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## **Juvenile Justice System and Social Work in Botswana: An Appraisal**

*Taolo Boipuso Lucas\**

### **Abstract**

The paper discusses Botswana's juvenile justice system and locates the role of social work within the same system. The provisions of the Children's Acts of 1981 and 2009 that established special legal provisions and structures for dealing with juvenile offenders are scrutinized with a view to show how the juvenile justice system seeks to secure the best interest of young offenders. The paper in particular discusses sentencing options for children and young persons who have committed crimes. Particular attention is paid to probation as a sentencing option in Botswana. It shows how the practice of probation interacts with social work practice. The school of industry which has been established to provide technical and vocational skills to juvenile offenders is also discussed and the role of social work in that institution is explored. The treatment of juveniles committed to prison sentences and their interface with social work is also interrogated. It is the argument of this paper that Botswana's juvenile justice system is profoundly underdeveloped. Structures, infrastructure and services associated with juvenile justice are either inadequate or non-existent. Probation services are provided by untrained personnel; probation rules and regulations are outdated; infrastructure such as attendance centres are not available and juveniles committed to prison sentences are not given specialised care and treatment consistent with their age and level of maturity. It is imperative that Botswana's juvenile justice system is aligned to international juvenile justice instruments that seek to promote the best interest of young persons who are in trouble with the law. As it turns out the 2009 Children's Act falls far short of filling the yawning gap in Botswana's laws relating to children in conflict with the law.

### **Introduction**

The introduction of a law specifically for the care and protection of children in Botswana in 1981 ushered hope that the best interest of the child would be served in the country. The law explicitly sought to protect children from all forms of abuse, exploitation and neglect while at the same time emphasizing the criticalness of achieving juvenile justice. The 1981 Act recognises children or juveniles who are in trouble with the law as a special population group deserving special care, protection and treatment. It views young people to be more amenable to reform, rehabilitation and positive behavioral change compared to adults. For this reason the Act establishes children or juvenile courts that have special rules and regulations designed to protect the identity, integrity and psychosocial welfare of the young person. The 2009 Children's Act was an attempt to improve on the flaws and deficiencies of the 1981 Act. In particular, the latest Act sought to incorporate the provisions of the Convention on the Rights of the Child of 1989.

Botswana's juvenile justice system needs urgent reform and rehabilitation. All the requisite structures, infrastructure and personnel should be developed consistent with the original objectives of rehabilitation and reintegration of the young offenders into mainstream society. In doing this, due attention should be paid to the principles and provisions of various international instruments that seek to promote juvenile justice. In particular, the country's legal and correctional services infrastructure should be reviewed to entrench alternative sentencing options such as probation and other community oriented sentences. Crime prevention should also be institutionalised by empowering families, communities, school systems and the social services.

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### **Juvenile Justice in Historical Perspective**

Juvenile justice is a matter that has attracted interest for many years around the globe. Prior to the nineteenth century, children were subjected to the same laws as adults. They were believed capable of both the act and intent of committing crimes and as such eligible to the same harsh punishments as adults. Hale quoted by Morris and Giller (1983:5) argued that:

Experience makes us know that the legendary murders, bloodsheds, burglaries... burning of homes, rapes, chipping and counterfeits of money are committed by youths above fourteen and under twenty one; and if they should have impunity by the privilege of such their minority, no man's life or estate could be free.

Criminal capacity and responsibility was thus not determined by age in the early years. It was only during the progressive era of the 1800s that there was a shift of thinking to appreciate young persons as deserving special care and protection because of their age. Rigorous debates and advocacy for children was placed at centre-stage in the mid 1800s and on 1 July 1899, the first juvenile court was established in Illinois (United States of America). A number of issues emerged during that time. First, the idea of state intervention to protect children emerged. Second, civil jurisdiction eliminated the notion that children are capable of criminal intent. Third, professional partnerships to alleviate children's suffering took shape, and fourth the foundation for enacting children specific legislation was laid. In Britain for example the Children's Act was enacted in 1948 and later it was the Children and Young Persons Acts of 1963 and 1969. In the United States of America, the Juvenile Justice and Delinquency Prevention Act was enacted in 1974 (Schwartz 1989).

At an international organisational level, conceptualisation of global children's rights dates back to the Geneva Declaration of 1924. The five point text was drawn by the then Save the Child Fund International Union and was later taken on board by the League of Nations. It was expanded in succeeding years to form the basis of current international instruments. They include the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985), United Nations Guidelines for the Prevention of Juvenile Delinquency (1990), United Nations Standard Minimum Rules for Non-Custodial measures (1990), United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and the Convention on the Rights of the Child (1989).

### **Botswana's Juvenile Justice System: An Overview**

#### *The 1981 Children's Act*

Botswana's juvenile justice system was born of the Children's Act of 1981. The Act sought to provide a comprehensive piece of legislation for the care and protection of children in need of care and the treatment of juvenile offenders. It sought to prevent the occurrence of juvenile delinquency and provide a humane and empowering environment for safeguarding and protecting the rights of juveniles who have committed offences. The Act in most of its provisions emphasized rehabilitation, and behavioural change of juvenile offenders as opposed to retributive punishment.

To set it apart from adult criminal proceedings, Section 22 and 23 of Part VI of the Children's Act established a juvenile court with special processes and procedures. The juvenile court which was a magistrate or customary court sat informally in a room that was not used for normal court proceedings. To engender a relaxed atmosphere, and an environment free from possible ridicule, as well as injury of self-esteem, public attendance of juvenile hearings was prohibited. According to Section 24 of the Act only officers of the court, parents or guardian of the offender, social welfare officer or other persons that the court may authorize were allowed to attend the proceedings. In a similar spirit and possibly to avert stigmatisation, victimisation and humiliation of the juvenile offender, the Act also prohibited the publication in any media of the details of the young offender. These provisions were retained in the 2009 Children's Act.

According to the 1981 Children's Act, a report by any person and the subsequent establishment of a prima-facie case against a juvenile by a commissioner of child welfare was sufficient to invoke the jurisdiction of a juvenile court. The commissioner would then cause the probation officer to enquire and report to him on the general conduct, home environment, school records and medical history of the juvenile alleged to have committed an offence. After consideration of the report from the probation officer, the commissioner could declare the child as a child in need of care or he may commit him/her to a juvenile court for trial.

The case involving a juvenile could, according to the 1981 Children's Act be disposed in any of the following ways, a) dismissing the charge; b) discharging the offender on entering into a recognizance; c) placing the offender on probation for a period of not less than six months or more than three years; d) sentencing the offender to a school of industries for a period not exceeding three years or until he attains the age of 21 years; or e) ordering the parent or guardian of the offender to pay fine, damages or costs (Republic of Botswana 1981). In all its provisions, the 1981 Act does not include imprisonment as a sentencing option for juveniles. It is, however, common cause that juveniles who committed serious crimes which falls outside the jurisdiction of the customary and magistrates were sentenced to terms of imprisonment by the High Court. The death penalty, however, could not be imposed on anyone below the age of 18, instead a child whose crime attracted a death penalty was detained at the president's pleasure at such a place and for such a period that the president deemed desirable. Such a place in the absence of suitable facilities was the prison. An issue of significance and one that was worrisome, as it was inconsistent with the spirit of the Children's Act was that the High Court did not qualify to sit as a juvenile court and as such in the exercise of its powers it was not compelled to mobilise remedies contained in the Children's Act. In this regard the rehabilitative, empowerment and behaviour change spirit of the Children's Act was violated. The 2009 Children's Act addresses this omission.

To facilitate the implementation of the 1981 Act, some infrastructure was envisaged. In this regard, the act proposed that the 'the Minister may establish and maintain any, a) a place of safety for the reception of children or juveniles under this act; b) children's home for the reception, care and upbringing of children; c) youth shelter for the reception of juveniles who have been arrested and are waiting to appear before a juvenile court; d) school of industries for the reception, care and training of juvenile delinquents; e) attendance centre for the training of juvenile delinquents; and f) such other place as the Minister may consider necessary for the reception of children or juveniles under this Act (see Section 34). Three decades later, most of the facilities proposed in the Children's Act have not been put in place. The only facility that has been established is the school of industry which was set up in 2002, twenty years after the enactment of the Act. The absence of requisite facilities has meant that the courts, the police, probation officers and social workers have found it difficult to implement or satisfy the provisions of the Act. The quality of service and the degree of protection of juveniles was thus compromised or curtailed in some situations.

#### *The 2009 Children's Act*

The new Children's Act was passed through parliament in Botswana in 2009 following the ratification of the United Nations Convention on the Rights of the Child of 1989, Botswana's ascension to the said convention in 1995, Reports on the United Nations Committee for the Convention on the Rights of the Child, Review of the 1981 Children's Act commissioned by the Ministry of Local Government and feedback from stakeholders. The Act in its preamble explicitly declares that it is 'an Act to make provision for the promotion and protection of the rights of the child; for the promotion of the physical, emotional, intellectual and social development and general well-being of children; for the protection and care of children; for the establishment of structures to provide for the care, support, protection and rehabilitation of children; and for matters connected therewith'.

The 2009 Children's Act seeks to solidify and consolidate the law pertaining to children. It intends to address the weaknesses and perceived deficiencies of the earlier Act. Most importantly, it seeks to align the Act with provisions of the Convention on the Rights of the Child. The 2009 Act is more elaborate and contains sections that were not available in the 1981 Act. In particular, the 2009 Children's

Act has sections on foster care, child trafficking and abduction. Additional structures namely the Village Child Committees, Children's Consultative Forum and the National Children's Council are envisaged under the Act. There are also schedules associated with the same structures.

In respect to children in conflict with the law, Section 82 (1) of the 2009 Children's Act exempts all children under 14 years from criminal responsibility unless it can be proved that at the time of committing the offence the child had capacity to know that he or she ought not to do so. According to the 2009 Children's Act offences related to children shall be reported to the police who upon establishing that prima facie a crime has been committed will cause the social worker to conduct an assessment into the personal circumstances and situation of the child. The social worker will produce a report wherein they will recommend what they consider to be the best possible remedy for rehabilitating the child. The police officer shall after completion of the investigation hand the docket to the director of public prosecutions who shall mobilise appropriate processes to allow the children's court to hear the matter.

Unlike the 1981 Children's Act, the new Act entitles parties to the proceedings of the children's court legal representation of their choice at their own expense. Where the persons involved in the proceedings of the children's court cannot afford legal representation, the state will provide a counsel according to Section 95 (1) and (2) of the 2009 Children's Act. In situations where a child under 18 is child jointly with a person over 18 years, the child shall be tried separately or where it may not be feasible the case shall be heard in a children's court. A child shall be cross-examined in the absence of the perpetrator of the offence. Cases involving children may be disposed by placing the offender on probation or sending the offender to the school of industries. Other ways of disposing juvenile cases that are not explicitly found in the 1981 Children's Act include sending the child for community service for such period as the court considers appropriate; sentencing the child to corporal punishment or sentencing the child to imprisonment. Where corporal punishment is meted out as a sentence, the maximum number of strokes will be six and such punishment shall be administered as per the provision of Section 305 of the Criminal Procedure and Evidence Act as read with section 28 of the Penal Code. A child charged with murder shall be tried in the High Court which sits as a children's court and such a child if found guilty can not be sentenced to death under any circumstance. Children charged with other capital offences other than murder shall be sentenced to imprisonment as per the provisions of the Penal Code. Child repeat offender is also liable to imprisonment of a period that the court considers appropriate. Like the 1981 Children's Act, the 2009 Act protects the identity of children appearing before the children's court (see Section 93). Provisions for appeal of decisions of the children's court are also provided in the new Act. The 2009 Children's Act explicit reference to the use of corporal punishment and imprisonment as sentencing options for juveniles is rather anomalous given the spirit of international instruments relating to the treatment of juvenile or child offenders. The absence of clear guidelines on the use of probation and community service for juvenile rehabilitation remains a deficiency that requires urgent attention.

### **Juvenile Justice, Probation and Social Work**

According to Section 32 (1) of the Children's Act of 1981 and Section 91 of the Children's Act of 2009, the 'minister shall appoint such persons as may be considered necessary who are qualified by experience in matters relating to social welfare and of good character to be probation officers'. Probation officers are officers of the court and their functions under the 1981 Children's Act were specified as including a) to enquire and report to the juvenile court upon i) the general conduct, home environment and the character of a child or juvenile on trial before that court, and ii) the cause and circumstances contributing to the delinquency of the child or juvenile; b) to devise and carry out measures for the observation and correction of tendencies to delinquency in children or juveniles, and for the discovery and removal of any conditions causing or contributing to juvenile delinquency; c) to supervise or control any child; juvenile or other person convicted of an offence and placed under the supervision of a probation officer; and to perform such other duties as may be conferred on them under the Act or regulations made thereunder. Section 91 (3) of

the 2009 Act, provides for additional functions of probation officers which include making an assessment of the risks posed by the child offender to the community; supervising children sentenced to community service and making arrangements for the release, from prison, of any child sentenced to imprisonment and to assist in the resettlement of that child in the community. The 2009 Children's Act compels the court to explain the content of the probation order as well as spell out the implication for non-compliance to the offender. Copies of the same order are made available to the offender; the probation officer responsible for the supervision of the offender and the person in charge of any institution in which the offender may be required by the order to reside.

Both Acts further propose the appointment by a minister of a probation committee comprising of such number of persons as the minister may deem desirable. Such persons are chosen with due regard to their experience and character and they shall review the work of probation officers and perform such other functions in connection with probation as may be prescribed. Since 1981 though, such committee has never been put in place by successive ministers. Whether that committee will ultimately be put in place is a matter that can only be left to time.

#### *Probation: Rules and Regulations*

To supplement the Children's Act, the Social and Community Development division of the Ministry of Local Government, has evolved some probation rules and regulations which spell out and expand on the duties of probation officers as stipulated in the Act. The rules and regulations also contain information about the court order that should be explained to the probationer. Notable duties of the probation officer as elaborated in the probation rules and regulations include to advise, assist and befriend the probationer and when necessary endeavour to find him employment. In this regard, the probation officer shall as far as is possible secure the cooperation and assistance of voluntary, social or religious workers and agencies. The rules and regulations further stipulates that in the case of young persons the probation officer shall Endeavour to secure their correction with some juvenile organisations such as Boy Scouts, Girl Guides, Boys and Girls Clubs, Brigades and other similar organisations. Other duties will include but not limited to facilitating collection of fines and submitting them to court; maintaining all useful records related to probationers; reports to court on any matter the court may demand at periodic intervals and facilitating transfer of juveniles to other districts or areas when such need arises. As for the probation order, there is a standard probation order prescribed in the probation rules and regulations, that state what the probationer is expected to do and not to do.

Probation rules and regulations provide useful pointers on the duties of a probation officer. It also touches, though not in any helpful detail, on the conduct of a probation officer. For instance, there are two issues related to the conduct of probation officers in the rules and regulations. First is that the probation officer shall not wear any uniform or badge destructive of his office and secondly a probation officer shall at all times refrain from borrowing or receiving from or lending to a probationer any item of value or money. It would have been useful if the document could have clearly spelt out the principles, values and ethical conduct expected of probation officers.

The probation rules and regulations could have been useful if they explained the various types of reports that may be expected from the probation as well as possible content of such reports. In addition the section on orders should have specified the possible orders that the probation may deal with and further explain such orders for the benefit of the probation officer. The section on orders, one can safely say that in tone and content, is poorly drafted. The language is crude and abrasive. Witness what it says among other things and do not forget, if one is foolish enough to misbehave and are sent to prison, you bring distress and trouble on your innocent parents and or wife and family and friends as well as shame on yourself. The use of such terms as 'foolish' is not consistent with respect for another person. The use of a standard order on probationers as contained in the rules and regulation is also problematic as it tends to simplify the complexity and differences of probationers.

*Probation and Social Work Practice*

It is evident from the foregoing arguments that probation work in Botswana is largely underdeveloped. The personnel and the structures are not in place. There is also insufficient guidance on the processes to be followed in probation practice. In this regard the role of social work in probation remains largely ambiguous. Social workers are not trained to carry out probation work. Formal training in probation is limited to a one semester course for social work diploma students and short in-service courses organised by the Department of Social Services in the Ministry of Local Government. The absence of legislation or clear guidelines that specifically deal with probation as a sentencing option and rehabilitation measure renders ineffective the role of social workers and other significant stakeholders in probation practice. Social workers have repeatedly expressed their incompetence in probation work. In most cases officers may have difficulty in writing proper reports for court. In some instances, orders are not properly understood or appreciated. Probationers are not followed as social workers have other primary responsibilities that take away their time and attention. Courts are not given and they do not demand progress reports.

To further show some indifference to probation by the authorities, the minister is expected to appoint persons with a proven track record and experience as probation officer but as the situation stands all social welfare officers have been gazetted as probation officer regardless of their character or experience as required by law. In the circumstance social welfare officers who may not possess adequate skills, knowledge and experience continue to serve as probation officers with possible detrimental consequences for such juveniles. It is also proposed in the Act that the minister may appoint a probation committee comprising of persons with good character and relevant experience to review the work of probation officer. The proposed committee has never been set up and this would mean the work of probation officers is not being reviewed. The likely consequence is poor quality service, inefficiency, stagnation and possible harm to the probationers.

**Juveniles in Prison**

As indicated elsewhere in this paper, there are some juveniles languishing in Botswana prisons either for lack of suitable or appropriate facilities or because of the inconsistency and contradictions in the country's laws. The Department of Social Services (2009) recorded 191 children in Botswana prisons between the ages of 14 to 21. 187 were boys while 4 were girls. The boys were accommodated at Gaborone Boys Prison and Moshupa Detention Centre. The girls do not have special facilities and they were housed with women prisoners. The Department of Social Services further reveals that offences commonly committed by children include 'assault, arson, attempted murder, attempted rape, rape, murder, theft of goods, vehicles, animals, unlawful wounding and common nuisance' (2009:49). The sentences vary greatly. According to Gaogane's most of the inmates up to 70 per cent have been sentenced to prison sentences ranging from five years to 17 years (Gaogane 2001). These sentences would mean that these young people spend considerable amount of their life in prison, socialised into the prison culture and possibly imbibing criminal values and attitudes.

There are no elaborate rules and regulations for the treatment of juveniles in prison. The Prison regulation section 5 (1) state thus in relation to young offenders:

with a view to facilitating the training of prisoners and minimizing the contamination, prisoners shall be classified having regard to their age, character, and previous history in the following classes – a) Young prisoner's class which shall consist of convicted prisoners under the apparent age of 18 or young convicted prisoners of whatever age who in the opinion of the officer in charge should not, having regard to their age and character, be classed with adult prisoners (Republic of Botswana 1980).

In addition to these rules, there is a handbook produced by the Department of Prisons and Rehabilitation Services that spells out the various punishable misconduct or offences within the prison set up. The offences

that include mutiny, escape, assaulting a prison officer, taking hostages and possession of weapons with intent to escape may attract punishments that may include solitary confinement, a reduced diet, forfeiture of remission, privileges or earnings (Department of Social Services 2009)

Rehabilitation is a part of the prison set up and among other things it include skills training, character building, anger and stress management, counselling, religious education and distance learning. A disturbing revelation from Gaogane (2001) is that of the rehabilitation services made available at the country's prisons. 75 per cent of the sample young offenders expressed disinterest in taking part in such activities. Inmates also asserted that when they experienced problems, they were reluctant to source professional expertise from social workers. Only 7.5 per cent of the respondents in the study would seek social work help if confronted by problems. 45 per cent preferred to talk to other inmates about their problems. Others would prefer to talk to prison officers, parents and other indicated that they would talk to anyone. The significance of this finding lies in the fact that social workers who are supposed to provide guidance and counseling services for persons experiencing psychologically challenging situations are not utilised. Other challenges identified recently by the Department of Social Services (2009) include lack of suitable facilities and staff to carry out the rehabilitation activities.

### **The School of Industry and Social Work Practice**

The school of industry is one facility envisaged by the Children's Act when it was enacted in 1981. The facility named Ikago Centre was established in 2001. It has an enrollment capacity of 100 trainees. The purpose of the Centre is to provide 'juvenile offenders with an opportunity to develop themselves socially, emotionally, and academically through the social and technical programmes that the school offers' (Ministry of Local Government undated). As indicated, the Centre has academic-technical component as well as the social component. The social component is the one that is of particular interest to this section of the paper. The stated objectives of the social component of the Centre with regard to trainees are to facilitate insight, self-control and maturity; to provide support and counseling in response to trainees' needs; to enhance positive relations between trainees, families and significant others; to help inmates develop social skills; and to facilitate a smooth transition from an institutional environment back to society. The social component has been crystalised into four operational stages being assessment; rehabilitation; re-integration and post release. It is also the duty of the social component of the programme to raise public awareness of the activities of the Centre through interaction with different stakeholders.

The social component is spearheaded by social workers in the Social Welfare Department of the Centre. The work of social workers is to provide intense counselling and guidance to the trainees. Social workers are also expected to make a comprehensive social assessment of all trainees and evolve a suitable care plan for them. As part of the broader rehabilitation programme social workers also provide group sessions to assist trainees to develop social and interpersonal competence. The group sessions cover a wide range of issues which include; introduction of the school; knowing oneself; offending behaviours modification; goal setting; decision making skills; interpersonal relationships; sex education; HIV/AIDS education; drug and substance abuse; self concept; peer pressure; role modelling; life skills; life education; world of work; social relationships; communication skills and work and leisure. Social workers in the Centre continuously monitor the progress of each trainee and suggest remedies on an on-going basis. It is hoped that through these efforts trainees would emerge out of the Centre fully rehabilitated and they would easily be re-integrated into the society.

The school of industry is a relatively new development in Botswana and not much in the form of evaluation of its effectiveness has been done. However, Mokgachane (2004) conducted a study to assess the attitudes of trainees to the school programmes. Overall the trainees appreciated the services rendered by the school. They, however, expressed dissatisfaction with the security arrangements which they found oppressive. In so far as social work interventions are concerned, the trainees expressed a high level of satisfaction. In this regard, Mokgachane wrote:



The respondents said a lot of things concerning the social welfare programmes carried out by social workers. Firstly, they indicated that the social workers played a pivotal role in the SOI, and “without them, the SOI would be a prison”. They related some of the varied ways that the social welfare programme helped them such as the orientation upon their arrival, guidance and counseling, teachings such as mannerisms, assisting in times of stress (and home sickness), promoting positive interactions among them and protection from abuse. They also stated that the programmes helped them to build their characters and some indicated that they were gradually improving through the social work interventions regarding the key issues in their lives.

Comments from trainees of the school of industry show that social work intervention is well received and it is seen as being central to the operations of the school. In actual fact, trainees, credit social work programmes for the positive behavioural change that they experience at the school. An interesting point is one where the trainees assert that social work interventions make the school of industries different from prisons. This is a positive endorsement of the efficacy of social work in providing a humane and hospitable environment for young offenders.

### **Botswana’s Juvenile Justice System in Light of International Trends**

To fully appreciate the broad dynamics of Botswana’s juvenile justice services, it is imperative to assess it in light of international trends. The key instruments to consider in doing so will be the Convention on the Rights of the Child, United Nations Guidelines on the Prevention of Juvenile Delinquency (The Riyadh Guidelines), The United Nations Standard Minimum Rules for the Administration of juvenile justice (The Beijing Rules), United Nations Minimum Rules for Non-Custodial Measures (The Tokyo Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. These instruments form the basis for protection of juveniles involved in crime. They spell out the rights, legal guarantees and basic rules of working with juveniles in trouble with the law. Botswana’s juvenile justice system as spelt out in the Children’s Act, only partially conforms to the spirit of these international instruments. There are some notable exceptions and departures that are worth pointing out.

The international instruments on the treatment of juveniles involved in crime place a high premium on non-custodial measures. Section 40 (4) of the United Nations Convention on the Right of the Child expresses its preference for non-institutional measures for juvenile offenders. It states that ‘a variety of dispositions, such as care; guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes; and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offences’ (United Nations 1989). The Beijing rules are even more explicit in their affinity to non-custodial measures. Rule 18.1 suggest that a ‘a variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible’. To buttress the point, rule 19 of the same document expressly state that ‘the placement of a juvenile in an institution shall always be a disposition of the last resort and for the minimum necessary period’.

In Botswana the Children’s Act of 1981 did not have clarity on the use of imprisonment of young offenders. The 2009 Act which supposedly addresses the deficiencies of the earlier Act, conspicuously entrenches and explicitly mentions imprisonment as a sentencing option for juveniles. The endorsement of imprisonment as a sentencing option for children is a retrogressive step given the potential psycho-social damage that such punishment may have on young persons. Imprisonment deprives inmates the natural family and community environment that could nurture normal development of a young person and as such imposition of the punishment serve to impair proper development of a young person. It is still not clear why in an era that places primacy on protecting the best interest of the child, Botswana enact a law

that has such severe punitive connotations for the young person. This clear and radical departure by Botswana from international norms and standards of treating young offenders should be a source of concern for all those concerned about the rights of children.

The use of corporal punishment is one important issue in the disposition of juvenile crimes. International norms and standards characterise such punishment as inhuman and degrading. Rule 17.3 of the United Nations Minimum Rules for the Administration of Juvenile Justice which is popularly called Beijing Rules and the Riyadh Guidelines (54) are against the use of corporal punishment (United Nations 1985 & 1990a). However, in Botswana corporal punishment is still administered on juveniles. Both the customary and common law make provision for such punishment. The 2009 Children's Act clearly specifies corporal punishment as a legitimate punishment for children which represents a marked departure from international expectations. There has not been much research on the efficacy of corporal punishment in Botswana but its violent nature points to a huge potential for fostering or perpetuating violence as a method of conflict resolution. The continuation of corporal punishment is yet another indication that efforts to align Botswana juvenile justice with existing international instruments are inadequate.

Botswana has placed the issue of child protection in its agenda since about 30 years ago with the enactment of the Children's Act of 1981. The enactment of the law has not been matched by a corresponding enthusiasm to establish structures, facilities, infrastructures, guidelines, protocols and processes that could serve the best interests of children in general and those in conflict with the law in particular. The failure to put up requisite infrastructure and define process for adjudication of juvenile offences and rehabilitation of juvenile offenders is not in keeping with the international instruments that seek to protect children. The instruments emphasize the necessity for government to deploy adequate resources to enable the juvenile justice system to respond comprehensively and competently to the needs of young people. Related to this, is an absence of national, community and family programmes to combat delinquency among children and young people in Botswana.

### **Juvenile Justice Services in Botswana: An Agenda for Reform**

Botswana's juvenile justice requires some transformation. It is imperative that emphasis is placed on evolving comprehensive juvenile delinquency prevention plans as espoused in the Riyadh Guidelines of the United Nations. Family policies, school systems, community practices, social policies and legislation should institutionalise crime prevention. This would entail evolving deliberate and purposeful programmes that would curtail attitudes and tendencies towards juvenile delinquency. In light of the unprecedented social changes that have alienated substantial sections of society including young people, it is essential that human service professionals are engaged to work specifically with young people in communities, educational settings and families to bridge the generational gap that exist. Psycho-social support is also needed for young people who have been dislocated from society by various causes.

The creation and evolution of the necessary legal and physical infrastructure that is supportive to prevention, treatment and administration of juvenile crime is also critical. The current juvenile justice legislation requires a major facelift. In particular, the legislation should entrench non-institutional treatment as a preferred option to juvenile rehabilitation. In addition to this, it is crucial that juvenile justice legislation in Botswana spells out clearly how juveniles deprived of liberty should be treated. In this regard, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty will be helpful. It is also essential that clear and consistent guidelines for probation practice and the treatment of juveniles in institutions be formulated to assist employees of the juvenile justice system to discharge their mandate.

Juvenile justice personnel should also be given specialised training and accorded adequate time and resources to discharge their mandate. The Beijing Rules document is fully supportive of this. Rule 22 of the United Nations Minimum Standard Rules for the Administration of Juvenile Justice states that 'professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing

with juvenile cases' (United Nations 1990b). Rule 12 of the same document assert that 'in order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose'. In Botswana training of all actors involved in juvenile justice system is vital. Social workers need to be assisted to appreciate both the broad dynamics and critical details of probation practice. Magistrates, traditional leaders (chiefs) and the police also need to be assisted to appreciate adolescent psychology as well as the spirit and intent of rehabilitation of juvenile offenders.

Investigation, prosecution, adjudication and disposition of juvenile cases also need to be improved in Botswana. The investigation and prosecution of cases in customary courts for instance should follow the letter and spirit of the law. Whenever is possible juveniles who have committed crime should not be detained in the same facility as adults as it happens in Botswana. The presence of a legal representative during juvenile trials should not only be on paper but should be emphasized as a requirement for a fair hearing. Disposition of juvenile cases should be widened to a wide spectrum of options. Corporal punishment as a sentencing option should be abolished in line with international human rights trends and standards.

Lastly, it is important that the provisions of the juvenile justice law and attendant regulations and protocols be adhered to and implemented without failure by all concerned. Currently the Children's Act is in place but it cannot be fully implemented because of lack of the necessary infrastructure. An agenda for reform should also include the corresponding political will to provide requisite facilities for the proper and full implementation of the laws in place.

### **Conclusion**

The interface between juvenile justice system and social work in Botswana presents very interesting dynamics. Whilst the law exists to protect the rights and welfare of juvenile offenders, implementation of such law lags behind. Infrastructure envisaged in the Act is not in place after three decades of the existence of the law. The new Children's Act of 2009 though introducing notable improvements to the 1981 Act, has serious flaws and loopholes that are likely to further compromise the best interests of juvenile offenders. The new law's explicit reference to imprisonment and corporal punishment is out of step with international best practices. Rehabilitation measures are not clearly defined in the old and new children's Act. Probation practice is ad hoc and informal, and no attempt has been made to professionalise it. Social welfare officers are incompetent to discharge their mandate in probation practice as they have not been prepared to undertake such a task. The interaction between juveniles in prison and social workers is not clearly defined. Social work is only partially applied at the only school of industries.

In light of these, juvenile justice services in Botswana require change and transformation. In particular, there is need to mainstream and realign juvenile justice processes, procedures and structures such that they conform to international instruments that seek to ensure the protection and humane treatment of juveniles who have infringed the law. There is a need to clearly define the location of social work in probation, other non-custodial measures as well as its relationship with juveniles deprived of liberty. A political commitment to implement juvenile justice services is also needed as laws and policies that are not implemented are as good as non-existent.

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