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The Role of Psychologists in the Dispensation of the Criminal Justice System in Zimbabwe

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Abstract:

The role of psychologists transcends all spheres of the criminal justice system in Zimbabwe. The roles are conceived within the framework of the following range of issues: identification of criminals, interrogation procedures, courtroom discourse, judicial decisions, rehabilitation of criminals and in criminology and research. There are many branches of psychology whose contributions feed into the criminal justice system in Zimbabwe. This discourse highlights these and other issues in examining the role of psychologists in the dispensation of the criminal justice system in Zimbabwe. Since our criminal justice system is modelled along western criminal justice and delivery systems, examples from the international scene will be brought into spotlight. The paper will conclude by proffering recommendations envisioned to substantially improve the effectiveness and efficiency of the Zimbabwean Criminal Justice System and to align it with international best practices in the field of justice delivery.

Keywords: *Crime, criminality, criminology, criminal system, criminological psychology, forensic psychology, interrogation, justice eyewitness and courtroom discourse*

1. Introduction

The role of psychologists in the Zimbabwean Criminal Justice and Delivery System is comprehensive, varied in scope and fairly indispensable. In pursuit of this proposition the discourse that follows attempts to illuminate on courts, mental hospitals, police departments, prisons, rehabilitation institutions and even schools with a view to unravel the symbiotic relationship between psychology and law enforcement. Specific issues to be addressed are articulated in the section on terms of reference presented below. Nonetheless the criminal justice system in Zimbabwe and elsewhere in the world has two main functions: preventative and punitive [11]. The goal of the preventative function is to remove potentially harmful individuals from the community in order to protect the general citizenry. The punitive dimension concern itself with punishment of offenders to deter them from engaging in similar behaviour in future. In this connection cognisance should be taken of the fact that legal punishment is premised on three justifying philosophical assumptions of retribution, utilitarianism and reformation, [16]. However, the issue of whether punishment meted out satisfies the acceptable deterrence threshold remains an area of intense debate. Notwithstanding the above observations the discussion that is set to unfold attempts to proffer the roles played by the different psychology specialisms in the dispensation of the legal system in Zimbabwe.

2. Statement of the Problem

Serious outcries and reservations over the credibility of the criminal justice and delivery system have characterised the mainstream legal environment in Zimbabwe during the past two decades. This observation has also received resonance within the international community, when the need to restore rule of law (ROL) in Zimbabwe, grew even louder particularly during periods of political turbulence. The rampancy of massive corruption in the law enforcement system in Zimbabwe has left too many questions unanswered with regards to whether justice can be delivered to the generality of the ordinary citizenry. Amongst the reforms that can be conceived to bring normalcy and credibility to the Criminal Justice System in Zimbabwe is the suggestion to create a robust synergy between Psychology and all facets of Law. This paper then, is set to examine the role of Psychologists in their specialised domains in improving the effectiveness of the criminal justice system in Zimbabwe.

3. Purpose of the Paper

This paper intends to bring into spotlight the role of specialised branches of Psychology in the dispensation of the Zimbabwean Criminal Justice System. It attempts to showcase a matrix of both vertical and horizontal linkages with regards to the interface between Psychology and law in Zimbabwe. The ultimate goal then, is to highlight the positive outcomes of the interaction between the two fields: psychology and Law. In this endeavour specific issues were conceived to guide the discussion and these are presented below.

4. Terms of Reference

Key among the concerns of this discourse are the roles of psychologists as conceived within the framework of the following legal issues:

- Interrogation procedures.
- Judicial decisions and processes.
- Eyewitness testimony and identification of criminals.
- DNA exonerations.
- Courtroom discourse.
- Determination of insanity threshold.
- Determination of whether one is competent to stand trial or not.
- Resolution of child custody disputes.
- Apprehension of child abuse perpetrators.
- Assessment of dangerousness of criminals.
- Criminology and research.

5. Delimitations and Limitations of the Paper

This paper was prepared from the context of the Zimbabwean criminal justice and delivery system. It's anchored on the quest to review the contribution of psychology as a discipline to the dispensation of the justice system in Zimbabwe. Though the application of psychological principles to law in general may be universal, it must be recognised that the criminal justice system in Zimbabwe assumes particular and unique characteristics. Whilst confining itself to the role of psychologists in the Zimbabwean legal system, the paper does not address the following: the dispensation of civil courts, juvenile offending, offender profiling, mental disorders and crime prevention. The paper only attempts to showcase the interface between psychology and law from the Zimbabwean perspective. However, Magaisa & Munomo [16] sound a precautionary note by asserting that, crime cannot be explained solely by psychological theory. In view of the foregoing, generalizability of key observations emerging from this paper whether in part or in whole would have to be done with great caution [9].

6. Theoretical and Conceptual Framework

6.1. Major Psychological Perspectives and the Criminal Justice Delivery System

Magaisa & Munomo [16] present invaluable insights into the major areas of convergence between mainstream psychological perspectives and the criminal justice system in general. Psychological theory and research as Hudson [13] recounts have influenced inter alia, laws concerning discrimination, capital punishment, pornography, sexual behaviour, child abuse, and conditions for which individuals may not be held accountable for their actions. Hollin [12] further asserts that psychology has provided us with models, concepts and assumptions about human behaviour as an aid to understanding the crime phenomenon and its legal implications. To this end Taylor, Watton and Young [22] show that scientific psychology has added to, clarified and improved upon the common sense or naive psychology on which law has preceded in the past. The implication of the advent of scientific psychology as a faculty of knowledge is that legal practitioners must understand what psychology is and is not, as an integral part of their knowledge base and practice. Below are some insights from major schools of thought in psychology.

Farrington and Hawkins [10] indicate that, behavioural psychologists far from being impressed by mentalist events, are mainly concerned with the functional relations between the stimulus and response patterns. Thus, they will not make a recourse to neuropsychological structures of the brain to account for behaviour. Behavioural psychologists are relevant to legal concerns by explaining the causes of crime and antecedents to particular behaviours as applied to issues of punishment and correctional services. This group of psychologists underpin the environment as key to our conception of criminal behaviour. To this end they blame the environment for manifestation of all sorts of criminal behaviour. For instance, the high levels of poverty in most Zimbabwean communities are deemed to be inextricably linked to high crime prevalence rates in these localities in particular and the country in general.

According to Kapardis [14] cognitive psychologists tend to explain human behaviour from the framework of mentalist events. They further advance that human behaviour is shaped by mental processes of perception, memory, thinking and decision making. These psychologists have already interfaced with the criminal justice system in the fields of witnessing, confessions and jury decision making. However, these issues are given more detailed treatment later in the discussion.

Yet another distinct school of thought in psychology is the psychoanalytic domain of Freud Sigmund and his followers. This psychological perspective is premised on the view that behaviour stems from unconscious processes. They argue that unconscious motives rather than rational reasons underpin all behaviours. These psychologists as Wrightsman, Nietnezel and Fortune [27] posit, are concerned with dangerousness, aggressiveness and anxiety in so far as these constructs foment criminal behaviour. Psychoanalytical psychologists have been instrumental in the conceptualisation of developmental, clinical and educational specialisms. Thus, the thrust of developmental psychologists is to focus on the evolutionary staged aspects of development from birth to old age. Central issues of concern revolve around aspects such as bonding, separation, attachment and cognitive development. All these factors are relevant to the criminal justice system in so far as they relate to juvenile delinquency and settlement of child abuse and custody disputes.

In the struggle to understand criminal behaviour an appeal has also been made to personality psychologists. This psychological paradigm is concerned with the uniqueness of persons, whether in groups or as individuals. The thrust of this approach is underpinned by the inconclusive debate on whether to understand personality from the nomothetic approach or the idiographic approach. The nomothetic approach tries to establish the major dimensions of personality on which people may differ but which are present to some degree in everyone. By contrast the idiographic approach seeks to establish the uniqueness of an individual's personality [16].

Strube and Hartman [20] reveal that, clinical and counselling psychologists, though not medically trained but have a significant role in the dispensation of any criminal justice system. These psychologists are concerned with less forms of abnormal behaviour than are psychiatrists. However, both are engaged in the application of psychological principles at the point of breakdown, and with the diagnosis and treatment of emotional and behavioural problems. This category of psychologists is concerned with mental illness, drug addiction, marital and family conflicts.

Lastly educational psychologists have played an important role with regards to resolution of a host of children welfare cases in courts. Valuable inputs are drawn from educational psychologists when resolving cases involving child custody disputes, child abuse in its varied forms, drug abuse, child trafficking, victim friendly courts, foster parenting, child rape and improper association with minors. Within the Ministry of Primary and Secondary Education in Zimbabwe is a specialised division of School Psychological Services and Special Needs Education (SPS & SNE) that is manned by educational psychologists and is hierarchically structured from school to head office.

6.2. Vertical and Horizontal Linkages between Psychology and Law

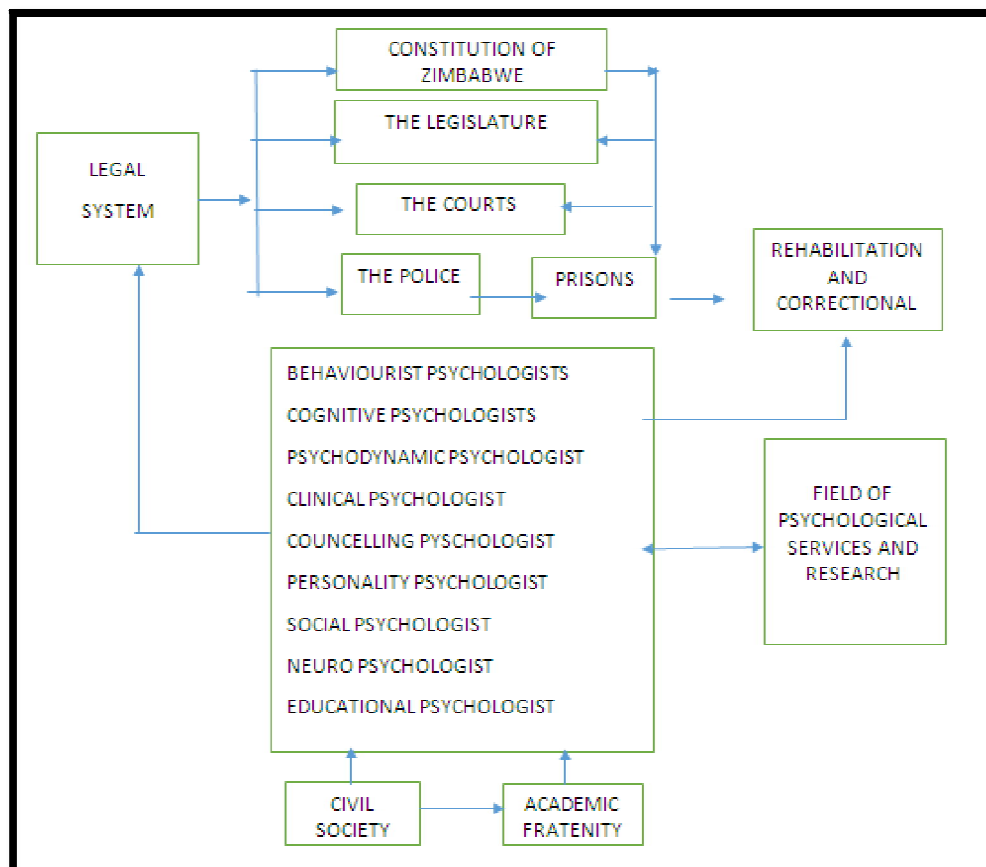


Figure 1: Adapted from Magaisa and Munomo [16]

The illustration above attempts to demonstrate the interweaving relationship between psychology and the varied components of the Zimbabwean criminal justice system. At the uppermost is the constitution of Zimbabwe, which is the supreme law of the land. Below the constitution is the legislature comprising the lower and upper houses of assembly. The mandate of the legislature is to make laws governing the operations of the legal system, *inter alia*. Laws so made should be consistent with the constitution of Zimbabwe. It is the same laws that in turn give parameters to the operations of various arms of the justice and legal system: the police, the courts and the prisons. According to the illustration above several psychological areas of specialisms provide invaluable inputs into the legal system including exerting influence at all levels of the law making and enforcement processes. Thus, the big box in the illustrative diagram encapsulates a whole host of psychologists who through services and research make indispensable contributions to the overall functionality of the Zimbabwe criminal justice system. Though this discourse confines itself to the field of criminology, the same courts of law also deal with civil and other issues concerning the welfare of the general citizenry and to which the same psychologists play a tremendous role. Vertical linkages are depictable as we see how civil society and the academic fraternity connect with the police right up to the constitution. Equally discernible are the horizontal linkages as we see the legal system connecting with the body of psychologists, civil society and the academic fraternity. From the foregoing the interface between psychology and law becomes apparent. The next section extends the discourse further to show the role of psychologists in the dispensation of the Zimbabwean criminal justice system in greater detail.

7. Main Discussion: The Role of Psychologists in the Dispensation of the Criminal Justice System in Zimbabwe

The take-off point is to look at the role of Psychologists in the initial aspect of the criminal system: interrogation. Williams [26] points out that each nation's criminal system tends to emphasize either an adversarial approach (attempting to prove the guilty of the person accused of crime) or the equitorial approach (Attempting to discover the truth). Social psychological research findings have resulted in the recommendations that a credible criminal justice system should be based on the truth rather than a confession. Similarly, the Zimbabwean criminal justice system would be fairer and just if it adopts this procedure of interrogation. For example, there are many cases in which suspects confess to have committed crime under duress but only to deny the charges in court.

Baron and Byrne [3] posit that pre-trial publicity in the media can shape public opinion including the opinions of those who will serve as jurors. Negative media coverage yields negative first impressions. For example, the publicity around O. J. Simpson, in the United States was so intense. O. J. Simpson was accused of murdering his ex-wife and her friend. Public opinion was so convinced that he was guilty but contrary to public expectations O. J. Simpson was eventually acquitted. In minimising the effects of pre-trial publicity social psychological researchers have made extensive investigations. The Zimbabwean criminal justice system is no exception and should draw useful insights from such research. For example, Moran and Cutter in Blackburn [8] surveyed potential jurors and found that exposure to news about a crime and about the accused criminal was associated with potential jurors reaching the pre-trial conclusion that the defendants were in fact guilty. Other research also indicates that the greater the publicity about the crime, the more prone are jurors to convict who ever has been accused of committing it [15].

One important area to which Psychological research has contributed significantly in the criminal justice system is the improvement of the validity of eye witness testimony. Eye witness testimony is the pillar of the criminal system in Zimbabwe. Even when the eye witness is the victim errors can occur. For example, the Washington times of 2 November [24] reports of a woman who was raped once but ended up identifying more than two suspects. Munsterberg's experiments with Harvard undergraduate students led him to the conclusion that observers to an unexpected and disturbing event leave out or falsely remember about half of what occurred. Munstenburg [19] recommended the use of hypnosis and police line-up procedures as techniques for improving validity of eye witness testimonies, but these too have their pitfalls.

In Zimbabwe eye witness is a critical aspect of the courtroom discourse. Magaisa and Munomo [16] also reveal that only 25% of eye witness seems to be correct. It follows that a very big proportion of convicts are sent to jail on the basis of eyewitness testimony and that most of this EWT is flawed. Mistaken identification by eyewitnesses was the primary evidence used to convict innocent people whose convictions were later overturned by forensic DNA tests. Thus, in recent times DNA tests have been found to be exonerating innocent individuals wrongly convicted with eye witness testimony. According to Bartol and Bartol [4] the conducting of DNA tests is a function of forensic psychology and a product of scientific psychological research. It may be necessary to focus on why there has been a tendency, worldwide to rely exclusively on eyewitness testimony. The seemingly high correlation between confidence of eyewitnesses and accuracy of testimony tended to confound the situation before the use of DNA tests [18]. In some way research had earlier on predicated a positive correlation between confidence and accuracy. Nonetheless testing for accuracy of an eyewitness becomes key to determining whether or not the correct suspect is to blame for the occurrence of a crime. Eyewitnesses depend on old and new memories. Like physical evidence, memory trace evidence can be contaminated, lost, destroyed and made otherwise to produce results that can lead to incorrect reconstruction of the event in question [5,25,28]. In the light of these psychological research findings, the criminal justice system in Zimbabwe which relies excessively on eyewitness testimony needs a clear paradigm shift to align it with most recent developments and practices in criminology on the international arena. For instance, a study of DNA exonerations by the Innocence Project, revealed that 82% of wrongful convictions rested, at least in part, on mistaken identification by the eyewitness or victim [2].

Carson [7] shows that, the role of psychologists in the criminal justice system in Zimbabwe and elsewhere in the world also come into spotlight in the courtroom in issues that affect the verdicts preferred against the accused persons. From the Zimbabwean perspective, in the courtroom people respond to one another on the basis of such factors such as race, gender, physical attractiveness, party affiliation, religious orientation and socio-economic status. In one way or another these factors influence the verdict. However, this is not unique to Zimbabwe alone, in the United States of America, African American defendants have been generally found to be more likely than whites to be convicted of homicide and to receive the death penalty [1,17,23]. Psychological research has also indicated that, when defendants do not speak English and testimony must be translated they are more likely to be found guilty than if precisely the same testimony is simply given in English. Insights from these psychological research findings could be basis for overhauling the Zimbabwe criminal system. For instance, members of some political parties commit criminal acts with impunity. The call from the international community for the authorities in Zimbabwe to restore rule of law (ROL) goes to demonstrate that our criminal justice system is not credible but biased and skewed in favour of some party groups. Still in the court room, psychologists could play a part in determining the state of mind of defendants either at the time of committing crime or a precondition before one stands for trial. Sue, Sue and Sue [21] contend that criminal law recognises that some people lack the ability to discern the ramification of their actions because they are mentally disturbed. Although they may be technically guilty of a crime, their mental state at the time of the offence exempts them from legal responsibility. Thus, some criminal defendants have a history of psychiatric illness. However not all mental disorders meet the legal threshold for insanity. In Zimbabwe and elsewhere in the world, to decide whether or not the defendant meet the legal insanity threshold, the judge relies on the psychologist's evaluation. For example, in cases involving rape, murder and sexual abuse perpetrators are usually subjected to psychological evaluations to find out if instantly was or was not the factor. However, one of the public's greatest fear is that innocence by reason of insanity might be used by guilty individuals to escape criminal responsibility [21].

Another area where psychologists play a role in the criminal justice system in Zimbabwe is when the need to determine the competency of the defendants to stand trial arises. This aspect has three facets. Essentially the psychologist must ascertain whether the defendant command a factual understanding of the proceedings, is able to consult with his or her defence attorneys and whether he or she has a rational understanding of the proceedings. However, incompetency to stand trial does not only arise from the mental state of the defendant. Poor physical health may also make a defendant unfit to stand trial. For example, the legal proceedings against the former president of Zambia F. Chiluba were postponed on the grounds that the defendant was in poor health.

Psychologists whether operating directly in the criminal justice system or in health institutions or in private consultant's companies, interface extensively with the law in general. In child custody disputes particularly following a divorce both parents seem to be equally qualified to assume custody of their children. However, in resolving child custody disputes, psychologists are best positioned to determine who between the contestants is mentally sound to assume custody of children among other considerations [16]. The rise in divorce cases in Zimbabwe has thus highlighted the importance of psychologist's role in resolving child custody disputes. Psychologists' role however extends to cover assessment of foster parents in adoption cases. The responsibility to arbitrate on competing interests to adopt orphans and dumped children often falls under the purview of social psychologists.

Educational psychologists play a critical role in collecting evidence in cases involving child sexual abuse. Thus, educational psychologists work in conjunction with police and social welfare officers in collecting and ensuring that perpetrators of child sexual abuse are brought to book and that victims receive psychosocial support and rehabilitation. In Zimbabwe's criminal justice system psychologists can play a role in risk assessment in courts, mental hospitals police departments, prisons and even in schools particularly of the mentally challenged. Psychologists for example assist with risk assessment where it is deemed risky to release a dangerous prison inmate back into the community [6,8]. In some cases, bail is denied to persons perceived dangerous to the community on the recommendations emanating from psychological evaluations. For example: murderers, rapists, and child sexual abusers need very comprehensive pre-release assessments for the reason that their premature release may pose a disaster to society.

8. Summary, Conclusion and Recommendations

8.1. Summary

This paper has attempted to bring into clear perspective the roles psychologists could play in Zimbabwe's criminal justice system. It has emerged that the criminal justice system could benefit from the many specialised branches of psychology: forensic psychology, social psychology, educational psychology, criminological psychology. The spheres of the criminal justice system where psychologists can play a role were identified as: interrogation techniques, reducing the impact of pre-trial publicity, improving validity eye witness testimony, control of bias and prejudice in jury decision making process, determining competency to stand trial, determining innocence by reason of insanity, resolution of child custody disputes, and generating literature for pre-service and in-service training of officers operating in all arms of the criminal justice system in Zimbabwe.

8.2. Conclusion

The roles psychologists could play in Zimbabwean criminal justice system seem to be inexhaustible. However, the benefits outlined above and many others not explicitly enumerated demonstrate the fundamental contribution psychology has made to our conceptualisation of crime, criminal behaviour and the dispensation of the justice system in Zimbabwe. As demonstrated in the foregoing discourse, the synergy between psychology and law in Zimbabwe has evolved over time and epitomises the thrust of research in the field of psychology as social science. Nonetheless the criminal justice system in Zimbabwe is yet to fully embrace the legal implications of the scientific gains of research in social sciences as it grapples to modernise itself.

8.3. Recommendations

The preceding discourse has yielded some recommendations, which are envisioned to significantly improve the credibility and lustre of the criminal justice and delivery system in Zimbabwe.

- The criminal justice system in Zimbabwe should attune itself more to the crime preventative dimension than concentrating on the highly expensive punitive component, particularly against the bedrock of a poorly performing economy.
- Given the pervasive influence of various psychological specialisms across the justice system, the training of police, judicial and prison officers should articulate a proportionate body of psychological theory and practical knowledge.
- The observed functional synergy between psychology and law also inversely enjoins psychology scholars to engage in constitutional studies for them to contribute more meaningfully in the legal fraternity.
- The criminal justice system in Zimbabwe should act in tandem with the call to make a paradigm shift from the adversarial to the equistatorial approach in its dispensation.
- Examples are abounded to demonstrate the adverse influence of pre-trial publicity particularly on sensitive cases that attract national interest. In this regard the state should regulate the media houses and avoid instances where one is convicted before trial due to pressure of public opinion that may have a bearing on the eventual jury decisions.
- The use of hypnosis and police line ups have been recommended as strategies for improving the credibility of eyewitness testimony. In addition, mechanisms to test the accuracy of EWT must be put in place, to avoid the needless conviction of innocent defendants.
- Equally compelling is the need to embrace DNA tests and depart from sole reliance on eyewitness testimony. In Zimbabwe and elsewhere in the world many individuals have been wrongly obligated to maintain controversial siblings in the absence of paternity tests.
- The criminal justice system in Zimbabwe should endeavour to minimise the influence of the following factors in jury decision making: race, gender, physical attractiveness, party affiliation, religious orientation, socio-economic status and language background. These factors if unchecked tend to confound objectivity in jury decisions.
- It is also a categorical imperative to bolster the role of psychologists in the following spheres of civil and criminal justice system: child custody disputes, child abuse, foster parenting, child adoption and victim friendly courts (VFC).
- Entrenching continuous research in all the institutionalised disciplines of psychology remains a central obligation to the promotion of the interface between psychology and law in Zimbabwe.

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