. Success or failure in school has been found to have a profound effect on juvenile misconduct. The school is, after all, second only to the family as the major socializing institution for children. Children between the ages of six and sixteen are required to spend a considerable amount of their time
in school. Children who come to school initially unprepared for the educational experience often quickly find themselves in a failure situation that is very threatening to their self-esteem. For those children for whom school has become one big failure, disruptive behaviour or school misconduct can become a way to cope with the loss of self-esteem that ensues. Peer approval and lost self-esteem can thus be regained by acting out disruptive and attention seeking behaviour. This kind of behaviour may then escalate through a series of stages to more serious delinquency.

- Family background: Family disorganization of some kind tends to be a major and very prevalent background characteristic in the lives of seriously delinquent children. The families of such delinquent children share common characteristics such as lower than average standard of living; welfare grants being a frequent source of income; large number of children, residence in poorer urban areas and poor parent-child relationships.

6. Age of criminal capacity

Criminal capacity has to do with the fact that young children and people with intellectual disability cannot be held criminally liable since they lack the mental abilities which other people have who can be accountable for their behaviour. The mental abilities which a person must have in order to have criminal capacity are the ability to appreciate the wrongfulness of his conduct, and the ability to conduct himself in accordance with such an appreciation of the wrongfulness of his conduct.
If a person lacks one of these abilities, he lacks criminal capacity and cannot be held criminally liable for an unlawful conduct in which he engaged. Criminal capacity may be completely absent because of immature age (Snyman, 2008).

Section 73 and 74 of The Criminal Procedure Act (51 of 1977) provide special procedures for an accused under the age of 18 years by distinguishes between three age groups, namely 0 to 7 years, (doli incapax, meaning that the child does not have the intention to commit a crime) 7 to 14 years and 15 years and older. Children under 7 years are irrebuttably presumed to lack criminal capacity. Irrebuttably presumed means that a court will not even allow evidence tendered with a view of rebutting the presumption. From the age of 7-14 years, children are rebuttably presumed to lack criminal capacity. Rebuttably presumed means that although the point of departure is that a child in this age group lacks capacity, this point of departure (or presumption) may be rebutted by evidence that at the time of the commission of the act the child had the necessary mental abilities required for criminal capacity. The onus of proving this lies with the state (prosecution). The unlawful conduct of children in this age group may lead to a conviction of a crime, proved the state rebuts the presumption of criminal incapacity beyond reasonable doubt and also proves that the other elements of the crime have been complied with. In the case of children from 15 years, the normal principles applicable to all adults apply and it is presumed that at the time of the act such a person was endowed with capacity, but this presumption is rebuttable. A person who lacks criminal capacity because of youth cannot even be convicted as an accomplice to a
crime. He could be used by another person as an innocent instrument in the commission of a crime.

The test to determine criminal capacity of children ought to be whether such a child, in spite of his age, is capable of appreciating the nature and consequences of his conduct and that it is wrong. It is the cognitive part of the test which is the ability to appreciate the wrongfulness and knowledge of the act. It should be tested whether s/he is capable of acting in accordance with that appreciation, which is the conative part of the test whereby the ability to conduct him/her in accordance with his/her insight into right and wrong. However, it does not mean that the child should simply be asked whether s/he was aware that what he was doing was wrong, and such formulation of the test is unacceptable as it confuses criminal capacity and awareness of unlawfulness, and it also contains no reference to the ability of the person to act in accordance with his/her appreciation of right and wrong. The child must have the necessary degree of self-control and ability to resist temptation before s/he can be regarded as having criminal capacity. Young children often act impulsively, or are under the influence of older children or adults to such an extent that they are unable or less able than the normal adult to resist temptation. Thus to determine whether a child from 7-14 years is mentally mature enough to be held criminally liable for his acts entails an investigation into his/her criminal capacity. It is also important to investigate conative abilities to indicate clearly that the test deals with criminal capacity (Ferreira & Kruger, 2010).
A delict is a wrongful, culpable act causing damage to another and a crime is an act prohibited by the law (whether by statute or by the common law). It is a requirement of both legal concepts that the perpetrator must be at fault of acted intentionally or negligently. The capacity to be at fault is known as accountability. However, a minor’s capacity to be at fault, his/her accountability, differs from that of adults. This affects the minor’s delictual and criminal liability. The reason is that a person can be accountable only if s/he has the mental capacity to differentiate between right and wrong and act accordingly. The capacity to act has nothing to do with accountability. A person must be able to understand the nature, extent and consequences of his acts before he can have capacity to act. However, accountability concerns the capacity to distinguish between right and wrong. Therefore a minor may be accountable even though s/he does not have the capacity to act (Ferreira and Kruger, 2010).

The researcher agrees with both authors’ explanation of criminal capacity, but does not agree with the latter opinion that children could be accountable if the criminal capacity of a child is unknown.

Art 40(3) (a) of the United Nations Convention on the Rights of the Child points to the importance of States establishing a minimum age of criminal responsibility, the diversity of practice among States indicates that there is no consensus on imputing criminal responsibility to children. Consequently, in some States, the child is criminally responsible at 7 and in others at 18 (Hodgkin and Newell, 1998). However, States are encouraged not to set the age too low and in its concluding comments on Sri Lanka, the
Committee was deeply concerned by the age of 8 years of criminal responsibility. The report of Hodgkin and Newell (1998) states that the low age of criminal responsibility and the national legislation relating to the administration of Juvenile Justice seem not to be compatible with the provisions of Articles 37 and 40 of the United Nations Convention on the Rights of the Child. Table 3 below shows what the age of criminal capacity in other countries is.

**Table 3: The age of criminal capacity in other countries**

<table>
<thead>
<tr>
<th>Country</th>
<th>Age</th>
<th>Country</th>
<th>Age</th>
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<tbody>
<tr>
<td>Ghana</td>
<td>12</td>
<td>Niger</td>
<td>13</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>14</td>
<td>Uganda</td>
<td>14</td>
</tr>
<tr>
<td>Argentina</td>
<td>16</td>
<td>Bolivia</td>
<td>16</td>
</tr>
<tr>
<td>Canada</td>
<td>12</td>
<td>Chile</td>
<td>14</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>12</td>
<td>Albania</td>
<td>14, criminal offences 16, petty crimes</td>
</tr>
<tr>
<td>Belgium</td>
<td>18</td>
<td>Italy</td>
<td>14</td>
</tr>
<tr>
<td>Burkino Faso</td>
<td>18</td>
<td>The Netherlands</td>
<td>12</td>
</tr>
<tr>
<td>Britain</td>
<td>10</td>
<td>Ireland</td>
<td>12</td>
</tr>
</tbody>
</table>

7. Protection of juvenile offenders according to International Guidelines and Namibian Legislation

Namibia signed the UNCRC in September 1990. The protection of children through the development and implementation of programs was primacy. Provisions as set out in international guidelines on juvenile justice and the Namibian legislation will now be discussed.
7.1 Protection of juvenile offenders according to International Guidelines


The United Nations Convention on the rights of the Child is the umbrella for The Beijing Rules, United Nations Rules for the Protection of Juvenile Deprived of their Liberty and the Riyadh Guidelines. Article 40 of the Convention on the rights of the Child states that children in conflict with the law should be treated in a manner which promotes their sense of dignity and worth, takes age into account, and to assume a constructive role in society. The article also enshrines the minimum guarantees of due process of law including the presumption of innocence, provision of clear and prompt information about the nature of the charges, availability of legal or other assistance, the right to cross-examine witnesses, equality for the witnesses of the defence, the right of appeal and the right of the child to have his/her privacy respected at all stages of the proceedings. Laws, procedures, authorities and institutions specifically applicable to children alleged as accused of or recognized as having infringed the penal law must be established. States must also establish a minimum age below which children should not
be presumed criminally responsible. Children must also be diverted away from the formal justice procedures and institutionalization.

The Convention on the Rights of the Child is the principal binding treaty that sets out all the rights to which Governments agreed. Three additional sets of rules adopted by the global community provide greater detail on the daily operation of juvenile justice.

Article 40 (3) (b) states that wherever appropriate and desirable measures for dealing with such children without resorting to judicial proceedings should be considered, providing that human rights and legal safeguards are fully respected. Article 44 states that a variety of dispositions and other alternatives to institutional care shall be available. This Convention is considered as the most significant because of its binding character and the extensive support it has received. Although the Rules and Guidelines contain greater detail and more substantive provisions, they are non-binding and are only persuasive as a result of which the obligations of states are minimal there under. However, the Convention ameliorates this to an extent, in that it draws heavily on the other instruments and imports their underlying ethos into its provisions on Juvenile Justice. There is a marked shift in the approach advocated in these documents in that the emphasis moves from punitive measures to advocating a child centred justice system in which the child’s interest are paramount and the inherent dignity of the child is preserved. Thus Article 40 of the Convention provides that: State Parties recognise the right of every child alleged as accused of or recognised as having infringed the penal law
to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth.

Juvenile justice is an immensely complex area of law that is evidence by the sheer breadth and wide ranging nature of the content of these documents. Article 37 prohibits the death penalty and life imprisonment without the possibility of release; and that imprisonment shall be used as a measure of last resort and where children are imprisoned it must be for the shortest possible period of time.

Art 39 requires the State to promote physical and psychological recovery and reintegration of child victims. The specific provisions on juvenile justice are to be read in the light of the Convention’s overarching principles, which provide that: States should be guided in all actions by the best interests of the child (Art. 3); take into account the evolving capacities of the child (Art 5); give due weight to the views of the child (Art 12); and guarantee the rights to all children without discrimination (Art 2). Hodgkin and Newell (1998) note that the Committee, in its general discussion on Juvenile Justice, highlighted in particular the need for States to establish a justice system that recognises the child as the subject of fundamental rights and freedoms and stresses the need for all actions concerning children to be guided by the best interests of the child as a primary consideration.

States Parties to the Convention are required to give effect to its provisions by importing the standards into the legislative and administrative practices of the State. State parties submit their reports to the Committee, which then engages in a dialogue with the state.
Thereafter the Committee issues a set of concluding comments in which it highlights areas of concern and commends the state for progress made in achieving the standards of promotion and protection laid down in the Convention. Separate systems for children are needed for the mode of trial. When this is not possible for economic reasons, States must ensure that children are not prohibited from participation in their own defence and that judicial hearing should be conducive to understanding (Hodgkin, 1998).

Fundamental principles consistent with international Juvenile Justice Standards are the principle of best interests and the wellbeing of the child through proceedings that would be conducive to the best interest and wellbeing of the juvenile. The family is included in decisions relating to the youth’s life. The young person’s freedom to enjoy his/her rights without discrimination. All juveniles should benefit from arrangements designed to assist them in returning to society, family life and education/employment after release. Procedures, including early release and special courses, should be devised to this end. Authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and lessen prejudice against them. Care, guidance and supervision orders, counselling, probation, foster care, educational and vocational training programs and other alternatives to institutional care should be available to ensure that children are dealt with in a manner appropriate to their wellbeing and proportionate both to their circumstances and offence.

The concluding observations of the Committee on the initial report of Namibia regarding programs on the United Nations Convention on the Rights of the Child, noted its
concern about the system of Juvenile Justice not to be in conformity with the Convention on the Rights of the Child (articles 37 and 40), as well as with relevant international instruments such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (MGECW, 2009). The enactment of the Child Justice Act that includes the minimum age of criminal capacity was recommended.

The Beijing Rules (United Nations Standard Minimum Rules for the Administration of Juvenile Justice) is a framework within which a National Juvenile Justice System should operate and a model for States to a fair and humane response to children who may find themselves in conflict with the law. It also calls for trained and professional personnel, inter-agency coordination and the use of research as a basis for program development, evaluation and policy and decision-making. The Beijing Rules stresses the need for privacy throughout court proceedings in order to avoid the stigmatising and negative effects of labelling children criminals and delinquents. Child justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes. Child Justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.
The child justice system shall emphasize the well-being of the child and shall ensure that any reaction to child offenders shall always be in proportion to the circumstances of both the offenders and the offence.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty aims at the protection of the rights of children when they are deprived of their liberty. Rule 1 states that the Juvenile Justice System should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a measure of last resort. The Rules serve as convenient standards of reference and provide encouragement and guidance to professionals involved in the management of the Juvenile Justice System. Rule 7 indicates that where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules. Juveniles who are detained under arrest or awaiting trial ("untried"), are presumed innocent and shall be treated as such. They should have the right of legal counsel, continue education or training and should receive and retain materials for their leisure and recreation. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and
presented at normal meal times and of a quality and quantity to satisfy the standards of
dietetics, hygiene and health and, as far as possible, religious and cultural requirements.
Clean drinking water should be available to every juvenile at any time. Every juvenile
shall receive adequate medical care, both preventive and remedial, including dental,
ophthalmological and mental health care, as well as pharmaceutical products and special
diets as medically indicated. Every juvenile should have the right to receive regular and
frequent visits. Personnel should be qualified and include a sufficient number of
specialists such as educators, vocational instructors, counsellors, social workers,
psychiatrists and psychologists (Excerpt from United Nations Rules for the Protection of
Juveniles Deprived of their Liberty).

The Riyadh Guidelines (The United Nations Guidelines for the Prevention of
Juvenile Delinquency) is an essential part of crime prevention in society. The
successful prevention of juvenile delinquency requires efforts on the part of the entire
society to ensure the harmonious development of adolescents with respect for and
promotion of their personality from early childhood. A child-centred orientation should
be pursued. It should avoid criminalizing and penalizing a child. Young people should
have an active role and partnership within society. The need exists for progressive
delinquency prevention policies. The systematic study and the elaboration of measures
should be recognized. Governments are under an obligation to make public education
accessible to all children.
The African Charter on the Rights and Welfare of the Child, Article 17(1) provides that every child who is accused or found guilty of having infringed the penal law shall have the right to special treatment in a manner consistent with the child’s sense of dignity and worth and which reinforces the child’s respect for human rights and the fundamental freedoms of others. The provisions of the African Charter can be seen as paving the way for the expansion of restorative practices and policies in order to promote best practice in the child justice system.

The Namibian laws will be discussed to determine how child offenders are protected when they are coming in conflict with the law.

7.2 The Protection of juvenile offenders according to Namibian Legislation

Attention will be given to the protection of juvenile offenders by Namibian laws such as the Constitution, the Criminal Procedure Act 51 of 1977, Children’s Act (33 of 1960) and the Prisons’ Act.

7.2.1 The Namibian Constitution

The Namibian Constitution is the fundamental and supreme law of the country. Children are protected from the economic system, hazardous work, interference in education and health (Ruppel, 2009).

Article 15 (1) of the Namibian Constitution specifically protects children’s rights: Children have the right to a name, to be protected from economic exploitation, not to be required to perform work which is dangerous or likely to interfere with their education,
no law authorising preventative detention shall permit children under the age of sixteen (16) years to be detained. Article 15(1) thus provides for a clear protection system that is constitutionally guaranteed. It is however still a concern that children do not have birth certificates, national identity cards shows traces of a failing child protection system. The birth certificate is proving that any person exists in the eyes of the law, and it contributes to creating safer, healthier and more prosperous societies. In October 2008 the United Nations Children’s Fund (UNICEF) and the Government launched a project to ensure that children who are born in the hospitals are registered at birth and receive a birth certificate (Ruppel, 2009). Article 20 refers to the right of children below the age of 16 years to education. Article 144 states that the general rules of public international law and international agreements which are binding on Namibia form part of the Namibian law.

7.2.2 The Criminal Procedure Act

Section 153 (4) of the Criminal Procedure Act, Act 51 of 1977 states that circumstances in which criminal proceedings shall not take place in open court is where the accused is under the age of eighteen years, and no person, other than such accused, his legal representative and parent/guardian or a person in loco parentis shall be present at such proceedings, unless such person’s presence is necessary in connection with such proceedings or is authorized by the court. When the witness at criminal proceedings before any court is under the age of eighteen years, the same principle would apply.
Section 154 (3) states that no person shall publish in any manner whatever any information which reveals or may reveal the identity of an accused under the age of eighteen years or of a witness at criminal proceedings who is under the age of eighteen years, provided that the presiding judge/judicial officer may authorize the publication of so much of such information as he may deem fit if the publication thereof would in his opinion be just and equitable and in the interest of any particular person. Section 290 (1) (d) makes provision for a sentence to a Reform School.

8. The rights of child offenders

The rights of child offenders look into different types of rights and how it can be asserted during the pre-trial and trial stage.

8.1 Different types of rights

A basic distinction exists between the rights that persons have under law, also called positive or legal rights, and rights that they have morally. The distinction concerns the status of the rights. Legal rights were also supported by the fact that whatever persons are morally entitled to they should also be legally entitled to. Participation rights represents children as subjects who are capable to exercise for themselves certain fundamental powers, especially rights as reflected under Article 13 of the Convention on the Rights of the Child to freedom of expression or that under Article 15 to freedom of association or peaceful assembly. Protection rights represent children as patients, objects of concern and potential victims of forms of harmful treatment. Article 19 is the right to protect from all forms of physical or mental violence, injury/abuse, neglect or
negligent treatment, maltreatment of exploitation or Article 32 which accords the child the right to be protected from economic exploitation and perform hazardous work.

The preamble to the Convention on the Rights of the Child states that the child by reason of his physical and mental immaturity; needs special safeguards and care, including appropriate legal protection before as well as after birth. It also gives rights to children because of the vulnerability and difference between adults and children. The Convention on the Rights of the Child states that the rights of juvenile offenders should be protected through the provision that the State must decide when a child is old enough to break the law. The human rights of every child who may have broken the law must be respected.

The State must care, advice and guide the child in a way that will help him/her to become part of the community. The State must establish and promote laws and special places to deal specifically with children. Children should not be kept in a prison, a reformatory or a place especially for children who have broken the law, if there are other ways of caring and helping the child. Counselling, probation, foster care in another family and education and training programs should all be made available to the child (Hill et al., 2007).

8.2 Due Process Right

It is the adherence to a fixed procedure to ensure that all accused persons are treated in the same manner. It is the conduct of legal proceedings according to established principles and rules which safeguard the position of the person charged, that must
includes stages of judicial process prior to charge and to a system. At the hearing it could be to the disadvantage of the young person if no legal representative is involved. Due process forms part of the Common Law. Due process right include the right to have notice of the accusation, to challenge it, to cite witnesses and examine others, to have legal representation and rights of appeal. In the USA, the juvenile court’s disposition to set aside these rights was criticised most famously in the Gault case, which led to a young person being sent to and institution for many years as a response to a minor legal infringement (Hill et al., 2007). This case called for a major shift of the focus of delinquency proceedings from a child’s best interest to proof of legal guilt in adversarial fashion and from procedural informality to due process requirements (O’Brien, 2004).

The Constitution of Namibia provides fundamental rights that include the right to be informed in a language that s/he understands about the reason for the arrest and the right to remain silent, and not to be compelled to make a confession/admission which could be used in evidence against you. The Namibian Constitution guarantees the right to a fair trial that includes the right to be presumed innocent until proven guilty and to have the choice to remain silent during the trial. The right to a fair trial includes the right of the person on trial to lead evidence and to challenge evidence against him or her.

A system which is essentially weighted in favour of due process, does not ignore the rights of the victim, it merely seeks to ensure that vindication of the rights of the victim should not trigger or lead to further injustices. Due process demands that there must be
practical limitations on state power in the detection, investigation, prosecution and punishment of crime (Bekker et al., 2009).

8.3 Doli incapax

Young people may under certain circumstances, not be competent to understand the gravity or the consequences of their actions by dint of their immaturity, thus being incapable of committing a crime. It is for this reason that the onus is placed upon the prosecution to demonstrate criminal intent, as distinct from knowledge that certain actions are simply right or wrong. Doli Incapax has served to reduce the discrepancy between the ages of criminal responsibility. It also makes proper allowance for the fact that children’s understanding, knowledge and ability to reason are still developing (Pitts, 2001).

9. Restorative and Retributive Justice Approaches

The Child Justice Program is based on a Restorative Justice Approach. In order to have a better understanding what Restorative Justice entails, it will now be discussed and compared with Retributive Justice and Rehabilitation.

9.1 Restorative Justice Approach

Restoration is not just about reparation but about seeking to restore the victim’s security, safety, self-respect, dignity and, most importantly, sense of control. Pitts (2001) stated that restorative justice has its roots in the criminological debates about the relative merits of formal and informal systems of justice. Formal justice was castigated for its inability
to respond to the real nature of the inter-personal conflicts it clumsily identified as crime and its consequent irrelevance to the needs of both victims and offenders.

Wallis (2010) described Restorative Justice as a creative approach to solve conflict and to heal the harm that it caused. Restorative Justice is effective when communication is encouraged between the people involved in the conflict, and it recognized that a conflict and its resolution belong to the people who are involved.

Restorative Justice is about communication between someone who has caused harm and the person/people they have hurt. The aim is to offer an opportunity for the participants involved in a conflict to address and attempt to repair the harm, and move forward in their lives. Restorative approaches are mainstreamed in the Youth Justice System and are embedded in many schools, youth centres and children’s homes. Restorative approaches can be used as an alternative to punishment/prosecution in certain cases, although neither is ruled out (Wallis, 2010).

Pickford (2000) described Restorative Justice as the traditional or experimental justice systems of other cultures such as Maori Justice of New Zealand. Thus the strongest legislative support lies in New Zealand and in Australia where Restorative Justice is the buzz word for dealing with young offenders of non-violent crime. This movement reflects the desire for a different form of democratic participation in criminal justice employing mediators/facilitators from the local community who could be Police Officers, Social Workers or volunteers). The procedure places emphasis on personal dialogic relations and concrete subjects such as victim and offender, while battles over
the positions of such schemes on whether it should be integrated into the criminal justice process and thus overseen by a court, or should they take place at a pre-trial stage where they are included as part of social services. These are also questions of ownership as Criminal Justice is usually in the hands of central Government, as well as the potential involvement in a process which may have diverse benefits. A key concept is the idea of mutual recognition by offender and victim where both are real personalities. Thus offenders are encouraged to take responsibility and in undertaking the restorative process, can bring emotional closure to the offence and particularly in the hands of a skilled mediator.

Restorative Justice emphasised the ways in which crime hurts relationships between people who live in a community. It gives crime victims more opportunities to regain their personal power by stating their own needs. Offenders take personal responsibility for their actions, and then working actively to repair the harm that they have cause to the victims and the community by making things as right as possible (Sloth-Nielsen & Gallinetti., 2004).

At the heart of the Restorative Approach is the restorative enquiry, which is a helpful framework for exploring a crime/incident with a young person. Skilful questioning helps the young person to understand their anxieties, emotions and assumptions. The concerns are addressed through key questions such as: What has happened; What were you thinking at the time; How were you feeling at the time; What do you think about it now; How are you feeling now; Who else has been affected by what happened; What do
you need now to move forward; What needs to happen for the harm to be repaired (Wallis, 2010).

Family Group Conference was also initiated in New Zealand and Australia which is also a practice from the Maori tradition that was adapted in the statutory system. It consequently reduced the number of children and young people in care and custody (Wallis, 2010).

Pitts (2001) highlighted key concepts, beliefs and principles that are operational in the restorative process. They are the following:

- Crime is a violation of individual rights and interpersonal relationships: The victims and the community have been harmed and need restoration. The primary victims are those most directly affected by the offence but others, such as family members of victims and offenders, witnesses and members of the affected community are also victims. The relationships affected and reflected by crime must be addressed. Victims, offenders and the affected communities are the key stakeholders in justice. A Restorative Justice Process maximises the input and participation of these parties in the search for restoration, healing, responsibility and prevention. The state has circumscribed roles, such as investigating facts, facilitating processes and ensuring safety, but the state is not a primary victim.
- Violations create obligations and liabilities: The offender’s obligation in as much as it is possible, is to make things right. Since the primary obligation is to the victim, a Restorative Justice Process empowers victims to effectively participate
in defining obligations. Offenders are offered opportunities and encouraged to understand the harm they have caused to victims and the community and to develop plans for taking appropriate responsibility. Voluntary participation by offenders is maximised and coercion and exclusion are minimised. However, offenders may be required to accept their obligations if they do not do so voluntarily. Obligations may be experienced as difficult, even painful, but are not intended as pain or revenge. Obligations to victims such as restitution take priority over other sanctions and obligations to the state such as fines. Offenders must actively address their own needs. The community has a responsibility to support victims of crime and to meet their needs. It also has a responsibility for all its members and the social conditions and relationships which promote both crime and community peace.

- Restorative justice seeks to heal the rifts and right the wrongs: The needs of victims for information, validation, vindication, restitution, testimony, safety and support are the starting point of justice. The safety of victims is an immediate priority. The process of justice maximises opportunities for exchange of information, participation, dialogue and mutual consent between victim and offender. Face-to-face encounters are appropriate in some instances, while alternative forms of exchange will be more appropriate in others. Victims have the principal role in defining and directing the terms and conditions of the exchange. Mutual agreement takes precedence over imposed outcomes. Offenders’ needs and competencies are addressed. Recognising that offenders
themselves have often been harmed, healing and integration of offenders into the community are emphasised. Offenders are supported and treated respectfully in the justice process. Justice values personal change over compliant behaviour. Removal from the community is minimised.

Pickford (2000) discusses the 10 rules of restorative justice:

- It focuses on the harms of crime rather than on the rules that have been broken;
- Be equally concerned about victims and offenders, involving both in the process of justice;
- Work towards the restoration of victims, empowering them and responding to their needs as they can see them;
- Support offenders while encouraging them to understand, accept and carry out their obligations;
- Recognise that, while obligations may be difficult for offenders, they should not be intended as pain;
- Provide opportunities for dialogue, direct or indirect, between victim and offender as appropriate;
- Find meaningful ways to involve the community and to respond to the community bases of crime;
- Encourage collaboration and reintegration rather than coercion and isolation;
- Be mindful of the unintended consequences of your actions and programs;
- Show respect to all parties – victims, offenders, justice colleagues.
Crime is seen as an act against another person, rather than an act against the state. The state requires that the problem be resolved, but leaves the primary responsibility for resolving it up to the directly affected party; restoring relationships or repairing the harms become the primary goal of criminal justice, rather than punishment for its own sake (Sloth-Nielsen & Gallinetti., 2004).

Youth Justice has a new role where it actively contributes to the rebuilding of communities and uplifts individuals through their participation (Pickford, 2000).

### 9.2 Restorative Justice Processes

Restorative approaches must be properly planned and resourced with skilled and trained facilitators. Participations should be voluntary and based upon informed choices for everyone. In some cases a restorative approach may lead to a carefully prepared meeting. The preparation process itself can be therapeutic and thorough preparation is the key to a successful outcome. Restorative meetings could range from an informal mediation in a corridor or classroom following a minor incident, to a carefully planned and facilitated meeting in a prison for a serious offence, which may take months to prepare (Wallis, 2010).

Sloth-Nielsen & Gallinetti. (2004) identified the following Restorative Justice Processes:

- **Mediation (victim-offender mediation)** offers victims and offenders the opportunity to meet one another with the assistance of a trained mediator to talk about the crime and come to an agreement on steps toward justice. This type of
program could be used in cases where the parties are in dispute over a matter that is not necessarily criminal.

- **Conferencing (family group conferencing/victim offender conferencing)**

  Conference participants include not only the victim and offender but also their families or support groups with a facilitator to assist them. Victim offender conferencing reflects the principles of Restorative Justice. These principles focus on the harms that have been done and the resulting implications. The collaboration of key stakeholders, the victim, offender and community is central. This program could be used for diversion, child protection and suitable criminal cases. Consensus Decision Making that works similar than the victim offender conferencing is well-known in Namibia.

  Family Group Conferencing (FGC) and restorative justice are two developments initiated in New Zealand and Australia that have had a major impact in many parts of the world. The adoption of these traditional Maori approaches within the statutory system in New Zealand and Australia has been associated with large reductions in the numbers of children and young people both in care and custody, as well as low rates of formal processing by courts. In the field of child protection FGC blend the idea of extended kin gatherings that represent an attempt to give back power to key figures in the child’s social network and for the child to benefit from available resources (Hill et al., 2007).
- **Circles** are community meetings that are attended by offenders, victims, their friends and families, interested members of the community and (usually) representatives of the justice system. They are based on traditional practices found in Canada.

- **Impact panels (victim - offender panels)** are groups of victims and offenders who are linked by a common kind of crime, but are not each other’s victims or offenders.

### 9.3 Retributive Justice Approach

When the crime is committed, it is a violation against the state and its laws. Justice focuses to establish guilt and punishment so that pain could be measured out. Justice is sought through an adversarial approach. Rules and intentions outweigh the outcomes as one side wins and the other loses. It focuses on the past and needs are secondary. The aim of retributive justice is to punish (Hamutenya, 2010).

### 9.4 Differences between Retributive, Rehabilitative and Restorative Justice

The difference between Retributive, Restorative and Rehabilitative Justice concerning their objectives and the role of the victim will be highlighted (Wallis, 2010).

**Table 4: The differences between Retributive, Rehabilitative and Restorative Justice**

<table>
<thead>
<tr>
<th></th>
<th>Retributive</th>
<th>Rehabilitative</th>
<th>Restorative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference</td>
<td>Offence</td>
<td>Criminal person</td>
<td>Losses</td>
</tr>
<tr>
<td>Means Inflicting harm</td>
<td>Treatment</td>
<td>Obligation to repair</td>
<td></td>
</tr>
<tr>
<td>Objectives</td>
<td>Juridico-moral balance</td>
<td>Conformity</td>
<td>Elimination of loss</td>
</tr>
<tr>
<td>Victim’s position</td>
<td>Secondary</td>
<td>Secondary</td>
<td>Central</td>
</tr>
<tr>
<td>Criteria for evaluation</td>
<td>Just desserts</td>
<td>Conformity</td>
<td>Satisfaction of parties</td>
</tr>
<tr>
<td>Societal context</td>
<td>State power</td>
<td>State welfare</td>
<td>State responsibility</td>
</tr>
</tbody>
</table>
10. The criteria for diversion

The concept diversion in cases involving children applied in terms of the United Nations Convention on the Rights of the Child, Art. 40 (3) (b), that promotes the establishment of laws and procedures providing for measures to deal with children accused of crimes without resorting to judicial procedures. Through diversion a child, who is accused of committing a crime, is given the opportunity to take responsibility for his conduct and to make good for the wrongful action. Through this process, diversion may involve a Restorative Justice component depending on the nature of the diversion. Diversion may involve conditional or unconditional referral away from the criminal courts. Conditional diversion may involve referring the child away from the formal court procedures on condition that he attends a program or undergoes a Restorative Justice process such as Family Group Conference or Consensus Decision Making currently used in Namibia. Furthermore, the outcome of such a conference may include referring a child to a particular program such as a Life skills program (Sloth-Nielsen & Gallinetti., 2004).

10.1 Benefits of diversion

Through diversion a child might gain insight into the consequences of his actions, take responsibility for it and make good the harm through compensating the victim or performing community service. Diversion allows for victim participation where appropriate and ensures that the child is not obtaining a criminal record, thereby granting him/her the opportunity to forge a path in life that is unburdened by the stigma of a criminal conviction.
A potential danger of diversion is the accused person’s right to a fair trial and due process. Bearing in mind the definition of diversion, it is therefore imperative that children are not diverted to a program or other informal diversion option in lieu of the possibility of prosecution. If the state does not have sufficient evidence to prosecute a matter, it cannot resort to diverting the child as a second option. The state cannot absolve itself of the onus of proving the guilt of an accused beyond a reasonable doubt by making use of diversion to achieve a result it would otherwise not obtain. This would constitute a serious invasion of the accused person’s right to be presumed innocent until proven guilty. Likewise an accused person’s right to remain silent might potentially compromises the possibility of diversion. Diversion should be preceded by the child’s acceptance of responsibility for his/her actions. There is a danger that a child could be unduly influenced into accepting responsibility for an offence at the expense of his/her right to remain silent. This right is inviolable, only a voluntary acceptance of responsibility gives credence to diversion procedures (Sloth-Nielsen & Gallinetti., 2004).

Diversion should be excluded when the child indicates that he intends to plead not guilty to the charge or when the child did not understand his right to remain silent and/or has been unduly influenced in acknowledging responsibility. Diversion is also excluded when there is insufficient evidence to prosecute or when the child and his parents do not consent to diversion or the diversion options.
10.2 Diversion Programs

The aim of diversion programs is to build resilience and some are based on the model of Experiential Learning.

10.2.1 The Journey Program

The Journey program is based on Experiential Learning which combines Intellectual Learning (thinking skills), Emotional Learning (feelings) and Social Learning (learning about relationships). The interests of each child are the main point of focus as it looks at the personality, needs and skills of the child. Children are encouraged to find answers to their own questions and problems. When the child discovers answers for him/herself it makes them feel more competent. They are encouraged to find different ways to solve problems and it teaches initiative and creativity. Their discoveries are discussed in a group that draw the group members closer and promotes trust, communication and respect. When the child discovers that s/he can control their own learning process they learn their strengths and weaknesses. They also discover what interests them, how to solve problems independently and on their own (Mallmann, 2003).

10.2.2 Pre-trial Community Service

Public Prosecutors in South Africa were confronted with cases where prosecution was not the best option, but some action was needed to hold the offender responsible for the transgression. Pre-trial community service was officially introduced in 1992 to children older than 14 years. It is a diversion option that obliges the participant to serve a predetermined number of hours at a community based structure in his/her free time.
without any form of payment. Charges are withdrawn on condition that the service hours are completed within a stipulated time and the individual concerned had adhered to all other conditions stipulated by the court. It is in line with the Restorative Justice principle by repairing the damage that was caused by the offence in that the offender takes responsibility of his/her action and the opportunity to make amends through service to the community. The prosecutor could consider additional guidelines for assessing an offender’s suitability for Pre-trial Community Service, such as alcohol/drug dependency, poor mental health and patterns of violent behaviour. Role players in the assessment and referral process include the Police, Justice and the National Institute for Crime Prevention and Reintegration of Offenders. Referrals were received from the schools, place of safety and family. Participants who were referred were mostly for the lower socio-economic strata, presumably because of their greater vulnerability to risk and crime.

Upon referral to pre-trial community service, a Probation Officer at the National Institute for Crime prevention and Reintegration of Offenders assessed the child to determine the number of hours that are to be served and the placement organization. A contract is drafted that binds the participant to complete the program. Breach of this contract could result in immediate referral back to the court for formal prosecution. The participant, the site supervisor and the worker responsible for the case at the National Institute for Crime Prevention and Reintegration of Offenders signed the contract. Site supervisors drew up time sheets that serve as valid records of the number of hours that were successfully completed. These are submitted to the Prosecutor when the
participant completes the program. The participants’ performance is monitored by the National Institute for Crime prevention and Reintegration of Offenders officials and the site supervisor. Participants are placed at Non-profit Organization or agencies that deliver a service to the community such as libraries, police stations, old age homes, children’s homes and hospitals. The placement site should be suitable and characteristics of the participants, the nature of the offence and the accessibility of the service site influence placement decisions. If the participants have a specific skill it should be taken into account. The costs involved for this program is covered in the global provincial budget (Steyn, 2005).

**Table 5: Average number of pre-trial community service hours for particular offences**

<table>
<thead>
<tr>
<th>Type of offence</th>
<th>Number of hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor property related, i.e. shoplifting</td>
<td>± 40</td>
</tr>
<tr>
<td>Driving under the influence of alcohol</td>
<td>Minimum 100</td>
</tr>
<tr>
<td>Malicious damage to property</td>
<td>60-75</td>
</tr>
<tr>
<td>Possession of dagga</td>
<td>30-50</td>
</tr>
</tbody>
</table>

Concerns that need to be formalized are the extra costs involved such as transport of children to placement agencies, provision of food to participants and who will take responsibility if the participants will get hurt on the premises.

**10.2.3 Family Group Conferencing (FGC)**

Family Group Conferencing (FGC) and restorative justice are two developments initiated in New Zealand and Australia that have had a major impact in many parts of the world. The adoption of these traditional Maori approaches within the statutory system
in New Zealand and Australia has been associated with large reductions in the numbers of children and young people both in care and custody, as well as low rates of formal processing by courts. In the field of child protection FGC blend the idea of extended kin gatherings that represent an attempt to give back power to key figures in the child’s social network and for the child to benefit from available resources (Hill et al., 2007).

10.2.4 The Youth Empowerment Scheme (YES)

This program is offered by the National Institute for Crime prevention and Reintegration of Offenders in South Africa since 1993 as a pre-trial diversion or a sentencing option. Parents or guardians are expected to attend the first and last sessions. Regular icebreakers and games stimulate discussions and communication, including the offence. The costs involved for this program is covered in the global provincial budget. It consists of eight sessions and the manual, “Mapping the future” is used. The manual is a guide and could be adapted to suit the needs of individual groups. It deals with the self-concept and an understanding that children are responsible for their choices and actions. Participants are made aware about the effects of having a criminal record and to help him/her to discard negative stereotyping and to create a space so that the participant can start to believe in him/herself. Through association, participants relate what they think of themselves and what they perceive their good qualities to be. Conflict resolution gets attention as well as the best ways to deal with conflict and how assertive skills are developed. Making responsible decisions are highlighted. It also deals with the link between rights and responsibilities, the rights of victims, to respect the rights of others,
how to assert rights, the necessity for laws and norms in society, the importance and respect for legislations are highlighted. Participants explore and understand the concepts of respect and gender equality and how to deal with the misconceptions around gender socialisation. The participants need to become responsible citizens. The parents/guardians also attend the last session to share their commitment for the future and to promote parent-child relationship, to build trust and to support the child in his/her future plans. A list of relevant resources is provided to them for assistance (Steyn, 2005).

The Life skills program and pre-trial community service are also used as diversion options in Namibia. However the report of the training held in 2010 (Hamutenya, 2010) indicated that the life skills program is only successfully implemented in Windhoek and pre-trial community service need to be formalized.

10.3 Resilience program or Lifestyle

Children who live in difficult circumstances should receive skills on how to deal with life’s difficulties. This section illustrates ways on how to build resilience with children.

10.3.1 How to foster resilience

According to Mallmann (2003) children cope better if they have capabilities to understand an adverse event to believe that they could cope with a crisis because they know that they have some control over what happens and to give deeper meaning to an adverse event. Most children developed these capabilities before reaching the age of 15
years. The external and inner resources of a child greatly influence the development of these capabilities. The external resources are a close and secure relationship with a caregiver and the remaining family members; enough food, shelter, clothing and medical services; education; financial stability and close links to his/her cultural community. Inner resources are the inner strength and ability of the child to deal with a crisis. The following are inner resources that foster resilience:

- A wide range of emotions to understand their own emotions and express it in words or actions;
- A good autobiographical memory to recall positive relationships, moments of kindness and personal achievements from the past;
- A sense of belonging as they know where they belong; compassion for others; the emotional capacity to help others; a value and belief system which gives them a vision of moral order and a sense of justice;
- Creativity, innovation and curiosity will enable them to learn and use their imagination. They are able to use materials in their environment to make sure they survive;
- Self-confidence which is visible in a sense of humour and are confident of their own abilities, resourcefulness and identity.

A child can develop resilience if a safe, nurturing environment is provided in which the child’s needs are met, when time is spent with the child, when the child is taught how to communicate with other people, allowed to make mistakes, when the child is involved in
the day-to-day activities and if the child is taught the family routines. The family and
the school are important environments for the child. The family is a place where the
child could experience love and affection and makes discoveries. It also provides the
child with a sense of belonging and an identity. Families share cultures, religion and
they have similar systems of values, rules and norms. Most children experience
unconditional love in the family. The school focuses on the cognitive, social and
emotional development of the child. Children who don’t have parents might look for
someone, who might be the teacher, they could trust and who is interested in their lives,
to help in times of a crisis, and to assist them to set realistic goals.

The Protective Behaviour Approach is used to support young people who lack skills to
protect themselves from physical, sexual and emotional abuse. Part of this approach is
the affirmation of the right to feel safe. Once people know they have this right, they
would feel confident to seek help. It also highlights the link between rights and
responsibilities. Blame and punishment is replaced with the ability to respond.

When feelings, thoughts and behaviour are separated, informed decisions could be made
on how to respond. When you tune into your feelings, you could think about options.
Our thinking influences both our feelings and behaviour.

The development of a clear support network that you could approach when you
identified that you feel unsafe is encouraged. Members of a network should be
accessible, reliable, able to listen and able to take action with you, but not necessarily for
you. Members of a network could provide guidance, reduce stress, open up new
opportunities and improve your ability to make choices which are in your best interest. It is also important to ask the youth to identify his/her support network (Wallis, 2010).

10.4 Experiential Learning

Experiential learning is yet another way of building resilience. It is a process through which individuals construct knowledge, acquire skills and enhance values from direct experience. It is also a powerful tool for change, growth and healing. An adventure component is added that made it much more effective in bringing about sustainable growth, as learning becomes fun. Children learned valuable life skills the best through play and fun. Experiential Learning programs move children out of a formal classroom into a learning environment where they could do what children love to do. Many vulnerable children are deprived of play time. A large group of children could be accessed at one time. It also provides boundless opportunities for interpersonal and intrapersonal skills development within the construct of organised play and activities. Social and emotional growth and healing acquired through experience has a far higher probability of retention, transferability and sustainability than traditional methods of therapy. The message sent to children is that they have the resilience and capacity to structure their own growth and healing, thereby deconstructing the myth of the expert. The Experiential Learning cycle has four phases which are experiencing, reflecting the experience, generalising and applying (Kluckow, 2004).
10.5 Life Skills Training Programs

Life skills training were introduced to help young people learn to function effectively in the modern world. Self-knowledge and self-understanding form the basis of life skills training. They are fundamental to maturity, a healthy self-esteem and self-reliance and played a pivotal role in decision making, assertiveness and relationships. Learning life skills involve taking responsibilities for one’s own well-being. Life skills training thus develop self-knowledge, positive attitudes about the self and instil abilities to communicate with others and maintain conflict in a constructive manner. Life skills training could entail different features to target specific aspects of behaviour. It was found that multi-modal programs that mostly have a life skills or psycho-social basis resulted in significant reductions in recidivism. At risk and disadvantaged children mostly often have poor levels of education, so creative alternatives to reading and writing exercises are needed when dealing and evaluating them. Besides this, some young people have limited language abilities and cannot effectively articulate their emotions and views. Life skills training on its own lacks a restoration/compensation component, that’s why this kind of intervention is frequently undertaken in conjunction with pre-trial community service (Kluckow, 2004).

10.6 Prevention Interventions

Pitts (2001) refers to the different levels of prevention. Primary prevention attempts to modify or eradicate criminogenic aspects of the social, economic and physical environment. At the primary level, the government intervene in the economy to redirect
business and industry towards pockets of social and economic disadvantage. It improved and expanded social housing to inject greater stability into destabilised neighbourhoods. In education, schools in underachieving neighbourhoods could be given additional resources while long-term education and training programs which aimed to equip trainees for primary sector employment could be introduced for unemployed people and adults. Secondary prevention attempts to reduce the risk of future involvement in crime by individuals or groups thought to be at risk because of social, economic, personal or familial characteristics or their physical or social environment. Tertiary prevention focus upon the behaviour, beliefs, attitudes, values, modes of thinking and opportunities available to individuals or groups who are already involved in crime. This could be done through the Act specifically for juvenile offenders. Community safety could be seen as individualised forms of tertiary and secondary prevention.

Specialized Prevention is rooted in the idea that some children and young people are denied the cultural and emotional experiences and the social space to grow to maturity. Consequently they find it difficult and sometimes impossible to handle the adult world and its institutions (Pitts, 2001).

Specialized prevention provides for the following (Pitts, 2001):

- **Street social work** with young people and some adults in targeting neighbourhood;
• **Prevention clubs** offer support to families in crisis, access to legal advice and representation, health promotion, school homework support, advocacy and support for children facing exclusion from school;

• **Holiday play schemes and activity programs** for children in areas of poverty and high crime;

• **Training and employment** help youngsters access the best schemes, working with local employers to develop opportunities, working with young people to start their own businesses and co-operatives;

• **Collaboration with mainstream agencies** help local people to gain access to them and helping the agencies to evaluate and enhance their impact locally;

• **Development of community problem-solving capacities** through the support of local people to develop residents and tenants associations and promote self-help networks, skills exchanges and purchasing collectives;

• **Intensive home visits to mothers** every fortnight and offering emotional support and advice about nutrition, infant behaviour and the need to avoid alcohol and drugs, resulted in the improvement of the health of babies and reduced the risk of physical abuse.

Interpersonal and cognitive-behavioural skills training replace impulsivity with a capacity for reason, concrete thinking with abstract thinking, low empathy with high empathy and egocentricity with other directedness.
If young people are to maintain a plausible identity and a sense of self-esteem, they need to sustain a lifestyle which allows them to participate in the same kinds of social, recreational and vocational activities with the same frequency as their peers. To do this, they must secure an income and thus had to enter the labour market (Pitts, 2001).

11. Summary of Section I

Section I discusses different aspects surrounding the child offender. Firstly a history on the developments of child justice in the world and specifically in Namibia were given and reasons why Child Justice was based on the Restorative Justice Approach.

The developmental stages of children and different childhood development theories are imperative to know when working with children to have a better understanding of the needs and behaviour of children.

Knowledge about the contributing factors of juvenile delinquency from a social work point of view completes the profile of a child offender.

The age of criminal capacity is about the ability of the child to understand the wrongfulness of his/her conduct and that every country needs to have a minimum age of criminal capacity. The 3 different age groups in the Criminal Procedure Act, 51 of 1977 for children under the age of 18 years highlighted the special provision to determine the criminal capacity of children.
Due to the vulnerability of child offenders they are protected by International Standards, The African Charter on the Rights and Welfare of the Child, The Namibian Constitution as well as the provision of a separate system.

The different types of rights of a person as well as the rights of child offenders according to International Standards, The African Charter on the Rights and Welfare of the Child, the Namibian Constitution and Laws were discussed.

The Child Justice Program is based on a Restorative Justice Approach. The principles and various Restorative Justice Processes highlighted the value of this approach to the victim, the accused and the community. Restorative Justice is compared with Retributive and Rehabilitative Justice to underline its impact.

Diversion is rooted in the paradigm of Restorative Justice, thus the elaboration of the benefits of diversion and diversion programs and how children took responsibility for their actions. Children should be equipped with skills to cope in life that could be achieved by building their resilience.
SECTION II

THE SYSTEMS DEALING WITH CHILDREN IN CONFLICT WITH THE LAW

1. Introduction

The core aim of the study is to evaluate the systems dealing with children in conflict with the law; therefore a thorough review will follow about the justice system, social supportive system such as the social welfare and youth development, as well as the law enforcement system.

According to Pitts (2001) systems are characterised by the interrelatedness and interdependence of all system elements. A systemic perspective alerts to the reality that when agents and agencies within a justice system affect choices about the populations with which they will intervene and the ways in which they will use their power and authority, they will have consequences for all the other parts of that system.

All countries have laws and elements of systems in place, even if they are not very effective. In order to start it is necessary to understand what is required, identifying the gaps and finding ways to develop it from there (Skelton, 2009).

The elements of a system look into where to start in relation to different legal frameworks and policy. Law reform could be a lengthy process and there is a need for government commitment. Legislation is not always an easy process to control. It is not recommended to put development of systems on hold until legal frameworks are in
place. To get started, policies and protocols could be utilized. The system could be evaluated to determine what is useful, such as existing laws that could be utilised more creatively, or certain role-players who have powers/discretion.

**Standards and guidelines** in place could be useful and they could be set at a minimum level so that they are achievable, perhaps setting targets for improvement over a period of time. International Standards are useful in setting local standards, but local standards could be more detailed and practical.

**Non Governmental Organizations** (NGO’s) assist in the delivery of services, monitoring or research. Ways need to be sought to improve and formalise cooperation with civil society. Services could even be outsourced to them, whereby they would be paid for the services. A working agreement could be reached, as long as the Government set standards for the quality and type of services.

**Social change** could be reached through awareness raising, so that everyone speak the same language regarding justice for children. Civil society plays an important role in awareness campaigns so that children know their rights and they and their families need to be aware of services.

**Processes** such as child-friendly procedures, referral and co-ordination systems are important. Case flow mapping could be useful on what happens to a child once s/he enters the system and to determine the delays and problems. Referral and co-ordination systems could be greatly improved with very little financial outlay, as it is about improving and seeing opportunities to insert new processes into the system such as
diversion, court preparation of witnesses etc. Pilot projects could be useful; especially with sustainability planning as part of project design.

**Human resources** are very important, although in some cases there is a lack of available personnel. In other cases the staff may be in place but insufficiently trained, so capacity building is required.

In countries that have a **skills shortage**, other creative routes could be found such as community workers or community child care workers (in Namibia) instead of social workers. Constructive traditional structures that already exist could be very useful.

**Financial** issues often got in the way of system development. When it is known what the system costs, assessment like the costs of developing a system is actually the starting point for being able to effectively advocate for money to be allocated. It is essential to be realistic about the costs of the development of a system.

**Data collection, research and evaluation** are important evidence for advocacy and resource mobilisation. National information systems should be developed that could inform upstream policy making.

Fifteen **Juvenile Justice Indicators** were formulated to provide a common way of measuring and presenting information that reveals whether standards are being met. The Quantitative Indicators are concerned with measuring features of the Juvenile Justice System that could be expressed with numbers. The Quantitative Indicators also measure lengths of time that children spent in contact with the system, and significant features of
the child’s experience in detention, such as whether he or she is separated from adults, whether visits are received from his or her parents and whether he or she receives assistance with reintegration into the family upon release.

The **Policy Indicators** assessed whether effective Juvenile Justice are enshrined in national law or policy, the degree of specialisation of the Juvenile Justice System and what a country does to prevent children from coming into conflict with the law. The Policy Indicators also examine two important safeguards for children in detention: firstly, whether such children are able to complain about their treatment or conditions of detention to an independent body and secondly, whether a system of independent inspections of places of detention exists.

The way in which the Quantitative Indicators and Policy Indicators are measured is different. Quantitative Indicators are measured using a numerical calculation and Policy Indicators are measured using a system of levels, from 1 to 4.

**Quantitative indicators** are:

- **Children in conflict with the law**: Number of children arrested during a 12 month period;

- **Children in detention** is the number of children in detention;

- **Children in pre-sentence detention**: Number of children in pre-sentence detention;

- **Duration of pre-sentence detention**: Time spent in detention by children prior to sentencing;
• **Duration of sentenced detention:** Time spent in detention by children after sentencing;

• **Child deaths in detention:** Number of child deaths in detention during a 12 month period;

• **Separation from adults:** Percentage of children in detention not wholly separated from adults;

• **Contact with parents and family:** Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months;

• **Custodial sentencing:** Percentage of children sentenced receiving a custodial sentence;

• **Pre-sentence diversion:** Percentage of children diverted or sentenced who entered a pre-sentence diversion scheme;

• **Aftercare:** Percentage of children released from detention receiving aftercare;

Policy Indicators provide descriptive information about laws and policies:

• **Regular independent inspections:** Percentage of places of detention that have received an independent inspection visit in the last 12 months;

• **Complaints mechanism:** Existence of a complaints system (percentage) for children in detention;

• **Specialised juvenile justice system:** Existence of a specialised juvenile justice system;
• **Prevention:** Existence of a national plan for the prevention of child involvement in crime.

The different systems such as the Ministry of Justice; Ministry of Gender Equality and Child Welfare; Ministry of Youth, National Service, Sport and Culture and the Ministry of Safety and Security- Department of Police, will be discussed.

2. The systems dealing with children in conflict with the law

The justice, social supportive and law enforcement systems are identified as the systems dealing with children in conflict with the law.

2.1 The Justice system

The roles of the magistrate and prosecutor as well as law reform initiatives in Africa form part of the discussions on the justice system.

2.1.1 The role of the Magistrate

The justice system for the magistrates courts comprise of the magistrates and the prosecutors. In South Africa magistrates reported referrals to the welfare-oriented children’s court despite the unhappiness of prosecutors. Findings of research conducted by Sloth-Nielsen and Mayer (2003) in juvenile courts in the Cape Town area indicated that magistrates played a proactive and officious role by applying diversion or withdrawal of charges. Magistrates can also use their creativity and local knowledge to develop alternative outcomes, even if it is not provided for in legislation (Sloth-Nielsen & Gallinetti, 2004).
Increase in the numbers of children and young people entering the Youth Justice System is called net-widening, which “unmanaged” Youth Justice Systems with a rehabilitative orientation (Pitts, 2001).

The New Penology marked the convergence of two intellectual and political currents. The one is the decline of the rehabilitative ideal marked the exhaustion of the belief that through scientifically informed professional interventions with individuals, families and groups, in institutions and in the community it would be possible to change the behaviour, beliefs and attitudes of children and young people who broke the law. The other, Neo-Conservative criminology, held that crime, like the poor, was always with us and that our best bet was to incapacitate the most serious offenders with exemplary jail sentences and subject lesser criminals and those on the edge of crime to cost-effective management and surveillance.

Modern systems of criminal procedure are divided into two models, namely the Accusatorial Model and the Inquisitorial Model. The Accusatorial system replaces vengeance and involves confrontation between two parties before an impartial arbiter. The procedure is oral and took place in public. Each party tries to prove its own case and highlighted the other party’s weakness. With the Inquisitorial Model the judge investigate the case himself with all evidence taken down in writing. The accused has no procedural rights and the parties involved are the accused and the court. Namibia uses the Accusatorial Model which has four features around which the procedures are built.
The features are a passive presiding officer, two opposing parties, cross-examination and rules of evidence (Müller, 2004).

- The passive presiding officer listens to the evidence that was presented to him by both parties and then makes a decision. The presiding officer decides whether evidence is admissible and may intervene when necessary to control the proceedings and ensure the necessary expedition of the trial. The officer also has the power to put supplementary questions to the witnesses and to call witnesses who have not been called by either party.

- The two opposing parties present their case to the court. The prosecution must prove their case beyond a reasonable doubt while the defense only has to raise doubt. The prosecution must present all relevant evidence to the court to prove the accuser’s guilt, while the defense is entitled to fight for an acquittal with all legitimate means.

- Once a witness has given evidence in a trial, the opposing party has an opportunity to cross-examine the witness and then the court would accept the evidence of the witness. Cross-examination is so crucial that evidence would be excluded if it cannot be cross-examined.

- The rules of evidence place the emphasis on the admissibility of evidence. A child must be found competent to give evidence in court. The presiding officer would examine the child to determine whether the child understand the
distinction between truth and lies in order for the child to testify. If the child is found to be incompetent, the child’s evidence would be excluded. The cautionary rule warns against the dangers of convicting on the evidence of a child, and requires corroboration of this evidence in certain instances. The rule against hearsay requires that evidence, which is not capable of being tested by cross-examination, must be excluded. The intricacies of these rules vary from one accusatorial system to another, but they are all based on a system which emphasized admissibility.

The Namibian legal system is Adversarial. The criminal justice system includes 3 main components, the police, the courts and the prisons. They function together, with each having its own roles, such as the police doing the investigation, the court is responsible for the trial, which includes sentencing, and the prison to carry out the sentencing (Muller, 2004).

**Net-widening** occurs as the exact goals of the program were not entirely clear and explained. The net of judicial control widens if there is no clear guidelines that could be used by the prosecutor or the police officer to determine whether a case could be referred to diversion or whether the offender could be left outside the system (Legal Assistance Centre [LAC], 2002).

**Through net slackening** diversion could sometimes be abused to the benefit of certain groups in society who has influence to evade the criminal justice system.
Pickford (2000) mentions that Juvenile Justice is having a **dual role** as it focuses on the Justice Model and the Welfare Approach. The Justice Model is based upon classicist ideas of culpability and responsibility would involve a strict legal due process system which sentenced using notions of proportionality and seriousness and provided a sanction which was befitting to the offence rather than the offender. The features of this model are due process, legalism, adversarial procedure, formalism, proportionality, responsibility and act orientation.

The Welfare Model involves a less formal and adaptable procedure which would contextualise the offending behaviour, allowing for mitigation. It has the following features: adaptable procedure, multi-disciplinary approach, inquisitorial procedure, informality, tailor made disposal, reasons for offending, person orientation

When a system is essentially a welfare system, it is a system in which the majority of offenders are dealt with outside the criminal courts, and it avoids stigmatising them as criminals. It also looks into the purpose/objective for which sentencing options are used. Cases are diverted from the courts, or supervision order with some form of social work intervention. The welfare of the child is paramount and therefore whatever at disposal available should be used. Police cautioning is a welfare approach since it avoids the offender being brought before the courts and given a criminal record. Does it give any constructive help to those who need it? A welfare principle could be summed up in art 40 of the United Nations Convention on the Rights of the Child, “state parties recognise
the right of every child and the child’s assuming a constructive role in society “(Pickford, 2000).

Strategies to deal with young offenders according to Muncie (1999) are:

- Welfare-based interventions designed to help young people in trouble and to secure their rehabilitation and reintegration into mainstream societies;

- Justice-based interventions designed to give young people the same legal rights as those afforded to adults;

- Diversionary interventions designed to prevent young offending and keep young people out of court and custodial institutions;

- Custodial interventions designed to punish offenders and prevent further offending through punitive deterrence.

Section 254 of the Criminal Procedure Act, 51 of 1977 makes provision to refer a juvenile accused to a children's court if it appears to the court at the trial upon any charge of any accused under the age of eighteen years that s/he is a child in need of care and that it is desirable to deal with the child in terms of the Children’s Act, 33 of 1960, the trial could be stopped and it could be ordered that the accused be brought before a Children's Court and that the child be dealt with under the said sections in the mentioned Act. If the order is made after conviction, the verdict shall be of no force in relation to the person in respect of whom the order is made and shall be deemed not to have been returned.
If the minor is held responsible for the offence, the only option is to pass a criminal sentence. The sentences applicable in Finland are a fine, conditional and unconditional imprisonment, community service and juvenile punishment. The Finnish criminal policy has strongly emphasised the importance of not using unconditional imprisonment for offenders under the age of 18 years (Hill et al., 2007).

Juvenile offenders in Namibia are sentenced according to Section 297 of the Criminal Procedure Act (CPA) 51 of 1977 in the case of serious offences. Community service, fine, postponed or suspended sentences could be imposed. Rape and domestic violence are dealt with according to the Combating of Rape Act and Combating of Domestic Violence Act.

The researcher agrees that the welfare and justice systems have different approaches towards a child coming into the justice system. Children are thus treated differently in these systems, as the welfare system will have a rehabilitative approach against the justice system that looks into upholding the laws of the country and looking into punishment.

2.1.2 The role of the Prosecution

The Prosecutor has the power to decide whether to prosecute or not. Prosecutors are not necessarily the best person to decide on diversion, as they are employed by the state and are responsible to bring offenders to trial. They present the rights of the victims and they are given the right to decide on behalf of the victim that the case will go to court (Müller, 2004).
The prosecutor may prosecute young people for offences, but may waive charges or caution the offender in some cases. Reports are written that describes the young person’s social situation as well as the circumstances of the offence. The Commission on Youth Crime in Finland was that two reports be compiled, one prepared by the social welfare authorities concerning the social situation of the young person, and the other by the probation officers focusing on issues concerning the crime and the recommended sentences. Social welfare authorities were challenged to ensure that the offender gets all the services he or she might need (Hill et al., 2007).

In South Africa the prosecutor is in charge of the discretion to prosecute or not. Prosecutors in South Africa played a major role to the development of diversionary practice. However, an audit on “the role of prosecutors in enabling diversion (Article 40 Volume 3 (3) Mukwevho adv H) underlined continuous training on diversion procedures and program, but also guidelines or directives to assist prosecutors in their discretion. Prosecutors lead the South African Young Sex Offenders Program, Saystop; the art class diversion.

2.2. The Social Supportive System

The functions of the welfare system and the juvenile justice system will be discussed to highlight the difference between these two systems.

2.2.1 The function of the Welfare System and Juvenile Justice System

Gladding (2000) indicates that Social Workers appear in court for two reasons: to be an expert witness and through a court order. Firstly, when the social worker acts as an
expert witness, he is objective and unbiased with specialized knowledge, skills and information that could assist the magistrate/judge to reach an appropriate legal decision. The social worker is compensated financially for his time when he acts as an expert witness. Secondly the social worker could appear in court through a court order (subpoena to appear in court at a certain time regarding a specific case). The summons is issued so that the social worker could testify on behalf of or against a present or former client. The Namibian legal system is Adversarial; therefore social workers would approach lawyers before responding to court orders. By doing so, they would understand the law, court proceedings and options they had to legally request. They also need to make ethical decisions that are based on ethical standards and legal precedents. They also consult with colleagues, casebooks and follow the ethical standards of the organization with which they are affiliated.

In Namibia all social workers have to be registered at the Council for Psychology and Social Workers according to the Social Worker and Psychology Act, Act 6 of 2004. If social workers are not registered, they cannot practise as a social worker. According to Section 58 of The Children’s Act, 33 of 1960, the Minister of Gender Equality and Child Welfare may appoint probation officers whose functions would be to enquire into and report to the court or magistrate upon the character and environment of children or persons under the age of twenty-one years on trial before that court or undergoing preparatory examination before that magistrate and upon the causes and circumstances contributing to the delinquency of such children or persons, observation and correction of tendencies to delinquency in children and for the discovery and removal of conditions
causing or contributing to juvenile delinquency; to supervise or control any child or person convicted of an offence and placed under the supervision of the probation officer; to perform such other duties as may be imposed upon them by this Act or any other law or by the Minister. A probation officer shall be an officer of every Children's Court and every Magistrate's Court. When a child or pupil is placed on probation or under the supervision of a probation officer, the probation officer concerned should be designated by his office and not by the name of any particular person holding that office.

The main role of the social worker in the child justice system is to conduct development assessment for the child who comes in conflicts with the law. The aim of development assessment is to obtain the proof of a child's age or to estimate the probable age of a child whose age is not ascertainable, to establish the personal circumstances of the child, to establish whether the child accepts responsibility for the offence, to establish the prospects of diversion of the case and whether the case warrants diversion, which diversion option is suitable to the circumstances of the child, to formulate recommendations regarding release of the child into the custody of a parent or an appropriate adult, or placement in a residential facility. Developmental assessment is based on 4 core values which are belonging (based on relationship), mastery (competence, social and emotional skills), generosity (Caring and sharing, being needed) and independence (inner control, self-discipline, responsible decisions/choices).

It may be helpful to create a simple assessment and referral form, which could identify need and risk. This could help when referring to a counsellor. Assessment may be
useful in identifying those young people needing further specialized support. A key question to determine whether a young person requires referral for further support is to ask what support they have.

The Common Assessment Framework is a standardized and holistic assessment process designed to help practitioners in identifying a young person’s unmet needs and strengths at an early stage. The assessment covers the development of the young person, their parents and carers and their family and environment. The Common Assessment Framework is all about relationships, allowing the practitioner to get a clearer understanding about the range of issues facing the family. It also helps the practitioner to gain a more holistic picture about what is going on, for example with siblings, housing and the extended family. The Common Assessment Framework is an early intervention/prevention assessment tool which requires the family/carers consent, which can then lead to a child protection referral (Wallis, 2010).

According to Sloth-Nielsen & Gallinetti. (2004) probation services are crucial as they devise the most appropriate recommendations before the matter of an alleged child offender goes to trial and then assist the child offender to become a rehabilitated and responsible citizen. Probation is seen as a method to deal with specifically selected offenders.

According to Hill et al. (2007) child welfare and juvenile justice practices in the United States (US) received critique regarding practice and policy changes. There are concerns about the general state of human service agencies. These service systems are isolated
from other service systems, overly procedural, inflexible and non-reflective. Correctional, mental health, welfare and educational systems have difficulty working together on cases. Suggestions were made that procedures can be moderated for the system to be more responsible to individual needs if practice is more strongly influenced by research, training or norms and accountability through collaborative model of service.

The difference between probation officers and child welfare workers in the United States are:

- The primary functions of child welfare agencies are to investigate allegations and process complaints about child abuse, offer family support and provide fostering and adoption services. Following investigations, the child welfare worker may refer cases to the criminal court for the prosecution of parents for neglect or abuse, and to the juvenile court for a decision on whether to remove a child. Juvenile courts also review placements to ensure that a permanency plan is developed and followed. Once the child is removed, other child welfare workers may place the child in foster care and supervise the placement, adoption or placement back in the family’s care. They also handle complex, demanding caseloads. They also fear errors, especially the failure to take endangered children into care and the response from the public to deaths or severe abuse and neglect. When the order of the magistrate is not carried out, the magistrate may order the child welfare agency to a formal hearing for contempt of court.

- Probation officers earn much more than the child welfare workers. The primary functions of probation officers are to screen cases, divert minor cases and to
conduct predisposition or pre-sentence investigation and to supervise cases in probation. Most probation officers’ interactions with young people are limited to office contacts and are normally short term. Probation officers rarely keep in touch when the youth are admitted to detention or residential care. Juvenile probation experience on-the-job safety. They also deal with high caseloads, limited resources for programmes and intense accountability (Hill et al., 2007).

The levels of interventions for social workers working with juveniles are prevention, early intervention assessment, statutory assessment and the continuum of care. Prevention includes crime prevention and prevention of family, community disintegration, early childhood development, family capacity building, youth development, education and community development.

Early intervention assessment is to understand the strengths and developmental issues of children and families, recommendations regarding diversion, plan and facilitate an appropriate diversion program, the way assessment is done depends on the time and personnel available, when assessment is not appropriate: recommend least restricted most empowering custody.

Statutory assessment is when the child faces some sort of statutory proceeding such as the juvenile court or children’s court. Court decisions are based on the report of the social worker and courts take into consideration aspects of assessment done at level two: no repetition and multidisciplinary nature of assessment.
The continuum of care is a plan for the care of the child while in placement, regular evaluation of the plan and recommendations. The least restrictive and most empowering options such as preserving the family and reintegration into the community should always be central. There must be justifiable reasons why a child remains in a particular placement far from his family.

Development assessment has different levels of development which includes crime prevention, prevention of family and community disintegration, the needs of children during early childhood development to build the capacity of the family, youth development as well as education and community development. Early intervention assessment focuses on the strengths and developmental issues of children and families. Diversion and how to plan and facilitate an appropriate diversion program is recommended (Sloth-Nielsen & Gallinetti, 2004).

2.2.2 The Role of the Ministry of Youth, National Service, Sport and Culture

The mandate of this Ministry is to develop and empower the youth and to promote sport, culture and art. They developed their first strategic plan to become operational from 2008-2011. This Ministry was formed in 2005 mainly to promote the welfare of the youth in Namibia. The Ministry is guided by the National Youth Service Act, Act 8 of 2006. The Ministry has 5 Directorates being Youth, General Services, Sport, National Heritage and Culture Programs and Arts. The Directorate of Youth has programs on youth health, youth employment, training and development, volunteer ship and work camps, rural development, youth gender programs, a Namibian youth resource directory,
youth participation through environmental education and a capacity building program. They are also responsible for the facilitation of the Life Skills Program of children who came in conflict with the law and were diverted by the social worker. Career guidance, facilitation of skills training and general empowerment and employment opportunities, counselling and cultural services is offered to the youth (Strategic Plan 2008-2011).

The Ministry of Youth, National Service, Sport and Culture (MYNSSC) was the only ministry that received N$5 400 000 for the 2008/9 financial book year for Juvenile Justice (MGECW, 2008).

2.3. The Law Enforcement System

2.3.1 The Role of the Police

The police are responsible to reduce crime, prevent action that may threaten the safety of communities, investigating crimes and bringing perpetrators to justice. The police practice is an integral part of any child justice system, also because contact with the police is the child’s first encounter with the criminal justice system and shapes his/her impression and with the process that will follows. Relevant International Standards that guide the duties related to children in conflict with the law are the United Nations Minimum Rules for the Administration of Juvenile Justice and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Sloth-Nielsen & Gallinetti., 2004).

According to Müller (2004), the police are involved in the initial stages of a case when a crime has been suspected or committed. The police open a docket when a complaint has
been lodged, and if the case is of a specialised nature, it will be referred to the relevant specialised police unit. When the docket is opened, an investigating officer will be appointed to the case.

2.3.2 Police practice in South Africa

The Child Justice Act, 2009 of South Africa provides clear roles and responsibilities for the police that ensure the protection of children who are alleged to have committed offences (Sloth-Nielsen & Gallinetti., 2004). The South African Police Service drafted instructions to inform Police Officers about the manner in which they should execute their duties and that was done before the enactment of the Child Justice Act. These orders are on arrest and the treatment of an arrested person until such person is handed over to the community service centre commander; medical treatment and hospitalisation of a person in custody; use of restraining measures; treatment of persons in the custody of the Service from arrival at the police station.

The One–stop Child Justice Centres in South Africa were constructed to bring together the police, social workers/probation officers and a dedicated court to deal with juvenile cases under one roof. The benefits are improved access to diversion, shorter detention and awaiting trial periods for children, better quality services aimed at respecting the rights of children and enhanced coordination between the various departmental officials involved in Child Justice. At the centre there is a dedicated charge office, dedicated staff and awaiting trial cells. A partnership to ensure effective management of juveniles exists between the departments of Social Development, Justice and the South African Police (Sloth-Nielsen & Gallinetti., 2004).
2.3.3 Arrest and Detention according to Namibian Legislation

Police officers should be impartial and not biased in their work against members of a particular group. Police officials should make a decision and took action based on the available facts and not on feelings or pre-conceived ideas. Namibia has an ethnically diverse population; therefore the Namibian Police must respect the cultures, values and beliefs of the citizens and be sensitive for these differences. The Namibian Police has a crucial role in giving the public access to the criminal justice system, without discrimination. Article 10 of the Constitution guarantees all persons equality before the law and freedom from discrimination, whether you are the victim or the perpetrator. According to Article 10(2) discrimination is prohibited on the grounds of sex, race, colour, etc. It would not be discriminatory to treat people unequally if the person falls within a vulnerable group or where equal treatment would mean discrimination, for example a child should not be treated the same as an adult because of the child’s intellectual and physical immaturity. Prejudice is considered as being bias without a reason and holds preconceived ideas, beliefs or attitudes, that are formed before the facts are known, which are sustained or supported by over generalisation. Negative prejudices are a concern, although positive prejudices could also lead to discriminatory treatment, except that the treatment favours the individual. The investigation of a crime is the first essential step in the administration of justice. The essential principles are that everyone has the right to a fair trial, presumed to be innocent until proven guilty in a court of law, torture and any other inhuman or degrading treatment is prohibited, no one shall be compelled to confess or testify against himself or herself and no one shall be
subjected to arbitrary or unnecessary interference with the privacy of his or her home, and no pressure, physical or mental shall be placed on suspects, witnesses or victims in an attempt to obtain information. Suspects thus have the right to a fair trial, to be informed promptly about the grounds of arrest and to be tried within a reasonable time (Light, 2000).

Arrest is when the police assume control over the movement of a person and thus deprived him/her of personal liberty. An arrest and detention is arbitrary if it was not lawful, meaning that it happened for an unlawful reason and without compliance with a lawful procedure. Arbitrary does not only mean against the law but includes elements of inappropriateness, injustice and lack of predictability. The Namibian Constitution, Article 15 states that “No law authorising preventive detention shall permit children under the age of sixteen years to be detained”. The arrest or detention must be appropriate in the context of the particular facts of the case. It means that a person need not always be arrested to begin criminal proceedings against that person. Similarly a person need not always be detained even if the person has been arrested. There may be other means of ensuring that the person appears in court. Before an arrest a member should always determine whether arrest and detention is appropriate under the circumstances and whether alternatives would not be as effective in bringing the person to trial. Alternative methods to secure the attendance of an accused at a trial according to the Criminal Procedure Act of 51 of 1977 are a summons in terms of Section 54(1), a Written Notice to appear in terms of Section 56(1) and a release on warning in lieu (in the place) of bail terms of Section 72(1). In the case of a release on warning or the
granting of bail by the police, the accused is arrested, but could be released by a police officer without first appearing in court (Light, 2000).

According to Light (2000) an arrested person must be taken to a police station as soon as possible after the arrest in line with Section 50(1) of the Criminal Procedure Act. Article 11(3) of the Constitution says that all arrested and detained persons shall be brought before the nearest magistrate or judicial officer within 48 hours of their arrest, or as soon as possible thereafter, and no persons shall be detained in custody beyond such period without the authority of a magistrate or other judicial officer.

When juveniles are arrested it should be considered whether the arrest and detention are necessary. The age of the juvenile is also important as it would be undesirable to detain a young child of 8 years, but this would not be applicable in the case of a seventeen year old. If juveniles are arrested they should receive special treatment because of their vulnerability and age. A person may be arrested without a warrant if any of the following factors are present:

- The arresting officer is unable to establish the identity of the person;
- The arresting officer had to secure or preserve evidence relating to the offence (possession of prohibited substance);
- The arresting officer had to prevent the continuation or a repetition of the offence or the commission of another offence (an assault);
- The arresting officer had reasonable grounds to believe that if the offender is released, s/he will not attend court for trial;
The general principle in relation to detention is that no one may be detained unless authorized by law. According to The Criminal Procedure Act 51 of 1977, an arrested person must be brought to a police station as soon as possible after arrest, and a person may be detained for a maximum period of 48 hours. Only a court can authorize further detention after 48 hours have expired. The purpose of the detention authorized in section 50 is to bring the accused before court for trial.

Section 71 of The Criminal Procedure Act 51 of 1977 has been criticized for the fact that it does not place an obligation on the police to release a child: they may do so but do not have to. The revised version of the Act makes reference to the release of a child under the supervision of a probation officer. Neither the police nor the courts are obliged to release a child into custody of his or her parent/guardian in terms of Section 72.

The section on bail does not state that children should deserve special treatment. Bail is an inadequate means of releasing children from detention in that it disadvantages those children whose families are too poor to pay the amount set by the court.

The Children’s Act 33 of 1960 distinguishes between place of safety, place of detention, children’s home, place of care and school of industries. A place of safety is for reception of children, whereas a place of detention is for the reception and detention of children. The Act also defines the police station as a place of safety. A school of industries is established for the reception, care, education and training of pupils and a children’s home is established for the reception, care and bringing up of children in need.
of care. The Children’s Act defines a foster parent as being a person who, whether for reward or otherwise, undertakes the temporary care of a child who is placed in his/her custody.

The Prisons Act is the governing legislation for police cells where awaiting-trial prisoners are held. McNab and Others v Minister of Home Affairs and Others (2007) found that conditions in the holding cells in which the plaintiffs were detained were inhuman and degrading and therefore a violation of the Constitutional Right to human dignity. Cell visits in Namibia was conducted in 2003 by a committee comprising of Government officials and civil society on the conditions at police stations and prisons. The need for special treatment of children in conflict with the law was predictable. The lack of suitable/conducive facilities and clear cut national legislation in place make stakeholders reluctant to vigorously render children the treatment they deserve.

Magistrates were not involved in the Child Justice Program in some towns, due to lack of residing magistrates at such places. Children are not assessed and they ended up remaining in the cells for long period of time without the possibility of diversion. The cells were not up to standard and according to the prescription of International Standards. The toilets and shower were in the cells which are not hygienic, and it becomes a health hazard when it’s blocked. The police officer has to open the tap from the outside if children want to shower. The food is also not “nutritious” as they are mostly eating porridge and bread. No evidence could be provided of a budget especially for the provision of food to the inmates, as it was mentioned that food was bought from
the Tea Club money. Children were also not kept busy with games, etc. Children did not report fights as they were afraid about the consequences if they do. Juvenile Justice Forums were not in existence so there is no platform where role players could come together to discuss the improvement of services (Hamutenya, 2003).

Based on practical experience in the field of Juvenile Justice, the following recommendations were made applicable to the IMC during a study in 2002 (Gora Basen Consultancy, 2002).

More funds to organize workshops in the regions in order to sensitize stakeholders in Child Justice management; meetings with administrators in the line ministries to sensitize these administrators on the importance of implementing the Child Justice Program while waiting for the enactment of the Child Justice Act; Revisit what is stipulated in the Convention of the Rights of the Child and improve or try to better meet those requirements; Halfway houses should be built to those children who have been abandoned by their parents; Speedy enactment of the Child Justice Bill.

The probation programme in Guatemala started without a legislative framework. Consequently alternatives to detention are now included in the legal provisions. The Probation programme enables first time offenders of serious crimes to avoid depriving them of liberty, and offering them training, employment, education and other rehabilitation services. The programme has links to referrals such as detoxification services, family assistance, scholarships at private schools, and training and employment
opportunities with private sector partners (Report Juvenile justice seminar held on 10 November 2003, At UNICEF headquarters in New York).

2.3.4 Arrest and detention according to International Guidelines

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLs) define deprivation of liberty as any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which the person is not permitted to leave at will, by order of any judicial, administrative or other public authority. Children detained in facilities should be guaranteed the benefit of meaningful activities and programs. Rule 17 requires that the investigation of a case related to a juvenile deprived of his/her liberty and awaiting trial must be expedited and given the highest priority to shorten the period of detention. Rule 12 requires that the deprivation of a juvenile’s liberty must be in accordance with respect of his/her liberty. Rule 50 involves the right of every juvenile to be examined by a physician in order to record evidence of prior ill-treatment or to determine whether there is a need for further medical care upon admission to a detention facility, including a police cell. Rule 56 deals with the notification to the family/guardian of a juvenile about his/her death, illness or injury in a detention facility (including a police cell). Rule 64 prohibits the use of instruments of restraint except in exceptional cases, when authorised, and where all other control methods have been tried and failed. Rule 67 prohibits all forms of disciplinary measures constituting cruel, inhuman or degrading treatment, including corporal punishment. Corporal punishment is abolished by the Namibian Constitution.
The United Nations Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule 6, deals with the scope of discretion at different levels of Juvenile Justice administration, including police investigation. There should be accountability by police who received qualified and specialized training. When a juvenile is apprehended, his/her parents must be notified immediately or within the shortest possible period of time. Law enforcement agencies must respect the legal status of the juvenile and promote his/her wellbeing and avoid any harm. Rule 11 deals with diversion that empowers the police to divert juvenile offenders. Rule 12 requires that police who deal regularly or exclusively with juvenile offenders receive specialised training and instructions and that special units to be established in large cities. Rule 13 deals with detention pending trial. It deals with principles such as detention as a measure of last resort and for the shortest possible period of time, the requirements that juveniles be kept separate from adults, and that they receive all the necessary care and assistance they require.

The United Nations Convention on the Rights of the Child, Article 37 indicates that deprivation of liberty for children can only be used as a measure of last resort and for the shortest appropriate time. Children are not to be subject to torture/other cruel, inhuman or degrading treatment and punishment. Children should not be unlawful or arbitrarily deprived of their liberty and wherever possible it must be replaced by alternatives. If in custody, children are to be separated from adults, unless it is considered in the child’s best interest not to do so. All children deprived of their liberty are to be treated with humanity and respect and in a manner that takes into account their needs. Such
humanity includes the right to prompt legal and other assistance, such as medical and psychological services.

The Convention and the Beijing Rules advocate supervision, intensive care/placement with a family or in an educational setting or home in preference to detention (Beijing rules, r 13).

3. Systems in Juvenile Justice

3.1 Introduction

According to the knowledge of the researcher, no research has been conducted on the evaluation of systems involved with children in conflict with the law. Hill et al. (2007) gives information on the systems of different countries, and although it is not related directly to the topic, it gives some information on how the systems in other countries are functioning.

The extent of youth crime is difficult to measure. The definition of crime differs between countries, as well as the age of criminal responsibility, police practices and differences in the administration of justice. Legal, linguistic and cultural differences are in place. Crimes are mostly committed by boys, whilst girls are invisible, thus making it difficult to develop resources to address the problems girls experience. Common crimes amongst girls are shoplifting and theft. Common crimes committed by boys in Sweden are car theft, burglary, physical assault and shoplifting (Hill et al., 2007).

Hill et al. (2007) also shed light on the juvenile justice systems in other countries.
3.1 Juvenile Justice Systems in Sweden

When a crime is reported until the final decision has been taken, a long chain of events is involved. Policy makers highlight prompt responses so that the juvenile offender can relate to the link between the crime and the associated decision.

The police officer as the crime investigator has the option of not reporting the crime to a prosecutor if it is considered less serious, such as shoplifting. No action is taken in such regard. Consequently unsolved shoplifting cases increased in the last ten years.

During the preliminary criminal investigation, the prosecutor has the duty to complete criminal investigation within six weeks and sooner if possible. If more serious offences or more suspects are involved, the time frame could be extended. The parents of the child and a social worker should be informed about the investigation and should be present at the child’s hearing. The opinion of the child is considered whether the parents should attend the court hearing. The social worker is obliged to be present according to the Provision Act, Section 5. The Provision Act, Section 23 has strong restrictions on taking a child between 15 and 17 years of age into custody during a criminal investigation. In such cases, the social welfare officer has the opportunity to intervene on the child’s behalf (Compulsory Care Act, Section 6). If the case goes to trial, the child has the right to a lawyer. The social worker submits a report concerning the young person to the prosecutor before a decision is taken whether to prosecute or not. The report must provide concrete information about plans for the young person so that the court can foresee the type of intervention planned related to the crime. It is important
from the social welfare perspective, that the child’s needs have been properly assessed, which includes the current situation and prognosis for development.

The prosecutor must make a decision to either prosecute, give summary penalty or no legal action. “No legal action” is when the crime is considered less serious and the juvenile has confessed to committing the crime. A decision not to press charges may also be accompanied by the imposition of a fine and registration of the child for the offence. Prosecution applies when the crime is more severe or the juvenile denies responsibility (Provisions Act, Section 15-17). However, during the last decade there were changes in the types of decisions by prosecutors regarding young people. More children are brought before court and the option of no prosecution has decreased. During the same period the use of surrender to special care by the court has increased from 35% to 54% concerning young offenders between 15 and 17 years of age. One of the reasons for increase is the focused on the crime by social services. During the 1990s the children taken into custody by the local services boards and the administrative courts increased.

The criminal legislation focuses on events that occurred in the past, whilst child welfare legislation focuses on the child’s current situation and prognosis for development in the future. This put social workers, prosecutors and the courts in a difficult situation when dealing with young offenders. The Government aims to have more consultations, cooperation and coordination between the social services and the juvenile justice system.
to have a common strategy that ensures their public responsibility for young offenders (Hill et al., 2007).

3.2 Juvenile Justice Systems in Scotland

The Children’s Hearing System in Scotland is an approach to integrate measures for protecting children and dealing with their criminal behaviour. Two reviews were conducted on the systems in Scotland to analyse the evidence, principles and values on any youth justice system as well as the ethical approach to deal with juvenile offenders. The first was the executive review of youth crime in 2000 that resulted in investment in specialist multidisciplinary staffing and dedicated strategic resources to build capacity within a developing framework of national objectives and service standards. Positive change in youth crime requires a range of responses such as prevention, diversion, intervention and participation. However, young repeat offenders were failed by the system. Since 1991 Scotland embarked on national guidance for criminal justice social work to have special planning for children between 15 and 17 years old as part of an integrated social work plan. Evidence showed a tendency of offenders in this category to progress fairly rapidly to custody once they enter the criminal justice system. The expertise and training of staff for maintaining and challenging young people in the community was doubted. The roles of other stakeholders were recognized. An Action Programme to reduce youth crime was announced in 2002. The programme aimed at the developments for a framework of national standards and objectives, common information and assessment framework within better integrated children’s services and the strengthening of the role and work of youth justice teams. It also included the
improvement of outcome measurements and evaluation proposal for programme accreditation.

As a result, National Standards for Youth Justice Services were introduced in 2002 (implemented in 2006) that emphasized the delivery of youth justice within the context of integrated children’s services. Specialized and dedicated staff was appointed by each Local Authority. Strategic planning groups established baseline data through youth crime audit and service mapping exercises. Other priority areas included violent offenders, female offenders, drug misuse and offending and the involvement and support for parents and families in order to reduce placements in secure accommodation. A national Community Justice Accreditation Panel was established to promote and accredit structured programmes for youth offenders. The victim of crime got information and services. Investments have been provided to support the extension of restorative justice approaches across Scotland.

The third target of the Action Programme focused on encouraging the youth to thrive by linking youth justice strategies more closely with other strategies supporting young people; developing the role of the youth worker; making stronger connections between youth justice and education; review access to mental health services and enhancing the role of sport, arts and cultural opportunities in building the self-esteem of young people.

The fourth target was to ease the transition between the youth justice and adult criminal justice system, through an integrated welfare and justice system for the 16 and 17 year olds. A policy decision by the government leads to the establishment of a criminal
youth court. By 2007, there were no guiding principles or philosophy outline to direct the youth court process that meets the terms of the Beijing rules. The criminal prosecutor had to consult with the Children’sReporter to discuss the possibility of diversion from prosecution. Guidance emphasized that the young person should be rather dealt with by the Children’sHearing than the youth court.

The fifth target focused on effective early intervention. For some young people, personal difficulties combined with early involvement in offending may be a stepping stone to more serious, violent and persistent offending. The risk of becoming involved in persistent offending is higher for a child who starts offending under the age of 12 years than for a young person whose delinquency started later. Children tend not to commit serious or violent offences and because they usually have not acquired an extended pattern of criminal behaviour, they often receive limited appropriate attention for these behaviours. A major challenge is to provide effective, non-stigmatising and age-appropriate interventions.

The second review has been on the system of the Children’s Hearing, together with changes in youth justice in 2004. The review concluded that although the principles underpinning the Children’s Hearing System was fundamental sound, practices and resources was lacking. The Children’s Hearing System was specifically designed to deal with young repeat offenders. However, the system was designed in the 1970s and was unable to deal with young repeat offenders between the age of 15 and 17 years old. Young people had to report simultaneously to the adult criminal justice system and to
the Children’s Hearing system. Given the complex difficulties of young repeat offenders, no sufficient evidence existed to prove that even a specialist youth court would provide a more effective way of dealing with them without the necessary services available. A major challenge for practitioners is to recognise the importance of understanding the nature of crime as a social phenomenon as well as the developmental needs and social characteristics of those who commit crime. Models of practice need to adopt an offence focus without abandoning a focus on the wider and related social and welfare needs of children, young people and their families. The provision of structured assistance within a framework of positive authority and control will always be a major challenge for service providers. Responses to youth crime need to be set within a child protection framework, building on whatever strengths the young person has. Parents and families need to be part of the solution.

The assessment of the effectiveness of the Scottish Hearings System concluded the existence of the following:

- An updated integrated information system to collect comprehensive and speedily available data for base analysis. It will ease the gathering of reliable data as the child justice process is complex with multiple agencies involved at different stages. The implementation of electronic case management made it possible to access records, track cases, manage data, analyse referral patterns. Track of repeat offender and the measures in place to break the cycle of offending;
• Clear aims as well as the realization of different expectations of the many stakeholders involved;

• Development of appropriate criteria by which the performance of the child court can be judged;

• Code of practice based on analysis of actions undertaken by all agencies involved and an integrated series of standards and performance targets to provide the court with a national framework for self-evaluation and continuous improvement;

• Implementation of a distinctive decision making process that conform to legal procedures and the principles of the welfare based approach for care and justice to, which focus on the best interest of the child.

• Assessment on the impact of the life of an individual child and the reduction of juvenile offences on a national scale;

• Confidentiality should rule the proceedings of the hearings of children;

• Standards in practice, resources and professional time available to children and young people on supervision is important to social work, police and other specialized services in order to improve services rendered to the children and their families, and to collect valuable evidence (Hill et al., 2007).
3.3 Juvenile Justice in America

The first juvenile court in 1899 addressed the holistic needs of the child. The court included the delinquent and dependent child (a child who suffered from abuse or neglect). On 9 June 1964 in Gila County, Arizona, a Deputy Probation Officer took Gerry Gault, 15 years old, to a detention home. Gerry Gault committed a crime by making an obscene phone call of irritatingly offensive adolescent sex variety to Ms. Cook. His parents were not told about his arrest, but an informal hearing in juvenile court was held the next day without any notice of charges against him, no witnesses, no record and no lawyer representing Gerry. He remained in custody after the hearing, but was released after being detained for 3 days. At the second informal hearing held on 15th June 1964, he was sent to the state Industrial School until he was 21 years old, thus a period of 6 years. If an adult was convicted of a similar offence it would have been a fine from US$5 to US$ 50 and imprisonment for no longer than two months. The case of Gerry Gault was appealed by the Arizona courts and ended at the US Supreme Court that extended constitutional due process rights to youth accused of crime. The Gault court required certain procedural protections in delinquency cases, including notice of charges, right to counsel, confrontation of witnesses, right against self-incrimination and the right to call and cross-examine witnesses. The Gault case underlined intervention on behalf of youngsters not only for their needs, but also for their liberty. Consequently, development of law and procedure on juvenile cases occurred in countries globally (Hill et al., 2007).
4. Summary of Section II

The different systems involved in Child Justice such as the Justice, Social Supportive (social welfare and youth development) and the Law Enforcement systems were discussed. The elements of a system gives a better understanding on what is required and should be in place in the child justice system.

The Justice system is divided into the Magistrate and the Prosecutor. The difference of the two models of a modern system, namely Accusatorial and Inquisitorial Models were discussed to have an understanding on what it entails. Namibia uses the Accusatorial Model. The Prosecutor also plays a very important role in the child justice process. The strength and weaknesses of the Inter-ministerial Committee was discussed and the importance to revive it.

The supportive systems, being the welfare system and youth development, have crucial responsibilities when it comes to assessment and diversion programs so that children should be referred to programs that met their needs.

The Law Enforcement system has the first contact with the child offender, and they should know how to treat child offenders from arrest till detention.

The lack of guidelines, policies and procedures make it difficult for stakeholders to execute their duties and to ensure that effective and efficient services are delivered to the beneficiaries of the Child Justice Program. The enactment of the Child Justice bill would be a key milestone for Namibia.
Examples of juvenile justice systems in Sweden, Scotland and the United States of America were highlighted.
CHAPTER 3

RESEARCH METHODOLOGY

1. Introduction

Research methodology details the procedures used in making systematic observations or otherwise obtain data, evidence, or information as part of a research project or study. It may be understood as a science of studying how research is done scientifically (Mouton, 2001). This chapter thus describes the study settings and study design. The targeted study sample, research instruments utilized administration and collection of the questionnaire, data analysis and ethical considerations are described and defined.

2. Research Design

A research design focuses on the end product: what kind of study is being planned and what kind of result is aimed. The point of departure is the research problem or question. The logic of the research focuses on what kind of evidence is required to address the research question adequately (Mouton, 2001). In fact, a research design is the conceptual structure within which research is conducted. It constitutes the blueprint for the collection, measurement and analysis of data. As such the design includes an outline of what the researcher will do from writing the hypothesis and its operational implications to the final analysis of data. According to Babbie et al. (2001) a research design may go through a number of changes before the researcher is satisfied that the objective is met. A research design is a set of guidelines and instructions used by the
The researcher to make appropriate decisions concerning the research problem. The research design includes an outline which will achieve the research objective.

The researcher applied the qualitative research approach. Qualitative research is an interpretative, multi-method approach that investigates people in their natural environment. It is systematic and subjective and describes the lived experiences of people in order to explain the meanings that people attach to their experiences. Qualitative research has three components. The first component is that it is interpretative. Data collected consist of words, pictures, clothing, documents or other non-numerical information. Once this information is collected, some meaning has to be extracted from it. The second component is that qualitative research is multi-method. This means that a variety of methods are used to collect data. These include an individual’s account of a personal experience, introspective analysis, an individual’s life story, interviews with an individual, observation of individual/s, written documents and historical information (Christensen, 2007).

The researcher used the methodological triangulation that is the use of multiple methods to study a single topic by combining quantitative and qualitative methods in a single study. The researcher collected data from formal and informal interviews (De Vos et al., 2005). The use of multiple-methods of data collection and analysis provided a better understanding of the phenomenon being investigated. It can provide greater confidence as what is being targeted is being accurately captured. Divergent results from multi-methods can lead to an enriched explanation of the research problem. It may stimulate
the creation of inventive methods and new ways of capturing a problem. The world is perceived from more than one frame of reference (relativism) and the formulation of an integrated understanding of your own cognitive world, especially your influence or role in a set of human relations.

The qualitative design is thus used as it represents an attempt to understand the interpretation of people, in this case the juvenile offender. The data were collected in a natural setting. The researcher was interested in the meanings implied in the way in which the participants made sense of their lived experiences, as well as the structures they encountered in their world (De Vos et al., 2005). The qualitative design enabled the researcher to build a complex and holistic picture through the analysis of the words used by the participants and the reporting of specific views and experiences of the participants on being in conflict with the law (Babbie et al., 2001).

The third component of qualitative research is that it is conducted in the field or in the person’s natural surroundings or therapy setting (Christensen, 2007). The researcher interviewed the children at the venue where they had to appear in court (Katutura magistrate court), and the key informants were interviewed at their duty stations.

An explorative design was applied because it explores the way in which a certain individual or group experiences a phenomenon about which the researcher has little knowledge in order to discover more about the issues being researched (De Vos et al., 2005).
The descriptive design in qualitative research focuses mainly on the portrayal of the characteristics of people, groups or situations. The experiences as lived by the participants in their particular circumstances. This design made provision to get the live experiences of the juveniles about the child justice systems in Namibia.

Qualitative researchers believe that in describing and understanding events in their natural context, meaning is conferring on concerned events and one can claim that they are understood. The context represents the setting which is the site where the phenomenon is studied (Babbie et al., 2001).

Programme evaluation (summative evaluation) was done by collecting information in a systematic way about the activities, characteristics and outcomes of programmes. This enabled the researcher to make judgements about the programme; improve its effectiveness and to inform decisions about future programming. The researcher used the Integrated Model of Programme Evaluation (IMPE) with phases such as Needs Assessment; Evaluability Assessment; Programme Monitoring; Impact Evaluation; Efficiency. The researcher further used the integrated model of programme evaluation including phases such as the Needs Assessment; Evaluability Assessment; Programme Monitoring; Impact Evaluation; Efficiency Assessment; Utilisation/Implementation and Empowerment Evaluation (De Vos et al., 2005).

3. Sampling Design

A research methodology focuses on the research process and the kind of tools and procedures to be used. The point of departure is specific tasks at hand. It focuses on the
individual steps in the research process and the most objective procedures to be employed, thus various methods and tools are used to perform different tasks (Mouton, 2001). The following procedures were employed.

3.1 Population

Population refers to all the events, things or individuals to be represented (Christensen, 2007). The population is also defined by Welman, Kruger and Mitchell. (2005) as a group of potential participants to whom you want to generalise the results of a study. The population therefore encompasses the total collection of units of analysis about which the researcher wishes to make specific conclusions. In this study the unit of analysis were the beneficiaries of the child justice system and key informants in Windhoek. Children who entered the criminal justice system and who appeared before the C-Court at the Katutura Magistrate Court in Windhoek was the target population from which the main sample was selected. They provided the primary data which was both quantitative (structured questionnaire) and qualitative obtained through the probing skills of the researcher who was the sole interviewer.

Key informants such as social workers, prosecutors, magistrates, youth officers and police officials of the line Ministries who are working with children in conflict with the law were interviewed at their respective duty stations in Windhoek to obtain secondary qualitative data pertaining to the delivery of services to children in conflict with the law.
3.2 Sampling method

A sample refers to any number of individuals less than the population (Christensen, 2007). A Sample is also seen by De Vos et al. (2005) as a small portion of the total set of objectives, events or persons which together comprise the subject of our study. Through stratified random sampling 70 children who committed crime and who appeared daily at the C-Court of the Katutura Magistrate Court in Windhoek (Khomass region) were selected, irrespective the type of crime committed, sex, or other considerations. Stratified random sampling of the probability sample was used. Probability sampling determines the probability that any element or member of the population will be included in the sample (Welman et al., 2005). With stratified random sampling as a sampling frame, the researcher was aware of the stratification variables such as the organisational authority level, crime type and technological generation order. The researcher obtained a representative sample from a population with clearly distinguishable strata.

The cross-sectional design was used as the criterion groups comprise of different age groups. These cohorts were examined in terms of one or more variables at approximately the same time (Welman et al., 2005). The children were between 14 and 20 years old who committed a crime and appeared in the C-court of the Katutura Magistrate court.

Twenty key informants were selected through purposive sampling of the non-probability sampling method, including the prosecutor and the magistrate working at the C-court at
the Katutura Magistrate’s Court, social workers, youth officers and police officers who were arresting juvenile offenders and who were investigating cases of child offenders in Windhoek. Purposive sampling enabled the researcher to the deliberate acquiring units of analysis that was representative of the relevant population (Welman et al., 2005). The choice of respondents for the in-depth interviews was based on their expertise in child justice and the power they wield in decision making in their respective sectors. They offered useful manifestations and shed light on the understanding of the phenomenon.

3.3 Method of data gathering

A structured questionnaire was developed for the quantitative method of data collection for the juvenile offenders to determine their needs during the pre-trial stage and the type of services they received from the systems. The questionnaire had the following focus questions: Treatment by the police during arrest and detention, assessment and court procedures and referral to diversion options. The researcher administered the questionnaires and arranged a venue at the Katutura Magistrate Court for the filling of the questionnaires.

In-depth interviews as part of the qualitative method were conducted with 20 key informants who were social workers, magistrates, prosecutors, police officials and youth officers working with children in conflict with the law. A tape recorder and field notes were used. These interviews focused on the variables which were influencing the quality of services. A structured interview guide was developed with the following open ended questions:
- Which ministry is responsible for affecting the child justice programme and please motivate your choice?
- What role does your ministry have to play in child justice?
- Which ministry should coordinate the activities of the Inter-Ministerial Committee (IMC) which coordinates the child justice programme and please motivate your choice?
- What policies, guidelines or procedures are in place to ensure the effectiveness of the IMC?
- How often should the IMC meet and why?
- What issues should the IMC prioritise and discuss during their meetings?
- What do you know about the diversion options available for children in conflict with the law?
- What is your opinion about the diversion programmes meeting the needs of the juvenile? Please motivate your answer
- How could the enactment of the Child Justice Bill protect the rights of children?
- What is your opinion about the training of stakeholders?
- What resources should be made available to meet the comprehensive needs of juvenile offenders?
- Any ideas/suggestions?
3.4 Procedures

The researcher went to the C-court of the Katutura Court in Windhoek for 16 days, from 5 September 2011 till 26 September 2011 (only during the week) and interviewed the children who appeared in court on a daily basis. The children and their parents were informed about the purpose of the study and their consent was obtained to participate. The parent or guardian completed the consent form. The letter from the University of Namibia signed by the moderator and the student was handed to each responded and their parents or guardians to prove that authority was granted to conduct this study. The researcher emphasized confidentiality of the information. The interviews were conducted in the office adjacent to the C-court where the social workers screened child offenders. Questionnaires were written in English and administered as such although the researcher could translate some questions into Afrikaans where a respondent requested for it. Where needed, questions were repeated until the respondent understood the content of the question. The researcher completed the questionnaire according to the respondent’s answers. The scope of the study was adapted to that of 70 respondents instead of the initial 100 juveniles because 30 juveniles completed the judicial procedure and were not available to participate in the research.

Questions were rephrased to suit the level of understanding of the participants. The questionnaire was pre-tested for reliability and validity in a pilot study after which questions were rephrased and adjusted to achieve the targeted results and to improve question clarity to the respondents.
Letters seeking permission to conduct the in-depth-interviews were delivered to the respective Permanent Secretaries of ministries targeted for interviews, the Inspector General of the Namibian Police and the Prosecutor General. After the approval was granted, the researcher arranged appointments and conducted interviews with targeted respondents. A copy of permission was in each case handed to a respondent. The researcher used 10 days to interview the key informants, from 28 September 2011 till 11 October 2011 during the week. The interviews lasted for forty five (45) minutes. Key informants participated until the number 20 was saturated, therefore only implementers were interviewed and not the Permanent Secretaries of the concerned ministries.

During the interviews field notes were taken, backed by a tape recorder. Both the voice records and field notes were processed after each interview as a means to prevent memory loss and prepare data obtained adequately for analysis.

Like in the case of child respondents, in-depth interviews were all conducted within the boundaries of confidentiality and informed consent by the respondents. To ensure reliability the interviews were consistent and neutral. Consistency was obtained through a description of the methods of data collection, analysis and interpretation; the use of a code-recoding process and the objective examination of the research plan by a social work colleague and a methodology expert (Rothmann, 2000). Neutrality of the research was obtained through conformability of the data and its interpretation. The validity of the research was addressed through credibility and transferability. The researcher rephrased and repeated questions to the participants so as to gain credible information.
Reflexive analysis was taken into account to prevent close relationships between the researcher and the participant or respondent which could possibly have an effect on the interpretation of findings.

3.5 Data Analysis

The data captured from the questionnaires were analyzed using the statistical package for social sciences (IBM SPSS Statistics - 19). Results are presented in frequency tables, bar charts, pie charts and other forms of graphs for interpretation. The quantitative method focused on key questions such as whether the program is reaching the appropriate target population and whether the service delivery and support functions were consistent with the program design specifications or other appropriate standards. The focus was on the context of the protection of the rights of children during arrest, detention, screening and rehabilitation offered by the diversion programs.

Qualitative data analysis involved content analysis where important questions in the interview schedule were identified, data coded, and then frequency distributions for these questions were created. Data was displayed in a matrix to perform cross-counts. The content analysis also included counting of frequencies and sequences of words, phrases and concepts in order to identify keywords or themes for quantification. Questions from the Integrated Model of Programme Evaluation (IMPE) were used as a guide to identify and categorize indicators (De Vos et al., 2005). These indicators were identified as themes and sub themes that linked to the structure of a child protection framework that include the following components: legal and policy framework, inter-
sectoral cooperation, service delivery, capacity building and required resources for the comprehensive care of juvenile offenders.

3.6 Research Ethics

Information on the purpose of the research, letters and procedures followed during the research and possible advantages were given to participants and their parents to obtain informed consent and voluntary participation. The researcher safeguarded the privacy and identity of respondents as no identifying details were completed on the questionnaires. The necessary sensitivity was displayed to ensure not to violate their privacy/confidentiality that contributed to validity. The analysis of data and results of the study was reported correctly. To ensure credibility the researcher spent sufficient time with the participants and established rapport, facilitated comfort and increased the willingness to make known sensitive information.

4. Summary

The purpose of the study was to evaluate the efficacy of the justice system in Namibia, Khomas region, Windhoek, which provides services to juveniles in conflict with the law. Methodological triangulation, which included qualitative and quantitative methods, of the qualitative research was used. A questionnaire was developed to use for the juvenile offenders and an interview guide for key informants. The research instruments were pretested for their reliability and validity. The interviews were conducted with the juveniles at the C-court of the Katutura Magistrate Court and the key informants were interviewed at their work stations. Research ethics were applied during all the interviews. The next chapter presents the data that was coded and analysed.
CHAPTER 4
DATA ANALYSIS AND DISCUSSION OF RESEARCH RESULTS

1. Introduction

This chapter outlines the results obtained through the research undertaken. The results of each of the questions are analysed and presented in the form of graphs, charts and frequency tables. Findings are presented and interpreted in order of relevancy to the study’s aim and objectives. The findings are further linked to theory and the researcher’s views are used to guide the discussion.

SECTION I
THE JUVENILE

2. Basic characteristics of the respondent

2.1 Gender profile of respondents

Knowledge of the gender of the respondents is instrumental in determining gender-based vulnerability to crime. Graph 1 indicates that boys were in the majority with 91.4% and the girls were 8.6%.

Graph 1: Gender of respondents
Juvenile delinquency is overwhelming male dominant behaviour (Pitts, 1999) and graph 1 is indicative of the statement. The extent of youth crime is difficult to measure. Crimes are mostly committed by boys, whilst girls are invisible, thus making it difficult to develop resources to address the problems girls experience. Common crimes amongst girls are shoplifting and theft. Common crimes committed by boys in Sweden are car theft, burglary, physical assault and shoplifting (Hill et al., 2007).

2.2 The age of the respondents

The age profile when children infringe the criminal justice system was important in order to categorize the juvenile delinquent in a specific life phase and debate the impact of crime on their lives. The age profile was used to determine whether juvenile offenders had the criminal capacity, thus the mental ability, to understand their actions and the consequences of criminal behaviour. The age profiles of the respondents were from 14-20 years. Half of the respondents (50%) were aged 17. See Table 6.

Table 6: Age of respondents

<table>
<thead>
<tr>
<th>Age</th>
<th>Frequency</th>
<th>Percent</th>
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<td>14 Years</td>
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<td>18 Years</td>
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<td>10.0</td>
</tr>
<tr>
<td>19 Years</td>
<td>1</td>
<td>1.4%</td>
<td>1.4</td>
</tr>
<tr>
<td>20 Years</td>
<td>1</td>
<td>1.4%</td>
<td>1.4</td>
</tr>
<tr>
<td>Total</td>
<td><strong>70</strong></td>
<td><strong>100.0</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>
The Criminal Procedure Act 51 of 1977 describes a child as a person under the age of eighteen (18) years old. The mentioned Act distinguishes between 3 age groups, being 0-7 years (doli incapax), 7-14 years and 15 years and older (Criminal Procedure Act, 51 of 1977). The younger a child is when he becomes involved in delinquency, the more likely they are to continue this type of behaviour and to become seriously delinquent (Bartol, 2005). The study, called the Cambridge Study whereby children between 8-10 years were convicted, indicted that 45% were troublesome and dishonest. At 14 years these children were aggressive and frequent liars. They also used more drugs when they became adults. They got on less well with their families and were more likely to live away from home. Pitts (2001) found that the effects of age vary with the type of crime. Violent crime involvement increases with age, whereas property crime involvement tends to decrease.

The age group of the respondents who were vulnerable are the children of 17 years old and this is also the age group in which the juveniles are treated like adults in the criminal justice system. It thus could be concluded that these children did not resolve some of the developmental tasks they were confronted with according to the 8 different stages of Erikson. The crisis in each stage is a turning point that is marked by both increased vulnerability and enhanced potential (Santrock, 2008).

2.3 Home language of respondents

The home language of the children would give an indication which cultural group is more at risk of committing crime. During this study, the respondents were classified in
only 4 language groups which were Nama/Damara, Oshivambo, Afrikaans and Otjiherero. The children who spoke Nama/Damara were the highest with 58.6%, Oshivambo and Afrikaans were both 17.1% and Otjiherero were 7.1%. See graph 2.

**Graph 2: Home language of respondents**

The language profile of an assessment conducted of juvenile cases at the Windhoek Magistrate Court by Swartz (1998) showed that the language grouping were Nama/Damara, Afrikaans, Oshiwambo and Herero (Swartz, 1998). These language groupings were similar to the finding of this study.

Research conducted on street children in 2002 indicated that the most prominent language group who were on the streets were the Nama/Damara (54%), Oshivambo (18%), Nyemba (5, 5%) and the Afrikaans language groups were 5% from the 202 children who were found on the streets (MGECW, 2002).

It is of concern to note that not only is the Nama/Damara, Afrikaans and Oshivambo language groups prominent to being on the streets, but they are also the prominent language groups who were more prevalent in committing crime.
It thus seems as if it is necessary for a study to determine whether social class and family background are factors contributing to delinquent behaviour. The Cultural Deviance Theory believes that a lack of attachment to the parents merely increases the probability that the child will be exposed to criminal influences, that he will learn the attitudes, values and skills conducive to delinquency (Hirchi, 2004).

It should also be determined whether there is a link between Maslow’s hierarchy of needs and the factors for delinquent behaviour within these language groups. Kluckow (2004) also stated that when all the needs of Maslow’s hierarchy are reasonably satisfied, a person might be able to reach the highest level which is called self-actualisation (Kluckow, 2004).

2.4 The nature of crime committed

The researcher aimed to determine the nature of crimes prevalent amongst juvenile offenders. Table 7 reveals that economic crimes, such as shoplifting, theft, housebreaking, fraud and possession of counterfeit money, constituted the majority of crimes committed at 57.1%. Violent crimes such as assault GBH, rape and attempted rape, robbery and murder were equally prevalent at a significant frequency of 42.9%.
Table 7: Nature of crime committed

<table>
<thead>
<tr>
<th>Crime</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valid</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assault GBH</td>
<td>10</td>
<td>14.3%</td>
<td>14.3</td>
</tr>
<tr>
<td>Attempted Rape</td>
<td>2</td>
<td>2.9%</td>
<td>2.9</td>
</tr>
<tr>
<td>Attempted Rape and Assault GBH</td>
<td>1</td>
<td>1.4%</td>
<td>1.4</td>
</tr>
<tr>
<td>Fraud and in Possession of Counterfeit Money</td>
<td>2</td>
<td>2.8%</td>
<td>2.8</td>
</tr>
<tr>
<td>House Breaking</td>
<td>4</td>
<td>5.7%</td>
<td>5.7</td>
</tr>
<tr>
<td>House Breaking and Theft</td>
<td>4</td>
<td>5.7%</td>
<td>5.7</td>
</tr>
<tr>
<td>House Breaking with Intent to Steal</td>
<td>1</td>
<td>1.4%</td>
<td>1.4</td>
</tr>
<tr>
<td>House Breaking with Intent to Steal and Theft</td>
<td>6</td>
<td>8.6%</td>
<td>8.6</td>
</tr>
<tr>
<td>Indecent Assault</td>
<td>1</td>
<td>1.4%</td>
<td>1.4</td>
</tr>
<tr>
<td>Malicious Damage to Property</td>
<td>2</td>
<td>2.9%</td>
<td>2.9</td>
</tr>
<tr>
<td>Murder</td>
<td>1</td>
<td>1.4%</td>
<td>1.4</td>
</tr>
<tr>
<td>Possession of Cannabis</td>
<td>2</td>
<td>2.9%</td>
<td>2.9</td>
</tr>
<tr>
<td>Rape</td>
<td>2</td>
<td>2.9%</td>
<td>2.9</td>
</tr>
<tr>
<td>Robbery</td>
<td>10</td>
<td>14.3%</td>
<td>14.3</td>
</tr>
<tr>
<td>Robbery and Assault GBH</td>
<td>1</td>
<td>1.4%</td>
<td>1.4</td>
</tr>
<tr>
<td>Shop Lifting</td>
<td>5</td>
<td>7.1%</td>
<td>7.1</td>
</tr>
<tr>
<td>Stock Theft</td>
<td>1</td>
<td>1.4%</td>
<td>1.4</td>
</tr>
<tr>
<td>Theft</td>
<td>14</td>
<td>20.0%</td>
<td>20.0</td>
</tr>
<tr>
<td>Theft of Firearm</td>
<td>1</td>
<td>1.4%</td>
<td>1.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>70</strong></td>
<td><strong>100.0%</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Pitts (2001) states that the effects of age vary with the type of crime committed. Violent crime involvement increases with age, whereas property crime involvement tends to decrease. Violent crimes reported in this study were committed by generally older children. These kinds of crimes are referred to as schedule 1 offences as stipulated in the Criminal Procedures Act, 51 of 1977, including crimes such as murder, indecent assault, robbery, rape, when a dangerous wound is inflicted, malicious damage to property, breaking or entering any premises with intent to commit an offence, theft and fraud.
The extent of youth crime is difficult to measure. The definition of crime differs between countries, as well as the age of criminal responsibility, police practices and differences in the administration of justice. Legal, linguistic and cultural differences are in place. Common crimes amongst girls are shoplifting and theft in Sweden. Common crimes committed by boys in Sweden are car theft, burglary, physical assault and shoplifting (Hill et al., 2007). According to Hill et al. (2007), peer association and neighbourhood norms in certain areas may encourage endemic crime almost regardless of family circumstances. Conversely many young people whose parental or substitute care is problematic, had the personal and or environmental strengths to avoid engagement in crime. It is common that children and young people who have serious family care problems become offenders.

2.5 School attendance at time of arrest

It was important to establish whether the respondents were school going or had dropped out of school. Generally, school dropouts are believed to be more susceptible to committing crime. Graph 3 shows that the respondents who were out of school at the time of arrest were 51.4%. Those arrested and reporting to have been attending school at the time of arrest was 48.6%.
Attachment to the school and education are contributing factors for juvenile delinquency. The family and school are major socializing institutions for children. Juvenile delinquents are not usually good students. If in school at all, they miss many days, are frequently late when they do attend, and simply do not do very well. Many have some kind of learning problem which is only compounded by their truancy, tardiness and inattention. The grades of delinquents are usually below average, and they are often either far behind their classmates or have dropped out of school. Success or failure in school has been found to have a profound effect on juvenile misconduct. Disruptive behaviour or school misconduct can become a way to cope with the loss of self-esteem that ensues. Peer approval and loss of self-esteem could thus be regained by acting out disruptive and attention seeking behaviour. This kind of behaviour may then escalate through a series of stages to more serious delinquency (Hirchi, 2004).

2.6 Grades of the respondents at the time of arrest

The grades of the children at the time they were arrested were determined to give an indication as to which grade children tend to be more vulnerable to committing crime.
Table 8 shows that most of the children who participated in this study were in grade 9 (23.1%) at the time of their arrest. Seventeen percent were in grade 10 and 15.4% were in grade 8.

Table 8: Grade of respondents the time of arrest

<table>
<thead>
<tr>
<th>Grade</th>
<th>Frequency</th>
<th>Valid Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>1</td>
<td>1.5%</td>
</tr>
<tr>
<td>5</td>
<td>8</td>
<td>12.3%</td>
</tr>
<tr>
<td>6</td>
<td>8</td>
<td>12.3%</td>
</tr>
<tr>
<td>7</td>
<td>6</td>
<td>9.2%</td>
</tr>
<tr>
<td>8</td>
<td>10</td>
<td>15.4%</td>
</tr>
<tr>
<td>9</td>
<td>15</td>
<td>23.1%</td>
</tr>
<tr>
<td>10</td>
<td>11</td>
<td>16.9%</td>
</tr>
<tr>
<td>11</td>
<td>4</td>
<td>6.2%</td>
</tr>
<tr>
<td>Electrical Course</td>
<td>1</td>
<td>1.5%</td>
</tr>
<tr>
<td>Polytechnic of Namibia - first year</td>
<td>1</td>
<td>1.5%</td>
</tr>
<tr>
<td>Total</td>
<td>65</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The school is a manifestly middle-class institution and delinquency has long been considered a predominantly lower-class phenomenon. The major lever for prying open the secrets of the school in the production of delinquency have been to assess its impact on the lower-class child (Hirchi, 2004).

2.7 The living status of the respondents before arrest

Where children stay is also a contributing factor towards involvement in criminal activities. According to Table 9, the respondents who stayed with their parents were 65.7%, whilst 17.1% stayed with relatives such as an aunt, uncle, brother, grandmother or a sister. Thirteen percent stayed with a guardian.
Table 9: Living status of respondent before arrest

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valid</td>
<td>Parents</td>
<td>46</td>
<td>65.7%</td>
</tr>
<tr>
<td></td>
<td>Guardian</td>
<td>9</td>
<td>12.9%</td>
</tr>
<tr>
<td></td>
<td>Friends</td>
<td>2</td>
<td>2.9%</td>
</tr>
<tr>
<td></td>
<td>Aunty</td>
<td>7</td>
<td>10.0%</td>
</tr>
<tr>
<td></td>
<td>Brother</td>
<td>2</td>
<td>2.9%</td>
</tr>
<tr>
<td></td>
<td>Grandmother</td>
<td>1</td>
<td>1.4%</td>
</tr>
<tr>
<td></td>
<td>Hostel</td>
<td>1</td>
<td>1.4%</td>
</tr>
<tr>
<td></td>
<td>Sister</td>
<td>1</td>
<td>1.4%</td>
</tr>
<tr>
<td></td>
<td>Uncle</td>
<td>1</td>
<td>1.4%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>70</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

The Control Theory assumes that the bond of affection and the family background for conventional person is a major deterrent to crime. The stronger this attachment towards the parents, the more likely the person is to take it into account when and if he contemplates a criminal act. Crimes are of course committed in the face of strong attachments to conventional others. The capacity to form attachments to others may be generally impaired so that the child who feels nothing for his parents is less likely to feel anything for anyone else.

When looking into the family background, family disorganization tends to be a major and very prevalent background characteristic in the lives of seriously delinquent children. The families of such delinquent children share common characteristics such as a lower than average standard of living, welfare grants being a frequent source of income, large number of children, residence in poorer urban areas and poor parent-child relationships (Hirchi, 2004).
3. Arrest, detention, treatment and screening

3.1 Reason for arrest

International Guidelines such as the United Nations Conventions on the Right of the Child and the Criminal Procedure Act, Act 51 of 1977 make provision that the child should be informed by the police about the charges against them. Graph 4 indicates that 58.6% of the respondents were informed about the charges against them when they were arrested and 41.4% were not informed why they were arrested.

*Graph 4: Whether respondent was informed about the reason for arrest*

The Constitution of Namibia provides a bill of fundamental rights that includes the right to be informed in a language that s/he understands about the reason for the arrest and the right to remain silent, and not to be compelled to make a confession/admission which could be used in evidence against the juvenile.

Article 40 of the Convention on the rights of the Child enshrines the minimum guarantees of due process of law including the presumption of innocence, provision of clear and prompt information about the nature of the charges, availability of legal or
other assistance, the right to cross-examine witnesses, equality for the witnesses of the
defence, the right of appeal and the right of the child to have his/her privacy respected at
all stages of the proceedings. This result shows a significant shortfall in appliance of
these provisions as 41.4% of the children were arrested and or detained without being
told what the charges against them were. The Child Justice Act, 2009 of South Africa
provides clear roles and responsibilities for the police that ensure the protection of
children who are alleged to have committed offences (Sloth-Nielsen & Gallinetti.,
2004). The South African Police Service drafted instructions to inform Police Officers
about the manner in which they should execute their duties and that was done before the
enactment of the Child Justice Act. These orders are on arrest and the treatment of an
arrested person until such person is handed over to the community service centre
commander, medical treatment and hospitalisation of a person in custody, use of
restraining measures, treatment of persons in the custody of the Service from arrival at
the police station.

The One–stop Child Justice Centres in South Africa were constructed to bring
together the police, social workers/probation officers and a dedicated court to deal with
juvenile cases under one roof. The benefits are improved access to diversion, shorter
detention and awaiting trial periods for children, better quality services aimed at
respecting the rights of children and enhanced coordination between the various
departmental officials involved in Child Justice. At the centre there is a dedicated
charge office, dedicated staff and awaiting trial cells. A partnership to ensure effective

3.2 Information to parents or guardians about the arrest of their child

The parents who were not informed about the arrest of their children constitute 50%, and those who were informed were 48.6% and 1.4% of the children did not know whether the parents were informed as they were detained. See graph 5 below.

*Graph 5: Information to parents/guardians about the arrest of their child*

The findings show that it was not a priority to inform parents/guardians about the arrest of their children. This is in violation of the Beijing Rules, Rule 10.1 which states that the parents/guardian of the juvenile shall be immediately notified of such arrest, or be notified within the shortest possible time.

3.3 Police Station where respondents were detained

Graph 6 shows that respondents detained at Katutura Police Station were 48.6% and 28.6% were detained at Wanaheda Police Station, whilst 12.9% were taken to Windhoek Police Station.
With the inception of the Child Justice Program arrangements were made that all children should be taken to Wanaheda Police Station as children would be separated from adults. Children were mostly taken to Katutura Police Station and not to Wanaheda Police Station as per agreement. In so doing, it is possible that children were unlawfully or arbitrarily deprived of their liberty. Article 37 of the United Nations Convention on the Rights of Children states that children should not be subjected to torture, cruel, inhuman or degrading treatment and punishment. The Child Justice Act, 2009 of South Africa provides clear roles and responsibilities for the police that ensure the protection of children who are alleged to have committed offences (Sloth-Nielsen & Gallinetti., 2004). The South African Police Service drafted instructions to inform Police Officers about the manner in which they should execute their duties and that was done before the enactment of the Child Justice Act. These orders are on arrest and the treatment of an arrested person until such person is handed over to the community service centre commander; medical treatment and hospitalisation of a person in custody;
use of restraining measures; treatment of persons in the custody of the Service from arrival at the police station.

**The One-stop Child Justice Centres in South Africa** were constructed to bring together the police, social workers/probation officers and a dedicated court to deal with juvenile cases under one roof. The benefits are improved access to diversion, shorter detention and awaiting trial periods for children, better quality services aimed at respecting the rights of children and enhanced coordination between the various departmental officials involved in Child Justice. At the centre there is a dedicated charge office, dedicated staff and awaiting trial cells. A partnership to ensure effective management of juveniles exists between the departments of Social Development, Justice and the South African Police (Sloth-Nielsen & Gallinetti., 2004).

### 3.4 Transfer of respondents to another police station

The children not transferred to another Police Station were 91.4% and they remained at that police station they were taken to after arrest. Only 4.3% were transferred to Wanaheda Police Station and 1.4% each to Katutura and Windhoek Police Stations, that brings the total of children transferred to 8.6%. See graph 7 below.

**Graph 7: Transfer of children to another Police Station**
According to Light (2000) an arrested person must be taken to a police station as soon as possible. This is also provided for in Section 50(1) of the Criminal Procedures Act 51 of 1977. Article 11(3) of the Constitution also states that all arrested and detained persons shall be brought before the nearest magistrate or judicial officer within 48 hours of their arrest, or as soon as possible thereafter, and no persons shall be detained in custody beyond such period without the authority of a magistrate or other judicial officer. When juveniles are arrested, it should be considered whether the arrest and detention is necessary. The age of the juvenile is also important, as it would be undesirable to detain a child younger than 8 years. The Namibian Police have a crucial role in giving the public access to the criminal justice system without discrimination.

According to Sloth-Nielsen & Gallinetti. (2004) the South African Police drafted instructions to inform police officers about the manner in which they should execute their duties.

3.5 Treatment by the Police after arrest

Treatment by the Police is part of services rendered to the respondents. The respondents who indicated good treatment by the police was 70% compared to the 30% who did not receive good treatment. See graph 8.
According to Light (2000) an arrested person must be taken to a police station as soon as possible after the arrest as in Section 50(1) of the Criminal Procedure Act 51 of 1977. Article 11(3) of the Constitution also states that all arrested and detained persons shall be brought before the nearest magistrate or judicial officer within 48 hours of their arrest, or as soon as possible thereafter, and no persons shall be detained in custody beyond such period without the authority of a magistrate or other judicial officer. When juveniles are arrested it should be considered whether the arrest and detention is necessary. The age of the juvenile is also important, as it would be undesirable to detain a young child of 8 years, but this would not be as applicable in the case of a seventeen year old.

When a crime is reported in Sweden, until the final decision has been taken, a long chain of events is involved. Policy makers highlighted prompt responses so that the juvenile offender can relate to the link between the crime and the associated decision.

The police officer, as the crime investigator has the option of not reporting the crime to a prosecutor if it is considered less serious, such as shoplifting. No action is taken in such
regard. Consequently unsolved shoplifting cases increased in the last ten years (Hill et al., 2007).

3.6 Status of respondents after the case was opened

Graph 9 shows that respondents detained after arrest were 92.9%, those released on bail were 4.3% and only 1.4% was released in the care of their parents/guardian.

**Graph 9: Status of respondents after the case was opened**

Arrest is when the police assume control over the movement of a person, who is deprived of personal liberty. An arrest and detention is arbitrary if it was not lawful, meaning that it happened for an unlawful reason and without compliance with a lawful procedure. “Arbitrary does not only mean against the law, but includes elements of inappropriateness, injustice and lack of predictability. The Namibian Constitution, Article 15 states that “No law authorising preventive detention shall permit children under the age of sixteen years to be detained”. The arrest or detention must be appropriate in the context of the particular facts of the case. It means that a person need
not always be arrested to begin criminal proceedings against that person. A person need not always be detained even if the person has been arrested. There may be other means of ensuring that the person appears in court. Before an arrest a member should always determine whether arrest and detention is appropriate under the circumstances and whether other measures would not be as effective in bringing the person to trial.

Alternative methods to secure the attendance of an accused at a trial are a summons in terms of Section 54(1) of the Criminal Procedure Act, a Written Notice to appear in terms of Section 56(1) of the Criminal Procedure Act and a release on warning in lieu (in the place) of bail terms of Section 72(1) of the Criminal Procedure Act of 51 of 1977. In the case of a release on warning or the granting of bail by the police, the accused is arrested, but can be released by a police officer without first appearing in court (Light, 2000).

Article 40 of the United Nations Conventions on the Rights of the Child makes provision for juvenile justice issues such as deprivation of liberty, and Article 37 also requires that imprisonment shall be used as a measure of last resort and where children are imprisoned it must be for the shortest possible period of time (Hill et al., 2007).

3.7 Fellow inmates of the respondents

It is of concern to note according to graph 10 that the respondents who were detained with adults were 40.3% and the children who were detained with peers were 35.8% whilst 23.9% shared the cell with adults and children.
When children are in custody, they need to be separated from adults, unless it is considered in the child’s best interest not to do so. All children deprived of their liberty are to be treated with humanity and respect and in a manner that takes into account their needs.

Cell visits in Namibia were conducted in 2003 by a committee comprising of government officials and civil society on the conditions at police stations and prisons. The evaluation was that there is a lack of suitable and conducive facilities and no national legislation in place on how children in conflict with the law should be treated upon their arrest and after appearance. Children are not kept busy with games or any activity. Children were also afraid to report fighting in the cells for what might happen with them afterwards.

3.8 Treatment by fellow inmates

Graph 11 indicates that the respondents who were treated well in the cells were 52.3% whilst 43.1% were treated badly and 4.6% stated that nothing happened.
Children reporting bad treatment from inmates particularly reported that their belongings were stolen from them, their food hidden from them and they were sometimes forced to clean the cells. Adult offenders might address juvenile delinquents with authority and that should be the primary motivation of separation. This is also against International Standards to detain children with adults.

3.9 The rating of the food in the cells

Graph 12 shows that 52.9% indicated that the food they received in the cells were bad and 26.5% indicated that it was extremely bad, 13.2% could not rate the food. 79% of the respondents reported that the food was bad, that is in contravention of the provisions set by International Standards.
Art 40 of the United Nations Conventions on the Rights of the Child makes provision for juvenile justice concerning issues such as deprivation of liberty, ensuring that basic rights to food, health care and clothing are respected.

Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time. Every juvenile shall receive special diets as medically indicated (Excerpt from United Nations Rules for the Protection of Juveniles Deprived of their Liberty).

3.10 Screening by the social worker before the first court appearance

The intervention of the Social Worker in the Child Justice Program starts with the screening process of child offenders before the first court appearance. The children who were seen by the social worker before their first court appearance was 63.8% and the children who were not seen were 36.2%. This result is revealed in graph 13.

_graph 13: Screening by the social worker before the first court appearance_

According to Sloth-Nielsen & Gallinetti. (2004) probation services are crucial as they devise the most appropriate recommendations before the matter of an alleged child
offender goes to trial, and then assist the child offender to become a rehabilitated and responsible citizen. Probation is seen as a method to deal with specifically selected offenders. Statutory assessment is useful to identify those young people who need further specialized support.

The common assessment framework is a standardized and holistic assessment process designed to help practitioners in identifying a young person’s unmet needs and strengths at an early stage. The assessment covers the development of the young person, their parents and carers, and their family and environment that could lead to a child protection referral (Wallis, 2010). The result still presents a significant number of children who were not screened before their first court appearance.

In South Africa a continuum of care is a plan for the care of the child while in placement, regular evaluation of the plan, recommendations: the least restrictive and most empowering option, preserving families and reintegration should always be central. There must be justifiable reasons why a child remains in a particular placement far from family. Development assessment is having different levels of development, being Crime prevention and prevention of family, community disintegration, early childhood development, family capacity building, youth development, education and community development. Early intervention assessment understands the strengths and developmental issues of children and families. Recommendations are on diversion and how to plan and facilitate an appropriate diversion program (Sloth-Nielsen & Gallinetti., 2004).
In Sweden, the social worker is obliged to be present according to the Provision Act, Section 5. The Provision Act, Section 23 has strong restrictions on taking a child between 15 and 17 years of age into custody during a criminal investigation. In such cases, the social welfare officer has the opportunity to intervene on the child’s behalf (Compulsory Care Act, Section 6). If the case goes to trial, the child has the right to a lawyer. The social worker submits a report concerning the young person to the prosecutor before a decision is taken whether to prosecute or not. The report must provide concrete information about plans for the young person so that the court can foresee the type of intervention planned related to the crime. It is important from the social welfare perspective, that the child’s needs have been properly assessed, that includes the current situation and prognosis for development (Hill et al., 2007).

The criminal legislation focuses on events that occurred in the past, whilst child welfare legislation focuses on the child’s current situation and prognosis for development in the future. It put social workers, prosecutors and the courts in a difficult situation when dealing with young offenders. The Government in Sweden aimed to have more consultations, cooperation and coordination between the social services and the juvenile justice system to have a common strategy that ensures their public responsibility for young offenders (Hill et al., 2007).

### 3.11 Other type of support from the social worker

The social worker need to follow a holistic approach towards screening, considering the circumstances of the children at their homes. Table 10 shows that respondents who
wanted to receive counselling were 21.5%, those who wanted to be released were 15.4%
and respondents who wanted to go back to school were 13.9%.

**Table 10: Other type of support from the Social Worker**

<table>
<thead>
<tr>
<th>Valid</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advise</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Counselling</td>
<td>14</td>
<td>20.0%</td>
<td>21.5%</td>
</tr>
<tr>
<td>Don't Know</td>
<td>9</td>
<td>12.9%</td>
<td>13.8%</td>
</tr>
<tr>
<td>Give me Information</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Give me Work</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Go Back to School</td>
<td>9</td>
<td>12.9%</td>
<td>13.9%</td>
</tr>
<tr>
<td>Have a Speedy Trial</td>
<td>2</td>
<td>2.9%</td>
<td>3.1%</td>
</tr>
<tr>
<td>Help Case to be Withdrawn</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>I Got PTCS</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>I Want to be Diverted</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Keep me Busy</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Nothing</td>
<td>5</td>
<td>7.1%</td>
<td>7.7%</td>
</tr>
<tr>
<td>Save me the Prison Sentence</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Save me the Sentence</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Screening</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Support in Court</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Take Me for Music Classes</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Talk on Rights</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Tell me I Have Hope</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Test to Prove Rape</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>To be Released</td>
<td>10</td>
<td>14.4%</td>
<td>15.4%</td>
</tr>
<tr>
<td>When is my exam due at NAMCOL</td>
<td>1</td>
<td>1.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>65</strong></td>
<td><strong>92.9%</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

Respondents indicated a need to receive counselling from the social worker. As a
counsellor, the social worker makes use of systematic and theoretical frameworks, a
guide to hypothesize about the formation of problems and possible solutions.
Counsellors assist clients to identify their strengths and build on their strengths,
therefore individuals are seen as having resources to solve their own problems in a
practical, immediate way (Gladding, 2000).
The welfare of the child is paramount and therefore whatever at disposal available
should be used. A welfare principle can be summed up in art 40 of the Convention on
the Rights of the Child; in that state parties recognise the right of every child and that the child assumes a constructive role in society (Pickford, 2000).

Section 254 of the Criminal Procedure Act, 51 of 1977, makes provision to refer a juvenile accused of a crime to a children's court if it appears to the court at the trial upon any charge of any accused under the age of eighteen years that he is a child in need of care and that it is desirable to deal with the child in terms of the Children’s Act, 33 of 1960, the trial can be stopped and it could be ordered that the accused be brought before a children's court and that the child be dealt with under the said sections in the mentioned Act. If the order is made after conviction, the verdict shall be of no force in relation to the person in respect of whom the order is made and shall be deemed not to have been returned.

3.12 The court where respondents appeared

A separate court exist for child offenders at the Katutura Magistrate Court in Windhoek, and this question was included to determine whether that Court was still used for child offenders. Graph 14 shows that 90.5% of the children still appeared in the C-Court of the Katutura Magistrate Court, with 3.2% each at the D-Court and Hosea Kutako Court. Children who appeared in B-court and those who did not have a court appearance when interviewed were 1.6% each.
Graph 14: The court in which the respondents appeared

The Constitution guarantees the right to a fair trial that includes the right to be presumed innocent until proven guilty and to have the choice to remain silent during the trial. The right to a fair trial includes the right of the person on trial to lead evidence and to challenge evidence against him or her. Separate systems for children are needed for the mode of trial (Hodgkin, 1998). When this is not possible for economic reasons, States must ensure that children are not prohibited from participation in their own defence and that judicial hearing should be conducive to understanding. The Namibian legal system is adversarial. The criminal justice system includes 3 main components, the police, the courts and the prisons. They function together, with each having its own roles, such as the police doing the investigation, the court is responsible for the trial, which includes sentencing, and the prison to carry out the sentencing (Muller, 2004).

3.13 Attendance of court proceedings

When juveniles appear in court it must be held in camera, with only the presence of the parent/guardian. Information from the 55 respondents who appeared in court, shows that 47.1% of them appeared with their parents/guardian or relatives, and children who
appeared in court where other people attended together with their parent/guardian were 30.8% and those who appeared in court with the presence of many people/people they don’t know were 16.3%. See table 11 below.

*Table 11: Attendance of court proceedings*

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valid</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Person</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Accused</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Aunty and Others</td>
<td>2</td>
<td>2.9%</td>
<td>3.6%</td>
</tr>
<tr>
<td>Aunty and Uncle</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Brother</td>
<td>2</td>
<td>2.9%</td>
<td>3.6%</td>
</tr>
<tr>
<td>Cousin and Others</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Father</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Father and Brother</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Father and Lawyer</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Father and Others</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Grandparents</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Guardian</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Guardian and Others</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Many People I don’t know</td>
<td>9</td>
<td>12.9%</td>
<td>16.4%</td>
</tr>
<tr>
<td>Mother</td>
<td>9</td>
<td>12.9%</td>
<td>16.4%</td>
</tr>
<tr>
<td>Mother and Others</td>
<td>7</td>
<td>10.0%</td>
<td>12.7%</td>
</tr>
<tr>
<td>Mother and Sister</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Mother and Victim</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Nephew</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Parents</td>
<td>4</td>
<td>5.7%</td>
<td>7.3%</td>
</tr>
<tr>
<td>Parents and Others</td>
<td>5</td>
<td>7.1%</td>
<td>9.1%</td>
</tr>
<tr>
<td>Sister</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Stepmother and Others</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Uncle</td>
<td>1</td>
<td>1.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>55</strong></td>
<td><strong>78.6%</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

Section 153 (4) of the Criminal Procedure Act, Act 51 of 1977 states that criminal proceedings shall not take place in open court where the accused is under the age of eighteen years, or is a witness, and no person, other than such accused, his legal representative and parent/guardian or a person in loco parentis shall be present at such proceedings, unless such person’s presence is necessary in connection with such proceedings or is authorized by the court. Section 154 (3) of the Criminal Procedure
Act, Act 51 of 1977 states that no person shall publish in any manner whatever any information which reveals or may reveal the identity of an accused under the age of eighteen years or of a witness at criminal proceedings who is under the age of eighteen years, provided that the presiding judge/judicial officer may authorize the publication of such information as he may deem fit if the publication thereof would in his opinion be just and equitable and in the interest of any particular person.

The Beijing rules stresses the need for privacy throughout court proceedings in order to avoid the stigmatising and negative effects of labelling children criminals and delinquents, and the United Nations Convention on the Rights of the child determines that no one may force the child to speak in court or to say that s/he is guilty, to have their privacy protected and respected during the time of trial.

Generally, the courts are not held in camera as per this result. Just over 47% could be stated to comply with the available legal provisions under which children should appear in court.

3.14 Time frame of the case before finalization

The children who did not have a speedy trial due to postponements were 82.8%, compared to 15.6% who confirmed a speedy trial because their cases would have been withdrawn when they completed the diversion program. The children who did not know whether they had a speedy trial were 1.6%. See graph 15 below.
The Namibian Constitution guarantees the right to a fair trial that includes the right to be presumed innocent until proven guilty and to have the choice to remain silent during the trial. The right to a fair trial includes the right of the person on trial to lead evidence and to challenge evidence against him or her.

During the preliminary criminal investigation in Sweden, the prosecutor has the duty to complete criminal investigation within six weeks and sooner if possible. If more serious offences or more suspects are involved, the time frame could be extended (Hill et al., 2007). In South Africa the prosecutor is in charge of the discretion to prosecute or not. Prosecutors in South Africa played a major role to the development of diversionary practice. However, an audit on “the role of prosecutors in enabling diversion (Article 40 Volume 3 (3) Mukwevho adv H) underlined continuous training on diversion procedures and program, but also guidelines or directives to assist prosecutors in their discretion. Prosecutors lead the South African Young Sex Offenders Program, Saystop; the art class diversion (Sloth-Nielsen & Gallinetti., 2004).
4. Diversion program and rehabilitation

4.1 Prior attendance of a diversion program

Graph 16 shows that children who did not attend a diversion program before the current court cases were 63.2% and 36.8% did attend a diversion program before the current court case.

**Graph 16: Prior attendance of a diversion program**

A child can develop resilience if a safe, nurturing environment is provided in which the child’s needs are met. The family and the school are important environments for the child. It also provides the child with a sense of belonging and an identity. Families share cultures, religions and they have similar systems of values, rules and norms. The school focus on the cognitive, social and emotional development of the child. Children who don’t have parents might look for someone, they can trust and who is interested in their lives, to help in times of a crisis, and to assist them to set realistic goals. Most children will develop these capabilities before reaching the age of 15 years. The external and inner resources of a child greatly influence the development of these capabilities (Mallmann, 2003).
4.2 Types of diversion programs attended

It was necessary to determine whether children are still diverted to diversion programs and how often children are referred to diversion programs. In Namibia children are diverted to either Pre-trial Community Service or the Life skills Program. Graph 17 shows that 67.9% of the children were referred to pre-trial community service, and 32.1% attended the life skills program.

**Graph 17: Type of diversion programs attended**

![Graph showing Type of diversion programs attended]

Through diversion, a child who is accused of committing a crime is given the opportunity to take responsibility for his conduct and to make good for the wrongful action. Diversion may involve a restorative justice component depending on the nature of the diversion. Conditional diversion involves the referral of a child away from the formal court procedures, on condition that s/he attends a program or undergoes a restorative justice process such as consensus decision making. The outcome of these conferences resulted in children being referred to either the Life skills program or pre-trial community service. Life skills training set out to develop self-knowledge, positive attitudes about the self and instil abilities to communicate with others and maintain
conflict in a constructive manner. Learning life skills involves taking responsibilities for one’s own well-being.

The underneath table is being used in South Africa as a guidance on the average number of hours for pre-trial community service for particular offences.

**Table 5: Average number of pre-trial community service in South Africa**

<table>
<thead>
<tr>
<th>Type of offence</th>
<th>Number of hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor property related, i.e. shoplifting</td>
<td>± 40</td>
</tr>
<tr>
<td>Driving under the influence of alcohol</td>
<td>Minimum 100</td>
</tr>
<tr>
<td>Malicious damage to property</td>
<td>60-75</td>
</tr>
<tr>
<td>Possession of dagga</td>
<td>30-50</td>
</tr>
</tbody>
</table>

Source: Sloth-Nielsen & Gallinetti, 2004

4.3 Reasons why respondents were not diverted

Results indicated in Table 12 that the reasons why respondents were not diverted to a diversion program were that 23.1% committed serious crimes and those who were not screened prior the court appearance were 20.5% and 15.4% claimed that they were innocent.

**Table 12: Reasons why respondents were not diverted**

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Valid Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discussions Ongoing</td>
<td>3</td>
<td>7.7%</td>
</tr>
<tr>
<td>Don't Know</td>
<td>5</td>
<td>12.8%</td>
</tr>
<tr>
<td>I Cleaned the Yard of the convict</td>
<td>1</td>
<td>2.6%</td>
</tr>
<tr>
<td>Innocent</td>
<td>6</td>
<td>15.4%</td>
</tr>
<tr>
<td>Not Screened</td>
<td>8</td>
<td>20.5%</td>
</tr>
<tr>
<td>Repeat Offender</td>
<td>2</td>
<td>5.1%</td>
</tr>
<tr>
<td>Serious Crime</td>
<td>9</td>
<td>23.1%</td>
</tr>
<tr>
<td>Younger than Required Age</td>
<td>5</td>
<td>12.8%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>39</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

A potential danger of diversion is the accused person’s right to a fair trial and due process. Bearing in mind the definition of diversion, it is therefore imperative that
children are not diverted to a program or other informal diversion option in lieu of the possibility of prosecution. If the state does not have sufficient evidence to prosecute a matter, it cannot resort to diverting the child as a second option. An accused person’s right to remain silent might potentially be compromised by the possibility of diversion. There is a danger that a child could be unduly influenced into accepting responsibility for an offence at the expense of his/her right to remain silent. This right is inviolable, only a voluntary acceptance of responsibility gives credence to diversion procedures (Sloth-Nielsen & Gallinetti., 2004).

Diversion should be excluded where the child indicates that he intends to plead not guilty to the charge, the child has not understood his/her right to remain silent and/or has been unduly influenced in acknowledging responsibility, there is insufficient evidence to prosecute and the child and his/her parents do not consent to diversion or the diversion options.

The case of Gerry Gault, 15 years old, who committed a crime by making an obscene phone call of irritatively offensive adolescent sex variety to Ms. Cook in the US, lead to the global developments of law and procedure on juvenile justice. He was sent to the state Industrial School until he was 21 years old, thus a period of 6 years. If an adult was convicted of a similar offence it would have been a fine from US$5 to US$ 50 and imprisonment for no longer than two months. The case of Gerry Gault was appealed by the Arizona courts and ended at the US Supreme Court that extended constitutional due process rights to youth accused of crime. The Gault court required certain procedural
protections in delinquency cases, including notice of charges, right to counsel, confrontation of witnesses, right against self-incrimination and the right to call and cross-examine witnesses. His parents were not told about his arrest, but an informal hearing in juvenile court was held the next day without any notice of charges against him, no witnesses, no record and no lawyer representing Gerry. He remained in custody after the hearing, but was released after detained for 3 days. The Gault case underlined intervention on behalf of youngsters not only for their needs, but also for their liberty (Hill et al., 2007).

4.4 Children who re-offended after attending a diversion program

The children who committed crime for the first time and who completed their current diversion program were 56.8% whilst 43.2% of the children re-offended. See graph 18 below.

*Graph 18: Children who re-offended after attending a diversion program*

The review of the diversion programs would be more successful if a multi-disciplinary approach could be used by the stakeholders involved. The contributing factors to
delinquent behaviour from a social work point of view such as social class, attachment to parents, attachment to the school, education and family background need to be incorporated when the programs are reviewed (Hirchi, 2004). It needs to be highlighted that the younger a child is when s/he becomes involved in delinquency, the more likely they are to continue this type of behaviour and they could become seriously delinquent (Bartol, 2005). Therefore programs should be tailor made to meet the needs of offenders and particularly to sustain behaviour change.

The Children’s Hearing System in Scotland is an approach to integrate measures for protecting children and dealing with their criminal behaviour. Two reviews were conducted on the systems in Scotland on how to deal with juvenile offenders. The first was the executive review of youth crime in 2000 that resulted in investment in specialist multidisciplinary staffing and dedicated strategic resources to build capacity within a developing framework of national objectives and service standards. Positive change in youth crime requires a range of responses such as prevention, early intervention, diversion, intervention and participation. However, young repeat offenders were failed by the system. Since 1991 Scotland embarked on national guidance for criminal justice social work to have special planning for children between 15 and 17 years old as part of an integrated social work planning. Evidence showed a tendency of offenders in this category to progress fairly rapidly to custody once they enter the criminal justice system. The expertise and training of staff for maintaining and challenging young people in the community was doubted. The roles of other stakeholders were recognized. An Action
Programme to reduce youth crime was announced in 2002. The programme aimed at the developments of a framework of national standards and objectives, an assessment framework within better integrated children’s services, strengthening the role and work of youth justice teams, and improving outcome measurements and evaluation proposal for programme accreditation (Hill et al., 2007).

4.5 Suggestion on support from the Government

The researcher asked the respondents to give suggestions on what kind of support they would need from the Government. Table 13 indicates that 13.3% suggested support with employment, 8.3% want schools, including industrial and vocational schools. Other suggestions included better food in cells, separation of children from adults in holding cells and sensitization on crime that were 5.0% each.
### Table 13: Suggestions on support from the Government

<table>
<thead>
<tr>
<th>Suggestion</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>An Institution Outside Windhoek</td>
<td>2</td>
<td>2.9%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Assist with parents who are drinking</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Better Food</td>
<td>4</td>
<td>5.7%</td>
<td>6.7%</td>
</tr>
<tr>
<td>Build Industrial, vocational schools and schools</td>
<td>12</td>
<td>17.2%</td>
<td>20.0%</td>
</tr>
<tr>
<td>Child Cells</td>
<td>5</td>
<td>7.29%</td>
<td>8.37%</td>
</tr>
<tr>
<td>Children should not be Handcuffed or go to jail</td>
<td>3</td>
<td>4.3%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Counselling</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Give Children Employment</td>
<td>8</td>
<td>11.4%</td>
<td>13.3%</td>
</tr>
<tr>
<td>Give us a Lawyer</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Inform Parents Upon Arrest</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Life Skills</td>
<td>2</td>
<td>2.9%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Make Court Appearances Quick</td>
<td>2</td>
<td>2.9%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Make Offenders Pay for Petty Crimes</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Offenders Should Not be Beaten</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Pay School Fees for Children</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Provide Blankets in the Cells</td>
<td>2</td>
<td>2.9%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Provide Psychologists</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Put Enough Light in the Cells</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Recreation Activities for Children</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Rehabilitation</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Sensitisation on Crime</td>
<td>3</td>
<td>4.3%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Shelter and Food for Children</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Support Street Children</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Take Children Back to School</td>
<td>3</td>
<td>4.2%</td>
<td>5%</td>
</tr>
<tr>
<td>Take us to Do Community Work</td>
<td>1</td>
<td>1.4%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
<td>85.7%</td>
<td>100.0</td>
</tr>
<tr>
<td>Missing</td>
<td>10</td>
<td>14.3%</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>70</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>
The respondents reflected that the Government should give more support, and identified those areas of services. The Convention on the Rights of the Child obliged state parties to establish a child justice system that should cater for the needs of children.

SECTION II

THE SYSTEMS DEALING WITH CHILDREN IN CONFLICT WITH THE LAW

1. Introduction

In conducting this study, the researcher interviewed 20 participants individually who are involved in the delivery of justice, protection and the promotion of children’s rights in Namibia. Graph 19 gives the distribution of the respondents by place of work, where 25% were from the Ministry of Justice (Legal Services, Magistrate, Prosecutors), Ministry of Gender Equality and Child Welfare constitutes 25% (Social Workers), Ministry of Safety and Security were 35% (Police officials), and Ministry of Youth National Service, Sport and Culture were 15% (Youth Officers, Social Workers).

Graph 19: Distribution of key informants by place of employment
In-depth interviews were used to gather the qualitative data by means of the following key questions: Who is responsible for performing specific functions, what are the lines of accountability as well as the consistency of service delivery and support functions with program design specifications and other appropriate standards. Finally it should be determined whether the program reaches the appropriate target population (De Vos et al., 2005).

The discussions include the own words of the participants that will be quoted and linked to the themes and sub themes that were identified by the researcher to respond to the research questions as in the interview guide. These themes are linked to the structure of a child protection framework which consists of the following components: legal and policy framework, inter-sectoral cooperation, service delivery, capacity building and required resources for the comprehensive care of juvenile offenders.

**Theme 1: Legal and policy framework**

**Sub theme 1.1: The Child Justice Bill**

The Child Justice Program was implemented in 1994 to comply with Articles 37 and 40 of the United Nations Convention on the Rights of the Child. The drafting of a Child Justice Bill in Namibia was initiated in 2000 by the Inter-ministerial Committee which was chaired by the Ministry of Justice. Law reform can be a lengthy process, and there is a need for government commitment (Ann Skelton, 2009). Most of the participants who were interviewed were not involved in the initial process of the drafting of the Bill, and therefore did not know much about the content of the Bill. When asked if the
participants knew the Child Justice Bill, the majority of participants did not know about it and recognised that the Child Justice Bill was not operational. Some were unsure whether the Bill would be a tool to protect children’s rights “...I am not sure, but I think it can protect the rights of children”. On the contrary, some respondents had faith in the Bill as a usable instrument to achieve child protection “...Yes, it will serve as a guideline on how to deal with children in conflict with the law”. To achieve this however, participants echoed a need for compliance “...when it becomes a law it must be adhered to in order to protect the rights of the children”.

**Quotations:**

Participant 1:”I am not sure, but I think the enactment of the Child Justice Bill can protect the rights of children. We don’t have resources, especially human resources to carry out activities. I am worried about available resources”.

Participant 11:” Yes, it will serve as a guideline to stakeholders on how to deal with children in conflict with the law”.

Participant 16:”Yes, when it becomes a law it must be adhered to and will protect the rights of the children”.

Participant 20:”Yes. Currently there is no Act and children are treated as adults”.

**Sub theme 1.2: Policies, Guidelines and Procedures**

The majority of the respondents were not aware of any policies, guidelines or procedures in place that would ensure the effectiveness of the Child Justice Programme. “...I have not seen it, I can’t give any information”. Some respondents acknowledged that policies
were not clearly laid out. “...No clear policies for prosecuting children apart from sending them to social workers”.

Quotations:

Participant 4: “Not sure whether the IMC was established as a Directive from Cabinet”.

Participant 12: “Previous years we had guidelines. We used Mapping the Future to do the Life skills Programme. Things changed and I don’t know where to go. My ministry is using old materials”.

Participant 13: “I cannot say, as I do not know. No clear policies for prosecutor apart from sending children to social workers. We don’t have anything in writing on how to deal with juveniles”.

Participants were concerned about the absence of policies, guidelines or procedures. No document is in existence to inform stakeholders how to handle juvenile offenders. Overall, policies, guidelines or procedures are not in place to underpin the relevance and effectiveness of the Child Justice Bill. A study on process mapping by //Gora Basen Consultancy (2002) highlighted that the Child Justice Program is not officially sanctioned and can be overlooked or become redundant with the absence of policies, guidelines and legislation. The lack of legislation, guidelines and policies on the hierarchical structural settings result in conflicting operational interventions (//Gora Basen Consultancy, 2002).

Policy and procedural development are vital for the following priority areas: arrest procedure; assessment of arrested children; minimum standards for diversion;
procedures and processes for the child justice court; minimum standards for the detention of children in prisons; police cells and facilities; monitoring and evaluation; dealing with children as victims and child consultation (Muntingh, Hamutenya & Kamwanyah., 2006).

Standards and guidelines in place can be useful, and they could be set at a minimum level so that they are achievable, perhaps setting targets for improvement over a period of time. International standards are useful in setting local standards, but local standards can be more detailed and practical (Skelton, 2009).

**Theme 2: Inter-sectoral cooperation:**

**Sub theme 2.1: Ministry responsible for the Child Justice Programme**

The participants isolated the different mandates of the ministries working with Child Justice. Overall, participants believed that one or two ministries should be responsible for the Child Justice Program particularly suggesting the Ministries of Gender Equality and Child Welfare and that of Justice. Participants verbalized that MOJ should lead due to their perspective of justice, or MGECW for their mandate of children and the presence of social workers who have the knowledge on how to deal with children. “One ministry should be responsible for child justice for better streamlining” said a participant. Participants expressed concerns that there were no developments on child justice as it used to be in the past when the Legal Assistance Centre implemented the program. Some participants believed that certain ministries had better capacity necessary to run the child justice programme “... the Ministry of Justice has the
mechanism and systems to deal with the child”. However, there was a critical need for synergy. “... it’s multi-sectoral, involving many ministries with separate mandates... the Ministry of Justice and the Ministry of Gender Equality and Child Welfare should work together”. No competitiveness or aggressive approaches were sensed between the key informants.

**Quotations**

Participant 2: “I think one ministry should be responsible for child justice for better streamlining. It could also become cumbersome if too many role players are involved. It should be the Ministry of Justice responsible because of the justice perspective. Respondent 4: “It’s multi-sectoral, involving many ministries with separate mandates”.

Participant 5: “Ministry of Justice is having the mechanism and system to deal with juvenile offenders in court”.


Many stakeholders are involved in child justice, therefore a coordinating body is crucial. The absence of a leading ministry creates uncertainties on who should take the lead and ownership of child justice. The uncertainty is in existence since 2002, as stated by the study conducted by //Gora Basen Consultancy (2002). Subsequently the study concluded that juvenile justice services are fragmented and uncoordinated due to the absence of an identified and agreed upon lead ministry. This fragmentation could result in the program not being implemented successfully due to overlapping and duplication
of services. A multi-disciplinary approach is needed so that stakeholders have integrated strategies in place for the successful implementation and continuity of such services.

**Sub theme 2.2: Individual Ministerial Roles**

All participants agreed that their ministry had a role to play in child justice, and they verbalized that role and expressed the enthusiasm to undertake such responsibilities. “...We should make some programme reviews to meet the needs of the children”. Participants recognised that some of the needed services were not available to child offenders, and those services, which were available, needed review. “...we should offer diversion programs as well as other alternatives to out of school children such as micro gardening projects, tailoring and computer classes”.

**Quotations:**

Participant 1: “Yes, MGECW must make sure that the child justice program is implemented and carried out. We should review the program to meet the needs of the children”.

Participant 7:” when a case is opened against a juvenile, normal trial has to take place. The recommendation from the social worker guides the prosecutors. If the child is a repeat offender or it is a serious offence, the child will be punished if found guilty. The type of sentence will be based on the pre-sentence report from the social worker”.

Participant 11: “MYNSSC offer diversion programs and other alternatives to out of school children such as micro gardening project, tailoring, computer classes”. 
Participant 19: “The Social workers screen child offenders, supervise diversion programmes such as the pre-trial community service, counselling and identifying children in need of care”.

Participant 20: “The Police are first on the scene. We determine the type of offences, how serious the offence is, if the child is residing with his parents, is he school going and what could be done for the child. We must trace the parents if it is a serious crime and determine the age of the child. The child will be charged in the presence of the parents and release the child in parental care so that he should not be in jail”.

The police confirmed their role as set out in the Criminal Procedure Act 51 of 1977 on how a suspect should be treated during arrest and detention. Some participants know their expected roles as they learned through trainings conducted by the MGECW on the child justice programme.

Uncertainties exist on the process of the different activities such as when children should be screened, when they qualify for a diversion program and how to refer to a programme. No guidelines are in place on the referral between the Ministry of Gender Equality and Child Welfare and the Ministry of Youth, National Service, Sport and Culture when children are diverted. The study by //Gora Basen Consultancy (2002) indicated that in 2002 role players were not clear about their roles and it could have a negative effect on sustainability of the program.

A study on process mapping was conducted in 2002 that gave a picture of activities that are taking place from arrest to reintegration, and the challenge is to decide how many
tasks and details should be included in these activities. Stakeholders need to have a systematic thinking about child justice in order to analyse the complexities in service delivery, the process, and the identification of constraints (//Gora Basen Consultancy, 2002).

**Sub theme 2.3: Coordination of the Inter-Ministerial Committee (IMC) on Child Justice**

Participants felt strongly that it should be the MGECW to coordinate the IMC since they have the mandate over children’s issues. The MOJ was suggested as well. It should be noted that the MOJ chaired the IMC since its inception. This further refers to the synergy earlier suggested. “... It must be vested with MOJ with the involvement of other stakeholders such as the police and social workers”.

**Quotations:**

Participant 4: “MOJ and MGECW are the relevant ministries”.

Participant 5:” I feel strong that it must be MOJ as they are responsible for enforcement of the law and that people are kept accountable for their actions”.

Participant 7:” It must be vested with MOJ with the involvement of other stakeholders such as the police, social workers, etc.”

Coordination of services by a leading Ministry is pivotal to ensure continuity and progress. According to the study of //Gora Basen Consultancy 2002) many key stakeholders render services in a fragmented manner with very little coordination in
place. They also experienced problems with the flow of information from the IMC to Non-governmental Organizations and ministries, as well as a lack of commitment.

Strengths identified during an assessment of the IMC in 2002 by Gora Basen Consultancy (2002) were committed members, regular meetings, discussions and a fixed chairperson. Weaknesses identified are no operational guidelines, lack of clear roles of members and unclear structure of the IMC.

Sub theme 2.4: Intervals of IMC meetings

Participants further indicated that regular meetings were very important. Suggestions were to have monthly meetings, “...once a month to discuss the type of cases reported, how to collaborate and develop strategies on how to coordinate services”, bi-monthly, or quarterly meetings. “...four times a year as it is the only platform for ministries to discuss issues related to child justice and the Child Justice Bill”. Respondents raised issues to be discussed at IMC meetings which included the Child Justice Bill, develop strategies on how to coordinate services, share information, review policies and to discuss the type of cases reported.

While every participant indicated the importance of coordination and holding meetings, some participants expressed a lack of knowledge about the existence of the IMC. This is particularly due to the fact that the IMC has been literary dormant over the years.
Quotations:

Participant 2: “Once a month, they deal with dynamic issues. Things happen fast. They might not do justice if meetings are not regular. Stakeholders must come together and discuss problems in child justice”.

Participant 4: “Four times a year as it is the only platform for ministries to discuss issues related to child justice and the Child Justice Bill”.

Participant 6:” Monthly meetings for the sake of coordination and information sharing. It is the only committee that will discuss issues and review policies affecting the child justice programme”.

All the participants mentioned the importance of regular meetings that would enable members to track progress. During the meetings members can plan and prioritise on ways to put structures in place for an effective child justice programme. A fixed chairperson from an identified ministry would ensure continuity.

Sub theme 2.5: Agenda of the IMC meetings

The participants mentioned valuable issues that need to be discussed. The issues ranged from screening, street children, prevalence of crime, the Child Justice Program, food at the holding cells, education, coordination, involvement of parents, referrals, repeat offenders, treatment of children, the mandate of the IMC, Child Justice Bill, child reintegration, tracing of parents, prevention strategies, program evaluation and Schools of Industries for uncontrollable children.
Quotations:

Participant 7:” Detention of juveniles and the places of detention, schools of Industries as many children are uncontrollable and parents cannot control them”.

Participant 12:” Cases, caseload, and screening, especially the environment where screening is conducted. Furthermore discussions should be held on parental involvement, coordination amongst different ministries, the role of the different ministries and aftercare service to the child and the family”.

Participant 14:”What should be done for repeat offenders, some children has up to 10 offences. Programmes can bring meaningful changes in the life of the child. There are no concrete places or steps to help these children”.

Participant 1:”Tackle issues concerning juveniles, cells, food and treatment according to what they should get. Every ministry must be held responsible. Records must be kept on how many children was screened, how many parents traced. Ensure the adherence of policies when it is developed”.

The meetings must discuss all related concerns on child justice. The topics of discussion vary from program implementation, legislations, service delivery (such as referrals, screening, diversion programs, prevention strategies and food during detention).
Theme 3: Service Delivery

Sub theme 3.1: Knowledge of Diversion Programmes

Generally, most respondents knew about the diversion programs that were available for juvenile delinquents. “...yes, the life skills program, pre-trial community service and counselling”. However, some respondents did not know about it at all.

Quotations:

Participant 6: “Yes, the life skills program, pre-trial community service and counselling”.
Participant 3: ”Yes, life skills programme and pre-trial community service”
Participant 10: ”I don’t really know what the programmes are all about”.

Sub theme 3.2: Views on the effectiveness of the Diversion Programmes

The quality and effectiveness of services rendered to children is a concern as not all the key stakeholders have knowledge about the diversion programs. The study conducted by /Gora Basen Consultancy (2002) indicated that some of the weaknesses of the diversion programs is a lack of specialized staff and that diversion is not fully understood by service providers. Diversion in Namibia is done at the discretion of the prosecutor.

Quotations:

Participant 6: “The diversion programmes are limited. IMC must look into other diversion options. Many of the children are repeat offenders and the current diversion options are not effective for them. The screening process must be intensified to know
the needs of the children. We have many programs at MYNSSC that could be offered to
the offenders”.

Participant 13:”No, the pre-trial community service is not effective as it is not properly
supervised. There is no follow-up after the child attended the life skills program and
some children are under estimating it”.

Most respondents expressed that the activities of the diversion programs were limited;
children with disabilities were not catered for. “...not all children’s needs are integrated
in the programme”. The diversion program was seen as not effectively responding to the
needs of the children. No activities are catered for repeat offenders. “...there is a high
rate of repeat offenders so they should look at the needs of the child”. This made key
stakeholders lose faith in the program. Many children kept reoffending, detained with
adults and for long periods, and cases are constantly postponed. Children were not
always supervised when performing pre-trial community services. “...the pre-trial
community service is not effective as it is not properly supervised. There is no follow-
up after the child attended the life skills program and some children are under estimating
it”. The services were not coordinated as stakeholders rarely communicate with each
other. “...the different ministries are not coordinating so this makes the programme
ineffective”. Some children took the diversion program for granted and younger
children were not fit for these diversion programs.

The impact of the diversion programs is disputed as it doesn’t meet the needs of the
child offender. The diversion programs that are currently offered are limited and must
be reviewed, considering that through diversion a child may gain insight into the consequences of his actions and take responsibility. Diversion also allows for victim participation where appropriate. According to Mallmann (2003) children cope better if they have capabilities to understand an adverse event, to believe that they can cope with a crisis because they know that they have some control over what happens and to give deeper meaning to an adverse event. Most children will develop these capabilities before reaching the age of 15 years. The external and inner resources of a child greatly influence the development of these capabilities.

In Scotland young people had to report simultaneously to the adult criminal justice system and to the Children’s Hearing system. Given the complex difficulties of young repeat offenders, no sufficient evidence existed to prove that even a specialist youth court would provide a more effective way of dealing with them without the necessary services available. A major challenge for practitioners is to recognise the importance of understanding the nature of crime as a social phenomenon as well as the developmental needs and social characteristics of those who commit crime. Models of practice need to adopt an offence focus without abandoning a focus on the wider and related social and welfare needs of children, young people and their families. The provision of structured assistance within a framework of positive authority and control will always be a major challenge for service providers. Responses to youth crime need to be set within a child protection framework, building on whatever strengths the young person has. Parents and families need to be part of the solution (Hill et al., 2007).
The Prosecutor General gave permission in 1997 for the decentralization to all the 13 regions in the absence of any legislative framework and no training to assist prosecutors. The Criminal Procedures Act, Act 51 of 1977, § 6(1) makes provision for a charge to be withdrawn before the accused has pleaded, and that is used to divert children.

The pre-requisite for any diversion program is the admission of guilt by the accused, which creates a danger that a child could be unduly influenced into accepting responsibility for an offence at the expense of his/her right to remain silent (Sloth-Nielsen & Gallinetti, 2004). Diversion can infringe on the “due process rights” which include the rights to remain silent, right to call and cross-examine witnesses, right to privacy and the presumption of innocence until proven guilty (//Gora Basen Consultancy, 2002).

**Theme 4: Capacity Building**

**Sub theme 4.1: Training of stakeholders**

The key stakeholders identified to be trained on child justice were the following: Social workers, police officers (including investigators, detectives), security guards at shops, prosecutors, magistrates, youth officers, teachers, children and parents were identified. Some of the key informants who were interviewed (operational staff) have not received any training and had to read to understand the program, and some were informed by their colleagues. It could be concluded that they have the urge to receive training to have knowledge about the program.
Participant 17:”Police (Investigators, Detectives)”. The police are the stakeholder who have first contact with the child, and should know how to treat juvenile offenders. Social workers must get knowledge about the legal instruments”.

Participant 19: ”Police (arresting officers, station commanders), teachers, parents, prison wardens, volunteers, youth officers, teachers and school counsellors”.

Participant 20:” Social workers, police, prosecutors, youth officers, psychologists, NGO’s, the law makers”

The Beijing Rules are a framework within which a national juvenile justice system could operate and a model for countries to a fair and humane response to children who may find themselves in conflict with the law. It calls for trained and professional personnel. Juvenile justice is regarded as a very specialized field and since the focus is on interventions in the best interest of the child, people involved in juvenile justice should have a sound knowledge of the field to be able to make decisions at all levels in the best interest of the child (///Gora Basen Consultancy, 2002). Training of stakeholders as such is of significant importance.

In addition, participants identified possible training providers including MGECW, MOJ, LAC and expert consultants such as National Institute for Crime Prevention and Reintegration (NICRO) in South Africa.
Quotations

Participant 16:” Experts from South Africa, experts with a law background, international experts such as NICRO; human rights experts. Experts have vast knowledge on the topic”.

Participant 19:” Training should be given by people who have experience, skills and knowledge in this field. IMC must decide who should do the training. They can get consultants from South Africa, Polytechnic of Namibia (criminal justice department)”.

Theme 5: Required Resources for the Comprehensive Care of Juvenile Offenders

When asked which resources were required in order to meet the comprehensive needs of juvenile offenders, participants mentioned financial resources; human resources with expertise; facilities that are conducive for children such as vocational training facilities, shelters, rehabilitation centres, provision of education and information materials; transport to trace parents and to take children to court.

Quotations:

Participant 2:” Financial resources to implement the programmes. A specific budget should be available for the life skills programme at MYNSSC. Money is needed to build place of safety, to do extra-mural activities for the children, to have support groups to parents, communication network at school, anonymous call line where children can report cases or seek help”.

Participant 6:” Human resources with expertise who work directly with children. Enough staff to give proper attention to the programmes, like enough social workers to
do the screening, psychologists to counsel the children, someone to give children information (prevention)”.

Participant 20:” Detention facilities for children with the necessary equipment and resources, as it is sometimes difficult to get hold of the parents of the children resulting in them being detained in the police cells”.

Sufficient allocations of human and financial resources as well as infra-structure are key components needed for the Child Justice Program. In some cases the staff may be in place but insufficiently trained, so capacity building would constantly be required. Constructive traditional structures that already exist could also be very useful. Financial issues often get in the way of systems development. It is essential to be realistic about the costs of the development of a system (Skelton, 2009).
CHAPTER 5

LIMITATIONS AND CONCLUSIONS

1. Introduction

The purpose of this chapter is to present the limitations and summarise the findings of the study to present the conclusions of the two sections: Section I and Section II.

2. Limitation of the study

The limitations of the study is that literature on this specific topic is not widely available and no research have been completed previously on this topic, consequently no scientific information is available about the treatment of children in conflict with the law by the different systems.

This study is limited in scope as it is confined only to the C-Court of the Katutura Magistrate’s Court and key informants from the Khomas region. The findings are therefore valid without any comparisons and tests performed across Namibia for greater result generalisation.

The respondents were attending court proceedings for charges against them on the days of the interviews. It is possible that the anxiety associated with court appearances could have influenced their responses during interview, which equally affects the results of the study.
3. Conclusions

The chapter also justifies how the study addressed the research aim, objectives and questions presented in chapter one. The purpose of this study was to evaluate the child justice systems dealing with children in conflict with the law. In-depth interviews and a questionnaire were used as research instruments to realise the purpose of the study. As demonstrated through the research findings, it is clear that the research problems are supported by the findings in this study. The research findings also indicated that the following research objectives were adequately met:

- To identify the needs of children in conflict with the law;
- To explore service gaps and support required for children in conflict with the law from the different systems that provide such services and support;
- To evaluate the current available services for children in conflict with the law;
- To determine how the coordinating Ministries support and protect the rights and well being of children in conflict with the law;
- To identify the gaps for effective implementation of the Child Justice Program (including guidelines for service delivery); and
- To emphasize the need for the implementation of legislation for children in conflict with the law.
SECTION I

THE JUVENILE

From the results of this study, it can be concluded that boys are more likely than girls to commit crime and are thus more vulnerable. Further, the age profile indicates that children from 14 – 17 years are more at risk to commit crime, with prevalence at the age of 17 years. Age influences the nature of crime involved in. This study presents a finding that older children are more likely to commit violent and serious crimes than younger children.

While the Nama/Damara cultural and language group was found to have more children in conflict with the law than other language groups, this study has no further evidence to conclude that the level of vulnerability to crime is a function of tribe, culture or language group. However, there is evidence that children who live with their parents and receive care and support from them are less likely to commit crime than children who live under other circumstances.

Overall, children committed more economic related crimes than serious violent offences. This is indicative of the strained circumstances in which children live, being the inability to meet their needs from their family settings. Particularly, families experience heightened hardships in meeting children’s needs due to low or no income resulting from unemployment, diminished entrepreneurial skills and abilities.
Children out of school are more likely to be involved in crime and become repeat offenders than those in school. Schools as such continue to not only provide an engaging and grooming place for children, but also provide a place for children to belong, interact, and learn from teachers and each other aspects that contribute to a lessened likelihood to commit crime. A few children lived with their biological parents.

Results of this study revealed that children were unnecessarily detained in holding cells and alternative forms of detention were not applied. This resulted in recorded abuses directed against children while in detention particularly from adult inmates with whom they shared holding cells.

A significant number of children appeared in court without a social worker having screened them. This ultimately leads to children being tried without them knowing their rights fully on one hand, denied an opportunity for diversion and cases being constantly postponed on the other hand. Further, significant children hearings are conducted in open courts and children are denied their due privacy in most court appearance. Cases were not finalized speedily and were constantly postponed.

These results clearly indicate that the diversion programs in place are not tailor made to achieve complete rehabilitation of child offenders. They are limited in reach and nature and are contributory in part to the noticed rate of re-offenders. Guidelines on referral are not in place and where implemented, referrals are done haphazardly.

The criminal justice system and the child welfare systems have different cognitive approaches towards juvenile offenders. The criminal justice system focuses on events
that occurred in the past, whilst child welfare legislation focuses on the child’s current situation and prognosis for development in the future. It put social workers, prosecutors and the courts in a difficult situation when dealing with young offenders.

SECTION II
SYSTEMS DEALING WITH CHILDREN IN CONFLICT WITH THE LAW

Namibia is still lacking legislation to drive the child justice process. The Child Justice Bill was drafted in 2002 and no progress was made ever since. Agreements were undertaken by the different ministries with no documents as proof, and these agreements are outdated. Policies, Namibian guidelines or procedures are not in place to ensure the effectiveness of the Child Justice Program. Stakeholders are not sure about the ownership of the Child Justice Programme, consequently their roles are uncertain. Policies, guidelines or procedures are absent which create uncertainties on the process of the different activities such as when children should be screened, when they qualify for a diversion program and how referral to a program should be done. The intervention and decisions made by stakeholders within the system will have consequences for all the other parts of the system. When stakeholders are not clear about their roles, it results in nothing being done and sometimes there is duplication of one aspect of the programme. Stakeholders could give wrong advice or information. The community and the child offenders could experience the program as a failure and might not have faith in the programme. Protocols are not developed to guide prosecutors, magistrates, police officers, social workers, youth officers and NGO’s.
No networking and coordination exist amongst stakeholders as the IMC is not operational to coordinate services. Therefore services are rendered in a fragmented manner with no coordination in place. Fragmentations cause boundaries for which stakeholders are scared and cautious to cross. Stakeholders show a lack of commitment as they do not want to be committed to other fragments of the program, thus only to their programme. The lack of interactions amongst stakeholders so far jeopardized the program as offenders return to crime.

The quality and effectiveness of services rendered to children is a concern as not all the key stakeholders have knowledge about the diversion programmes. Participants verbalized that the diversion programmes are limited and not effectively responding to the needs of children, including repeat offenders. The conclusion could be made that the diversion programs are not tailor made for the juvenile offenders and are therefore not rehabilitative. Children who are in conflict with the law are not seen as children who need protection.

Child justice is a complex and specialized field, thus the absence of trained and professional personnel with sufficient knowledge on how to make decisions at all levels in the best interest of the child is detrimental for the best interest of the child. With only the social workers who received training, it would be difficult for them to interact and make decisions with other stakeholders who do not have any information or knowledge about the Child Justice Programme.
Namibia has a system similar to Scotland where Probation officers and child welfare is combined in one system. The difficulty is that not enough personnel is available and they are overstretched with many cases and can therefore not give priority attention to children in conflict with the law.

Human and financial resources as well as infra-structure are key resources needed for the Child Justice Program to be functional. However, it is not a priority as the absence of legislation makes it difficult to prioritize the program.
CHAPTER 6

RECOMMENDATIONS

1. Introduction

The purpose of this chapter is to present suggested recommendations for possible improvements in as far as the delivery of services and justice to children in conflict with the law is concerned. The recommendations based on the research results are provided according to the two sections. Recommendations are also provided for future social work research.

SECTION I

THE JUVENILE

MGECW and MYNSSC should initiate and provide programs on resilience to boys so that they can acquire skills and capabilities on how to deal with life’s difficulties. Multi–model crime prevention strategies at primary, secondary and tertiary levels, with the involvement of the parents should be offered to children.

Ministry of Education should strengthen strategies to keep children in schools or Vocational Training Centres and hold national campaigns on the importance of education. Programs should include school drop outs and children on the streets.
A standardized common assessment framework with a holistic approach must be developed to determine the needs and strength of the juvenile offender. The development of this framework should be coordinated by the IMC.

Training of stakeholders on the Child Justice Programme should be prioritized so that stakeholders have a common understanding on the execution of the programme.

The extension of restorative justice approaches should be supported. The role and work of the youth justice systems should be strengthened. Youth justice should be delivered in the context of an integrated child service, therefore legal procedures and the principles of welfare based approach for the best interest of the child need to be adopted. The care and protection of juvenile offenders should thus be part of the Child Justice Programme.

SECTION II

SYSTEMS DEALING WITH CHILDREN IN CONFLICT WITH THE LAW

The IMC must be revived to effectively implement the Child Justice Programme. It is imperative to have a Directive from Cabinet to officiate the decision on the coordinating ministry. The IMC must spearhead the following:

- The speedy enactment of the Child Justice Bill.
- Develop and cost a structure on child justice. The system should be evaluated to determine what is useful, such as existing laws that could be utilised more creatively. The development should not be put on hold until the Child Justice Bill is enacted.
• Policies, guidelines and protocols which include process mapping should be developed. The processes should include child-friendly procedures as well as referral and co-ordination systems.

• Case flow mapping must be documented to be used by stakeholders on services at each process when a child enters the system to eliminate delays.

• The implementation of pilot projects should assist sustainable planning which is part of project design.

• The roles of the different stakeholders, including NGO’s, must be clarified.

• Multi-model crime prevention strategies with emphasis on specialized prevention with the involvement of the parents at all levels should be implemented.

• Continuous capacity building should be conducted to ensure that stakeholders are abreast on child justice and proper services are offered to the target group.

• Detention facilities should be available so that children are separated from adult offenders.

• The 15 Juvenile Justice Indicators developed by UNICEF should be applied to provide a common way of measuring and presenting information that could reveal whether standards are met when dealing with children in conflict with the law.

• The development of a Common Assessment Framework to set a standardized and holistic way of an assessment of the juvenile to identify and address their unmet
needs and strengths. Ideally children should also be assessed by the Social Worker before the first court appearance.

- Diversionary options should be available and tailor made for children. It must be multi-modal programs that have a life skills or psycho-social basis to reduce recidivism.
- Initiate studies on the different activities in the Process.
- Intensive awareness raising on justice for children should be launched.
- An updated integrated information system to collect comprehensive and speedily available data to ease the gathering of reliable data such as electronic case management system, should be implemented.
- Resource allocation should be made sufficient.

2. Recommendations for future social work research

The following recommendations can be considered by researchers who would like to expand on this study or gain in-depth understanding of the findings herein.

A similar study with a broadened scope in terms of geographical coverage and sample size could be conducted. It is also necessary to have a detailed study on the impact of diversion programs and suggestions on how it should be tailor made to meet the needs of children. Such a study would enable stakeholders to understand the nature of crime as a social phenomenon as well as the developmental needs and social characteristics of those who commit crime. The psychological effects of detention of child offenders with adults should need further study. An assessment on why court cases involving juvenile
offenders are not speedily finalized should be made so that those issues could be addressed. Finally, ethnography is recommended to explore the psycho-social needs of the Nama/Damara, Afrikaans and Oshiwambo ethnical groups.
REFERENCES


Swartz, J.J. (1998). *Report to the LAC on juvenile cases assessed at the Windhoek Magistrate Court*.


ANNEXURES

Annexure 1 - Structured Questionnaire to children
Questionnaire Number..................

### An evaluation of the child justice systems dealing with children in conflict with the law

Good morning/afternoon....

My name is Celeste Feris. I am a student at the University of Namibia. I am conducting a research as part of my studies to evaluate the child justice systems dealing with children in conflict with the law. I would like to request you to participate in this study through an interview with me. I would ask you a few questions.

Your answers will remain confidential and will be used as part of an overall body of information. You will not be asked to give details related to your personal identification such as your name.

Place of interview_____________________ Date of interview____________

**Section 1**

In this section, I will ask for basic information from you. You may indicate your answer from the options I will read out to you. I can repeat a question for better understanding.

<table>
<thead>
<tr>
<th></th>
<th>What is your sex? Are you Male or Female?</th>
<th>How old are you?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>[state sex] ____________________________</td>
<td>[state age] _____________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>What is your home language? [please state]</th>
<th>What crime [offense] have you been charged with? [please state]</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>[please state] _______________</td>
<td>[please state] ____________________________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Did you attend school before your arrest? [please state]</th>
<th>If yes, which grade were you? [state grade]</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>[please state]</td>
<td>[state grade] ______________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>If no, why were you not attending school? [please state]</th>
<th>Who did you live with at the time of your arrest?</th>
</tr>
</thead>
</table>
| 6 | [please state] | 1. Parents  
                            2. Guardian  
                            3. Friends  
                            4. Other [specify] ____________ |

<table>
<thead>
<tr>
<th></th>
<th>Where did you live before the time of</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Section 2
In this section I will ask you questions about your arrest, treatment and screening.

<table>
<thead>
<tr>
<th>8</th>
<th>Did the police inform you of the reason why they arrested you?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>9</td>
</tr>
<tr>
<td>2. No</td>
<td>1. Wanahenda</td>
</tr>
<tr>
<td></td>
<td>2. Katutura</td>
</tr>
<tr>
<td></td>
<td>3. Windhoek central</td>
</tr>
<tr>
<td></td>
<td>4. Other [specify] ______________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>10</th>
<th>Were you at any one time transferred to another police station?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes [specify] ______________</td>
<td></td>
</tr>
<tr>
<td>2. No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>11</th>
<th>Did the police treat you well [did not beat or harass you] after your arrest?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td></td>
</tr>
<tr>
<td>2. No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>12</th>
<th>Were your parents/guardian or people you were staying with informed immediately after your arrest?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td></td>
</tr>
<tr>
<td>2. No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>13</th>
<th>With whom were you detained in the holding cells?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Adults</td>
<td></td>
</tr>
<tr>
<td>2. Fellow children</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>14</th>
<th>How many were you in your holding cell?</th>
</tr>
</thead>
<tbody>
<tr>
<td>[state number] ______________</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15</th>
<th>How did your fellow inmates treat you?</th>
</tr>
</thead>
<tbody>
<tr>
<td>______________________________</td>
<td></td>
</tr>
<tr>
<td>______________________________</td>
<td></td>
</tr>
<tr>
<td>______________________________</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>16</th>
<th>How would you rate the food that you were given while you were detained?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Extremely good</td>
<td></td>
</tr>
<tr>
<td>2. Good</td>
<td></td>
</tr>
<tr>
<td>3. I don’t know</td>
<td></td>
</tr>
<tr>
<td>4. Bad</td>
<td></td>
</tr>
<tr>
<td>5. Extremely bad</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>17</th>
<th>After your case was opened, were you:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Released into the care of your parents/guardians?</td>
<td></td>
</tr>
<tr>
<td>2. Released on bail? Or</td>
<td></td>
</tr>
<tr>
<td>3. Detained in the holding cells?</td>
<td></td>
</tr>
<tr>
<td>4. Other [specify] __________</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>18</th>
<th>Did a social worker support you before your first court appearance?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td></td>
</tr>
<tr>
<td>2. No</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>19</th>
<th>What other support apart from screening did you receive from the social worker?</th>
</tr>
</thead>
<tbody>
<tr>
<td>______________________________</td>
<td></td>
</tr>
<tr>
<td>______________________________</td>
<td></td>
</tr>
<tr>
<td>______________________________</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>20</th>
<th>What type of support do you think a social worker could give?</th>
</tr>
</thead>
<tbody>
<tr>
<td>______________________________</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>21</th>
<th>Do you know about the child justice programme?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td></td>
</tr>
</tbody>
</table>
### Section 2

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 If yes, what do you know?</td>
<td></td>
</tr>
<tr>
<td>23 In which court have you appeared?</td>
<td></td>
</tr>
<tr>
<td>24 Who attended your court session?</td>
<td></td>
</tr>
<tr>
<td>25 How would you rate the way you were treated in court by the prosecutor and the magistrate?</td>
<td></td>
</tr>
<tr>
<td>26 Do you think you have had a speedy trial?</td>
<td></td>
</tr>
<tr>
<td>27 If no, have your case been postponed?</td>
<td></td>
</tr>
<tr>
<td>28 How would you rate the overall manner in which your case is being handled?</td>
<td></td>
</tr>
</tbody>
</table>

### Section 3
The following section includes questions to do with the process of rehabilitation offered by the diversion programme.

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>29 Have you been diverted to a diversion programme?</td>
<td></td>
</tr>
<tr>
<td>30 If yes, which diversion programme have you been diverted to?</td>
<td></td>
</tr>
<tr>
<td>31 If no, please give some reasons why you were not diverted</td>
<td></td>
</tr>
<tr>
<td>32 Were your parents/guardians or people you stay with involved in the diversion programme?</td>
<td></td>
</tr>
<tr>
<td>33 If yes, how would you rate the support you received from them?</td>
<td></td>
</tr>
<tr>
<td>34 How would you rate the overall benefit from the diversion programme?</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>------------------</td>
</tr>
<tr>
<td>35</td>
<td>Have you re-offended after attending the diversion programme?</td>
</tr>
</tbody>
</table>
|    | 1. Yes  
|    | 2. No  |
| 36 | If yes, what additional support would you have needed to avoid crime? |
|    |    |
| 37 | Do you have any suggestions for the government that can be used to support children in conflict with the law? |
|    |    |
| 38 | Do you have any other questions or additions? |
|    |    |

Thank you very much for your time and answers to these questions
ANNEXURE 2: LETTER OF CONSENT BY PARENT OR GUARDIAN

I.............................................................................................................................. (Parent/guardian)

of ........................................................................................................................... (Name of the child) hereby gives consent that the abovementioned child can participant in the post graduate research (MA SW) conducted by Ms. I. C. Feris. The research is to evaluate the system dealing with children in conflict with the law.

.......................................................................................................................... .......................................................... Signature of parent Date
Annexure 3: The semi-structured interview guide

**Interview Number....................................**

An evaluation of the child justice systems dealing with Children in Conflict with the Law

Good morning/afternoon....

My name is Celeste Feris. I am a student at the University of Namibia. I am conducting a research as part of my studies to evaluate the child justice systems dealing with children in conflict with the law. I would like to request you to participate in this study through an interview with me. I would ask you a few questions seeking your open view.

Your responses will remain confidential and will be used as part of an overall body of information as such it will not be possible to identify a particular response with an individual. Also you are not required to give details related to your personal identification such as your name.

During the interview, I will take some notes as a means to remember the discussion we will have. It is allowed for you not to answer a question that you feel uncomfortable with or to completely withdraw from the interview if you wish so.

Now I will ask for your consent, would you like us to have this interview? Yes / No

<table>
<thead>
<tr>
<th>Place of interview___________________</th>
<th>Date of interview_____________</th>
</tr>
</thead>
</table>

- Which ministry is responsible for affecting the child justice programme, and please motivate your choice?

<table>
<thead>
<tr>
<th>Record of actual responses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Question</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>What role does your ministry have to play in child justice?</td>
</tr>
<tr>
<td>Which Ministry should coordinate the activities of the Inter-Ministerial Committee (IMC) on child justice and please motivate your choice?</td>
</tr>
<tr>
<td>What policies, guidelines or procedures are in place to ensure the effectiveness of the IMC?</td>
</tr>
<tr>
<td>How often should the IMC meet and why?</td>
</tr>
<tr>
<td>What issues should the IMC prioritise and discuss during their meetings?</td>
</tr>
<tr>
<td>What do you know about the diversion options available for children in conflict with the law?</td>
</tr>
<tr>
<td>What is your opinion about the diversion programmes meeting the needs of the juvenile?</td>
</tr>
</tbody>
</table>
- How could the enactment of the Child Justice Bill protect the rights of children?

  Record of actual responses

- What is your opinion about the training of stakeholders?

  Record of actual responses

- What resources should be made available to meet the comprehensive needs of juvenile offenders?

  Record of actual responses

- Any ideas/suggestions?

  Record of actual responses

Thank you very much for your time and answers to these questions
Dear Mr. Katjiuanjo

Permanent Secretary
Ministry of Justice
Private Bag 13248
WINDHOEK

RE: RESEARCH RESPONDENTS

I am a MA SW (Masters of Social Work) student at the University of Namibia (UNAM). I am currently conducting research on the topic: A social work evaluation of systems dealing with children in conflict with the law in Namibia.

I want to schedule interviews with Ms. Gladys Pickering and Mr. Limbo on child justice. I will make use of a tape recorder and take narrative notes during the interview session. Please note that information obtained during the interview will be used for academic purpose only and will be treated confidential.

In the event of queries, feel free to ask or contact us:

- Dr. M. Grobler, 081-4319597/2063111
- Celeste Feris, 081-1226548/254490 (H)

Kind regards

Dr. M. Grobler
Moderator

Ms. Ingrid Celeste Feris
Researcher
Mr. Steve Katjiuanjo
Permanent Secretary
Ministry of Justice
Private Bag 13248
WINDHOEK

Dear Mr. Katjiuanjo

RE: RESEARCH RESPONDENTS

I am a MA SW (Masters of Social Work) student at the University of Namibia (UNAM). I am currently conducting research on the topic: A social work evaluation of systems dealing with children in conflict with the law in Namibia.

I want to schedule interviews with Ms. Gladys Pickering and Mr. Limbo on child justice. I will make use of a tape recorder and take narrative notes during the interview session. Please note that information obtained during the interview will be used for academic purpose only and will be treated confidential.

In the event of queries, feel free to ask or contact us:

- Dr. M. Grobler, 081-4319597/2063111
- Celeste Feris, 081-1226548/254490 (H)

Kind regards

Dr. M. Grobler
Moderator

Ms. Ingrid Celeste Feris
Researcher
Dear Adv. Imalwa

RE: RESEARCH RESPONDENTS

I am a MA SW (Masters of Social Work) student at the University of Namibia (UNAM). I am currently conducting research on the topic: A social work evaluation of systems dealing with children in conflict with the law in Namibia.

I need to interview the Prosecutor (respondents) of the C-court/juvenile court at the Katutura Magistrate Court. I will make use of a tape recorder and take narrative notes during the interview session. Please note that information obtained during the interview will be used for academic purpose only and will be treated confidential.

In the event of queries, feel free to ask or contact us:

- Dr. M. Grobler, 081-4319597/2063111
- Celeste Feris, 081-1226548/254490 (H)

Kind regards

Dr. M. Grobler

Ms. Ingrid Celeste Feris

Researcher

Moderator
Dear Mr. Salionga

Acting Chief Magistrate
Ministry of Justice
Private Bag 13248
WINDHOEK

Mr. H. Salionga

Dear Mr. Salionga

RE: RESEARCH RESPONDENTS

I am a MA SW (Masters of Social Work) student at the University of Namibia (UNAM). I am currently conducting research on the topic: A social work evaluation of systems dealing with children in conflict with the law in Namibia.

I need to interview the Magistrate (respondents) of the C-Court / juvenile court at the Katutura Magistrate Court. I will make use of a tape recorder and take narrative notes during the interview session. Please note that information obtained during the interview will be used for academic purpose only and will be treated confidential.

In the event of queries, feel free to ask or contact us:

- Dr. M. Grobler, 081-4319597/2063111
- Celeste Feris, 081-1226548/254490 (H)

Kind regards

Dr. M. Grobler

Moderator

Ms. Ingrid Celeste Feris

Researcher
Dr. P. Shipoh  
Permanent Secretary  
Ministry of Youth National Service, Sports and Culture  
Private bag 13391  
WINDHOEK  

Dear Dr. Shipoh  

RE: RESEARCH RESPONDENTS  

I am a MA SW (Masters of Social Work) student at the University of Namibia (UNAM). I am currently conducting research on the topic: A social work evaluation of Systems dealing with children in conflict with the law in Namibia.  

I need to select Youth Officers (respondents) in the ministry who are facilitating the Life Skills Program as a Diversion Program to juvenile offenders in Windhoek. I will make use of a tape recorder and take narrative notes during the interview session. Please note that information obtained during the interview will be used for academic purpose only and will be treated confidential.  

In the event of queries or questions, feel free to ask or contact us:  

- Dr. M. Grobler, 0814319597/2063111  
- Celeste Feris, 081-1226548/254490 (H)  

Kind regards  

Dr. M. Grobler  
Moderator  

Ms. Ingrid Celeste Feris  
Researcher
Dear Parents/Guardian

RE: PERMISSION TO INTERVIEW A MINOR IN AID OF RESEARCH

I am a MA SW (Masters of Social Work) student at the University of Namibia (UNAM). I am currently conducting research on the topic: A social work evaluation of Systems dealing with children in conflict with the law in Namibia.

I need to get permission from you as the guardian of the minor to interview him/her who came in contact with the criminal justice system. I will make use of a questionnaire during the interview session. It will take approximately 30-40 minutes to complete the questionnaire and I will assist in the completion.

Please note that information obtained during the interview will be used for academic purposes only and will be treated confidential.

In the event of queries or questions, feel free to ask or contact us:

- Dr. M. Grobler, 0814319597/2063111
- Celeste Feris, 081-1226548/2833179

Kind regards

Dr. M. Grobler
Main Supervisor

Ms. Ingrid Celeste Feris
Researcher
MINISTRY OF GENDER EQUALITY AND CHILD WELFARE

DIRECTORATE CHILD WELFARE SERVICES

Tel: +264 61 283 164
Fax: +264 61 229569
E-mail: rkamuingona@rngcw.gov.na

Private Bag 13359
WINDHOEK

Enquiries: Ms. R. Kamuingona
Date: 26 December 2011

Celeste Feris
P.O. Box 6208
Auspans Platz
Windhoek

Dear Madam

RE: RESEARCH RESPONDENTS

I hereby grant my permission that you can interview social workers as respondent in your MA (SW) research.

I hope you will share the findings with the Ministry.

Kind regards,

Ms. R. Kamuingona

Sirkka Ausiku (MS)
Permanent Secretary
13 October 2011

Mr. J. Shuuveni
Head of Office
Magistrates’ Court
WINDHOEK
MUNGUNDA STREET

Dear Sir

RESEARCH : MRS. C. FERIS : JUVENILE OFFENDERS

Attached hereto a copy of a letter, with reference 10/10/1(old) dated the 10th day of October 2011, regarding the above-mentioned research for your information.

Kindly hand over a copy of the said letter to Mr. Mayumbelo, the magistrate presiding in the Juvenile Court, to assist Mrs. Feris during an Interview on juvenile justice.

Yours faithfully,

H. J. HORN
CONTROL MAGISTRATE
WINDHOEK