



Republic of Botswana

Ministry of Justice

Assessing the State of the Child-Friendly Justice System in Botswana:

Qualitative Situational Analysis for Reform

Comprehensive Report

July 2023



**It is my sincere hope
that this research study
will assist government
to develop a child
friendly justice system
that will guarantee the
respect and effective
implementation of all
children's rights at the
highest attainable level.**



Foreword

Children are vulnerable members of society in all aspects of life and access to justice for children is no exception. It remains my conviction as a person and indeed my Government's to ensure that children are not in any way prejudiced in their endeavor to access justice.

It is for that reason that the Government of Botswana has prioritized reform of the justice sector in its National Development Plan. The reform of the justice sector is consistent with the Government of Botswana's international obligations on the promotion and protection of children's rights as well as key international children's rights instruments that Botswana is a party to.

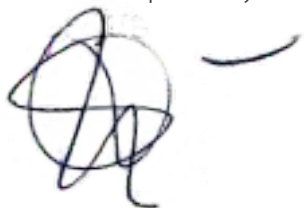
The Ministry of Justice is committed to transforming and reviewing the justice system to remove impediments to the enjoyment of rights of children through improving access to an effective justice system. The Government recognizes the continuous support it receives from the civil society organizations like Stepping Stones International Botswana to improve the justice system by making it more child friendly.

For the Ministry, strengthening child-friendly justice in Botswana is also part of the national commitment to end violence against children, 'E seng mongwaneng'.

This research study will be part of the review and has proposed constructive solutions to addressing critical gaps for improving access to justice with particular emphasis on Children. This includes strengthening the relations between referral mechanisms service providers of the justice system such as the judiciary, police, healthcare providers, education officials, social workers, prosecutors, lawyers, and correctional officers.

It is my sincere hope that this research study will assist government to develop a child friendly justice system that will guarantee the respect and effective implementation of all children's rights at the highest attainable level. The system should also give due consideration to the vulnerability including a child's level of maturity and understanding and also deepen understanding of the processes of the different stakeholders in the justice system.

In conclusion, Ministry of Justice, is committed to providing an enabling environment for a justice system that is fair, accessible, affordable, and last but not least, a justice system that dispenses justice timeously!



Honourable Machana Ronald Shamukuni
MINISTER OF JUSTICE



Acknowledgements

The research study on “Assessing the state of child-friendly justice in Botswana: Qualitative situational analysis for reform” is a partnership between the Ministry of Justice and Stepping Stones International. This research would not have been made possible without the support of the Government of the Republic of Botswana, the European Union, and the Stephanie Lacroix Humanitarian Fund.

First and foremost, the Ministry would like to thank all the respondents for providing their valuable time to participate in the study and the research team who managed to conduct the survey during a difficult period of COVID-19. The research team comprised of the following members: Boikanyo Mooki, Connie Mogara, Desiree Thato Berman, Keaogile Letshabo, Khumo Sebabi, Lame Wakwena, Mooketsi Mosweu, Rebabonye Gakeresepe, Tshepang Maphucheka, Tshiamiso Diteko, and Kelly Lekobe.

My sincere gratitude extends to the Technical Advisory Committee (TAC) for their guidance and review of the research study. Members of the TAC are as depicted in Annex 1 of this report. I, however, would like to thank Mr. M.R. Lubinda and Ms. S. Nong from the Ministry of Justice for the leadership and facilitation of the research study to finality. My extended gratitude also goes to Ms. S. Mosweunyane and Ms. K. Lekobe from the Ministry of Defence and Security who provided the coordination for the conduct of the research.

Stepping Stones International (SSI) initiated and led the research in collaboration with the University of Botswana (UB) in the Faculty of Social Sciences (Department of Sociology: Criminal Justice Studies). Dr Styn Jamu, Jeldau Rieff, Chirwah Mahlolo, Lisa Jamu (SSI), Keboyengwana Mashaka, and Galani Seete (UB – Criminal Justice Studies) constituted the research team that designed research tools, piloted the study, collected the data and compiled this research study.




Stella Naledi Moroka
PERMANENT SECRETARY – MINISTRY OF JUSTICE

Documents

This is the comprehensive research report that describes the extensive research conducted and its findings. In addition, an abridged report and a policy brief have been developed. Recommended citation: Jamu S.M., Rieff, J.A., Mahlolo, T.C., Mashaka, K., Seete, G., Jamu, L. Mosweunyane, S. (July 2023). Assessing the state of child-friendly justice in Botswana: Qualitative situational analysis for reform. Gaborone, Botswana.

Disclaimer

The opinions expressed in this report are those of the respondents and do not necessarily represent the views of the Ministry of Justice, the European Union, Stepping Stones International or the Stephanie Lacroix Humanitarian Fund.

A young girl with dark skin and braided hair is running through a grassy field. She is wearing a light pink, sleeveless dress with a subtle pattern. Her arms are extended forward, and she appears to be holding a small object. The background is a dense thicket of green foliage with small purple flowers. The overall scene is bright and natural.

The primary purpose of this study was to investigate the current state of the children's justice system by identifying strengths, opportunities, challenges, and gaps. This information is critical for providing evidence to reform the system to a friendlier, fairer, and more accessible justice system.

Table of Contents

Acronyms	v
Executive Summary	1
1. Introduction	11
1.1 Legislative Policies on Children's Rights	13
1.2 Problem Statement	17
1.3 Research Aim & Objectives	18
1.4 Research Scope	19
1.5 Mandates and Responsibilities in Judicial Landscape	19
2. Methodology	23
2.1 Research Design	23
2.2 Study Setting	23
2.3 Data Collection Instruments	26
2.4 Data Analysis	27
3. Justice Sector Findings	29
3.1 Justice Sector Gaps	29
3.2 Promising Practices	37
4. Police Sector Findings	39
4.1 Police Sector Gaps	39
4.2 Promising Practices	44
5. Social Services: DSP and S&CD Findings	47
5.1 Social Services Gaps	47
5.2 Promising Practices	52
6. Social Services: Ikago School of Industries Findings	53
6.1 Ikago School of Industries Gaps	53
7. Education Sector Results	59
7.1 Education Sector Gaps	59
7.2 Promising Practices	63
7.3 Gaps for District Leadership Administration	64
7.4 Promising Practices Tribal Administration	66
8. Health Sector Findings	67
8.1 Health Sector Gaps	67
8.2 Promising Practices	71

9.	Gender Affairs Findings	73
9.1	Gender Affairs Department Gaps	73
9.2	Promising Practices	73
10.	Non-State Actor Findings	75
10.1	Non-State Actor Gaps	75
11.	Lived Experiences Children and Caregivers	79
11.1	Children's Perceptions	79
11.2	Caregivers' Perceptions	88
12.	Cross-Cutting Findings	95
12.1	Governance and Administration	95
12.2	Legislation	96
12.3	Culture and CSAEN Awareness	99
13.	Discussion	101
13.1	Strengths and Opportunities at Strategic Level	101
13.2	Strengths and Opportunities at Organisational Level	103
13.3	Strengths and Opportunities at Implementation Level	103
13.4	Challenges, Gaps, and Constraints at Strategic Level	104
13.5	Challenges, Gaps and Constraints at Organisational Level	107
13.6	Challenges, Gaps and Constraints at Implementation Level	111
14.	Recommendations	117
14.1	General Recommendations (cross-cutting)	117
14.2	Justice Sector Recommendations	123
14.3	Police Recommendations	124
14.4	Social Services Recommendations	125
14.5	Ikago Recommendations	126
14.6	Health Recommendations	126
14.7	Education Recommendations	126
14.8	District Administration and Tribal Administration Recommendations	137
References		129
Annex 1. Technical Advisory Committee		135

Photographs: © <https://www.freepik.com/>



Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
AG(C)	Attorney General's (Chambers)
AOJ	Administration of Justice
ARCW	African Report on Child Well-being
ARV	Antiretroviral
BCRN	Botswana Child Rights Network
BDF	Botswana Defence Force
BOFWA	Botswana Family Welfare Association
BONELA	The Botswana Network on Ethics, Law and HIV/AIDS
BPS	Botswana Police Service
BPS	Botswana Prisons Service
CB	Children's Budgeting
CFC	Child-friendly Court
CID	Criminal Investigation Department
COREQ	Criteria for Reporting Qualitative Research
COVID	Corona Virus Disease
CCRS	Crime and Criminal Recording System
CRB	Criminal Record Bureau / Court Record Book
CS	Council Secretary
CSAEN	Child (Sexual) Abuse, Exploitation, Negligence
CPC	Child Protection Committee
CP&EA	Criminal Procedure and Evidence Act
CRC	Convention on the Rights of the Child
CRIN	Child Rights International Network
CRNSA	Child Rights Network for Southern Africa
CS	Council Secretary
CSAE	Child Sexual Abuse and Exploitation
CSO	Civil Society Organisations
DC	District Commissioner
DCPC	District Child Protection Committee
DHMT	District Health Management Team
DMSAC	District Multi-Sectoral AIDS Committee
DPP	Directorate of Public Prosecutions
DRC	Democratic Republic of Congo
DSD	Department of Social Development
DSP	Department of Social Protection
DTVET	Department of Vocational Education and Training
EMDR	Eye Movement and Desensitisation and Reprocessing
EU	European Union
FGD	Focus Group Discussions
GeAD	Gender Affairs Department
GICO	Government Implementation Coordinating Office
GBV	Gender-based Violence
HIV	Human Immunodeficiency Virus



HOD	Head of Department
HQ	Headquarters
ICPCC	Inter-agency Child Protection Committee
IDI	In-depth Interviews
KII	Key Informant Interviews
LAB	Legal Aid Botswana
LGBTQI+	Lesbian, Gay, Bi-sexual, Transgender, Queer/Questioning, Intersex and any other sexuality/gender self-identification
MEL	Monitoring, Evaluation and Learning
MoESD	Ministry of Education and Skills Development
MoH	Ministry of Health
MJS	Ministry of Justice
MLGRD	Ministry of Local Government and Rural Development
MPAGPA	Ministry for Presidential Affairs, Governance and Public Administration
MYGSC	Ministry of Youth, Gender, Sports and Culture
NCC	National Children's Council
NCCF	National Children's Consultative Forum
NCPF	National Child Protection Forum
NCPTC	National Child Protection Technical Committee
NGO	Non-Governmental Organisation
NPC	National Planning Commission
NQI	National Quality Improvement
NSA	Non-State Actor
NSO	National Strategy Office
PS	Permanent Secretary
PTA	Parent Teacher Associations
S&CD	Social and Community Development
SDGs	Sustainable Development Goals
SER	Social Enquiry Report
SOP	Standard Operating Procedures
SRC	Student Representative Council
SSI	Stepping Stones International
SSG	Special Support Group
STD/STI	Sexual Transmitted Disease / Infection
TAC	Technical Advisory Committee
UB	University of Botswana
UB-IRB	University of Botswana Institutional Review Board
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations International Children's Emergency Fund
VCPC	Village Child Protection Committee
VDC	Village Development Committee
WHO	World Health Organisation
YFC/YFS	Youth Friendly Clinic / Services



Executive Summary

Background

The Government of Botswana has committed to reform its child justice system to improve, protect, and promote children's rights and well-being. This is consistent with Botswana's progressive efforts and steps made in the past years, such as ratifying the United Nations Convention on the Rights of the Child (UNCRC), the African Charter on the Rights and Welfare of the Child (ACRWC) and domesticating these provisions into national legislation through the enactment of the Botswana Children's Act in 2009.¹ A child-friendly justice system starts with legislation. Part of implementation and enforcement involves ensuring that laws protect all children and work in their best interest. In addition, laws create the framework for a multi-sectoral system to provide responsive services, ensure coordination and accountability, and enhance child-friendly justice. However, laws alone do not improve justice for children, but their effective implementation and enforcement.

The primary purpose of this study was to investigate the current state of the children's justice system by identifying strengths, opportunities, challenges, and gaps. This information is critical for providing evidence to reform the system to a friendlier, fairer, and more accessible justice system.

The need for reform is the foundation on which the qualitative situational analysis of the justice system was conducted, answering questions on the current state of child justice in Botswana, identifying international and national standards of best practices in judicial systems and recommending reform for the child justice system to develop a blueprint for a child justice system in Botswana.

Research Methodology

The situational analysis employed a qualitative research methodology, triangulating in-depth phenomenological interviews, comparative legal document review, and a retrospective case note analysis.

The study sampled key informants from appropriate government departments knowledgeable in their departmental mandates and who provide child protection and services related to child sexual abuse, exploitation, and negligence (CSAEN) within the justice system at the national, district, and community levels. The sample composition included non-governmental organisations and development partners who advocate for child protection services.

The sample also included children who reported being victims and witnesses of a crime, those who had been in- conflict-with the law and their caregivers. The study conducted face-to-face and virtual interviews with a 327-sample population in the selected districts. The study setting included Tsabong, Maun, Letlhakane, Francistown and Greater Gaborone.

¹ Where we state "the Act" or "Children's Act" in this report, we refer to the Botswana Children's Act 2009

A photograph of three young children of African descent outdoors. A boy on the left in a tan shirt and a girl in the middle in a striped dress are smiling and looking at each other. A younger child is in the foreground, looking directly at the camera. The background is a soft-focus green landscape.

**A child-friendly justice system
starts with legislation. Part of implementation
and enforcement involves ensuring that laws
protect all children and work
in their best interest.**





Summary Findings

The research summarises sector specific and cross-cutting results tailored to the study objectives, iterated by key informants' subjective perspectives and from document and case study analyses.

Strengths and Opportunities

Results from key informants and service recipients highlighted several strengths and opportunities of the current justice system:

Legislation: The enactment of the Children's Act of 2009 which domesticated some of the Convention on the Rights of the Child (UNCRC) and African Charter on the Rights and Welfare of the Child (ACRWC) articles, is considered one of the major strengths, and a foundation for creating a children's justice system that is accessible, friendlier, fair, age-appropriate, speedy, and focused on the needs and rights of children. While Botswana's constitution protects all its citizens, it is not explicit about children as equal rights bearers compared to other exemplary constitutions like South Africa.

Governance Structures for Children's Rights: The establishment of the National Children's Council, the Children's Consultative Forum and Child Protection Committees at all levels (ICPCC, NCPCT, DCPC and VCPC) as official institutions to oversee the implementation of the Children's Act and rights' interventions are cited as significant governance structures for advancing the rights of children in Botswana.

The establishment of Legal Aid Botswana to provide legal advice, representation and education to indigent populations was also cited as a significant milestone for advancing the protection and rights of children in rural, urban, and hard-to-reach areas. Despite limited staff and presence in a few districts, Legal Aid Botswana is heavily underutilised by the courts, social services, and police. Legal Aid Botswana can play a critical role in providing legal advice and representation for children before and during court proceedings.

Budgetary Allocation on Child Protection Services: Botswana is considered one of the significant investors in social protection programmes in Africa; however, most of the current investments do not trickle down to address CSAEN. Consequently, service providers are under resourced, and children often receive suboptimal and varied services that are often delayed, unfriendly, age-inappropriate, and characterised by a limited focus on children's needs and rights.

Child-friendly Infrastructure: The establishment of the child-friendly police station is lauded as one of the significant steps towards creating accessible, friendlier, fair, age-appropriate services, focused on the needs and rights of children. While it is too early to determine how the new initiative will perform, it is a significant step in the right direction.

Exemplary and Promising Attitudes, Behaviours and Commitment to Children's Rights: Results showed exemplary attitudes, behaviours, and processes across participating departments consistent with the best interest of children and focused on the needs and rights children deserve. Results from children and caregivers also underscored some promising characteristics of services and service providers (explicit examples are cited in sectorial results). Unfortunately, these promising characteristics and processes were isolated and outweighed by the negative experiences.



Challenges, Gaps and Constraints

Results from key informants and lived experiences from service recipients highlighted some significant challenges, gaps and constraints that undermine Botswana's child justice system, including:

Children's Act Implementation Barriers: Results show that most of the Children's Act's provisions, the blueprint for a child-friendly justice system, are not comprehensively implemented by the ministerial department mandated to do so due to multiple challenges and constraints. None of the existing social protection programmes focus on preventing child sexual abuse, exploitation, and negligence (CSAEN). There is a lack of earmarked child-specific budgets. Results also indicated the lack of adequate human and operational resources to support the implementation of the Act across all government departments.

Weak Governance Structures for Child Protection Services: The current governance and administrative structures (the NCC, NCPTC, ICPCC, CCFs, DCPCs, and VCPCs) aimed at overseeing, coordinating, and monitoring the implementation of the Children's Act in their current structural configuration and character have failed to achieve their legal mandates. Most of them are not established nor active. Consequently, there is a lack of accountability, quality assurance mechanisms, monitoring, evaluation and learning framework to inform continuous service improvement in the justice system. External accountability institutions, such as the Office of the Auditor General, the Public Accounts Office, and the Ombudsman do not focus on children. As a result, CSAEN services remain suboptimal and there are limited incentives for improvement.


Unfriendly Infrastructure and Systems: Except for the eight established child-friendly police stations across Botswana, most government departments and NGO offices providing CSAEN services are not designed to meet the minimum standards for creating a child-friendly environment. Most government offices have inadequate space to serve children with privacy.

Weak Monitoring Evaluation and Learning Systems: There are no comprehensive, centralised monitoring, evaluation and learning systems to inform the justice system's performance (across sectors) and to generate evidence-based programme planning and continuous improvements.

Weak Stakeholder Coordination and Collaboration: The study found weak stakeholder coordination and collaboration due to the complexity of the bureaucratic system in which pertinent justice system stakeholders follow their departmental mandates, rules, and approaches, often resulting in coordination difficulties and constraints to create seamless communication and referral processes. Key informants used blame shifting for service delivery deficiencies to justify problems. The results reflect serious coordination and collaboration dysfunction requiring redress.

Respondents cited the following challenges:

- Delayed and untimely provision of services such as the delivery of social enquiry reports.
- Lack of referral system and timely feedback for cases requiring services from multiple departments.
- Ad hoc legal representation for juveniles in conflict with the law.



Insufficient (Child-friendly) Guidelines, Standard Operating Procedures and Processes: There are no standardised guidelines and standard operating procedures (SOPs) for handling children considering their age and maturity within the justice system. Where such departmental guidelines and SOPs exist, they have not fully incorporated the principles and elements of the child-friendly justice system.² Some of the critical guidelines lacking in the current system include the children's court rules. The study found inadequate processes for safeguarding the rights and best interests of children including:

- Child victims and those in conflict with the law are often interviewed by several police officers in the absence of support from social workers or parents without accounting for their age and vulnerabilities, creating an unfriendly environment.
- Child offenders are often subject to harsh and intolerable interviewing sessions.
- Defilement victims reported police officers who were condescending and demeaning.
- Counselling services were not immediately provided for most children at the entry into the justice system and throughout the case process, if provided at all.
- Most children entering the court system are ill-prepared and lack guidance and support from social workers or psychologists. Most children characterised their experiences as being afraid and traumatised. Additionally, they were often not informed of their rights, such as their right to legal representation.
- While most child cases are held 'in camera' in magistrate courts sitting as children's courts, the current arrangement does not prevent children from re-victimisation because they still come face-to-face with accused persons.

Inadequate Specialisation and Capacity Building: More than 70% of the respondents do not have received specialised training for working with children, such as providing trauma counselling for victims of rape, and children in conflict with the law, and applying child-friendly principles.

Dissatisfied Children and Caregivers: Results from child victims and those in conflict with the law reported being dissatisfied with the current services within the system, characterised by unfriendly experiences and delayed resolution to their grievances.

- Children in conflict with the law complained about being handcuffed without their Miranda rights read, subjected to harsh interrogation, physically assaulted, and appearing in court without adequate preparation or legal representation.
- Most child victims and perpetrators reported not receiving timely and adequate counselling during contact with the justice system (from entry and during medical examinations). Social services often come late where such was provided.
- Children and caregivers reported absence of a positive attitude, motivation, and compassion from service providers. The adult-child power struggle was at play, and respect for the child was non-existent. As a result, many cases are withdrawn from the justice system.
- Caregivers reported experiencing non-responsiveness from service providers on issues such as progress and updates on investigations from police and social workers.
- Caregivers complained that delays in the completion of cases meant that many victims of sexual violence gave up hope of receiving the justice they deserved. In some instances, cases of child offenders are brought before the courts after they have reached the age of legal majority and thus are unfairly tried as adults.

² During data collection the Botswana Police Services was developing standard operating procedures for the child-friendly police stations with technical support from UNICEF. The study did not review how the SOPs meet the principles and elements of child-friendly justice system.



Study Implications

The child justice system is a complex system composed of multiple partners, and its analysis requires careful consideration. While results highlight significant milestones and opportunities Botswana has achieved to improve its child justice system, most structures, systems, and processes provide sub-optimal services to child victims, witnesses, and those in conflict with the law. Evidence shows that chronic persistent suboptimal services in the children's justice system have several implications and significant consequences for children and their families, communities, and the country. At a personal level, a suboptimal child justice system can lead to a rise in recidivism and antisocial behaviours.

Second, a suboptimal system can perpetuate inequalities where children from socially disadvantaged families and communities become more marginalised, ending up in situations that deny them from overcoming their challenges and become productive adult citizens. More importantly, suboptimal systems have long-term effects on children's mental health and well-being, which can be passed on to the next generation. Thus, failure to address violations of children's rights and optimisation of the system can negatively impact Botswana's pathway to Vision 2036 aspirations.

Conclusion

Children are the bearers of equal rights as any other human being. The recognition and domestication of UNCRC and ACRWC conventions is a clear testimony of the country's commitment to advancing children's rights and needs. This situational analysis investigated the state of the children's justice system to inform improvements in the delivery of services, instigate reforms for rights-centric services and create a system that is accessible, fair, prompt, age-appropriate and serves children's best interests.

The study drew from rich experiential data from service providers and service recipients' lived experiences about the current state of the child justice system: its strengths and opportunities, challenges, gaps, and constraints undermining the optimal delivery of rights-centric services. It is up to the government to adopt or modify the suggested recommendations that are required for reform towards a child-friendly justice system. The government's actions or inactions impact children more significantly than any other age cohort, given that Botswana has a young population. The individual and societal costs of failing to address children's rights and needs are high, thus the government's immediate action is imperative.

While results highlight significant milestones and opportunities Botswana has achieved to improve its child justice system, most structures, systems, and processes provide sub-optimal services to child victims, witnesses, and those in conflict with the law.



Recommendations

The abridged proposed recommendations address the challenges, gaps, and constraints identified in the study, while utilising and building on the existing strengths and opportunities.

Prioritising and Mainstreaming Children's Rights: Create a strategy (protocols, guidelines, indicators) for child rights mainstreaming, including children's meaningful participation in the design, implementation, monitoring and evaluation of policies and programmes and accountability systems. Children's rights should be brought to the forefront so key players achieve their mandates, including those that are not part of the child justice system directly, such as Parliament, the National Planning Committee and the Office of the Auditor General.

Legislation: While Botswana has an excellent legislative blueprint (Children's Act) to advance children's rights within the justice system, its major 'Achilles heel' is its suboptimal implementation. Each suggested recommendation below is intended to address implementation barriers and create an internationally robust child-friendly justice system.

- Government must consider including a comprehensive Children's Bill of Rights and Protection Provisions in the Constitution to solidify its commitment to creating children as equal bearers of rights and ensure the absolute protection of their rights.
- The Government of Botswana is recommended to review the Children's Act and all other laws pertaining to child justice such as Affiliation Proceedings Act, Marriage Act, Adoption Act and the Domestic Violence Act to ensure that all legislation in Botswana is consistent with child-friendly principles, such as the best interest of the child and their participation.
- It is recommended to harmonise the Children's Act's Bill of Rights and provisions with the Customary Act to address rights for children meeting the customary court for civil cases. Other statutes, such as the Criminal Procedure and Evidence Act and the Penal Code, need to be aligned where inconsistencies exist to ensure that processes are child-friendly. Harmonisation should also consider alignment with international children's rights instruments that Botswana ratified, such as the African Charter on the Rights and Welfare of the Child.
- It is advisable to repeal the application of corporal punishment as a sanction of penal punishment within the court system, schools, and all government establishments.
- The government should develop a sentencing guideline or protocol that promotes restorative and rehabilitative programmes for children.
- There should be consistency in the Penal Code (Section 13.1) and the Children's Act (Section 82.1 and 83) defining the age of criminal responsibility. The prosecution should also be held accountable to prove that the child brought before the courts had capacity to know, at the time of the offence, that they were committing an offense.
- It is recommended to increase the age of criminality above 8 years of age.
The review must expound on children's court rules to streamline the management of children's cases within the court system.

Restructuring Governance and Administrative Structures: Government must urgently consider amending the Children's Act, to strengthen the position and legal form of the NCC and ensure it can function more independently, such as in the form of an autonomous parastatal organisation with its own leadership, an independent board of directors, and human and budgetary resources to facilitate the implementation of the Children's Act and implement its legal mandates.

- The strengthened and restructured NCC should oversee the functioning and the roles and responsibilities of Child Protection Committees and Children's Consultative Forums at national level (ICPCC, NCPCT, NCCF), district level (DCCF and DCPC), and village level (VCPC).
- The new entity must also be answerable to the Parliamentary Committee(s) that created it, the MLGRD and the public.
- The NCC is recommended to develop a comprehensive accountability framework, whereby different institutions ensure each sector is consistently audited and evaluated on their performance. A key role is for institutions like the Office of the Auditor General (including Public Accounts Committee and Court of Auditors), the Human Rights Unit, the Human Rights Commission under the Office of the Ombudsman and inspectorates.

National Quality Improvement (NQI) and Monitoring, Evaluation and Learning (MEL) Mechanisms:

The proposed NCC must be the bearer of the child justice system, implementing stringent NQI and MEL mechanisms with each department and participating NGOs. The aim is to hold government and NGOs accountable for performance, upholding child-friendly justice principles.

Children's Rights Budgeting: There is an urgent need for a costed and adequate budgetary resource review for all government departments mandated to implement child protection and justice interventions or programmes. Without sufficient financial resources, it is implausible that government can achieve optimal outcomes that uphold a child-friendly justice system.

Child-friendly Infrastructure: There is an urgent need to remodel child-friendly infrastructure or spaces in all departments that provide services to children accounting for differently-abled children. Such designs must consider including privacy assurance and creating an appealing environment such as colourful walls, soft interview rooms, consultation rooms, child-friendly toilets, and sick bays. The current eight child-friendly police stations are an example that can be replicated or improved.

Addressing Weak Stakeholder Coordination and Collaboration: To address weak stakeholder coordination and collaboration, the government must:

- Create integrated multidisciplinary teams within the child-friendly police stations and Children's Courts as a matter of urgency. For example, each Children's Court must be composed of trained and specialised staff: a children's court magistrate, social worker/ probation officer, psychologists, and court assistants (a prosecutor as provided in the Children's Act) to improve the integrated provision of services and account for the needs and maturity of children, and
- Provide integrated services [one stop shop] where interviews, statement taking, counselling, and health services can be offered in one friendly centralised institution.

Specialised Services and Capacity Building: To capitalise on promising practices, attitudes, and behaviours identified in the study, there is a need to prioritise and offer specialised capacity building to improve and make high-quality service a professional norm within and outside government institutions providing CSAEN services to children.

Development of Guidelines, SOPs and Processes: All sectors should develop standardised SOPs for implementing the Children's Act. These guidelines need to guide the handling of child-related cases interlinking the roles of all relevant stakeholders. They need to include:

- **Role clarity:** To remove confusion and streamline roles and responsibilities within and between sectors.
- **Functional referral system with feedback loop:** A referral system among sectors is required to ensure inter-departmental and external referrals and speedy services in the child-friendly justice process.

- **Prioritisation:** All service providers starting with the police, health, social workers and the courts should give priority to children's cases.
- **Legal Representation:** Because Legal Aid Botswana is underutilised in cases involving children, the organisation should be utilised as a resource and primary bearer of legal representation and advice for children in conflict with the law requiring legal representation to close the existing gap.
- **Impact statement:** To ensure full participation in court proceedings, child victims/their legal representation and caregivers must be allowed to provide a victim impact statement. These describe the emotional, physical, and financial impact suffered directly from the crime.

Children Sentencing Guidelines incorporated in a Statute: Integral to child-friendly procedural standards, the government should consider developing a comprehensive child sentencing guideline focusing on rehabilitation and restorative justice rather than punitive measures. Custodial sentencing must be used as a last resort for serious crimes that put the public at risk from violent children. To ensure the guidelines are followed, it should be incorporated in a statute such as in the form of a Schedule under the Penal Code, the Children's Act, or as a stand-alone Act.

Video Recorded and Conferencing Testimonies: Consistent with the Children Act, the government must implement video-recorded documentation of all matters involving children in the justice system under the guidance of qualified personnel. The justice sector must lead in developing quality standards and parameters that meet a child's best interest without jeopardising the offender's protection under the law.

Prioritising Children's Cases: To safeguard children's safety and promote a speedy conclusion within the child-friendly justice system, the government must consider prioritising children's cases, emulating lessons learnt from the gender-based violence courts.

Use of Age-appropriate Tools and Aids: To account for the age, maturity and vulnerability of children who struggle to articulate themselves in the justice processes during administrative, investigation and court proceedings, the government must consider investing in visual aids, dolls, art, audio, and sign language (personnel) materials. These would aid children to effectively communicate by showing what happened to them or what they saw instead of using their jargon and metaphors that often result in the miscarriage of justice.

Professional Skills Set: Undertake a restructuring and skill's analysis to ensure that the required qualified professionals in the child protection and child justice system are appointed and adequately and equitably distributed to serve in all sectors.

Community Interventions: In conjunction with law enforcement agencies and departments, including Legal Aid Botswana, child protection committees and civil society organisations must scale up interventions that aim to increase community awareness on children's rights, on the importance of bringing cases to the (formal) justice system, the importance of children receiving comprehensive and child-friendly services (and demanding those rights), and the right to attain legal support and representation.

Dialogue and Training of Dikgosi: As custodians of children and communities, how Dikgosi encounter, handle, and refer criminal cases to the police has a substantive bearing on children's rights and child-friendly principles. Therefore, there is an urgent need to initiate dialogue to address Dikgosi's concerns and train Dikgosi on children's rights. There is also a need to start a dialogue on including a children's Bill of Rights in the Customary Court Act.



Parenting Programmes: There is an urgency to scale up the evidence-based parenting programme to support and protect their children from abuse and descale inhumane and punitive punishment (such as corporal punishment and verbal abuse) in community settings.

Support Programmes: Expand programming that supports child protection through CSOs such as provision of psychosocial support, violence prevention, substance abuse programmes, and sexual reproductive health and rights.



The government should consider developing a comprehensive child sentencing guideline focusing on rehabilitation and restorative justice rather than punitive measures.



1. Introduction

The Government of Botswana expressed its commitment to reform its child justice system to improve, protect, and promote children's rights and well-being consistent with the provisions of the Children's Act and the international children's rights instruments. The Government is committed to creating a justice system which guarantees the respect and the effective protection and promotion of all children's rights to the highest attainable level. It is justice that is accessible, age-appropriate, expedient, diligent, adapted to and focused on the needs and rights of the child.

However, the current state of children's justice is far from this ideal. Several studies show multiple gaps in the Botswana juvenile system due to the failure or limited implementation of the Children's Act (DSP & UNICEF, 2010; Lucas, 2010; Jamu et al., 2015). In a mapping study of the Botswana justice system, the Department of Social Protection & UNICEF (2010) found that the juvenile justice system lacked administrative, regulatory capacity, and human resources to implement the Children's Act, thus compromising the optimal protection of children's rights and well-being. The research also found weak and inconsistent procedural guidelines and child protection protocols to supplement children's legislation, inadequate child victim support, and witness protection structures and processes (DPD & UNICEF, 2010).

Lucas (2010) found that probation services were delivered by untrained personnel, rules and regulations were outdated, and the prison services did not provide specialised care and treatment to young offenders consistent with their age and level of maturity. Lucas (2010) further found that the Botswana juvenile system was unaligned with the international juvenile instruments and thus does not promote the best interest of children in conflict with the law.

In child protection preparedness survey of social services, the police, guidance and counselling teachers, and health service providers. Jamu et al. (2015) found that 90% of the respondents had never received specialised training in counselling of sexually abused children, crisis counselling, and trauma management. Furthermore, 95% of the respondents had never received specialised training in forensic social work. Therefore, support to the child and processing of such cases is inadequate from the onset.

The Ministry of Justice* and its stakeholders, through the Technical Advisory Committee (TAC) (Annex 1) shared the sentiment that there is a sense of urgency to improve the child-friendliness of the justice system for child victims, witnesses, and children in conflict with the law. To inform critical areas requiring reform and provide a clear understanding on the functioning of the current child justice system was essential. Therefore, the Ministry of Justice through the TAC commissioned a situational analysis to assess the current state of the Botswana Child Justice System and gather relevant information to reform the system building on the strengths and opportunities.

Based on the research findings, case reviews and literature, recommendations for improvement are provided which will pave the way for national reform of the justice system into one that can be qualified as child friendly and in line with Botswana's legislation and international standards. The background of Botswana's legislative policies towards children are outlined below based on literature review and case analysis which establishes the context for the research.

* Since the inception of the research, the Ministry of Defence, Justice and Security has been restructured into two separate Ministries, namely the Ministry of Justice, and the Ministry of Defence and Security. The Department of Social Protection has changed its name to Department of Social Development.



Child-friendly justice is justice that is accessible, age-appropriate, expedient, diligent, adapted to and focused on the needs and rights of the child.



1.1 Legislative Policies on Children's Rights

Botswana has several statutes that relate to children, including the Constitution (1966), the Children's Act (2009), the Domestic Violence Act (2008), the Adoption Act, Affiliation Proceedings Act (1970, amended 1999), the Deserted Wives Act, the Penal Code (amended 2018), and the Criminal Procedure and Evidence Act. The Children's Act is the most important Act since it precedes all other Acts and will be discussed more extensively in this paragraph.

1.1.1 Botswana's Children's Act

The Children's Act of 1981 ushered a law specifically for the care and protection of children in Botswana before the commencement of the United Nations Convention on the Rights of the Child (UNCRC). The Act was subsequently amended in 2009, as an attempt by the Government of Botswana to incorporate and domesticate the objects and provisions of the UNCRC into national legislation.

The Act recognises a series of rights for children. Part II, which covers the objects, guiding principles, child participation and the primacy of the child's best interests, clearly incorporates in the legislation two of the four pillars of the UNCRC, in addition to laying a framework for the interpretation and application of the Act's provisions. Part III contains a bill of child rights, spelling out a series of rights including civil and political rights (right to a name and nationality, right to life), socio-economic rights (right to health, right to shelter, right to clothing, right to education) and protective and developmental rights (right to leisure play and recreation, and recognition of the child's right to parental care and guidance, right to protection against harmful labour practices and sexual abuse and exploitation).

There are few provisions in the Children's Act that focus specifically on child victims and/or witnesses. The starting point is section 8 which encourages child participation in any decision which will have a significant impact on the child's life. Such rights can only be attained once the child has been provided with adequate information in a language they understand. Although this is a general provision, it is especially applicable to victims of criminal offences that have a right to be heard before a decision that may impact them is taken.

1.1.2 International Standards Relating to Child-friendly Justice

Universal human rights were formalised and consolidated with the creation of the United Nations and the adoption of the Universal Declaration of Human Rights in 1948. The General Assembly of the United Nations further adopted various human rights treaties. These include:

- The International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- The International Covenant on Economic, Social and Cultural Rights (1966)
- The International Covenant on Civil and Political Rights (1966)
- The Convention on the Elimination of All Forms of Discrimination against Women (1979)
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

Each of these treaties apply to children, young people, and adults, but it was not until 1989 when the United Nations Convention on the Rights of the Child (UNCRC) was adopted by the United Nations General Assembly, and not until 1990 when the Convention came into force, that a universal human rights instrument focused exclusively and comprehensively on protecting and promoting children's particular interests came into existence.



1.1.3 The United Nations Convention on the Rights of the Child (UNCRC)

As already stated, the United Nations Convention on the Rights of the Child is an international treaty which sets out the civil, political, economic, social, health and cultural rights of children. It is the core human rights treaty recognising that children too are equal as human beings. Article 1 of UNCRC defines a child as every human being below the age of eighteen years. The Convention enshrines four general principles that guide the implementation of national programmes and oblige governments to not only develop but sustain infrastructure conducive for upholding children's human rights within their sovereign jurisdictional spheres.

1. The first principle is **non-discrimination**. Article 2 of the Convention obliges State Parties to provide equality of opportunity among children and ensure that all children within their sovereign jurisdiction enjoy their rights free from discrimination.
2. The second principle is that of the **'best interest of the child'** which imposes an obligation on anybody, or organisation including courts of law, administrative authorities, legislative bodies and both public and private social-welfare institutions to accord primary importance to the best interests of the child when making decisions that affect children.
3. The third principle is the **right to life and maximum development**. Article 6(2) states thus: "State parties shall ensure to the maximum extent possible the survival and development of the child."
4. Lastly, the principle of **inclusion and participation** is essentially the right of children and young people to have their views given due weight and respected in all matters affecting them.

In addition to the UNCRC and the foregoing principles, in 1990, the United Nations General Assembly incorporated several rules into the instrument that are also binding to, and therefore enforceable by Botswana jurisdiction.

- First, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (referred to as the 'Beijing Rules') provides for the development of separate and specialised juvenile justice systems in the jurisdictions of State Parties.
- Second, the 1990 United Nations Guidelines on the Prevention of Delinquency (referred to as the 'Riyadh Guidelines') emphasise the primacy of preventative measures to juvenile delinquency and only resorting to formal agencies of social control as a last resort. Therefore, 'no child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.'
- Third, the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (often referred to as the 'JDL Rules' or the 'Havana Rules') also emphasise that deprivation of liberty for juveniles should be a disposition of 'last resort' and used only 'for the minimum necessary period'.

1.1.4 African Charter on the Rights and Welfare of the Child

As a member state of the United Nations and the African Union, Botswana has ratified the African Charter on the Rights and Welfare of the Child (ACRWC), which is a regional human rights treaty adopted in 1990 and came into force in 1999. The Charter augments the UNCRC and bridges the gap between international law and local African norms and practices, by taking cognisance of the cultural heritage, historical background, traditions and the values unique to the African region.



The charter shares several commonalities with the UNCRC:

- It defines a child as any human being below the age of 18 years, entitled to enjoy all their rights free of discrimination
- It emphasises the primacy of the best interest of the child by all those mandated to make decisions affecting children
- Children can express their views and have the right that those views and opinions be respected.
- Article 16 provides for legislative, administrative, social and educational guarantees for the protection against child abuse, all forms of torture, inhuman or degrading treatment
- Presumption of innocence
- Separate detention facilities for children
- The Charter prohibits the press and public from the trial where the accused person is a child.
- Article 17 (3) of the Charter promotes reintegration and rehabilitation of minors in the event they are found guilty instead of the use of punitive measures.

1.1.5 Botswana Law versus International Law: a dualist state

It must be noted that Botswana's legal system is 'dualist' in nature. As with many other dualist states, rules of international law embodied in treaties do not automatically become part of the law of Botswana, unless they are incorporated into the domestic law by legislation. The position in Botswana is therefore that treaty rules only apply in so far as they may aid in the interpretation of domestic law, including the Constitution. Otherwise, they do not directly form part of the domestic law of the country. The Interpretation Act specifically provides that as an aid to the construction of any enactment, a court may have regard to several sources including 'any relevant international treaty, agreement or convention.' The Court of Appeal in the case of Attorney General v. Unity Dow, used the values and norms embodied in various international instruments that Botswana has signed and/or ratified, to interpret her Constitution, even though the said international instruments had not been incorporated into domestic law by the legislation. International conventions that Botswana is party to have great persuasive value in the interpretation of domestic law.

1.1.6 Child-friendly Principles

The legislative policies and international standards form the foundation for creating a friendly juvenile justice system. Critical analysis and evaluation of jurisprudence studies show that propositions and principles characterising a child-friendly justice system emanate from the UNCRC (Liefwaard & Doek, 2015; O'Brien & Foussard, 2020; Skelton, 2020, Skelton, 2019; CRIN, 2016) and the ACRWC (Sloth-Nielsen, 2015; Skelton, 2009). The Committee of Ministers of the Council of Europe on child-friendly justice (2010) provides the most elaborate definition of child-friendly justice:

"A system which guarantees the respect and the effective implementation of all children's rights at the highest attainable level [...], giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is accessible, age-appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child. It respects the rights of the child, including the rights to due process, the right to participate in and to understand the proceedings, the right to respect for private and family life and the right to integrity and dignity" (CoE, 2010).



The CoE (2010) identified five fundamental principles that govern a child-friendly justice system, including:

- **Participation:** Children have the right to be heard in decisions that affect them, and adults must take children's views seriously.
- **Best interests of the Child:** Decisions about children must respect their spiritual, physical, emotional, and educational rights according to their age, maturity, level of understanding, background, language, culture, and ethnic and religious identity.
- **Dignity, care, and respect:** It is paramount to always to treat children with respect and protect their privacy.
- **Protection from discrimination and equality:** Children are all different. They require equal treatment irrespective of their country of origin, group, religion or of the language they speak. Children with disabilities, homeless children, or those placed in homes need protection.
- **The rule of law:** Children should be treated fairly in the justice system. If they are in-conflict with the law, they should have a lawyer, and the court should consider their specific situation and needs. Children have the right to complain about their treatment to an independent and impartial person or body.

However, studies show a need to consider these principles together with the elements of the child-friendly justice system.³ These elements include providing information and advice, protecting privacy, safety measures preventing secondary victimisation, training professionals, and depriving liberty as a last resort. A friendly juvenile justice system uses separate sentencing guidelines, court structures, juvenile secure and non-secure detention facilities, juvenile probation officers, and statutes that define delinquency and status offences, which are age-related (Patterson, 2018).

Studies on best practices in implementing a child-friendly justice system note that laws alone do not improve justice for children. Instead, high-impact children's rights services require an interface between laws and children's services from multiple providers: the community (the family and Dikgosi), the police, social service, education, health, prisons, non-state-actors and responsible citizenry to protect and promote children's best interest (Lansdown, 2000; CoE, 2010; Lucas & Jongman, 2018). Therefore, the legislative framework, child-friendly principles and elements formed the basis for identifying this study's strengths, opportunities, and gaps.



³ https://resourcecentre.savethechildren.net/node/18417/pdf/achieving_child_friendly_justice_in_africa.pdf



1.2 Problem Statement

Botswana has made significant strides to promote and safeguard children's rights since ratifying the United Nations Convention on the Rights of the Child (UNCRC on March 14, 1995) and the adherence to the African Charter on the Rights and Welfare of Children (ACRWC) on July 10, 2001. To consolidate and domesticate some of the UNCRC and ACRWC provisions, the Government of Botswana enacted the Children's Act (2009), which makes provisions for the promotion and protection of children rights, promotion of the physical, emotional, intellectual, and social development and well-being of children. It articulates the establishment of structures to provide for care, support, protection and rehabilitation of children (Government of Botswana, 2021, p.8).

Since the commencement of the Children's Act implementation on June 19th, 2009, several studies and reports suggest that many gaps exist at the strategic, organisational, and implementation level that lend to reformation of the children's justice system (Lucas & Jongman, 2018; UNCRC Country Report, 2018; Jamu et al., 2017; Jamu et al., 2015; Macharia-Mokobi, 2013; Cole, 2010, DSP & UNICEF, 2010; Lucas 2010; Somolekae, 2010).

The Children's Act is not effectively implemented due to varying contextual definitions of rape, defilement, and sexual assault in diverse communities, varying laws in different Acts, as well as complexity of the bureaucratic systems in which multiple stakeholders are required to implement the Act. Inadequate structures and implementation guidelines and the lack of community participation have resulted in weak implementation outcomes (Ramabu, 2021). Studies suggest child victims and offenders are subjected to an unfriendly environment and experience re-victimisation during judicial processes. Their cases are subjectively handled due to the lack of procedural standards (Ramabu, 2021; Jamu et al., 2017).

While Botswana allocates substantial public resources to cater for children's needs, the budgetary allocation is not earmarked for implementation of the Children's Act, resulting in not catering for all the needs of children, particularly those in conflict with the law. The UNCRC country report (2018) indicates that Botswana does use children's budgeting (CB) to determine resources adequate for implementing child-friendly services.

1.2.1 Infrastructure & System Gaps

Studies indicate the inadequate infrastructure and services for children in contact with the justice system at the organisational level. For example, in a cross-sectional study that examined the preparedness of child sexual abuse and exploitation service provision in the country, Jamu et al. (2015) found that most service providers, particularly in rural police stations, lacked private space to take crime statements from victims, witnesses as well as offenders. Furthermore, the study found that most police stations and health facilities did not have rape kits, making collecting evidence impossible. The studies also found that Botswana does not have a standardised child sexual abuse and exploitation screening questionnaire to decide proper service provision at health delivery points (Jamu et al., 2015).

Currently, Botswana has only one school of industry and trade to rehabilitate young offenders into responsive citizens. However, the school (Ikago) is underutilised due to the shortage of professional staff including clinical psychologists and criminologists. Consequently, most young offenders requiring rehabilitative services end up in prisons (Cole, 2010; Macharia-Mokobi, 2013).



1.2.2 Implementation and Skills Gaps

Several studies highlight gaps in the implementation of the child justice system. One of the major gaps in the Botswana juvenile justice system is the backlog of cases. Cases involving children can take up to five years before they are brought before the courts. Prolonged delays result in individuals who commit crimes when under 18 years to be tried as adults when their cases are held.

In addition, reports indicate that in some instances, the judicial proceedings of children's cases violate their privacy. Somolekae (2010) observed that the courts' call registers often fail to separate children from adult cases. Consequently, court galleries are open to the public only to be closed after a call of a juvenile case, compromising the child's identity. Children and adults share the same waiting area and courtroom, thus violating the Act's privacy provisions.

The juvenile justice system uses untrained probation officers and the available probational rules and regulations are outdated. In addition, prison services do not provide specialised care and treatment to young offenders consistent with their age and level of maturity. A service mapping study of the Botswana justice system, done by the Department of Social Protection and UNICEF in 2010, found that the juvenile justice system lacks administrative, regulatory capacity, and human resources to implement laws that protect and promote children's well-being.

In a qualitative study examining social workers' knowledge of children's socio-economic rights in the Children's Act, Lucas & Jongman (2018) found that social workers lacked substantive knowledge to discharge their mandate regarding delivering socio-economic rights based on the children's best interest principle. Furthermore, in a qualitative study assessing the implementation of the Children's Act at the community levels, Jamu et al. (2017) found that Dikgosi do not have the legal competencies of handling and reporting child abuse cases. The study also found that communities had no procedural guidelines on the appropriate legal precedents of handling and reporting child sexual abuse and exploitation cases occurring in their communities.

1.3 Research Aim & Objectives

The overarching aim of this situational analysis is to identify strengths, opportunities, gaps and lessons learned in the implementation and processes of the current juvenile justice system at the strategic (governance, legislative), organisational (infrastructure, systems, protocols), and implementation levels (skills capacity, partnerships, community engagement).

Objectives

The research objectives include the following:

- To deepen understanding of the status, functioning, and processes of the justice system for children, all stakeholders and service recipients, i.e., identify strengths, weaknesses, gaps, and lessons learnt in the implementation and functioning of the juvenile justice system.
- To recommend reform for the weaknesses and gaps of the current judicial system to accommodate a sustainable child-friendly justice system.
- To inform a model to promote access to child-friendly justice for child victims, witnesses and offenders as well as cater for complainants consistent with the statutory provisions of the Children's Act, thereby minimising both short and long-term trauma and secondary victimisation by the justice system.



1.4 Research Scope

The research findings provide critical planning information to reform and create a friendlier child justice system that is fair, accessible, accountable, transparent, and delivers the justice that children victims/witnesses and offenders deserve and demand. The expected results form a critical source of data for informing evidence-based measures, including standards, policies and policy guidelines, and regulations as well as a 'blueprint' for a child-friendly justice system.

The scope of the research focused on government institutions and non-state actors recognised as providing child protection and welfare services related to child abuse in Botswana. The sectors included are shown in Table 2. The inclusion of the sectors and the service beneficiaries were agreed upon and approved by the Technical Advisory Committee (TAC) in the Ministry of Justice that oversaw the implementation of the research.

The research focused on different components of the child justice system, including child justice before, during and after both criminal and civil judicial proceedings, administrative proceedings, as well as children and youth in the justice system as a victim, witness or those in conflict with the law. The study probed the judicial process with the key stakeholders outlined below including their mandates.

1.5 Mandates and Responsibilities in Judicial Landscape

This paragraph summarises mandates and responsibilities of the judicial stakeholders that participated in the study.

1.5.1 Justice Sector

Administration of Justice: The Administration of Justice presides over children's cases filed at the High Court and the Magistrate Court. The court is the key institute to achieve child friendly justice.

Magistrate Court: The Magistrate Courts operate in 27 different centres around the country. They handle trials for most criminal cases such as rape, robbery, theft, assault and civil cases of most common disputes between citizens, family related cases such as paternity and maintenance orders, adoption of children and restraining orders in domestic violence cases. In addition to these duties and responsibilities, the Administration of Justice (AOJ) has made a provision across all its magistrates' offices, that heads of Magistrate Courts convene at least two Justice Forums per year with all relevant heads of department in every district to discuss legal issues affecting work in the districts.

High Court: The High Court is a superior court of record with unlimited jurisdiction. There are currently four locations of the High Court in Lobatse, Francistown, Maun with the headquarters being in Gaborone. The High Court acts as the upper guardian of all minors and presides over matters beyond the jurisdiction of lower courts.

Court of Appeal: The Court of Appeal is the highest court in the country and is the final arbiter of all legal matters. It is headed by the Judge President.



Children/Juvenile Courts: The Children's Act provides that Magistrate Courts serve as juvenile and children's courts. The children's court entertains all matters involving children including matters where a child is accused of having committed an offence. The juvenile courts handle cases of children between the ages of 14 and 17, alleged of a criminal offence. They should operate separately from adult courts.

Attorney General's Chambers: The Attorney General's Chambers (AGC) is the principal legal advisor of the Government of Botswana comprising of several divisions. The AGC is responsible for public prosecutions, legislative drafting, civil litigation, and international commercial agreements. It is currently based in Gaborone and intends to open a branch in Maun.

Directorate of Public Prosecution (DPP): The Directorate of Public Prosecutions' primary mandate includes the prosecution of criminal cases before all courts of the land, criminal applications and appeals arising from criminal litigation. DPP has a separate unit that is mandated to handle cases involving children. The Directorate operates from the head office in Gaborone and satellite offices in Francistown, Maun, Palapye, Lobatse and Selibe Phikwe.

Legal Aid Botswana: Legal Aid is a parastatal organisation under the Ministry of Justice that provides legal representation, advice, and public education on legal matters to impoverished populations. Legal Aid has centres in Gaborone, Francistown, Kasane, Tsabong, Maun, Palapye and Mochudi. Legal Aid also takes on criminal trials for offences committed by juveniles or minors.

1.5.2 Police Sector


The Botswana Police Service is a security organ mandated to protect life and property, prevent and detect crime, repress internal disturbances, maintain security and public tranquillity, apprehend offenders and bring them to justice and enforce all written laws. All matters of crime including children's rights' violations are to be reported to the police. They investigate the offence and compile sufficient evidence before handing the docket over to prosecutors. Children's cases are handled by the Criminal Investigation Department (CID) and then referred to the Director of Public Prosecution.

1.5.3 Social Services: DSD and S&CD

The Ministry of Local Government and Rural Development (MLGRD) provides social protection services to children in Botswana. Within the MLGRD, the Department of Social Development (DSD) is mandated to coordinate, monitor, and evaluate social protection programmes and project delivery aimed at improving the quality of life of Botswana. Within DSD, service delivery is guided by child protection, family welfare services, elderly and social benefits services, information, research and public relations division, specialised services, and departmental management (MLGRD, 2023).

The Ministry is responsible for the entire Child Protection Committee (CPC) landscape. At a national level this comprises of the National Children's Council (NCC), the National Child Protection Technical Committee (NCPTC), the National Child Protection Forum (NCPF), the Inter-agency Child Protection Committee (ICPCC), and the National Children's Consultative Forum (NCCF); and at the district and local level it entails the District Child Protection Committees (DCPCs), Village Child Protection Committees (VCPCs) and District Children's Consultative Forums (DCCFs).

At the district level, S&CD is responsible for implementation of a social protection package aiming to reduce poverty and vulnerability of large segments of the population (Mupedziswa & Ntseane, 2011). Regarding children, the S&CD is the primary administrative and investigative department of children's welfare, either as victims, witnesses and those in conflict with the law.



Social workers: Social workers are assigned several roles under the Children's Act including reporting cases involving children to the police; writing social enquiry reports; application and implementation of child protection orders; working with protected children; arranging alternative care for children; facilitating foster care; working with children in conflict with the law; provision of counselling both process and trauma; visitation and inspection of premises placing children.

Child Protection Committees (DCPC and VCPC): The Act provides for the creation of child protection committees (CPC). The main purpose of the CPC is to educate the community about the neglect, ill treatment, exploitation or other abuse of children and to promote and monitor the welfare of children in their communities.

National and District Children's Consultative Forums (NCCF and DCCF): The Children's Consultative Forum, established by Section 34 of the Children's Act, provides meaningful opportunities for children to influence key processes that affect them. The Forum is composed of children from 16 districts and serves as an advisory body to government on issues of children's education, health, safety and general wellbeing. The forum meets for children to express their opinions and make recommendations to the National Children's Council.

1.5.4 Ikago School of Industry and Trade

The Ikago Rehabilitation Centre was established in 2001 in Molepolole under the MLGRD, for boys between the ages of 14-18. The school of industry was envisaged as a centre where convicted children could be diverted from the damaging effects of prison and experience rehabilitation as their sentence. The Ikago Rehabilitation Centre converges three Ministries, namely the host MLGRD, the Ministry of Justice, and the Department of Vocational Education and Training (DTVET) under the Ministry of Education and Skills Development (MOESD).

1.5.5 Education Sector: Guidance and Counselling Services in Schools:

The guidance and counselling programme was introduced in the education system to address delinquency, teenage pregnancy, behavioural problems and school dropouts, as well as drug and substance abuse. The guidance and counselling teachers screen and link children in need of social protection, justice and rehabilitation services to the relevant authorities.

1.5.6 District Commissioner and Council Secretary

District Commissioners and District Council Secretaries are non-political leaders who offer oversight to the management and leadership of district/town councils.

District Commissioner (DC): District Commissioners serve as senior central government representatives overseeing the development, implementation, and monitoring of the local district and urban development plans. They facilitate and give direction to the departments operating in their district and ensure their alignment. They advise councillors on government priorities and programmes, and governance issues.

Council Secretary (CS): Working alongside the DC, the Council Secretary (CS) heads the administration arm of the council governance and district leadership, comprised of twelve different departments, such as education, S&CD and health (DHMT), to name a few. Council Secretaries ensure the efficient operation of all local authorities through good governance. They serve as the national government's focal point for local government policies and operational matters.



1.5.7 Tribal Administration

Tribal administration dispenses justice through the customary court system presided over by Dikgosi. Staff working in customary courts include Dikgosi, the clerk of the courts, and the bailiff. Dikgosi's primary mandate is to promote and preserve culture, ensure tranquillity among community members (such as through reconciliation), preside over civil cases and refer child-related criminal cases to the police or social services.

1.5.8 Health Sector

Hospitals and clinics provide clinical and preventive services. The health system plays a critical role in the justice system by providing professional services that form part of the evidence in providing justice to child victims and offenders. One critical role is the provision of timely access to medical and psychological support services for child (sexual) abuse survivors.

1.5.9 Youth-Friendly Clinics (YFC)

The Ministry of Health (MoH) established youth-friendly clinics where the youth's unique physical, psychological, and emotional development needs are met. Youth-friendly services include sexual reproductive health and rights (SRHR) services, management of sexual abuse and violence, providing post-exposure prophylaxis, post-abortion care, and antenatal and postnatal care. Youth-friendly clinics create referrals and linkages to legal services, drug rehabilitation, and other social support services.

1.5.10 Gender Affairs

The Department of Gender Affairs under the Ministry of Youth, Gender, Sports and Culture (MYGSC) aims to ensure gender equality and gender mainstreaming in Botswana. One focal area is violence against women and the girl child, including women's rights. Gender officers are based in each district to ensure gender mainstreaming is taking place in district and local programmes.

1.5.11 Non-State Actors

Non-state actors, civil society organisations (CSOs) play an essential role in supporting the government's endeavours to protect children. CSOs contribute to child justice inclusive of, but not comprehensively, provision of shelters and placement in foster homes; social services such as counselling and guiding clients in the justice system and rehabilitation for juveniles.

2. Methodology

The research methodology section describes the underlying strategies to collect and analyse the data. It elucidates the underpinning design, the processes, sample determination, sample size, sampling technique, inclusion and exclusion criteria, and data analysis.

2.1 Research Design

The assessment employed a phenomenological qualitative research design aimed at illuminating an individual's perspective, emphasising the importance of a personal worldview. It is a powerful research method for understanding subjective experiences and gaining insights into people's motivations and actions (Taylor et al., 2015; Cleland, 2017). The study triangulated in-depth interviews with legislative analysis and case analysis.

2.2 Study Setting

To account for the urban-rural as well as socio-cultural and demographic differentials in crime patterns, case adjudication, resource availability and quality, service delivery, and access to justice, the study settings included Gaborone, Francistown, Maun, Tsabong, and Letlhakane districts.

2.2.1 Sampling Methods and Composition of Participants

Respondents in the study were purposively selected from among government departments and non-state actors involved in implementing and advocating for child-friendly justice. They were deemed pertinent bearers of justice within their profession and, therefore, knowledgeable about issues that are effective or non-effective in delivering child-friendly services at strategic, organisational and implementation levels. To juxtapose the views of service providers against those of service beneficiaries (recipients) the sample included children as victims/witnesses and offenders as well as their caregivers, and community gatekeepers (Table 1). The aim was to gain insight into the beneficiaries' lived and subjective experiences, attitudes and expectations.





Table 1: Summary of areas of study focus, type of data collection tools and sample population

Target level	Data Collection Tool	Target Population
Strategic Level (HQ)	Desk Reviews/Document analysis	International and local policy documents on child-friendly justice
	In-depth Interviews	Key Informants/Subject matter experts: Senior Government Officers across government departments
Organisational and implementation levels	In-depth interviews	Department heads in Social & Community Development, Police, Health, Education, District Heads (District Commissioners/Council Secretaries), Administration of Justice, Attorney General Chambers, Directorate of Public Prosecution, and Botswana Legal Aid
	Focus group discussions	Police Officers
	Case study	Case notes of children's court proceedings
Non-government actors	In-depth interviews	Non-state actors (within and outside of Botswana)
Service recipients	In-depth interviews	Child victims/witnesses and offenders
		Parents/guardians of child victims or offenders and community gatekeepers (Dikgosi)

2.2.2 Inclusion Criteria

Key Informants

The aim of interviewing a sample of service providers was to ensure that the information collected reflected the journey children and their caregivers go through from the initial reporting, during and after their contact with the justice system.

Child Victims/Witnesses

The study composition included children who were victims/witnesses or offenders of a crime. Efforts were made to interview parents/caregivers and young people separately; however, parents were allowed to be present when they demanded to be present. The inclusion criteria were:

- Children under 18 years who had been a victim or witness of a crime.
- Parents/caregivers or legal guardians who granted the research team permission to interview their children.
- The child must have assented to participate regardless of parental/caregiver/legal guardian permission.
- Where child victims were below the age of 14, parents/caregivers responded to the question on behalf of their children.

Child Offenders

The inclusion criteria for child offenders were comparable to those for non-offenders. The research included offenders in non-custodial settings to determine the array of services available in country.

Parents/Caregivers

The research team sought the help of Dikgosi and social workers to identify caregivers of children who have encountered the justice system as victims, witnesses, or offenders. The inclusion criteria included the following:

- Must have a child who has been a victim, witness or an offender and
- Must have consented to participate in the study.

2.2.3 Sample Size and Breakdown

The sample sizes for various study sectors ranged from 10 – 48 respondents, enough to achieve over 80% information saturation based on Guest et al. (2020) sample size calculation criteria. The sample therefore consisted of a total of 327 participants including those in the one (1) focus group discussion with police (Table 2).

Table 2: Number of Key Informant Interviews conducted, per sector and study district							
Sector	Site	Francistown	(Greater) Gaborone	Letlhakane	Maun	Tsabong	Total
Children (victims and offenders including Ikago [†])		6	11	6	6	8	37
Caregivers		10	7	8	10	10	45
Social Service Sector: social workers, Ikago staff, MLGRD		7	18	5	7	10	47
Justice Sector: High court, Magistrates, Court Clerks, DPP, AG, Legal Aid Botswana		10	24	4	2	2	42
Police		11	15	9	10	3	48
Health		13	7	6	3	3	32
Education		8	5	6	9	7	35
Gender Affairs		2	3	2	2	2	11
Non-State Actors: CSOs, UN, CRNSA (outside country counted in Gaborone)			12		1		13
Other Leaders: District Commissioner, Council Secretary, Dikgosi, Customary Court clerks		3	2	2	5	5	17
Total		70	104	48	55	50	327
†Note: Of the 37 children interviewed in the study, five were boys incarcerated at the Ikago School of Industry and Trade							



2.3 Data Collection Instruments

The study utilised semi-structured, open-ended questionnaire guides for in-depth interviews (IDI) of all participants. The question guides were discovery-oriented and interactive, characterised by probing to understand respondents' lived experiences (Boyce & Neale, 2006). Separate instruments were designed for children and caregivers; strategic, organisational and implementation levels of study organisations

For the collection of data, researchers recorded interviews using a smartphone or tape recorder. Out of 327 there were four (4) who did not want to be recorded, however researchers took notes, which were incorporated into the analysis. Participants who expressed their discomfort with face-to-face interactions due to the COVID-19 pandemic, were interviewed virtually through Zoom, MS Teams or WhatsApp platforms. Since the study was carried out at the peak of COVID-19 with its associated restrictive protocols only one focus group discussion (FGD) was conducted with police.

2.3.1 Data Management and Processing

Qualitative data elicit verbal opinions from research participants captured in audio format. To ensure confidentiality and privacy, data were anonymised (although anonymity in qualitative research is elusive when the designation of the respondents is captured) and kept in password-protected computers. All audio data were downloaded to one central computer and thumb drives under the custody of SSI. External transcribers had access to audio data that did not have socio-demographic profiles, making it impossible to trace the participants' identity.

2.3.2 Trustworthiness and Rigour

The study implemented and documented all trustworthiness strategies, including data collection/ interview logs, field notes, transparent transcript validation process, and creating memos to elicit opinions and inherent biases of the research team. The study followed the consolidated criteria for reporting qualitative research (COREQ), a 32-item checklist for reporting research methods and analysis approach (Tong et al., 2007; O'Brien et al., 2014).

2.3.3 Data Preparation (Pre-text Data Analysis)

The audio and text data preparation (pre-analysis) employed the following steps:

Step 1: Transcript Validation, Organisation and Editing

The first step involved validating the quality of transcripts by assessing whether the audio and text data were consistent, thus that the transcript was the respondent's true voice (opinions, insights, and lived experiences). The study randomly selected 5% of the audio-data and text-transcripts for a proficient English-Setswana translator, to conduct the assessment. Less than 2% of the transcripts were re-translated using an independent transcriber. Each transcript was assigned unique identification numbers characterised by study setting code, data type code (in-depth interview or FGD), respondent level code and the transcript number (001 – 050).

Step 2: Free-Floating Reading

Free-floating reading involved reading and re-reading of text-data (transcripts). The aim was to become familiar with respondents' opinions, insights, and lived experiences by immersing in respondents' subjective views of social phenomena under study (Faria-Schutzer et al., 2021).



2.4 Data Analysis

The study analysed text data using ATLAS.ti (Berlin, Germany) version 23 for windows (Friese, 2021), one of the computer-assisted qualitative data analysis software. The study applied the framework analysis approach (Ritchie & Spencer, 1994), which identifies, describes, and interprets critical patterns within and across cases, study units, and themes of interest. Thematic framework analysis includes familiarisation, identification of thematic frames, indexing, charting, mapping and interpretation.

Familiarisation: Familiarisation involves reading and re-reading text data to understand major thematic areas. The second step in familiarisation involves carefully examining and identifying vital ideas around the participants' lived experiences, insights, and opinions.

Identification of Thematic Framework: The first round of quotes guided initial coding which were ordered into themes and concepts tailored to the research objectives. The second stage involved refinements, including renaming, identifying new components, deleting, collapsing, and reordering (Goldsmith, 2021).

Indexing: The indexing process categorised themes (Spencer, Ritchie, O'Connor, et al., 2014). The indexing step also provides an important opportunity for framework revision, as viewing all study data simultaneously necessitates assessing how well the framework works with the data.

Charting: Charting entails ordering and abstracting the indexed study data to be examined systematically and in totality. Charts are organised in a matrix form, using ordered rows and columns populated by the units of analysis and the framework components.

Mapping and Interpretation: Mapping and interpretation combine key learning patterns by comparing across and within units of analysis and framework components. The charts and other data are reviewed, recombined in themes, collapsed, or condensed as suggested by the study focus, data, and patterns. The results describe concepts, demonstrating associations across units of analysis for explaining attitudes, experiences, and behaviours; and creating typologies (Ritchie & Spencer, 1994).

Study Challenges and Limitations: The study was conducted at the peak of the COVID-19 pandemic. Consequently, some selected individuals were not available to participate in the study because they were either sick from COVID-19, attending a funeral, passed away or in quarantine. The study was conducted in phases, prolonging the data collection period from August 2021 to January 2022. The study received a pre-selected list of participants from government departments. In these institutions, the senior officials demanded to see the interview guide, which may have biased the responses.

However, the research teams' reflections for each interview suggests that the level of biased responses were minimal. Efforts to include the department of prisons were unsuccessful despite several attempts by the Ministry of Justice Leadership. The Ombudsman could not participate as they were undergoing a restructuring process.

Ethical Clearance: The study received ethical clearance from the Office of Research and Development at the University of Botswana Institutional Review Board (UB-IRB), Ref #UBR/RES/IRB/SOC/125, dated July 7, 2021.



Results

The next chapters present results by sector. The sectors include justice, social services, police, tribal administration, gender affairs, health, education, Ikago and non-state actors. Results reflect verbatim accounts on each topic of discussion. Results include information from legislative statutes and case analyses in relevant sector results. The results section also includes cross-cutting issues drawn from interviews and document and case analyses.

The information is organised in themes of legislative, governance, infrastructure and systems, guidelines and standard operating procedures, capacity and skills and stakeholder collaboration. Each verbatim excerpt reflected in this report shows the transcript identification number indicating the district, type of data, level of the respondent (strategic, organisational, and implementation), sector and assigned a number. The transcript IDs are a form of data. It must be emphasised that the results are not the researchers' opinions but those of the respondents.

3. Justice Sector Findings

The justice sector included forty-two respondents drawn from the Administration of Justice (AOJ), the Attorney General's Chambers (AGC) (an officer in the legislative drafting unit), the Directorate of Public Prosecution (DPP), and Legal Aid Botswana (LAB), an officer in the legislative drafting unit.

3.1 Justice Sector Gaps

"The law is left to our discretion, and in a way, it places magistrates at crossroads as to how to proceed with children's matters because there are no guidelines set, and yet 70% of the judiciary falls on the magistrate core mandate." GA-LB/IDI/IMP/MAG_#015

3.1.1 Governance

Budget and Resources

Inadequate resources drive officers to consistently compromise child friendly principles and standards espoused in the Children's Act. Respondents reported the lack of an earmarked budget to implement children-related programmes as a significant obstacle to the implementation of the Children's Act. There are not enough vehicles to transport children separately from adult offenders. Those available are marked with police and prison insignia. Some magistrate courts cover outstations spread across vast geographical areas, often with difficult terrain, and shortage of transport impedes prosecutors' travel to these outstations. The environment in the courtrooms falls short of providing a child-friendly atmosphere.

Discussing the challenges in implementing the Children's Act, a respondent said:

"From my experience as a judicial officer, it is that, at the end of the day, resource constraints, actually, like in every other judicial environment, end up compromising, what would have been a fully and wonderfully implemented Act. For example, you may not want a child to travel in a police car with adult accused persons, but you do not have the resources to isolate the child to take them to court." GA/IDI/STR/LAB/_#002

Magistrates and prosecutors alike pointed to inadequate human and financial resources. This leads to a high workload, which causes case backlogs and affects timely case conclusions. Consequently, there are incidents where a case can remain unresolved for more than five years. Victims in delayed cases often give up while perpetrators who commit offenses as minors end up being tried as adults, resulting in a miscarriage of justice. In some instances, accused persons apply for permanent stay of a pending case if it drags for long.



**The environment in the courtrooms
falls short of providing a child-friendly
atmosphere.**



3.1.2 Legislation

Current Legislative Statutes

The study asked respondents to describe the primary legislative statutes and policies they apply to fulfil their mandate pertaining to child-related activities. The respondents cited many legislative statutes, including the Constitution (1966), Children's Act (2009), the Domestic Violence Act (2008), Adoption Act, Affiliation Proceedings Act (1970, amended 1999), the Deserted Wives Act (1978), the Penal Code (amended 2018), as well as the Criminal Procedure and Evidence Act of 1939 and Bill 2022. Other statutes include the Magistrate Court, High Court and Court of Appeals Acts and case laws. Few respondents cited international human rights instruments such as the UNCRC.

Most respondents opined that a fully integrated implementation of these statutes with the Children's Act taking precedence could meet children's rights and provide judiciary safeguards in the Botswana child justice system.

"We have all the laws and everything, but nobody knows how to apply them. If you deal with the Children's Act and the regulations on their own, you are not going to get the best quality... because child issues are so many and at some point, as judicial officers, we wonder on how to handle them." FT/IDI/IMP/MAG/_#001

Gaps in the Current Legislative Statutes

Despite having all these legislative statutes to meet the minimum standards to advance children's rights, respondents highlighted some gaps that require attention. These include:

- The Children's Act as a major piece of legislation in advancing children's rights, is not being implemented to its fullest capacity across all government departments.
- Applying the laws tends to depend on individual preferences commonly used or developed by the department. (The police tend to use the Penal Code, and Gender Affairs officers prefer the Domestic Violence Act).
- Some respondents noted that most statutes are old and use archaic colonial legal language, inconsistent with human rights language. While there have been amendments, they have not been aligned with most provisions of the Children's Act.
- Currently, there are no Children's Court rules (Act) and administrative protocols to provide procedural safeguards of treating and managing child victims, witnesses, or offenders, creating inconsistent processes that negatively impact children's rights and child-friendly principles.

Inconsistencies between Penal Code and the Children's Act

There is inconsistency between the laws. The Children's Act Section 82(1) reads, "Children under the age of 14 are presumed incapable of committing a criminal offence 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". The age is different than that of the Penal Code, Section 13 stating: "No one can be held criminally responsible for an act or omission carried out while under the age of 8." A person under the age of 12 is presumed incapable of having "carnal knowledge" which prevents the prosecution of younger children for certain sexual offences.

Implementation of the Children's Act

Most prosecutors and magistrates identify the Children's Act as a major piece of legislation in advancing children's rights. There was a consensus among respondents that the Act is not being implemented to its fullest capacity across all government departments.



Lived experiences from almost all magistrates revealed instances in which children in conflict with the law have been brought to magistrate court without legal representation, violating the Children's Act. Children's interviews indicate that most police officers (guided by the Police Act and the Penal Code) or prison officers appear in court with a minor without a legal representative, a social worker, or guardian:

“Now, when it comes to section 95, in all honesty, the government has failed. It has failed dismally because we have many children in conflict with the law, whom the police bring to court, and they want to arraign...” GA-LB/IDI/IMP/MAG_#012

Reflecting on the implementation of the Children's Act with the Directorate of Public Prosecution, a respondent acknowledged that his department had not called for Legal Aid's services in cases involving children without legal representation.

“The problem for me is that, as DPP, we have not done what we need to do with the Children's Act. I discussed it yesterday with my colleagues in a performance management meeting, and we agreed to have a Children's Court assistant, who would advise in court that this is the procedure to follow.” GA/IDI/STR/DPP_#001

Interviews with Legal Aid Botswana revealed that the police, in consultation with the social workers, can call the services of Legal Aid Botswana for legal advice during the pre-trial for legal advice and where legal representation is required. However, the police and social services have never called for the support of Legal Aid Botswana.


There were divided opinions on whether it was necessary to amend the Children's Act. On the one hand, some noted that it would be a non-starter to amend a legislative statute that has not been fully implemented. However, others observed that the Act needed harmonization with other legislative statutes, such as the Penal Code and alignment with ratified international treaties, such as the UNCRC. Others argued that Botswana needed to review old statutes to align them to human rights-centric language.

Commenting on outdated and archaic instruments used in the Act, a respondent cited the medical-legal check (#Bp73) which the police use to request an assessment of rape victims. Respondents feel that the use of the form can be traumatizing to the victim. The BP73 form is also regarded as limiting in its use because it requires the user to outline and document injuries or observations made by the medical doctor on a body drawn picture.

3.1.3 Infrastructure, Institutions and Systems

Absence of Children's Courts and Child-friendly Spaces and Buildings

Several interviews noted that separate children's courts buildings do not exist. Because of their design, the current courts remain not child-friendly, even when sessions are held 'in camera', child victims or witnesses can still be confronted with a perpetrator in the hallway while waiting for the court session to start. The process of emptying the gallery (court room) in the presence of children continues to compromise their identity and privacy, since it happens while a child is still in the room. Despite the provision of the Children's Act (section 84) that states that a child victim or witness should not give evidence in the presence of the perpetrator, currently, there are no provisions for children to testify or give evidence in the absence of the accused person. Since there is a shortage of child-friendly interview



rooms (e.g., with one-way mirror), interviews continue to be intimidating and traumatic for children as they encounter accused persons during trial. Other court features like toilets and furniture have not been designed to be child-friendly.

Prosecutors and magistrates also pointed out that unprepared children lacking support from social workers and guardians are often afraid of the intimidating and unfriendly environment in the court system.

“If the court environment can scare an adult just seeing the set-up of everything, you can imagine how a child will react. Even if you can change a few chairs, make them face that way; this way, it does not matter. We need new infrastructure designed to ensure the protection and safety, the safety of children.” FT/IDI/IMP/DPP/_#009

Moreover, respondents suggest that children have no direct access to the court system. Most of the respondents commented that no child under the age of 18 can register a case to be adjudicated in the court of law unless under their caregivers, social worker or legal representative.

Absence of DPP offices in some parts of the country

DPP officers are not available in all villages in which Magistrate Courts exist. The Directorate is undertaking a process to reorganise its functions. Parallel to that, it has embarked upon a decentralization exercise which will see it extending its physical presence to all areas where there are magistrate courts. As a result, the Directorate has embarked upon a massive recruitment exercise of prosecutors to increase its prosecution capacity.

Justice Forums

Magistrate Courts should convene at least two justice forums per year with all relevant heads of department in every district to discuss legal issues affecting work in the districts and share their challenges. The justice forum is scheduled by the heads of the magistrates' courts through circulating invitations and requesting stakeholders to add to the forum agenda their pertinent legal issues.

Unfortunately, not all districts consistently convene such forums, some had not had a meeting for four years, despite being considered useful by respondents.

3.1.4 Guidelines and Standard Operating Procedures (SOPs)


In addition to the infrastructure, a serious impediment to the implementation of the Children's Act is the inadequate and inconsistent child-friendly guidelines and standard operating procedures for handling children's cases.

Sentencing Protocol for Children

The narrative suggests that Botswana does not have a sentencing protocol for children. Magistrates must apply the common law, opening chances of inconsistent sentencing if a magistrate does not consider a child's age due to other factors. Magistrates also rely on social workers' reports to help inform their decisions, further highlighting the importance of social enquiry reports for the sentencing of children.

Children's Court Rules and Procedural Protocols

Most respondents argued that the Children's Act falls short because it does not include Children's Court rules (Act). In addition, there is no standard operating procedure or protocol to guide administrative, investigative, and judicial processes safeguarding children's rights.



“No legislature binds us to any child-related etiquette in the courtroom. That is one thing that I believe we are failing. When I got into this job 21 years ago, it’s one of the things that I realised we were lacking.” GB-LB/IDI/IMP/HC/_ECC/_#001

‘In Camera’ Arraignment and Proceedings

In addition, more than half of the respondents reported that court arraignments and proceedings are conducted ‘in camera’ or the magistrate’s chambers with a restricted number of authorised personnel, including the magistrate, his/her support staff, a prosecutor, a social worker, a guardian, and the perpetrator. This procedural safeguard is to ensure the privacy and confidentiality of children during a court appearance. While most prosecutors and magistrates cited holding children’s cases ‘in camera,’ they also reported instances whereby the procedure was not followed, resulting in minors being brought to an ‘open court’ for arraignment and proceedings.

“We do not have specialised Children’s Courts dealing with children. We have them on paper but not in practice. We change the court set-up to accommodate that juvenile, although such a provision does not meet friendliness...” GA_LB/IDI/IMP/MAG_#012

Turnaround Time of Children’s Cases and Court Delays

The study asked respondents to draw from their experiences and explain the normal turnaround time of children’s cases they have experienced in their careers. Results suggest that there is confusion and disagreement on turnaround time for children-related cases. The speedy processing of litigation cases depends on how individual magistrates approach each case in court. Some respondents stated that cases related to maintenance, custody, adoption and placing children into foster homes cases take a short period, when all required documents and social worker reports are availed to the magistrate.

“We do not have a specific turnaround time for children’s cases. We do have turnaround times for all cases in general. [...] For criminal cases, the turnaround time is a year. For maintenance cases, it is three months. We will try to comply with these time schedules at a magistrate level.” GA-LB/IDI/IMP/MAG/_#012

Commenting on the root causes of delays in children’s cases within the justice sector, the Head of Prosecution gave an illustrative example:

“We have a huge problem of matters not moving while in the court system, which happens for various reasons. The most common is that cases get postponed every time [...] Yesterday, I went to court for a trial set by a particular magistrate four or five months ago. I called witnesses from all over the country, with someone coming from Tsabong. The Magistrate was not there and did not even inform the prosecution. [...] I understand their frustration because, at different levels, there have been delays.” GA/IDI/ORG/DPP/_#002

Procedures Granting Abortion Rights

Respondents highlighted how indecision and the complex nature of multi-department mandates defeats the right to abortion in a rape-related (incest/defilement) pregnancy when the victim wants to terminate a pregnancy. The provision of legal abortion to the victims of rape, defilement or incest is to be legally determined by a medical practitioner. The indecisiveness often leads to failure to work under the legally provided timeframe of 16 weeks, leaving a traumatised child carrying an unwanted child to full term, a practice recognised as torture by the United Nations Human Rights Working group.

"There is a very painful circumstance when your children get defiled. Some of them fall pregnant. There is a provision under which they can have abortions. However, the chain of decisions between the social worker who determines, the doctor who examines, the magistrate who must make the order, the police officer who investigates, and the DPP who must consent to the abortion so that the doctor is assured that she/he is not committing a crime, takes too much time, endangering the life of the victim."
GA/IDI/STR/DPP_#001

Counselling for Judicial Officers

Respondents reported psychological stress from prosecuting or presiding over violent cases of victims, as they relate them to the ages of their own children, siblings, or relatives. They reported the need for a protocol to ensure the officers receive counselling or that de-stress programmes are implemented in the justice sector. Currently there is no support of this type.

Culture and Use of Language

Respondents told the research team that culture and using metaphoric language⁴ during cross-examination or giving evidence in a court of law poses challenges when mitigating a case, often leading to "miscarriage of justice." Magistrates noted that in most instances, victims tend to use metaphors, a commonly accepted way of communication in cultural settings, but not befitting the common law. Giving an example of the challenges posed in mitigation, a respondent told an interviewer about his experience:

"In one rape case I presided, a child victim gave evidence that the perpetrator had inserted a log inside her. Asked to elaborate, she continued, a bird flew into me. - "O ne a tsere nonyane, kana o ne a tsentse legong mo go nna", so legong mo go nna." meaning he "he had inserted a bird or log (tree) in me." FT/IDI/ORG/MAG/_#014

Explaining the impact of the use of Tswana metaphoric language in sexual assault cases (rape and defilement) in the court of law, a respondent said:

"You do not want to be talking in a way that is not explicit enough to be understood that this is what transpired. Using milder and gentler terms might not bring forth the true picture of what transpired." GA_KW/IDI/IMP/MAG_#005

3.1.5 Specialisation and Capacity Building

Most noted that interacting with children requires specialised personnel or trained professional staff during investigations, pre-court preparation, and court proceedings and protocols. There is however a shortage of adequate human resources and specialised personnel on child-related matters. Moreover, magistrates are not always aware of the sentencing options in the country which leads them to use limited sentencing options. When asked to describe the training needs when handling children's cases, prosecutors and magistrates, with less than five years of employment, were most likely to report that they had not received any child-focused training.

⁴ Metaphors are figurative language, rhetorical devices in which an object, idea or situation is referred to directly as something it is not. It moves away from referring to something in a literal sense and refers to it as something else to create a more imaginative figure of speech and description of something. When used as a literary device, a metaphor can add a more detailed and complex description, giving the reader a more in-depth experience. A metaphor can easily convey an idea or an emotion more than simply using a literal statement.

3.1.6 Stakeholder Collaboration

Respondents indicated the important role of stakeholders such as education, health, and non-state actors in protecting children in the country. Respondents noted that more than 90% of children in Botswana enroll in the education system and interact with teachers for more than half a day. Equally important is the health sector. More than 98% of children born in Botswana are serviced by a professional health worker, mostly in public health facilities. Narratives in all the study areas indicate that most school-going children who drop out of school due to pregnancies are not reported to the police or social workers, even though impregnating a minor and not reporting the crime are both criminal offences. Moreover, teenagers giving birth under the care of the health worker, due to defilement are not reported to social workers and the police.

Stakeholder collaboration delays

Protecting children's rights is a circuit-like relay involving several departments each with their own internal delays. A magistrate shared her opinion on the delays of cases involving children, attributing them to the lack of collaborative involvement of key stakeholders at the initial reporting of a case. The silo approach, after reporting a case involving a child, negatively impacts the principles of a child's best interest and the rule of law, resulting in denying children their basic human rights. For instance, in the case of a 16-year-old committing an offence, the police did not alert Legal Aid and social services to come in and represent or help this child. The child waits for trial for four years, and Legal Aid cannot represent him at the Magistrate's Court since he's not a minor anymore.

Most respondents reported that unwarranted case delays emanate from social welfare services. According to prosecutors and magistrates, any case involving a child (a victim or perpetrator) requires a detailed social enquiry report as part of the docket that the DPP assesses during pre-trial. The social enquiry report forms an important decision-making document during arraignment, court proceedings, and sentencing. Prosecutors and magistrates raised several concerns regarding the social enquiry reports:

- Social workers take too long to compile the social enquiry reports, at times delaying up to seven (7) months from the time of the initial request.
- The reports sometimes lack the details and depth necessary for magistrates to make an informed judgement that accounts for a child's best interest.

In addition, prosecutors and magistrates indicated that given the age, maturity and needs of children in contact with the courts, the Children's Act requires the presence of social workers to provide their expert support of children and guide the child-centric conduct and processes during court arraignment and proceedings. However, in most cases, social workers do not show up during arraignment and court proceedings. The absence of social workers often results in case postponement and subsequently compound court delays.

"[...] If we had an in-house social worker in the court system, we could control the time and the pace of the cases because we would never wait for the report from a council social worker in custody or defilement cases. We would operate on a timeline that directs the attorneys, the judge, or the magistrate. But when it includes external stakeholders, we lose control." GA-LB/IDI/IMP/HC/ECC/_#001



Allocation of Cases to Social Workers

According to the magistrates, social workers often cause the delay in cases. Regarding the quality of their work and partners, a magistrate believed that social workers should be allocated cases based on their skills and knowledge, and not randomly allocated as is currently the case.

Incomplete Police Investigative Reports

A respondent suggested that, on average, one of every ten dockets (investigative reports) that the DPP receives from the police fails to meet the minimum standard of evidence to proceed to trial. Such investigative reports are sent back for further investigation. Sometimes, cases are closed or withdrawn from the court with the liberty to reinstate.

3.2 Promising Practices

Allocating Specific Dates for Children's Cases

There has been noted innovation and efforts by some magistrates to ensure that children's cases are expedited. When allocating dates for children's cases some magistrates mentioned that they always consider the best interest of the child to ensure that it is a date that is not in conflict with their exams and suitable to them.

Facilitating Children's Cases In-camera and Conducive Environment

'In-camera' proceedings refer to the facilitation of parts or in full of cases where general public and media are not allowed to attend. Magistrates make efforts to facilitate cases of children in-camera. This is often done through holding cases in an empty gallery or in chambers. Magistrates and social workers have further made initiatives to reduce the court intimidation children face by not wearing their usual regalia, and creating a comfortable seating arrangement as they prepare children for court.

Criminal Legal Aid Pilot Project

Legal Aid Botswana through their 2019-2024 corporate strategy have carried out a Criminal Legal Aid pilot project whereby they represent child offenders in criminal matters, instead of only attending to civil matters. This pilot project is a much-needed initiative considering the current challenges of access to legal representation for child offenders and should be supported to ensure that all child offenders have access to free legal aid representation. The public needs to be made aware of Legal Aid Botswana's work.



There are not enough vehicles to transport children separately from adult offenders. Those available are marked with police and prison insignia.

4. Police Sector Findings

The police sample included 48 officers (29 males and 19 females), comprising of high-ranking officers to the lowest-ranking cadres, including the Deputy Commissioner of Police – Child Protection, Assistant Commissioners (Divisional Commanders), Gender and Child Protection Officers, Officer Commanding, Station Commanders, Criminal Investigation Department (CID) officers, Police Prosecutors, Constables and Special Constables. Their work experience in the force ranged from 2 years (mainly within the lowest rank) to 39 years (among senior officers). The majority had completed secondary education, with a sizeable number with post-secondary school education (diploma, degree, and master's degrees).

4.1 Police Sector Gaps

“Until we have facilities that can cater for children, trained officers to investigate these cases, magistrates and judges who understand how to handle children [painful or dangerous as this crime is], I will say we are not there yet [to achieve child-friendly justice system]. We are trying but have not reached that point.” GA/IDI/IMP/POL/_#017

4.1.1 Governance

Budget and Resources

Police expressed frustrations over the deteriorating trust with the public over crime management and disposal emanating from organisational and inter-departmental challenges. Lack of adequate resources impedes efficiency in accomplishing police work without delays. Significant causes of delays include staff shortages and lack of adequate transport.

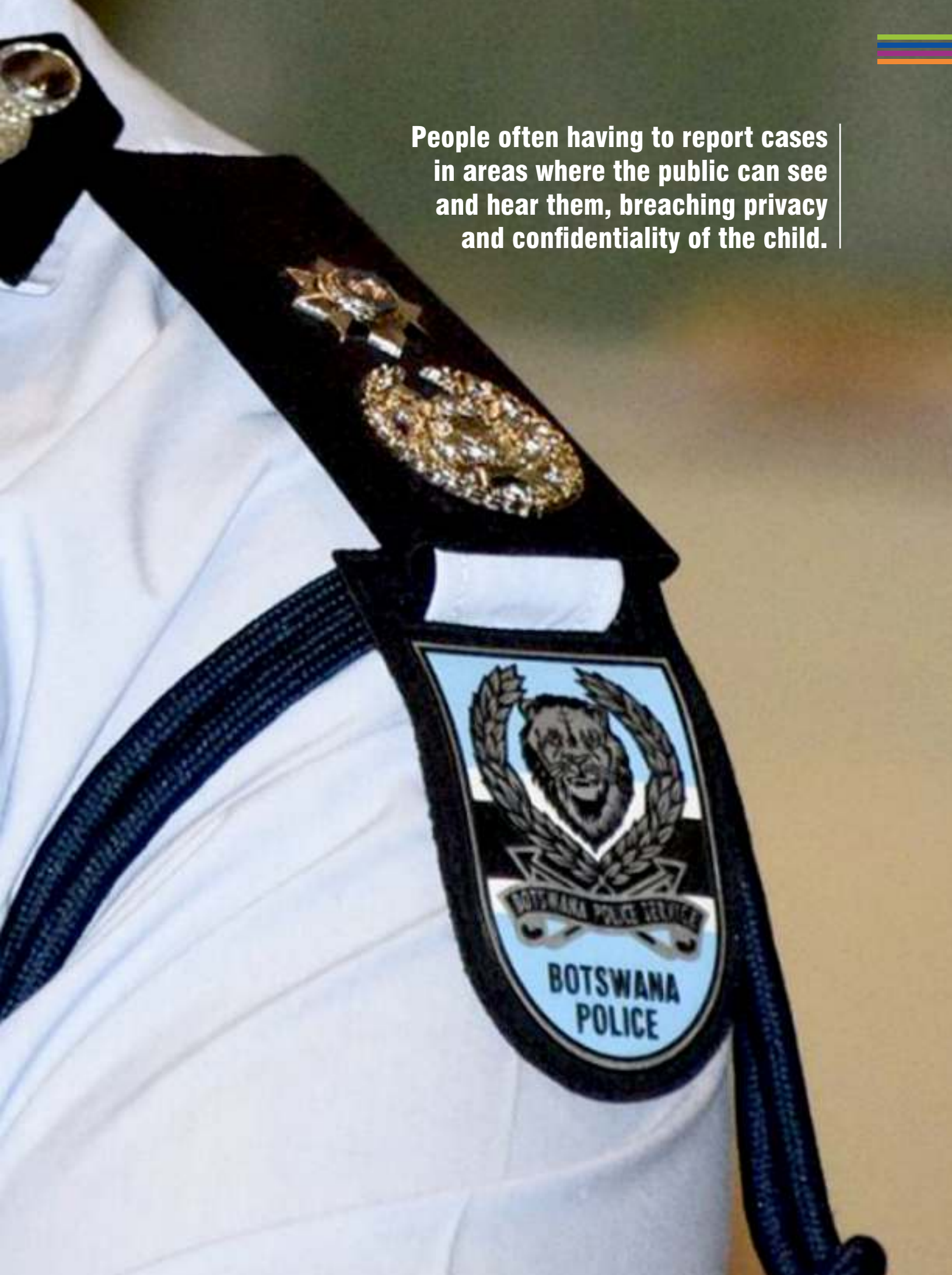
4.1.2 Legislation

Respondents were asked to describe the primary legislative statutes they apply to fulfil their mandates. According to police testimonies, the most cited legislative documents guiding their work and conduct were the Police Act (Sec. 6), the Penal Code, and the Criminal Procedures and Evidence Act. Some officers, particularly in the senior ranks, cited the Children's Act when dealing with child-related cases, however it was not commonly cited nor used.


4.1.3 Infrastructure, Institutions and Systems

Inadequate Infrastructure

Most officers highlighted the inadequate infrastructure to create a child-friendly environment for managing child victims and those in conflict with the law across many police stations. Many police stations do not have appropriate space for interviewing children. For conducting interviews with children, the police often make do with existing office space, where the regular occupants of the office move to make way for a child's interview. This results in people often having to report cases in areas where the public can see and hear them, breaching privacy and confidentiality of the child.

A close-up photograph of a Botswana Police Service uniform. A black shoulder strap with gold-colored buttons and a large, ornate gold-colored oval badge is visible. Below the strap is a blue and white police badge featuring a lion's head and the text "BOTSWANA POLICE SERVICE" and "BOTSWANA POLICE". The uniform is white. In the top right corner, there is a small graphic of horizontal lines in green, yellow, blue, and orange.

**People often having to report cases
in areas where the public can see
and hear them, breaching privacy
and confidentiality of the child.**



“We have a shortage of facilities. Today, I opted to use the kitchen space. The infrastructure is not quite good, as you can see. Child clients are mostly interviewed in areas that are not conducive.” MA/IDI/IMP/POL/_#040

“There is also the problem of having one juvenile prison in Moshupa. Imagine having a child who has a case in Kasane. It means that every time we go to court, the police officer must return the child from Moshupa to Kasane or Francistown. So we need another juvenile prison in the northern part of the country to relieve this.” FT/IDI/IMP/POL/_#006

Scarce Holding Cells for Children in Conflict with the Law and Juvenile Prison

Developing a justice system requires creating safe spaces for children, who may be a risk to the public if they have committed a violent crime. Botswana has no elaborate risk management protocol for temporarily holding violent-prone children in conflict with the law in safe and conducive holding cells. Children are often held in prison cells together with hard-core criminals, which may be detrimental to the safety of such children.

“I think so many things involving children must be established, including Children’s Courts and safe houses (prisons), because violent children cannot just be released back to society. Some of them are dangerous to other people. There should be safe holding spaces for detaining children who need to be isolated from the members of the public.” LT/IDI/IMP/POL/_#022

Inadequate Safe/Protective Custody Space for Children in Need of Protection

From time to time, the police would encounter a child in need of protection. This could be a child victim of sexual or physical violence, neglect, or other forms of abuse, or a child in conflict with the law who needs protection from public backlash. Neither the police nor the social workers have facilities for safe custody of children. The police refer such cases to the social workers, while the social workers themselves rely on the NGOs to assist in this regard.

Extreme Shortage of Forensic Testing Facilities

To build a strong case for prosecution, the police require forensic evidence. Investigating officers across the country collect specimens for forensic testing in a wide variety of cases ranging from rape, murder, assault, and substance abuse. Police stations from all over the country rely on only one forensic testing lab. This results in excessive delays in the processing of cases for prosecution because results from the forensic laboratory are delayed.

4.1.4 Guidelines and Standard Operating Procedures

Shared Reception Space Police

There was consensus that every criminal case reported for the first time goes through a shared reception area that caters to all cases, regardless of the age of the victim and offender. In relation to interviewing children in conflict with the law, responses from children reflected a mixture of some commendable efforts whereby the police interview children in a child friendly manner and instances where they were interviewed in an unfriendly manner.

Despite dire shortage of child friendly infrastructure (reported elsewhere in this report), police in some stations made the effort to interview children in secluded spaces away from the public. Many of the children reported being interviewed by only two officers, in plain clothes.



Other children reported being interviewed in the open community service centre or in an office amongst other uniformed and plain clothed police officers. A respondent, who was 15 at the time of his interview, responded that he was interviewed *“Near the reception where people come to report”*.

There are no separate reception areas for children and adults, except for Broadhurst Police Station, where children are served in the newly established Gender and Child Protection Unit in the police station.

Initial Procedural Standards for Handling Children's Cases

The results suggest that stations have different initial procedural standards for handling children's cases after a case has been registered at the community service centre (front office desk). In some stations, cases are allocated to officers based on their designation (focal persons for GBV, newly established child protection officers, where child friendly police stations have been established), sex of the child, experience, and availability of officers. The verbatims below illuminate different procedural practices police exercise in dealing with children's cases.

“We have those trained to interview children, so when we receive such cases, we bring those trained to come and address the issues. However, not every officer who deals with children's cases is trained.” LT/IDI/POL/_#023

Lack of Child-friendly Police Procedures (Arrest, Interviews, Detention)

Comparative analysis of interviews with child victims, offenders, and their caregivers show that some police procedures, such as arrest, interviews and detention of children are inconsistent with principles of the best interest of the child. Contrary to the accounts of the police in the study districts, police followed children to their homes in full police uniform and transported them in marked police vans.


One of the children interviewed at Ikago center reported being arrested in the early hours of the morning by a squad of police officers in full police uniform who then proceeded to keep him waiting in the police station until 7am when the CID officers reported for duty. The CID officers then kept the child until 8pm.

Most caregivers and children interviewed in this study revealed that some children were interviewed by the police without parents (particularly in defilement, children in conflict with the law, and rape cases). Where the victim appears mature, police interrogators requested parents or legal guardians to leave the interview rooms. In other words, police interviewed parents and children separately. A respondent said the police began interviewing him in the absence of his parents. He said that the police “had already finished taking down the statement” when his uncle arrived at the police station.

Often for rape cases, a female officer may lead the interrogation in the company of other male officers, or whoever is available at the station, regardless of their experience and training credentials. Two of the children at Ikago recalled that they were interviewed by the police in a room full of uniformed and non-uniformed police officers. One officer would sit facing the child, but anyone in the room could chip in and throw a question or a comment.

Of the eight children interviewed at Ikago, six of them reported being assaulted by the police during arrest, including one who recalled being beaten with black power cables under his feet while in handcuffs, thus violating the best practice that children should not be handcuffed on arrest.

Another child reported being arrested in the street by a total of three officers, who also beat him up in the process. He had this to say regarding his arrest:



“When we got to the police station, they ask me if I am [name] and I told them, ‘Yes, I’m the one’. They then asked me what it is that I had done, and I told them. Then they started beating me up. Then my uncle came and found me with them. They were slapping me.... They beat me up and then they took me into the police cell. Yes, I spent two days and the next day I went to court.” KW/ IDI/IMP/CAS/ CHD/_#003

Another child had this to say about his arrest by the police:

“Yes, they slapped us and hurt us with these handcuffs we had. Yes, they were slapping us and beating us with the black power cables. Yes, they were beating us under our feet. [...] I felt very sad because they had beaten us badly, they really beat us (“bare biditse bone”). Yes. They had beaten us severely. When they started arresting us, they started beating us at the bus rank. Yes, even at their offices.” KW/IDI/IMP/Ikago-CHD/_#005

Detention in Police Cells with Adults

During the investigations of their cases some of the children reported being detained in the police cell, together with adult suspects.

Procedures with Rape Cases

The study found that managing rape cases differed depending on the officers dealing with the case. Some officers reported taking victims for rape assessment, HIV testing and HIV prophylaxis, and the perpetrator for HIV testing before taking a statement, while others interviewed victims and perpetrators first before taking the victims and offenders for medical services.

Access to Police Services

In an in-depth interview with a police prosecutor on whether children can independently access police services, the officer indicated that children independently lodge complaints to the police. However, the narrative suggests that police still demand parental or guardian support to register a case.

4.1.5 Specialisation and Capacity Building

Deficiency in expert services and child friendly approach

Respondents identified the limited availability of expert services as one of the significant organisational challenges confronting police operations in Botswana. These included relying on one forensic science laboratory in Gaborone and an inadequate number of social welfare officers designated to manage child-related cases within the police services.

Officers highlighted the lack of access to expert personnel to promptly cater to the needs of children with disabilities (children who use wheelchairs, children with visual impairment, hearing impairment and children with cognitive disabilities).

In terms of “child-friendly” approach at the police, several reviewed incidences of police station encounters demonstrated that police shout at the child to “speak” and use harsh blaming interrogations such as “What did you do to cause him to do this?” or “Why didn’t you report this earlier?” Several police requested the child to narrate the rape incident multiple times causing the child more trauma. Not all police receive training on building trust with a child and the use of child friendly language leaving a significant skills gap.

4.1.6 Stakeholder Collaboration

Police respondents cited inadequate collaboration among stakeholders which is one of the primary causes of inefficiency in the police services, undermining the delivery of quality services to children. They mention delays in delivering requested reports from social workers and the fact that social workers are unavailable outside office hours and on weekends. They also mention a shortage of space in shelters, whereby it is a struggle to find a conducive environment to place children in need. In addition, the long waiting hours most officers experience when they take rape victims for medical services are mentioned as a hindrance.

4.2 Promising Practices

Child-Friendly Police Stations

The Botswana police are in the process of setting up child-friendly police stations, aiming to handle cases in a child-friendly manner and ensuring uniformity in handling children's cases across the country. They set up a child friendly police centre at Broadhurst Police Station in December 2020 after a pilot phase. The Botswana Police Department, in collaboration with UNICEF set up seven more child-friendly police centres, amongst them in Shakawe, Letlhakane and Ghanzi. Through support from the British National Crime Agency and the British High Commission, twenty-five police officers (60 per cent female officers) from all 18 policing districts, have been trained on child friendly policing including child development, collecting evidence from children and roles of different stakeholders in ensuring access to justice.

Text data analysis from the Broadhurst Child-friendly police stations suggests the station creates a friendly space, improves investigation speed, creates a sensitive interviewing environment, and prevents trauma by creating a psychologically safe environment.


So, we have people who will investigate cases of children, speeding up the investigation and taking cases to court as quickly as possible. We have a separate house catering to children where we interview them and try to calm them down. We have a team of skilled officers to interview children. These stations will shorten the investigation period because of the skilled teams we have put together.” GA/IDI/IMP/POL_#017

Specialised Focal Staff in each Police Station

Several police officers expressed the need to have an in-house social worker, whose work schedule would align with the 24-hour work shift of the police. This way, a social worker will always be available at the initial stages of the children's cases. Social enquiry reports would also be generated timeously. To mitigate the delays at health facilities when the police accompany children for medical examination, some of the police respondents expressed the need to have designated health officers who would give priority to children's cases whenever they seek medical examination.

Integrated services within Child-friendly Police Stations: One Stop Shops

Respondents highlighted the need for strengthening collaboration by creating integrated services in the child-friendly police stations, creating one-stop services where children can receive medical care, counselling, police services, and legal guidance (testimonies under oath) under one roof. Creating a one-stop service within a child-friendly police station may solve case delays, re-victimisation of children, and offer ongoing trauma therapy lacking in children's social protection services.



“If we can have that one-stop service centre, where a medical officer attends to that victim first, and next door they find a police officer to lodge a report after being attended here and then from there, go to the next door, get to a counsellor or a social worker to attend to you it would go a long way in creating child-friendly justice system.” GA/IDI/STR/POL/_#012

Child-Friendly Police SOPs

After data collection Botswana police, UNICEF and a technical advisory group developed SOPs for child friendly police stations. The Botswana police has started the detailed training of police officers on the SOPs and will engage with other child protection stakeholders’ SOPs so that they align.

Public Education Campaigns to Sensitise Community on Children’s Act

One of the recurring challenges surfacing in this study is that members of the community are not aware that some of their practices and actions regarding children are against the law. To create a heightened awareness of the law, the police developed a programme to undertake public education and sensitization drives in schools.

Digitalization of Policing Processes and Data Capturing

The police have introduced an electronic data capturing system called CCRS. This is a step in the right direction toward embracing the global digitalisation of processes and data capturing. However, some police respondents expressed their concerns regarding the use of the system. Since it relies on network connectivity, it does not work all the time due to network failures, hence remains mostly unutilised across many police stations. In addition, the CCRS does not capture the statement of the case, meaning that if the docket is misplaced, all the details of the case disappear as well.

Psycho-social Support for Police

In their line of work, the police encounter dangerous offenders, tragic matters and highly sensitive issues. To help them emotionally cope with the sensitive and tragic issues they handle, police officers are provided with counselling. However, this does not always materialise due to the tight schedule of their work. Some officers within the Botswana Police Service have embarked on an evidence-based trauma counselling course, called EMDR, which is recommended by the WHO as an evidence-based and highly effective methodology to help victims heal from their trauma.



For conducting interviews with children, the police often make do with existing office space, where the regular occupants of the office move to make way for a child's interview.

5. Social Services: DPS and S&CD Findings

The study drew the sample from the Department of Local Government Technical Services, which houses the Department of Social Development (DSD) and the District Social and Community Development Department (S&CD). Results stem from 44 key informants from DSD and S&CD. More than half of them had a bachelor's degree in social work and the remainder a Diploma in Social Work. Respondents from DSD and heads of city and district council S&CD officers reported having post-graduate education.

5.1 Social Services Gaps

“The challenge is coordination. There are many gaps, such as poor communication and working relationships between ourselves and the justice system. We need to recommend that magistrates should have social workers in their system. I think it still can be done; it should be done.” GA/IDI/IMP/S&CD/_#20

5.1.1 Governance

Budgets and Resources

According to non-state actors, Botswana has about 30 overlapping social protection programmes implemented by ten government departments. The overall provision of social protection is uncoordinated and is not well-targeted on child specific activities. The disparate nature of social protection programmes also makes it challenging to obtain data on overall social protection programmes, including public expenditures.

The study asked the leadership of DSD whether there is an earmarked budgetary allocation for child protection within the Ministry and across government sectors mandated to deliver child protection services in Botswana. Respondents described the current budgeting system as vote based rather than earmarked for specific social protection activities. Narrating the current situation, a senior officer at DSD noted:

“One of the things we have always been advised to do is to have a national children’s budget, so that we determine the proportion of the national budget that actually goes to children. But the way the budgeting process is done in Botswana is by mandate.”
GA/IDI/STR/DSP/_#009

The officer further stated:

“The major constraint in using the budget available to the different stakeholders is the lack of coordination. There is much investment but sometimes the money does not really go where it is supposed to be. And sometimes we would have excesses where, when in other aspects it would be less available for children. So, I think the main gap is the lack of efficiency in using the allocated budgets that we have at our disposal.”
GA/IDI/STR/DSP/_#009



Most of those needing counselling services did not receive services from S&CD offices or medical services in health facilities.



Actual Services S&CD Compared to Mandate

The respondents described the core services they implement to achieve their departmental mandates. Testimonies highlighted a wide range of services, including implementing services directed at realizing the bill of rights articulated in the Children's Act and handling issues concerning children. Respondents reported being responsible for facilitating all children's cases by reporting and writing social enquiry reports, implementing child protection orders, working with protected children, arranging alternative care for children, and providing psychosocial support. They also reported working with children in conflict with the law.

Comparative analyses from children and caregivers indicate that most of those needing counselling services did not receive services from S&CD offices or medical services in health facilities. Testimonies from other stakeholders suggest that social workers are not involved in investigations or first interrogations when child victims or offenders are at the police for the first time. Magistrates and prosecutors also complained that social workers often do not submit social enquiry reports on time, and in some instances the reports they submit are not informative for them to make decisions that abide by the child's best interest. Teachers and children complained of delays in receiving school supplies and transport money.

However, there were exemplary social services in which some social workers provided emotional support and accompanied victims and offenders to court. Child offenders and those who reported being defiled characterised social workers as emphatic compared to the police (See Children results section.)

5.1.2 Legislation

Most respondents cited the Children's Act as the primary legislation guiding child protection services in addition to the Adoption Act, the Affiliation Proceedings Act and the Domestic Violence Act. Other documents included the child protection regulations, operationalised pieces of the legislation, and short-term action plans for orphans and vulnerable children.

The Children's Act vests significant responsibilities to social workers in ensuring the delivery of child-friendly services in Botswana. Social workers are required to investigate child-related cases in conjunction with or without police officers and form a critical role in ensuring that children's voices are heard in the justice system. The expectation is that social workers should uphold the value of social justice as the norm, but currently, that is not consistently the case.

The study asked respondents to reflect on their lived experiences and to describe the most critical challenges that hinder their work to achieve optimal child protection services in Botswana. Social welfare respondents suggested that key stakeholders, such as the police, health, and education, who are responsible for the implementation of the Act, are not conversant with the Act's provisions. Respondents also reported conflict between the Children's Act and other legislative statutes such as the Penal Code and the Criminal Procedure and Evidence Act, where in some instances, judicial officers apply these alternative laws in adjudicating cases involving children, setting aside the precedence of the Children's Act.

5.1.3 Infrastructure, Institutions and Systems

At the implementation level, social welfare officers reported multiple challenges. The most frequently cited challenges include the lack of coordination in providing services, differing interpretations of the Children's Act leading to different approaches among social workers, lack of child-friendly spaces and infrastructure, differing professional levels of understanding of child protection among stakeholders,



lack of resources (transport, personnel), and the conflict between law and social, cultural norms.

Child-friendly Space

Most social workers addressed the problem of not having a child-friendly infrastructure to fulfill their job responsibilities. Offices are often very small and lack privacy with people continuously walking in and out.

"Office space is one of the challenges because we are treated like other employees when it comes to office space. Our tiny office space is not conducive to providing one-on-one counselling service." GAB/IDI/ORG/S&CD/_#012

Shortage of Resources: Transportation and Communication

Social workers cited the inadequate resources in most S&CD offices, such as transportation and communication, as significant impediments to delivering their duties. Cars often have mechanical faults and are frequently out of service which causes delays in attending cases. In addition, vehicles are shared amongst social workers that work in different clusters (geographical areas), sometimes with eight clusters sharing one car. Social workers use shared landlines which are often faulty, with only some that are provided a small phone which allows them to communicate in remote areas.

5.1.4 Guidelines and Standard Operating Procedures

Understanding the Children's Act

Some social workers cited the limited understanding of the Children's Act provisions, resulting in differing legal interpretation and subsequent service delivery approaches.

Case Response Processes

Child abuse and neglect are a societal concern with significant ramifications for the affected children, their families, and society. A critical step in devising effective responses is reasonable agreement on the definition of the problem and its reporting or response process. However, achieving clarity on child abuse and neglect is often challenging without standard operating child-friendly social protection protocol. The differing legal interpretation of the Children's Act provisions across social workers may create substantial obstacles hampering the effective delivery of services that protect children from harm. The overall view is that social workers follow different case response approaches depending on their interpretation of the legal meaning of a child's best interest. There are no standards for the turnaround time on processing child cases of varying degrees.

Licensure for Social Workers

Senior respondents also decried the lack of a social work professional licensure body or council as an impediment to professional excellence in social work. They argued that the professional social work council would regulate the profession to protect the children by setting and enforcing quality standards for social work practice. The officers also pointed out that a professional body would establish the rules and regulations of the profession and the standards for licensure, issues licenses to social workers who met professional standards, investigate complaints and when necessary, decide whether a social worker continues to deserve a license.

Roles and Responsibility Clarity

As mentioned above, there is insufficient clarity on the roles of social workers and priority areas of focus. Several social workers may focus on assessing the need for and the provision of supplies, spending less time on the child's counselling needs and reporting to court.

Availability of Social Workers

Police work around the clock, and whenever they are dealing with a child, they are required to engage a social worker. However, social workers only work during the week and are not available in the evening hours or weekends. Children who fall victim to crime outside of the social workers' office hours are disadvantaged. Describing this predicament, one police officer said:

"Imagine a child who's been victim to a crime during the weekend. Where will the child go, because the magistrate's court is closed on the weekend? Then you are told to put the child in a holding cell for their safety. Just imagine what kind of environment a cell is on its own." MA/IDI/IMP/POL/#034

High Caseload and Duties

Social workers reported having multiple responsibilities and high caseloads, often spread over a wide geographical area which delayed processes in cases that needed judicial attention.

"[...] Sometimes stakeholders think we are lazy, while the real reason is that we are swamped with workload... For example, we have to supervise and counsel project recipients from home economics, attend VDC meetings and simultaneously be expected to being at the office. Clients may think I am AWOL while I am doing other tasks." MA/IDI/IMP/S&CD/CM_#029

Quality of Social Enquiry Reports

Several copies of social enquiry reports were obtained from the study districts. The copies furnished were selected by the social workers themselves. The reports covered children in a wide variety of circumstances: children in conflict with the law, child victims of crime (particularly defilement), and assessment of eligibility for custody. The enquiry reports primarily focus on the situation, for example, at the household, rather than the needs of the child for healing or rehabilitation. The reports do not adequately provide thorough recommendations for the child.

Psychosocial Support Guidelines

When providing psychosocial support, the best interest of the child is interpreted differently by different social workers. The psychological, physical and emotional effects of teen pregnancy or sexual abuse on a child are often not fully appreciated and given appropriate attention by service providers. The child may have poor mental health due to an incident and not cope with what the social worker believes is 'best'. There is an absence of standard of care for the child.

"I am going to be truthfully open. It is not in every case where we rush to report. Whenever there are allegations of abuse, everyone thinks we should report it. However, in terms of our ethics, there are issues you have to understand first before reporting because the best interest of the child is always paramount. A typical example is that we may encounter a case of teenage pregnancy. Suppose she is doing standard seven and has to start her final exam the following week. In such a case, the best thing to do would be to allow the child to write and finish her exam before we approach the courts. The important thing is to allow the child to write, except in situations where her life might be in danger. If a child's life is at a higher risk, especially in cases of rape and other sexual violence, you may find that the abuser is the child's uncle. In such cases, we must protect the child." LT/IDI/IMP/S&CD/_#023

5.1.5 Specialisation and Capacity Building

Social workers reported challenges in supporting children with disabilities due to shortage of specialised services and availability of experts, such as educational psychologists. This means that it takes a long time for specialised help, while a child urgently needs attention. Respondents also highlighted the need to provide social workers with legal training to help them interpret the Children's Act. This will also help minimise the variations in their interpretation of the Act.

Lack of Probation Officers

At the time of the interviews there were no probation officers, however DSD stated that they were developing guidelines for probation work.

5.1.6 Stakeholder and Community Collaboration

Service Provider Collaboration

Social workers cited poor coordination and working relationships with other stakeholders such as the police, magistrates and the caregivers. According to social workers, the police engage them in children's cases late into the process. As a result, many children go through initial police interviews in the absence of social workers.

"The challenge is coordination. There are many gaps, such as poor communication and working relationships between ourselves and the justice system. We need to recommend that magistrates should have social workers in their system."
GA/IDI/IMP/S&CD/_#020

"The problem of dragging cases by the police where perpetrators would end up returning to the environment where the child lives. It becomes difficult to help clients adjust or heal full functionality when they are re-exposed to the same monster that initially perpetrated them." LT/IMP/Hosp_SW/_#025

However, respondents from the police, magistrate court, the high court, and prosecution blamed social workers for failure to provide social enquiry reports timely and characterised them as non-responsive to court orders and one of the major root causes of case delays.

Parent collaboration

Respondents reported challenges in managing negligence cases because parents tend to take negligence and child sexual abuse matters lightly. Caregivers often prefer to have Dikgosi handle the case for reconciliation at the customary court rather than the children's court.

5.2 Promising Practices

Development of SOPs for social workers

The Department of Social Protection developed SOPs for social workers released in May 2017. Piloting of the document was interrupted by the COVID-19, and only a few elements of the operating procedures have been implemented.

Guidelines for Child Protection Committees at all levels

DSD is currently developing guidelines to ensure the proper functioning of CPCs and CCFs at the national, district and community levels. The guidelines include accountability mechanisms and budgeting of activities.

6. Social Services: Ikago School of Industries Findings

In-depth interviews (IDIs) were conducted with three staff members of the Ikago Rehabilitation centre in Molepolole and five children who were resident at the centre during the data collection. The sample included the Principal, the Deputy Principal and the social worker who had recently been transferred from the centre. The study captured children's lived experiences about their perceptions of the prearrest, arrest, pre-trial, and trial procedures pertaining to the police, the social workers and court officials. Children were also asked to share their experiences of the Ikago reception procedures, welfare services, quality of the accommodation, the academic/training programmes and recreational activities in which they were enrolled during their stay at the centre.

6.1 Ikago School of Industries Gaps

“The last time there was a training, was on building and plastering. Unfortunately, the person who was responsible for training our children on building and plastering passed away in August this year (2021). Therefore, currently we do not have anything going in vocational training.”
GA/KW/IDI/ORG/_#001

6.1.1 Legislation

Inconsistent Legal Representation of Children in Conflict with the Law

One of the five children interviewed at Ikago reported being brought before the children's court. He reported attending three court appearances, all without any legal representation. He was never advised of his right to legal representation and counsel. The respondent thought the social worker was his lawyer.

Children's Experiences with Courts

The child brought before the magistrate reported that during one of his court appearances, he alerted the magistrate of having been assaulted by the police. However, his pleas were dismissed on account of his inability to identify the police officers responsible for assaulting him.

6.1.2 Infrastructure, Institutions and Systems

Quality of Boarding Facilities

As the centre was operating far below its full capacity, accommodation facilities were sufficient at the time of data collection. There is an accommodation block with ablution facilities. Although the centre has capacity to house a total of 100 children, according to the principal, the highest number of children the centre has had is 15. Despite being the only centre of its kind in the country, it has never operated at full capacity since its inception. Consequently, the unused infrastructure was falling apart at the time of the interviews.



Interviews with children at the centre reported an acute shortage of water. Just like the rest of the village, the centre experienced frequent interruptions of water supply, leading to residents relying on water collected in big water tanks (jojós) to meet their needs. The grounds are unkept, with overgrown grasses and bushes. One of the children even reported being afraid to walk from one point to another, particularly at night, fearing that they may be attacked by snakes. Lighting around the facility at night is poor, with a lot of blind spots and dark alleys.

Recreational and Vocational, Health and Education Facilities

The layout and infrastructure clearly indicate its conception as a school of industries. There are four workshops: carpentry, bricklaying, electrical and auto-mechanic. There are also indoor and outdoor sporting facilities of various sporting codes including football (soccer) and table tennis among others. All other sporting facilities have remained idle and unutilised for some time.

In addition to sporting facilities, residents have access to digital satellite television set located at a central point in a sitting room. The television set was operational and the only source of entertainment for the children at the time of data collection. While the facility has internet connectivity, it is only used by the administrators.

The centre was built with a fully equipped clinic. However, the clinic has not been operational for a long time and the residents' access medical services from facilities in the village. The clinic is dilapidated with electrical wires hanging from the ceiling.

Security

The custodian of the centre highlighted his concern about the safety and security of both members of staff and the children. In the event of an attack (internal or from outside) or an emergency, there were no panic buttons through which they can urgently call for assistance or take cover.

6.1.3 Guidelines and Standard Operating Procedures

Reception Procedures

Interviews with the centre officials revealed that when children arrive, they carry out an assessment to draw a comprehensive individualised care plan. In the absence of any vocational training, social worker or specialised personnel, it is not clear what the care plan for each child entailed. All the children interviewed reported that they were transported to the facility in unmarked S&CD vehicles in the company of social workers. On arrival, they complete several forms and one takes them through the rules and regulations governing their stay at the centre.

The social workers had sufficiently explained to them that they were being sent to Ikago to reflect on their lives and reform. However, no information was shared with the children regarding the length of time they are expected to remain in the centre. Only one child was officially informed that he will stay for 12 months, while the other only overheard that he should stay for three years when the social worker was talking with someone else within his earshot.

Daily Schedules and Programming

A typical day for those children who were not attending school outside was characterised by rising in the morning, going for meals, watching TV, taking naps and going back to sleep in the evening after watching TV. Even though the children are sent to Ikago as diversion from the potentially damaging effects of the prison such as monotony and boredom, the centre was said to be excruciatingly boring.

The study found that the centre's recreational programmes were not available due to the lack of coaches/ instructors and equipment like footballs, tennis balls, and rackets. Regarding sports and recreation, the only sporting code that was active was table tennis (there was a ping pong table in the indoor sporting hall) but the rackets are only provided by the coach. All other sporting facilities have remained idle and unutilised for some time. Unfortunately, the excursions to Lion Park for example have ceased and there are no outings, sport activities or vocational training. A child commented:

“To be honest, we are tired of Ikago. Staying in one place all the time is not good, you don’t get to interact with people outside. You only get to see people when you go to school. If only we were taken on a tour for one month”. KW/ IDI/IMP/ CAS/ CHD#003

Opportunities for Vocational Training

Excerpts from children and centre officials showed that the centre was not providing vocational training at the time of data collection. None of the four workshops were operational. There was therefore no rehabilitation taking place at the centre. The respondents mentioned that the school was offering bricklaying until the unfortunate death of the lecturer. Commenting on his experience regarding vocational training, one respondent said:

“Since I got here, I have not been taught anything or any other project. Yes. Unless I just take an initiative of learning something myself. Yes. No, there are others who are going to school, so I do not know if it is because some of us like me are not being trusted or what, because I once pleaded to be taken back to school.”
KW_IDI_IMP_-CHD_#005



The study found that the centre's recreational programmes were not available due to the lack of coaches/ instructors and equipment.

6.1.4 Specialisation and Capacity Building

Specialised Instructors

The operation of any of the workshops require a clear academic program, equipment (materials and supplies) and most importantly instructors trained in the various trades represented at the centre. With the low enrolment in the centre, officials at the centre felt that it is uneconomical to engage fully-fledged instructors and purchase materials just for the few students. Officials at the facility indicated that there is no resident nurse or medical doctor.

6.1.5 Stakeholder Collaboration

The operations at the centre are facilitated through collaboration between the police, social workers, the hospital and the education sector.

Social Workers' Services

Social workers' critical role includes accompanying children to court and Ikago and preparing social enquiry reports. The children's experiences before entering Ikago were mainly shaped by their interactions with the social workers. All children spoke highly of the social workers who handled their cases. The social workers made the effort to explain every step and procedure to the children.

During rehabilitation, social workers are expected to continue scheduling counselling sessions, however, there was no resident social worker. It had been three months since she was transferred out. Before her departure, the children received counselling on arrival, and continued to receive it at ad hoc intervals. Asked about counselling sessions received in a week, a respondent who was attending school outside the centre doing Form 1, said that the counselling had helped him deal with his anger issues:

"Anytime that is convenient, especially after school, when I and the school officials have some time. They often sit down and talk to me. [...] They have provided me with counselling. I used to have pent up hostility. I would get very angry every time someone asks me what I did to be here." KW/IDI/IMP/CAS/CHD#003


Clothing for the children is provided by the S&CD. One of the children expressed their dissatisfaction with the quality of private clothes they received but being happy with the uniforms issued to him. Regarding the quantity and quality of the food, all the children reported that the food ration is enough for their fill. They get three meals per day, and they are allowed to go back for more whenever they feel the food is not enough. However, the children complained about the repetitiveness of the food. Children expected celebration of birthdays as was done in the past, as well as treats once in a while.

Police Interactions

Before being brought to the centre, all the children had several brushes with the police. Their opinions of their interactions with the police ranged from confused, scared, to one child reporting that he hated the police for the way that they treated him. Children reported being beaten by police.

Educational Support

At the time of data collection, ages of children at Ikago ranged from 14 to 19 years. One child was still doing form one while the others had completed form three. The age range of the children is such that some of them arrive at the centre at an age too young for vocational education. However, one child, reported being denied an opportunity to continue his schooling even though he was promised that arrangements will be made for him to complete his studies:





“After I realised that I could have gone back to school. I told the social worker that I would like to go back to school. Then the social worker went to school. They then refused that I can come back to school, the social worker said I should write a letter together with my parents stating that I would like to go back to school and the letter was taken to Bobirwa Council. We took the letter to the council, then they said they will call the social worker. I ended up being sentenced before they could call.” KW_IDI_IMP_-CHD/_#005

One child attending school reported receiving enough stationery and school supplies for his schooling. This child faced several difficulties pertaining to his ability to do homework or study after school and no guidance was provided. Another child had his studies interrupted at form three. He was promised that he will be enrolled into school upon arrival at the centre and has been at the centre for a total of almost two years with no schooling. With the absence of vocational training and rehabilitation programmes, the child spent all his time idle.

Family Participation

Four months into their stay at the facility, the children are given an opportunity to interact with their families by phone and in-person visits, a dispensation they had all enjoyed except for one child. The children are allowed supervised home visits, particularly during the Christmas holidays. During the weekends, the children were allowed to go into the village for a few hours. Their friends from school could visit, but they could only go as far as the school gate.



The study captured children's lived experiences about their perceptions of the pre-arrest, pre-trial, and trial procedures pertaining to the police, the social workers and court officials.

7. Education Sector Results

The education sector sample comprised 35 educators sampled from regional offices, district offices, and primary and secondary schools in the study districts. There were four regional and district officers, five school heads, ten heads of departments, twelve guidance and counselling teachers, two teachers, and two caretakers for learners with disabilities. The 18 female and 17 male respondents had work experience ranging from seven months to 20 years.

7.1 Education Sector Gaps

“Our challenge however, is that many of the teachers, especially at the primary level, do not have the right qualifications to be guidance and counselling teachers [..]. Being a guidance and counselling teacher is based not on qualification but on promotion, based on the number of years one has been in the education system. Most do not have the passion appropriate for the guidance and counselling position. We need role models. These factors are not considered when some of these promotions are done...” LT/IDI/ORG/TEA/_#014

Teachers cited multiple challenges that affect the delivery of services to children, including stakeholder relationships, teacher-parent challenges, community engagement challenges, legal challenges, logistical, professional, child welfare work-related and staffing challenges.

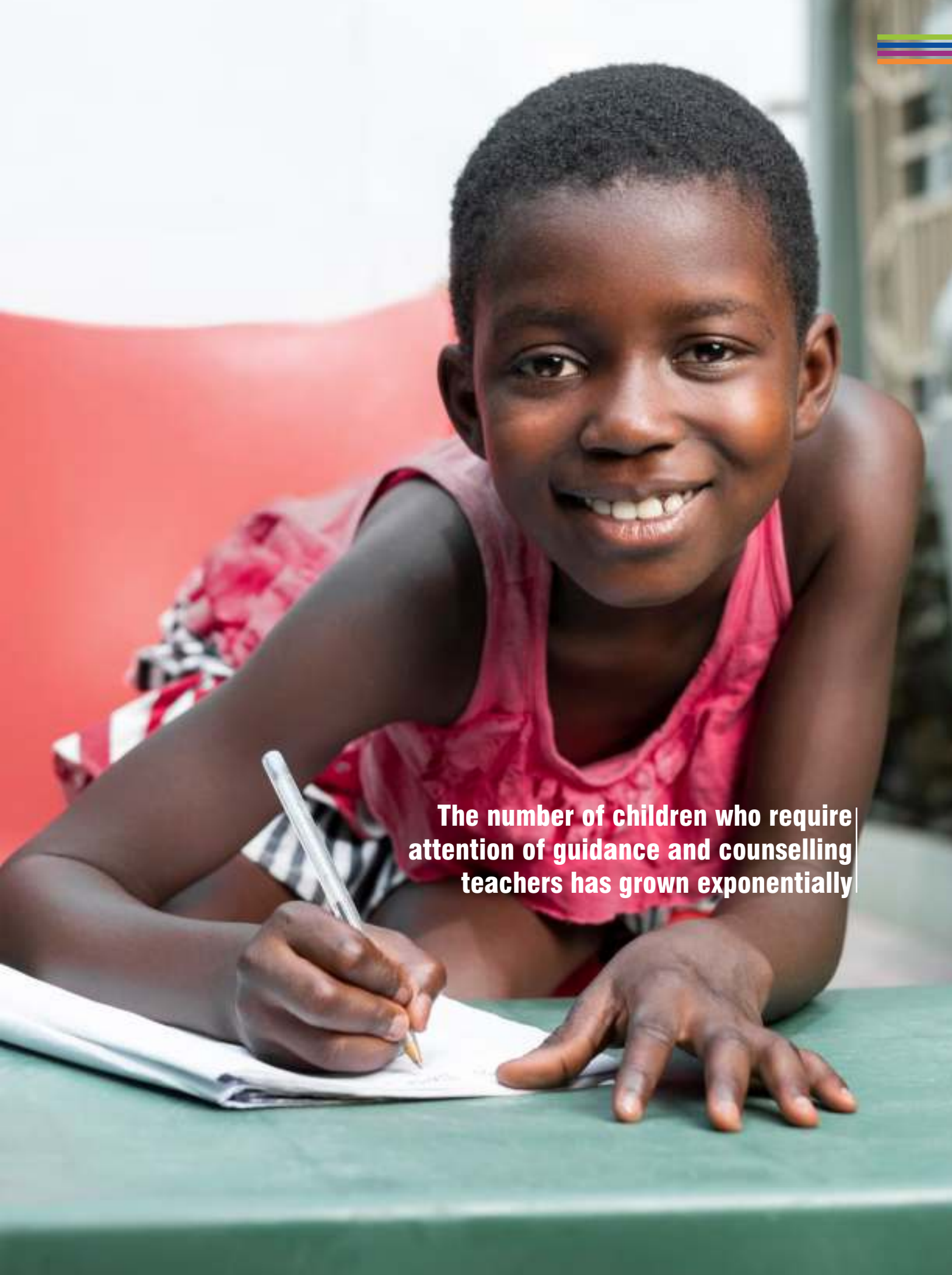
7.1.1 Legislation

The study asked respondents to explain the legislative and policy frameworks that guide their work as they interface with learners. The Education Act was the most cited legislative statute among respondents across all districts and sample schools. Other legislation included the Children's Act, costing policy and pastoral policy. However, results suggest that applying the Children's Act depends on individual guidance and counselling teachers. Apart from the National Policy of Education and the Children and Education Policy, the guidance and counselling department has policy documents in the form of Savings and government directives.

7.1.2 Infrastructure, systems, institutions

The counselling space in schools was noted as not child friendly and is set up as an office with several people sharing and interrupting during counselling sessions.

“On the topic of psychosocial issues we have a problem with space. This creates a challenge when the matter requires immediate attention. Even the guidance teacher does not have an office, the child is attended to in the classroom after school. Sometimes we use staffroom if it is empty.” TS/IDI/IMP/TEA_HoD/030



**The number of children who require
attention of guidance and counselling
teachers has grown exponentially**

7.1.3 Guidelines and Standard Operating Procedures

Conversation with guidance and counselling teachers, school heads, and heads of department highlighted several implementation challenges that undermine the core objectives the programme was introduced to achieve, namely, to address delinquency and protect children from harm. Lived experiences from respondents suggest that high workload (the dual tasks of teaching and guidance and counselling), lack of expertise in addressing the needs of children in need of protection, student-teacher time conflict, the teacher-learner classroom relationship undermine implementation of guidance and counselling services in their schools. Moreover, Dikgosi raised the growing complexities of delinquency issues concerning school-going children and the unbecoming way school heads and teachers handle child-related matters and lack of a proper structure within the school to handle all these matters.

Discipline

In the event of indiscipline, different schools follow different approaches depending on disciplinary protocols established within the schools.

"We handle discipline issues as the pastoral committee, because the guidance department mostly deals with psychosocial support. [...] We call a meeting where we invite the class teacher and their HOD so that they are fully represented. We then look at the regulations. See this (pointing to a document), there are class 1 offences, which include rape or attempted rape -these contravene the Penal Code and warrant the involvement of law enforcement officers. Then we tell the learner we must involve the police in this matter. We do not directly call the police, we inform the social workers first and our guidance and counselling department so that they provide their services, talk to the child and offer counselling to find out the root cause of the problem. Then we involve the police." TS/IDI/IMP/TEA/_#032

Corporal Punishment in Schools


The study asked teachers to describe conditions necessitating corporal punishment and how it is administered in school environments. The study found indiscriminate use of corporal punishment in schools and procedures are not followed. Responding to the questions, teachers shared different opinions illuminated by the verbatim below:

"With regards to punishment, the law says we are not supposed to do corporal punishment, I think you know that the procedure is that once a child has committed an offence, I must talk to the school head, who will give me the permission to go and discipline the student, but we are human we make mistakes, and we discipline students in class, I do not want to lie, we sometimes use a stick to correct behaviour." MA/IDI/IMP/TEA/_#024

7.1.4 Specialisation and Capacity Building

Shortage of Specialised Guidance and Counselling Teachers

The number of children who require the attention of guidance and counselling teachers has grown exponentially. This has resulted in unmanageable teacher-guidance-student ratio. In Maun secondary school, the ratio is as skewed as 869 children to one guidance and counselling teacher. The education sector faces the challenge of having teachers being given guidance and counselling tasks, but who lack any professional training in special education, counselling, and child friendly approaches.



"My profession is teaching. I provide counselling services even though I am not trained. I was promoted and developed a passion for doing the work."
GA/IDI/IMP/TEA/_#012

7.1.5 Stakeholder and Parent Collaboration

The relationship between schools and stakeholders (police, social services, parents and the community) varied across districts and respondents. Some schools applauded the relationships, while others complained about poor relationships that affect the well-being of learners. A complaint from teachers is that parents fail to report cases in time. Complaints about stakeholders focus on shortages of stakeholder staff, delays in stakeholders' response and turnaround time, and handling of cases by multiple officers.

Teacher-Parent Challenges

Teachers recounted several challenges they encounter when trying to help children who have been abused. Because of weak cordial, supportive parent-teacher relationships, teachers may not call social services or the police for fear of retribution.

"There is also the part where the school will intervene and engage the social workers and police, but then the parents will protect the culprit, not wanting to put an uncle, a stepfather or a relative in trouble. Parents will be protective to the extent of lying, even when the child is insisting that they have been raped." LT/IDI/ORG/TEA/_#014

7.1.6 Social Problems Children Face

Problematic Behavior Learners

Indiscipline among learners is a significant emerging problem in many schools. Teachers attributed these problematic behaviours to situations at home, substance abuse, underage alcohol consumption and other societal issues. Children commit serious crimes such as rape and burglary and minor crimes such as common assault, theft, and the use of foul language.


"The other problem in our schools is bullying. We deal with bullies by punishing them. After the punishment, we sit down and get the root cause of the bullying behaviour. Some of them result in bullying because of issues at home. Some children grow up in families where the father beats the mother. They carry much anger from home."
LT/IDI/IMP/TEA/_#016

Substance Abuse

Discussions with educators across the study districts revealed that one of the emerging problems in schools is the abuse of substances – alcohol consumption, smoking marijuana or even using cocaine. In some districts, teachers revealed that some learners are known drug dealers in their schools. Respondents argued that even though drug abuse is an individual child's behaviour, it is embedded in a sociocultural context that strongly determines its character and manifestations. According to testimonies, removing children from these toxic environments and treating them for addiction has beneficial effects in helping them effectively.

Problematic Home Situations: Stay-alone Children

One emerging social issue is the increasing prevalence of stay-alone children in some districts such as Maun. Often parents or legal guardians leave their children alone to work in tourism lodges, the fields or



cattle posts. Stay-alone children often assume the role of caregiving to their younger siblings. In most instances, such children, mainly girls, are prone to sexual abuse by relatives or strangers. Academic performance often deteriorates, resulting in dropping out of school, thus denying them the right to education.

7.2 Promising Practices

Strengthening Community Engagement: Circles of Support

Some respondents reported on existing support structures developed to promote the well-being of students, keep parents and community stakeholders informed of developments with schools and reach out to stakeholders on issues that matter to children. A school mentioned they have a support committee called the Circle of Support; a structure meant to assist the school regarding children's welfare. It is concerned with helping learners in school attendance, sending messages to parents, and addressing emerging issues in school and the community. The committee carries the voices of parents and teachers and aims to support issues concerning children's rights. They educate the community and work with the guidance and counselling committee when they are formulating term plans on issues to address such as drugs in school and around the village. Members of the circles of support work together with clinics and NGOs and disseminate messages at kgotla meetings.

"There are delays in concluding cases. I engaged the former magistrate here. I went with her to the principal social welfare office, showing him the low-case conclusion output. Our success rate was at 37% by that time, and I told him that this was too low and that this could compromise people's trust in government service delivery."
TS/IDI/ORG/CS/_#002

"We have a weak referral system as stakeholders who deal with children's cases. There is no document or no effective referral process. You find that most of the clients end up being frustrated because their issues are not being appropriately handled."
FT/IDI/ORG/DC/_#001

7.2.1 Guidelines and Standard Operating Procedures

Culture versus SOPs

District leadership reported the challenge of increasing incidences of rape and defilement in their districts, particularly during the pandemic. In addition, respondents addressed the rise of child marriages that have not been effectively addressed, despite the protection of children in the Children's Act. The procedures to deal with such cases can become jaded by culture. Most referrals are done by word of mouth, there are not standardised guidelines or referral documents.

"In the different areas in Botswana, we have different ethnic groups with peculiar beliefs and cultural practices. [...] One such cultural peculiarity is child marriages. Some cultures allow a child to be engaged even at birth. Such cultures do not perceive child marriage as violating the child's rights." MA/IDI/ORG/CS/_#001

7.2.2 Specialisation and Capacity Building

Children with Disabilities

Children with physical and mental disabilities face challenges, since there are minimal services available for them, nor are there specialised professionals. For those presenting with hearing and visual impairments, authorities depend on the parents and guardians to make a special request for the child to be assisted with the provision of hearing aids.

7.2.3 Stakeholder Collaboration

The district leadership highlighted the weak coordination leading to delayed case conclusion and the issue of working in silos saying:

"[...]I have never seen magistrates being proactive in terms of teamwork, in terms of joining other government departments they are always lacking. It is like they are an isolated group." TS/IDI/CS/_#002

"Working together is challenging because you find that most of the departments look at their mandate in a child's case. A child case is presented and the person in the department does not care that much to facilitate the child to get to access other services that they may need." FT/IDI/ORG/DC/_#001

7.3 Gaps for Tribal Administration

7.3.1 Legislative Statutes and Frameworks: The Customary Court Act

The study asked Dikgosi and customary court clerks to describe the legislative statutes and frameworks guiding their work to fulfill the tribal administration mandate. Results show that the Customary Court Act is the primary legislative statute regulating Customary Courts. The administration of customary law within Botswana's customary court system differs between tribes and its interpretation is tailored to the specific tribal socio-cultural system. Excerpts from Dikgosi indicated that they primarily use the Customary Act and the Customary Procedure and Rules Act to guide the administration of justice within the customary court. Dikgosi also reported using the Penal Code and the Children's Act in dispensing justice for cases brought by their courts.

7.3.2 Governance

Budgets and Staffing Resources

One of the most frequently cited challenges in the administration of justice at the customary court was the lack of adequate resources.

The Customary Court does not have staff who can facilitate direct access to services when dealing with children with disabilities or want to place a child in protective housing. They rely on other stakeholders when a child needs to communicate in sign language, such as the Ministry of Education and Skills Development or the Center for the Deaf and Disabled. They do not have sufficient resources that allow them to carry out their duties sufficiently and this causes delays in the judicial process.

"Besides the lack of transport, we lack internet connection. There are instances where I am presiding over a case, and I want to research to better inform myself on the case. The absence of internet connectivity works against us in that regard. We do not keep case notes at the customary court, so we have no reference point as we handle one case after another." TS/IDI/TRA/_#006

Establishing Children's Court at Customary Court System

Commenting about providing child protection services at the community level, a Kgosi opined that minor cases are presided over at the Customary Courts. It is imperative to create a child-friendly environment and expand the involvement of VCPCs.

"We are saying that the Customary Court could handle some issues. For example, if a child wants to report that they are not getting enough food at home, this is something that the Customary Court can handle with the help of other members of the CPC.

"We must consider that not every child can travel to Maun to access justice at the magistrate. The court is distant from many other places in the expansive district. [...] Children's cases have also become numerous and more complex. Mechanisms within the schools are severely limited to meet this complexity." MA/IDI/TRA/_#005

7.3.3 Guidelines and Standard Operating Procedures

Reporting to Customary Court

Customary courts have varying jurisdictions over civil and criminal cases. However, customary courts do not provide direct services to children. Instead, services to children are brought to the court by caregivers. Regarding cases over which they do have jurisdiction, the court clerk acts as a clearing desk for both civil and criminal cases, referring civil cases to the Kgosi and criminal cases to the police for investigation. Because of their accessibility to the communities, customary courts serve an important role in identifying children neglected and abused by their parents and alerting social workers for appropriate intervention. They also assist parents to obtain counselling for children who may need counselling services.

Regarding procedures, standards and guidelines, respondents noted several challenges that the customary courts face in the delivery of justice:

- Dikgosi highlighted the lack of a feedback loop in the current case referral system. They never get to receive the judgements of cases escalated to the Customary Court of Appeal, hence keep repeating the same mistakes in subsequent cases.
- Customary courts are often unable to meet their turnaround time due to the winding processes of collecting evidence to build a strong case. This results in prolonged trials and weak cases.
- Dikgosi expressed dismay at the growing levels of social dysfunction where parents neglect their parental responsibilities and children grow up without good role models.

Fingerprints in Crime Database

The Dikgosi raised the concern that the current procedure for building the fingerprint database disadvantages children. Fingerprints of perpetrators are deposited into the crime database notwithstanding the age of the perpetrator. A minor who gets their fingerprints deposited into the database will have this record hanging over their head, stigmatizing and depriving them of opportunities for the rest of their lives.

7.3.4 Strengthening and Capacity Building

Customary court clerks highlighted the lack of training in procedural processes critical in registering cases and dealing with psychological trauma for victims in contact with the customary court.

"We may need training on how to register cases. We also need social welfare officers at the customary court. The chief may try to reconcile the opposing parties in cases requiring reconciliation, but social officers could help because they understand human emotions." GA/IDI/TRA/_#002

7.3.5 Stakeholder Collaboration

The customary court's primary stakeholders include the police and social workers. Police conduct investigative work for all criminal cases through the customary court or those referred to social services. Sometimes, the customary courts contact social services for cases involving children.

"The working relationship between the police and the Customary Courts is excellent. Together we do all that the Law requires us to do. For example, the police never report late for a trial that has already been allocated a date and time. They would never give flimsy excuses for not appearing in scheduled trials." TS/IDI/TRA/_006

Poor Service Delivery

Dikgosi identified the lack of and poor delivery of psychosocial support services to children and families in many communities in the study districts from social services and civil societies.

"There is a growing concern about unsatisfactory child protection service delivery, particularly regarding psychosocial support within social services. Even civil society organisations are overwhelmed, understaffed, and many have collapsed. They end up being overstretched and struggling to provide satisfactory service, particularly in physically vast districts such as the Northwest and even large villages like Maun." MA/IDI/TRA/_#0058.3

7.4 Promising Practices Tribal Administration

Dikgosi Guidelines on Child Protection

Dikgosi play a prominent role in communities and are for many the first point of entry to report cases of child abuse. Because research showed that Dikgosi are not trained on the Children's Act, and still handle cases that should be presided over by the common law, guidelines have been developed to help them carry out their role consistently across the country. In a pilot, Dikgosi were effectively trained on the Children's Act, their role, the guidelines, and how to support a child in bringing cases to justice. This pilot has potential for national roll-out.

Effective Elements of Customary Courts

Despite the many serious gaps described in the customary court, there are elements that are positive examples that the common courts can learn from, such as ease to reach for a community member. The courts handle cases without cost, on average, with less delays in the process in contrast to what children often face in the common law courts; caregivers are involved during the process; and lastly, rehabilitative and restorative approaches are often used, whereby victims can express their experiences and perpetrators are confronted with the impact of their (criminal) behaviour.

8. Health Sector Findings

The study interviewed health service providers to understand their role and how they provide the child-related services associated with child sexual abuse, exploitation and negligence, including teenage pregnancies. Health service providers were sampled from District Health Management Teams (DHMT), hospitals, and youth-friendly clinics participating in the study. The sample included eight medical doctors, one psychologist, 20 registered nurses (who held different portfolios), two data entry clerks and one linkages officer. The respondents comprised 18 females and 14 males with work experience ranging from nine months to 30 years.

The results presented in this section highlight the realities of the current health system services that victims of sexual abuse receive from service providers. It also covers inter-departmental coordination with other departments within the justice system pipeline.

8.1 Health Sector Gaps

"Addressing rape cases depends on what the government has as a priority. When the government does not agree with international laws, they halt discussions on other matters, and such an issue is dropped off. They sign to certain matters and say they will follow them up close later."

FT/IDI/IMP/HEAL/_#024

8.1.1 Legislation


Legislative and Policy Frameworks

Respondents were asked to describe the legislative statutes and operational documents guiding them in providing children's services. Narratives from DHMT coordinators, doctors, and nurses participating in this study cited many guidelines and standard operating procedures (for managing each disease and condition), implementation strategies (such as adolescent sexual reproductive health and abortion guidelines), and legislative statutes, including the Nurses and Midwives Act and Children's Act.

8.1.2 Infrastructure, Institutions and Systems

Youth/Child-friendly Clinics

Responding to the question about services they directly provide to children (aged <18), more than half of the health respondents cited delivering children-specific services through youth-friendly clinics. Below are verbatim accounts of services respondents reported providing to children in their youth-friendly services.



"Botswana formed youth-friendly clinics in 1984 to deliver health services to the youth in a friendly manner. They are open environments and are age appropriate since it was noticed that older people intimidated the youth. So, in those clinics you find friendly staff, regardless of the situation that you may be presenting, who employ a non-judgmental approach in order to assist all youth. For instance, we would not judge a 16-year-old who may be curious about sexual matters" GA/IDI/IMP/HEAL/_#004

"Youth have their specific door. They do not mix with adults. Adults would have come for different services without using the children's door. An office is reserved specifically for assisting children." LT/IDI/IMP/HEAL/_#012

The study also found that some youth-friendly designated clinics are not providing services as previously envisioned due to a lack of space, staff shortage, work overload and training to provide the minimum services required in youth-friendly services.

"In our setting, as I said, we do not have a dedicated space for youth-friendly services. At times, children come with issues that need immediate involvement of the law, and we delay helping because we are not trained. As you can see, Tlokweng main clinic sometimes does not have youth services when we are off duty. We recently found a place behind, though it is not yet ready to be used. Currently, we are involved in all work streams, have limited time, and have a staff shortage." GA/IDI/IMP/HEAL/_#002

Narratives also suggest that the current youth-friendly services only cater to children between ten and 18 years [youth services go up 24 years], excluding those under ten. Children's results show that some victims of child sexual abuse are younger than ten years.

Results from children and caregiver respondents indicate that none of the victims of rape, abortion services or one who wanted to commit suicide received on-the-spot counselling or trauma services from the health facilities or youth-friendly clinics. Results also suggest that none of the children had been referred to a psychiatrist or a clinical psychologist within the health system. Few who received counselling got these services from the council social services and non-governmental organisations referred by the police.


Results indicate that different districts have different infrastructure arrangements that enable or hinder the provision of youth-friendly health services such as in Letlhakane and Tlokweng. Respondents summed up the current state of youth-friendly services as follows:

"We do not have a specific youth clinic. Currently, youth-related matters are attended to by a general nurse same as everybody else. The current challenge is that when older people see us with children, they make conclusions that those children are sexually active and rush to tell their parents. So, if we have a special clinic for them, we can help them effectively." GA/IDI/IMP/HEAL/_#003

8.1.3 Guidelines and Standard Operating Procedure

Poor Reporting of Defilement Cases

Studies and excerpts from this study suggest that more than nine in every ten pregnant women in Botswana attend antenatal care services. More than 95% deliver in health facilities, and 85.2% attend postnatal



care (Nkhwalume & Mashalla, 2019). The 2020 Statistics Botswana report shows that 99% of children born in Botswana are delivered in health facilities. These statistics are consistent with current study findings, which found that despite the increasing number of teenage pregnancies that go through the health services due to defilement, most are not reported to social services, or the police as mandated by the Children's Act. Discussing whether the Ministry was aware of this violation of the Children's Act provision, one of the Chief Health Officers at the Ministry headquarters had this to say:

"It is a 50-50 problem. Lately, our training emphasised that when you see a pregnant young person, that is a defilement. Whether they say, they consented, this young person cannot consent to sexual activities under normal circumstances. So, these are the cases that should be reported as defilement. However, the other defilement problem is the inaction of the social workers and the police." GA/IDI/STR/HEAL_#001

To put the reporting problem into perspective, the lived experience of one 12-year-old sixth grader from Letlhakane is critical. She became pregnant when she was in sixth grade. Neither her parents nor health service providers reported the matter to social services or the police. The story of this teen mother is the story of many young mothers who are lost through the cracks of the system intended to protect them.

Deficiency of Guidelines

Respondents state that delays are caused by deficient guidelines and adequately trained staff:

"Delays occur due to the lack of protocol or guidelines for handling such cases and adequate staff. If you are the only pediatrician and suppose to cover the whole district, some people will be quick, but it is beyond your control to speed up anything." MA/IDI/IMP/HEAL/_#027

Processes for Child Victims


Respondents were asked to describe their interaction with a rape victim from the point of contact and through the health delivery service. Drawing from his experiences, a doctor told the interviewer:

"Let us talk about sexual assault. They go through the same patient flow process as everybody else. You go through the accident and emergency departments. They are assessed, and from the assessment, they go to the relevant ward. We have encountered many delays, so kids are uncomfortable due to fear of stigmatism. They would be sitting there with the police. The police would carry the test kits; everyone knows this one has been raped. If we had a place separate, where we know it is safe where those patients are attended to, it would be fast, and the stigma part will be removed." FT/IDI/ORG/HEAL/_#012

"The outpatient is often crowded when opening the clinic. Youth queue with older patients. The other challenge is staffing. I am alone in the youth clinic." MA/IDI/IMP/HEAL/_#028

Prioritising of Child-Related Matters

Health service providers commented that evidential medical examination is not a health emergency. Therefore, the police, who accompany the child to the clinic are made to queue with the rest of the patients, sometimes running into hours or an entire day. Health service providers acknowledged the delays rape victims experience and suggested prioritising child-related matters since that is currently not the case.



"A victim can spend the whole day queuing in the hospital, in such a terrible and traumatic condition. Sometimes they may even be asked to come the following day. People come and go, everyone who comes into the hospital sees the victim. Before you know it, the victim is the talk of the town, there would be rumors that 'so and so has been raped', even before the issue goes before the courts of law. That is the main concern. Even as we speak, the concern has not been addressed. It is bad."

MA_IDI_IMP_POL_#038

"To address the challenges, they require all parties to prioritise children's matters. That is to say, maybe a police officer should drop whatever they would be doing and come rushing here. The psychologist must see how to make time, so this patient receives counselling. The social worker must see how they slot that person so that they deal with them and find a shelter for them elsewhere." GA/IDI/IMP/HEAL/_#006

8.1.4 Specialisation and Capacity Building

Challenges Managing Rape Cases in Health Facilities

Asked to describe some challenges undermining the quality of care for child rape survivors, a psychologist highlighted inadequate or absent coordination of care involving clinical psychologists and social and legal patient services. In addition, she also discussed the shortage of qualified personnel for handling child-related cases at the point of entry into the justice system and the government's selective incorporation of children's rights, to which the government is a signatory. On specialised care, when cases are first reported, a psychologist said:

"There is a challenge [at point of entry] because you find that a police station, that is where you find officers who do not have specialised qualifications for handling rape victims, yet they have to ultimately deal with and handle many of these cases despite having little knowledge about the issues. So, my wish is that the police, together with social workers, be given priority assistance about handling children-related training."

FT/IDI/IMP/HEAL/_#024

Commenting on how the handling of victims of sexual violence could be improved in the current health delivery system, service providers recommend an individually customised approach based on the needs, age (maturity), sex and understanding of the child. Thus, service providers must have specialised knowledge and an evidence-based care model to manage child-related problems at the service delivery level.

Understaffing

In addition to the need for more qualified staff, respondents repeatedly mentioned the need for more staff to attend to children's cases. One respondent elaborated:

"The duration of time we take to act is a matter that requires the strict attention of the social worker. Delays result in losing valuable time, and the child loses hope. I think the social worker should not be one [person]. Also, for us here, we have one nurse of which, if they were two, the other would effectively cover for the other if they went on a workshop. Furthermore, even if the social worker gets sick, progress becomes difficult, and the poor child gives up due to being pulled all over the place." GA/IDI/IMP/HEAL/_#004

8.1.5 Stakeholder Collaboration

Weak Inter-departmental Referral System

When health service providers report incidences of defilement to social services and the police, there are instances where responsible departments in the justice pipeline do not respond. Drawing from their professional experiences, health service providers reported incidences in which stakeholders and the police failed to act when health service providers reported incidences of sexual abuse. Sharing her experiences, a nurse at the youth-friendly clinic had this to say:

"There are many defilement cases, and usually, these are a group of young girls from boarding school and known people in the community sexually abuse them. When trying to report, they are told that they are lying or threatened to be killed by abusers, which is something that has been going on for a prolonged period. We reported the matter, but no action has been taken. [...] They are cases where children report abuse and are not taken seriously. Others are emotionally abused we referred them for counselling..."
MA/IDI/IMP/HEL/_#028

8.1.6 Societal Problems

Societal Problems in Child Protection

Health services providers blamed parental attitudes and low socioeconomic incomes for neglecting to report defilement and teen pregnancies to authorities.

"Teen pregnancies are a major concern. Children are reproducing and impregnated by older men who have their own families. Most of these girls are from low socioeconomic status [and parents do not report when there is a promise of financial support]. These girls end up not returning to school and remaining at a low standard of life."
LT/IDI/IMP/HEAL/_#008

"I think we can do something because it is not a very good picture, not necessarily because it is inadequate, but because the numbers of teen pregnancies are very high. Can you imagine a place like Gantsi at a pregnancy rate of 22%? It is not a very good picture," GA/IDI/STR/_#001

Respondents suggested holding an inter-governmental dialogue and community engagement to address the increasing problem of defilement and teenage pregnancies, which is becoming an accepted social norm in most communities and among service providers in the justice system.

8.2 Promising Practices

Youth-friendly Clinics

Establishing youth-friendly services across Botswana to cater for youth-friendly health services was an important milestone for the Government. However, most facilities do not provide a broad range of youth-related protective services from sexual abuse, exploitation, negligence. Furthermore, they lack adequate resources and specialised staff to deliver child friendly services. Respondents suggested holding an inter-governmental dialogue and intensive community engagement to address the increasing problem of defilement and teenage pregnancies, which is becoming an accepted social norm in most communities and among service providers in the justice system.



...increasing problem of defilement and teenage pregnancies, which is becoming an accepted social norm in most communities and among service providers in the justice system.

9. Gender Affairs Findings

The research sampled eleven Department of Gender Affairs Officers, three in Gaborone and two in each study district. There were ten males and one female, with work experience ranging from two to ten years. All the respondents had attained post-secondary education.

9.1 Gender Affairs Department Gaps

“As a department, we do not have specific services for children. However, we provide advocacy for a better life. A child or a parent might come with a child, or a child might be referred to us for certain things. We would listen and advise. If it is gender-based violence or an abuse case, we do not do spadework to assist a client who is being abused or has issues.” FT/IDI/IMP/DGA/_#009

9.1.1 Guidelines and Standard Operating Procedures

No Direct Services to Children

Narratives indicate that the Department of Gender Affairs does not provide direct services to children, but instead, it does so indirectly by promoting gender equality and other community development activities. Narratives indicate that when children do report to their officers, they often refer them to either S&CD or the police. However, they do not get feedback and would not know how the complaint was addressed.

District SOPs and guidelines

Drawing from their experiences, respondents highlighted some challenges that hinder the delivery of services at the district level, such as the root cause of case delays and absent or weak operating standards for serving children.

“We have policies and guidelines to guide us, but I will say we do not have a straightforward tool to use.” TS/IDI/IMP/DGA/_#010

9.2 Promising Practices

“My recommendation, we must have a standardised referral system so that, as service providers, we may know how to deal with clients. We advocate for that.” FT/IDI/IMP/DGA/_#008

Phone based, paper free referral system for GBV

As a screening department, some respondents recommended a standardised government-wide referral system that would allow the recording of a reported case. Some officers suggested replicating the GBV referral system that the Gender Affairs Department developed in 2016 and was piloted in Mochudi and Maun.



The phone-based referral system allowed service providers handling cases of GBV (police, health sector, social services, NGOs) to refer clients directly to each other. The system was linked to the Gender Affairs server to track completed referrals. A survivor would report to the police and information was captured on the phone and sent to a health provider. When the survivor arrived at the health provider, they would not have to repeat their story, reducing secondary trauma. The referring organisation would receive feedback when the referral was complete or make a follow up. The system was client-friendly and minimised the use of paper.



10. Non-State Actor Findings

Respondents from non-state actors were drawn from Development Partners, Regional Human Rights, and Civil Society Organisations (CSOs). Organisations included in this study provide high-level technical and policy direction to the government on social policies and social protection services, advocate for children's welfare, or work directly with children. The study interviewed 12 respondents comprised of social policy advisors, psychologists, social workers, and health and development professionals. Results presented here reflect individual experiential knowledge working with government social protection and developmental services.

10.1 Non-State Actor Gaps

“The implementation of the Children’s Act is weak. The Act is particular about access to justice and how child-friendly courts must be organised and prepared. However, the police and social workers responsible for the mandates are unaware of what the Act says. You see police interviewing children in an unfriendly environment and court proceedings conducted in the open. Children are interviewed without social workers, even making the child face their perpetrator when the child is a victim.” GA/IDI/STR_#007

10.1.1 Governance

Budgeting

A social policy analyst described the current government budgeting model as a major deterrent to providing social protection services to children. Offering his expert view, he noted that Botswana was one of the highest per capita investors in the social protection sector in southern Africa, surpassing South Africa. However, less than 10% of the budgetary allocation trickles down to a child because the budgeting system does not specify how much Pula is spent per child. A respondent noted:

“Botswana has more than 27 government departments implementing social protection services. However, none of the departments has an earmarked budget for children. Take the example of the Ministry of Local Government and Rural Development. Its total budget in the 2021/22 fiscal year was about BWP7.0 billion. Out of the four policy objectives, not one specified using the budget on a child.” GA/IDI/NSA/_#012

The analysts pointed out that demonstrable investment in the children's justice system is attainable only if children are prioritised by allocating an earmarked budget that fulfils the government obligations as articulated in the Children's Act.

Regional Accountability

The following respondent spoke about the importance of “child governance” indicating that it is not a high priority among judicial sectors. This infers that the child is at the centre of governance and the principles



of child friendly justice are adhered to. The accountability across borders for child issues and standardization of addressing children's issues is emphasised by the respondent from CRNSA:

"We have policies and practices at the regional level that set the regional tone in addressing issues of children that SADC member states would subscribe to. That will help us even to have forums where we can compare what is happening in our countries and perhaps learn best practices and facilitate issues. We have a standardised way of addressing children's issues and are accountable to our children and each other." GA/IDI/STR/NSA/_#007

10.1.2 Legislation

Several legislative challenges that Non-State Actors highlighted included an uncoordinated and weak focus on implementing the Children's Act provisions, the conflict between legislative statutes for cases involving children, and weak collaboration among state and non-state parties.

"Magistrates, are child custodians at the end of the day. We expect them to be vigilant regarding the Children's Act issues. We expect them always to use the Act's precedence when adjudicating cases involving children. However, the Penal Code and other legislation are used in these cases. One issue is the lack of child representation by lawyers in courts. That is one of the things that we have found that in most cases: children do not have legal representation." GA/IDI/NSA/_#002

Implementation of the Children's Act

The study asked non-state actors to reflect on the implementation of the Children's Act in the context of child-friendly justice. An expert from CRNSA summarised her subjective view in this way:

"I think there is a weak implementation of the Children's Act of 2009. The Act is particular about access to justice and how child-friendly courts must be organised and prepared. However, we see that the police and social workers responsible for carrying out the mandates are unaware of what the Act says. You see police interviewing children in an unfriendly environment and court proceedings conducted in the open. Children are interviewed without social workers, even making the child face their perpetrator when the child is a victim. If you go to magistrate courts, you see inconsistencies of how magistrate adjudicate a case. Why do we have these inconsistencies?" GA/IDI/STR/_#007.

10.1.3 Guidelines and Standard Operating Procedures

Respondents cited absent or weak standardised guidelines and operating procedures as one of the major impediments to servicing children at the implementation level. The lack of guidelines in a fragmented and bureaucratic system creates challenges for seamless inter-departmental coordination and collaboration for social protection services.

"Coordination is the key. When we agree, we will be able to address the needs of children. Look, you have social workers in Broadhurst at Tsholofelo community just a few, not even a kilometre from the child-friendly police station. Then there is a clinic on the other side of the police station. Why don't you coordinate to address the high caseload coming through the Broadhurst Child-friendly Police Station? The child-friendly police station has reported more than 200+ cases. Why can't you coordinate with a social worker and a health worker?" GA/IDI/NSA/_#002



10.1.4 Specialisation and Capacity Building

Regarding specialisation of child service providers, the respondent highlighted a dearth of specialisation where child protection units are not functional and not supervised, lending to an element of low performance, minimal capacity, and nominal accountability.

"There is no specialised personnel among all child service providers. We do not have the right structures in place in physical buildings (courts, offices that are child-friendly). Child protection units are not functional in some districts, and these units are not supervised. Because the issue is: there is no specialisation, no capacity, people have no skills." GA/IDI/NSA/_#009

CSO Specialisation

The CSO respondents emphasised the need for not only collaboration, but also a clear understanding of the organisation's role in the larger scheme of child protection and a coordinating body that has overview and ensures alignment. This lends to specialisation and capacity building of NGOs to contribute to the national strategy for child friendly justice.

10.1.5 Stakeholder Collaboration

Despite the lack of coordination of CSOs and non-state actors' work, they collaborate and support the government's goals to achieve the SDGs and national strategies in Botswana and the region. The narratives below reflect the different services NSAs or CSOs contribute to the government's social protection interventions in Botswana.

"Child protection is our niche. That is where we support the government supporting any institution dealing with child protection issues." GA/IDI/NSA/_#002

Respondents highlighted the need to strengthen coordination of NGOs in Botswana to avoid duplication of efforts.

"We need to improve collaboration. We need understanding of roles in the child protection system. Because if I do not understand my role in this child protection system, then I will not be able to fully execute my role in helping the child." GA/IDI/NSA/_#009



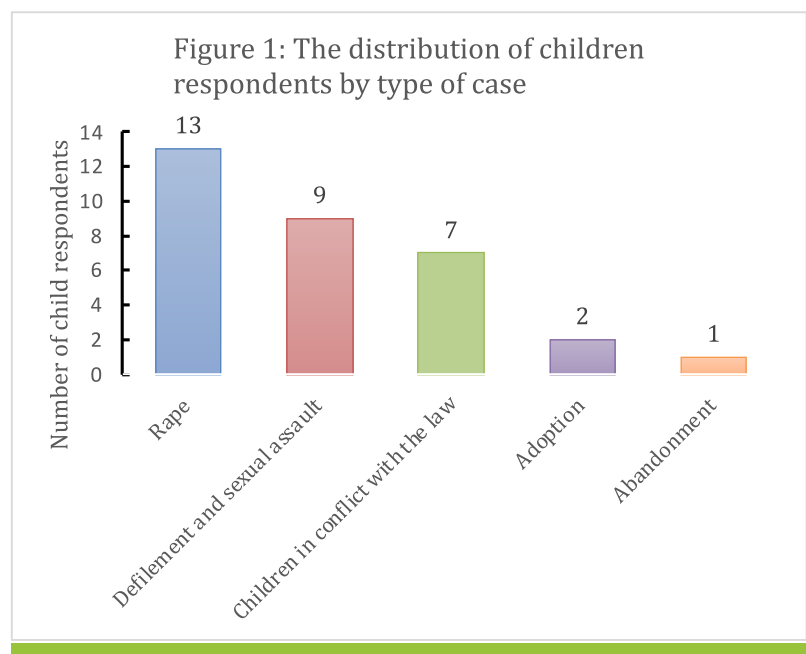
Botswana was one of the highest per capita investors in the social protection sector in southern Africa, surpassing South Africa. However, less than 10% of the budgetary allocation trickles down to a child

11. Lived Experiences: Children & Caregivers

This section presents the subjective lived experiences, insights, and opinions of 77 respondents, including caregivers of children who were either victims, witnesses, or perpetrators of a crime (n=45) and children who encountered the justice system (n=32). The study recruited caregivers and children through the Social Welfare and Community Development Departments, Dikgosi, and non-governmental organisations advocating for or working in child-related services. Results are presented in two segments, Children and Caregivers. The results are summarised into case stories, to set a platform for measuring the child-friendliness of the justice system from its administrative, investigative and judicial pipeline.

11.1 Children's Perceptions

Of the 32 children who assented and whose parents/caregivers allowed the researcher to interview, 25 were girls, and seven were boys, between the ages of 11 and 18 years. The youngest age at the time the incident occurred was nine years with the average age of 15. Most of the respondents were victims of rape and defilement. The results show that child victims suffer at the hands of adult males known to them or those residing in the same neighbourhood. Children in conflict with the law were primarily boys (Figure 1) and their offences included, defilement, rape, manslaughter, threat to kill, physical assault, and burglary. In this study, only one underage offender victimised another underage person.



In-depth interviews with child participants examined their insights from lived experiences as they interacted with service providers in relation to justice. The study did not seek detailed descriptions of the violent nature victims experienced, nor did it seek the detailed nature of crimes children committed. Where children shared their experiences, it was meant to establish the context and services received. All interviews were conducted within the proximity of caregivers to allow remedial and immediate responses to distress and emotional breakdown. When children showed distress, interviewers terminated interviews and caregivers were interviewed instead.

The results are organised according to the type of cases to illustrate the realities of children's interactions with service providers. They are therefore organised into the following thematic areas: rape defilement (and sexual assault), children in conflict with the law, adoption and negligence and maltreatment.

11.1.1 Rape Victims

Thirteen of the 31 children sampled in this study were raped. The youngest victims were nine and 12, and the oldest were 15 years old. Five of the 13 rape victims were sampled from Tsabong, four in Letlhakane, two in Francistown, and one from Gaborone and Maun. These results indicate that girls suffer a high proportion of rape from close relatives, including uncles, mothers' boyfriends, neighbours, schoolmates, and friends. The following case scenarios highlight the broader contexts in which a Motswana girl child is subjected to brutal violence by both older men and her age mates.

Case 1: A 12-year-old standard six student reported being raped by her uncle. She did not immediately report him because she was scared.

"My uncle sexually abused me. He told me to bring him water. When I got there, he held my hands together, placed the cup down, pulled out a knife and put it next to the bed and told me that if I ever told anyone about what he was about to do to me, he would kill." MA/IDI/CHD/_#020

Case 3: Two respondents, 14 years old and attended form 1. The girls reported being raped by one 18-year-old fellow student attending form 2. On this fateful day, the girls suspect that the accused spiked their drink because they could not remember anything until they realised they had just been raped. Recounting how the rape happened, the respondents told the interviewer:

"I don't know if it was a drink that he gave us to drink." "We went to where the accused lived after school to play with a dog." He took us to another individual's house, where we were raped. We were dumb to realise the setup. Yes, we went there; he then raped us..." TS/IDI/CHD/_#008_#012

Case 2: A 15-year-old girl attending secondary education (form 2) was raped by a man she did not recognise, but it later transpired that he lived in her neighbourhood. Describing the incident, a child told the interviewer:

"I woke up in the morning to warm water and then bathed. Afterwards, I went outside and wrapped my body with a towel to apply lotion. I then went back into the house. I was surprised when the door opened by a stranger asking me where the elders were. I told him they had gone to work, and he immediately threw me on top of the bed and he threatened to kill me if I screamed. He raped me."

GA-MD/IDI/CHD/_#037

Case 4: A 15-year-old girl was with her younger sister when she reported being raped. The accused man had threatened to kill her sister if she screamed.

"After the incident, I went home and found my mother not there. I went to the neighbour and found a sick person and realised that she would not manage to assist me cause of the sickness. I went to other compounds and found a lady who called my mum." LT/IDI/CHD/_#003

First Point of Contact Rape Cases

The first point of contact for rape cases reported in this study included caregivers, neighbours, and school authorities (Guidance & Counselling Teacher, Deputy Headmaster, a Boarding Master). The first point of contact often notified the police and occasionally social services.

Police Services

Because the perpetrators were known to the victims, the police often arrested the accused and transported the victims and the accused to the police station in the same police van. In these instances, the victims talked of being intimidated and scared by the perpetrators.

"They [the social worker and other women] followed us while being transported to the police, and he [the perpetrator] was chained. When he spoke, I got scared, and he was close to us. The police told him to go to the back [of the vehicle]. He was talkative, and then they warned him. He kept refuting, shaking the chains saying that he did not do anything to us, but he was the one who raped us. At the police station, he still denied raping us. He tried to scare me, and I was shaking." TS/IDI/CHD/_#008

Relating the travel of more than 200 kilometres from the village where the incident occurred to Tsabong, a respondent told the interviewer:

"The two police officers rode in the front of the van while Kgomotso (the teacher who called the police), the mother, the child and the culprit were all in the back in the canopy. That did not go down well with me at all. I understand they had a situation with the car and the fuel, but it was not OK. We are talking of a minor here. How can you put the culprit with the child and her mother in the same car, in the back, with no police officer at the back." TS/IDI/CHD/_#015

Victims reported giving statements at the police station in the presence of more than two officers, often in the absence of an adult or a social worker. In twelve of the thirteen cases, social workers were absent during initial contact with the police. In two incidences, the caregiver was present during interrogation. Respondents expressed discomfort and frustration being in the same room with perpetrators.

"I was hurt being interviewed in the same room with perpetrators, so deep [...]." LT/IDI/CHD/_#006

Health Services

In all rape incidences, the police escorted the victims to the nearest hospital or clinic for a rape examination, HIV testing, post-exposure HIV prophylaxis, and pregnancy tests. Narratives suggest that health service providers explained the services they provide.

Social Services

In two case scenarios (Tsabong and Francistown), social workers kept in close contact by telephoning caregivers. However, reports suggest that social workers often did not provide services to the victims.

"They did not come altogether." GA-MD/IDI/CHD/_#037
"The police said that our parents should counsel us at home." TS/IDI/CHD/_#012



The study found that trauma-related counselling services were not offered among children at all points of contact, either at the police, social services, or the emergency centre at the hospital, immediately after rape incidences. Respondents showed evidence of a persistent pattern of trauma, fear, and distress about the incident.

"Yes, I was traumatised by the whole incident, such I was even afraid of leaving my home." LT/IDI/CHD/_#002

"I nearly died because I was vomiting and I could not eat. I was confused and lost. I was always asleep and did not go to school." LT/IDI/CHD/_#006

Perceived Quality of Services and Final Thoughts

The study aimed to establish what respondents knew and how they felt about the handling of their cases. None of the respondents could recall names of officers handling their cases across different service providers. Most respondents expressed frustration and disappointment for the slow progress and not knowing the state of their case. The police who were investigating were often unresponsive and failed to provide updates about their cases.

"I didn't understand the police. It is because my aunt kept following them, and they said they would return to her, but they never did. I feel this case should not be shelved, but instead, it should be done so that the perpetrator is arrested and called to order. Also, I need continuous feedback from the police." GA-MD/IDI/CHD/_#037

"All I want is for the police to change." LT/IDI/CHD/_#006

Asked if there was any additional thought or questions, children expressed dismay at the rate at which perpetrators tend to be left unpunished after they have abused children.

"I want to ask – Why do grown-ups rape school children?" TS/IDI/CHD/_#008

"...Is there any possibility that I could take action against the perpetrators so they can be sentenced to jail or charged very hard?" LT/IDI/CHD/_#006

11.1.2 Defilement

Nine respondents (all girls) had been defiled. In this study, defilement entails any unlawful sexual act on a person under 18 years, whether the child consents or not. The Botswana Penal Code (s 147) defines defilement as any person who unlawfully and carnally knows any person under 18 is guilty of an offence. On conviction, the amended Penal Code, has a minimum prison sentence of 25 years for defilement. This segment highlights the context and patterns in which defilement occurred, circumstances of the respondents and how service providers responded to each circumstance.

Case Story 1: A 16-year-old girl, and a 15-year-old boy are biological siblings who had been having incestual sexual relationships until the girl became pregnant. The mother reported the incident to the police, and the police notified social services.

"I slept with my younger brother. He did not force me. It just happened. I was pregnant, and I did not want it (the child)." MA/IDI/CHD/_#025

Case Story 2: 16-year-old teen mother who dropped from school after falling pregnant in standard six at 15 years old.

The suspected perpetrator is a man she knew by sight. He frequented her household, where he came to drink beer sold next door. The man was friendly and used to greet her every time he came into her yard. One day, he gave her a drink. She does not recall what happened that day until her parents noticed she was pregnant. She firmly believes the friendly man defiled her after giving her a spiked drink.

"No, madam, it was not based on agreement. He usually just greeted me. He always came here in our yard to chill here. Yes, I was not close to him. I do not know because he just came and gave me a drink. Then I drank it," GA/-MD/IDI/CHD/_#032

She filed a criminal defilement case because the man refused to care for her and the unborn child. During the interview, she had given birth and pursued the case, but the man had not been arrested.

Managing Defilement Cases

The testimonies from respondents highlight a pattern of indifference to defilement by the abused, the caregivers, and the authorities (the police, the school and social services) depending on their circumstances. Results in this study indicate that where defilement cases are reported to the police and social services, they take a long time to reach the prosecution and court systems. Across most cases of defilement, child victims reported that they did not report the abuse because the abuser had promised to take care of or is taking care of the mother and child, with some reporting the abuse because the father was not taking care of the child as promised. Currently there is no government programme to support child mothers as victims of sexual abuse to care for their babies born from crime.

Victims' and Caregivers' Responses to Defilement

The verbatims below highlight the line of thought victims held regarding their cases:

Case Story 3: 17-year-old girl dropped out of junior secondary school after falling pregnant. Prior to the pregnancy, she was skipping school and spending nights at a man's house who she thought was in love with her. She refused to report the defilement to police or social services. The relationship did not work; she is a single teen mother struggling to raise her child.

"It makes me ashamed [to talk about it now]. I met this guy who is my 'baby daddy.' We were in a relationship. He did not tell me, these guys [slight laugh], but I was just a hit and run." GA-MD/IDI/CHD/_#033

Case Story 4: One of the respondents is a 16-year-old teen mother who became pregnant following a relationship with a 29-year-old 'boyfriend'.

"He asked my name; I told him that my name... He used to pass by here telling me he loved me. " I told him I was still a child and went to school. I ended up falling pregnant with his child. When we met with our parents, he promised my parents that he would take me back to school next year. He has acknowledged that he made a mistake. Then they agreed on that." TS/IDI/CHD/_#009

She agreed with her caregiver and the man's relatives not to seek legal services because the man had agreed to care for her and the unborn child.

"I admit that he made a mistake. I admit it is defilement, but I do not want my baby daddy to be apprehended because I am still young, and my mom is not working." GA-MD/IDI/CHD/_#033

"They [The guidance and counselling teacher and the head teacher] asked me if they should take legal measures. I told them that the man had asked for forgiveness already. He said he would care for the child and me." TS/IDI/CHD/_#009

Evidence shows that in some instances, caregivers do not show any cause for alarm and treat defilement as a societal norm. When researchers asked a girl what action her caregivers did immediately after notifying them that she was pregnant, she responded:

"Nothing. She did not ask about the father of the child. After, I went to the cattle post." LT/IDI/CHD/_#001

Where defilers do not show interest in the victim and deny responsibility, parents and victims report to authorities. When a respondent became pregnant, and the accused denied being responsible, the parents reported the matter to the police. While no arrest was reported a year after the incident, the police investigated the matter and ordered a DNA test for the baby and the suspect.

Service Providers' Responses to Defilement

Service providers reacted differently to defilement. There is indifference and often no sense of urgency, and the investigation takes a long time to reach the courts. In one case, the police and social service reacted differently. Asked about the services she received in her contact with social services, she reported being happy because social service officers talked to her politely. However, she reported that one police officer was consistently rude.

One respondent commenting on the services he and his sister received, told researchers that the social worker and the doctor they interacted with were professionally polite. He complained that every time a fellow police officer entered the interrogation room, the interrogators told their fellow officers about their case. The pregnant sister terminated the pregnancy with the help of the hospital and the council social workers, the magistrate, and the doctor.

11.1.3 Adoption

Case Story: Two twin sisters, 17 years of age and doing form four at a boarding secondary school, lost their biological parents when they were nine years old. They were put in foster homes at SOS Children's Village and later transferred to Mpule Kwalagobe. In 2018, the social worker came to tell them they found the adoptive parents and uncle they did not know they had.

Participation in Adoption Process

Child participation is a key principle of child friendly service in matters that involve children. Narratives from the girls suggest that they did not fully comprehend the adoption process and were not given adequate information to contribute to deciding with whom they would stay between their aunt and uncle and his wife. While they were happy to relocate and live with a relative, they did not contribute to any decision.

Access to Social Services in Adopted Home

The girls emphasised the limited access to supportive services and being cut off from direct contact with social workers when they moved to Francistown. They mentioned that the adoptive parents were the only ones with contact with the social welfare office.

"It is like they are not telling us. Our (adoptive) parents are the ones who go to the social service office, not us. We never go." FT/IDI/CHD/_#043

11.1.4 Children in Conflict with the Law

The study interviewed seven boys accused of infringing the Botswana penal law. The crimes ranged from burglary, manslaughter, physical assault, a threat to kill (including substance abuse and intent to commit suicide), defilement and rape. The accused children were aged between 16 and 18 years. Two had dropped out while in junior school, and the remainder were still in school during the time of the interview. Two were doing form 5, one was in form 4, and the others were in form 3. The results are summarised in main case types to reflect the lived experiences of children's accounts regarding their circumstances and their path through the juvenile system.

Burglary. During the interview, one of the boys was almost 18 years old. He dropped out of secondary school after he fought with a teacher. He reported a string of criminal activities and substance abuse leading to his arrest. He was accused and found guilty of burglary, to which he admitted the charge. The magistrate gave him a suspended sentence and corporal punishment.

Manslaughter. A 17-year-old form 4 student was accused of killing a man during bird hunting. He told the interviewer that he had accompanied his father for bird hunting when the gun accidentally discharged, killing a man he knew well. The man was with another hunting crew. He did not have a visual of the man he killed and did not know the other crew was nearby. He and his father immediately took the man to the hospital and reported it to the police. His narrative suggests there was a proactive response from the police, social services, health, and psychologists. He was being treated fairly, considering his age and level of maturity. He reported having interacted with the magistrate and the prosecutor.



Defilement. One respondent was 17-years old, a form 3 student when he was accused and arrested for defiling a primary school pupil in Lobatse. When he was charged with defilement, the girl had given birth. He was arrested by plainclothes officers and taken to the police station. He was later exonerated when the paternity test determined that he was not the biological father of the girl's child.

Physical Assault. Another respondent is a 16-year-old boy who dropped out from junior secondary school because of bullying. He does not have friends. During the interview, he told researchers that his only best friend was his girlfriend. He was accused of physical assault on an elderly couple from whose tap he had drawn water without permission.

Substance Abuse and Threat to Kill. Another boy is an 18-year-old form five student who had started abusing cocaine and marijuana to escape bullying. To sustain his addiction, he asked his mother for money, and when she refused, he threatened to kill her with a kitchen knife. He reported being unfairly treated because teachers gave him zero grades. In the process, he drank paint he took from his art laboratory in an attempt to commit suicide.

Handling of Children in Conflict with Law

The police process and investigate criminal cases by making initial decisions involving juveniles. For children in conflict with the law, the police often take a socio-cultural disciplinary approach of shame-based conditioning and treat child offenders harshly disregarding their circumstances, age, rights, social background, and maturity. Children's lived experiences show a consistent pattern of abuse of the adult-child power relationship.

Most of the child offenders reported that police handcuffed them during their arrest, hand cuffing of children is prohibited unless the child is a risk to themselves and or others. The UN Committee on the Rights of the Child on general comment 24 states that a child can only be restrained when there is immediate threat of injury to oneself or others and when everything else has been tried. This was not the case with the children interviewed during the study.

"They called me nicely and handcuffed me when I got to them. I did not even get to ask them because as soon as I got out of the house, they asked for my hands and handcuffed me. I was not even dressed. [...] They tightened the handcuffs so much, as you can see the marks this side. [...] One of them hit me on my stomach while I was handcuffed. They scolded me, asking why I was fighting with elderly people."
MA/IDI/CHD/_#022

"During arrest at the playground, they slapped, handcuffed, and placed me in the van. When we got to the police station, they gave me some slashes under the feet. [...] I spent about 2-3 nights in a holding cell." MA/IDI/CHD/_#019

Results suggest that police interrogation practices involve more than two officers mostly without the presence of a social worker or any adult for support.

"Four or five were interrogating me. They were impolite and spoke over each other. Sometimes I could not hear them as their voices were overpowering me." TS/IDI/CHD/_#014

Social and Health Services

Children's testimonies suggest that they perceive fairness and respect when service providers were polite and perceived them as responsive to their needs. The response of social and health services providers varied as depicted below in the following verbatim accounts:

"The social worker came and enquired about our relationship. The social worker said she had something to do and would be back. I don't remember what that was, but she never came back." TS/IDI/CHD/_#014

A boy's account paints a professional approach, suggesting providers were fair, considerate of the accused age, level of maturity consistent with children's rights principles. Recounting his experience, he told the interviewer:

"We reported the incident to the police. We then went with them to where it occurred. Then we were taken to Maun General Hospital. Then I saw a doctor who gave me sleeping pills. Then we were told that we should go to Letsholathebe hospital.... There, I was taken to the psychologist, who started helping me immediately. The social worker was with me during the sessions with the psychologist to end. Then I went to see her after I was done with the psychologist, and we started our sessions. Our sessions are currently ongoing, and I see her twice a week." MA/IDI/CHD/#023

Court Services

Of the seven child offender cases represented in this segment, only one went through the juvenile justice system pipeline. Recounting his experience, he told the interviewer that he perceived his treatment as fair, and the magistrate gave him an opportunity to speak his mind. The case was heard 'in camera'. Concluding the cases, the magistrate found him guilty of burglary and gave him a suspended jail sentence and corporal punishment. The punishment was administered by the prison services.

"Everyone went outside when my case was called and we remained behind. Sometimes the social worker would not show up, and it would be cancelled, stating that the social worker is unavailable."

11.1.5 Neglected Children

Neglect Scenario:

Boy attending primary school who wants to be a soldier. At the time of the interview, the grandmother cared for his sibling and him. His biological mother had abandoned the children. The school head teacher and guidance teacher reported the matter to the police. All parties came to the school met with the mother so she could talk with the boy. Social services was not called. When asked what the mother said in the meeting, the boy responded,

"Mmh – nothing. We are the ones who were questioning her."

When asked where she lives he responded,

"She lives in Paoneng. She left a long time ago. I miss her. When I met her, she promised to come back." TS/IDI/CHD/_#017

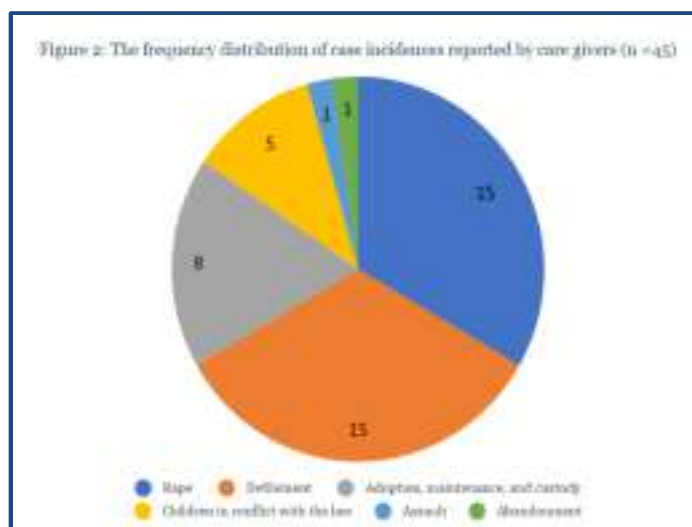
Child neglect is one of the most prevalent forms of child abuse making children more vulnerable to abuse or committing and offence. Avdibegović & Brkić (2020) define neglect as the lack of sufficient attention, responsibility and protection that matches the age and needs of the child. Abandonment of children is an extreme form of neglect and a serious social problem that denies children the right to protection and family. It perpetuates physical health problems and affects personality development, possibly leading to negative social behaviours of delinquents and criminals. The current study interviewed one abandoned child in Tsabong.

11.2 Caregivers Perceptions

Forty-five caregivers were interviewed in the five study districts: Gaborone (n=7), Francistown (n=10), Maun (n=10), Letlhakane (n=8), and Tsabong (n=10). Of the 45 caregivers, more were female (n=42) than men (n=3). Most of the cases reported in this study were rape (n=15) and defilement (n=15). Rape and defilement were frequently reported in Tsabong, Letlhakane and Gaborone (Figure 2). Only three of the cases reflected the experiences of caregivers when they had interacted with the court system.

Most of the narratives are related to caregivers experiences when interacting with the police,

social services, health services, and education services. Results reflect caregivers perspectives on how service providers respond to case and the quality of their services. The vignettes highlight inconsistent patterns in the approaches and responsiveness of services providers and caregivers in handling child victims and offenders.



11.2.1 Rape

Vignette 1: Rape by a Stranger

A mother recounted on a case of her standard 1 daughter who was raped by a man in her village. The man bribed the little girl 50 Thebe not to tell anyone. She however told her mother the same day the incident happened.

"He told her to remove the shirt and spread it on the ground and lie on it. He then told her to remove the underwear then he went on top of her. After he was done, he gave her 50 Thebe, saying she shouldn't tell anyone that he raped her." MA/IDI/CAG/_#045

Vignette 2: Rape by Stepfather

A grandmother reported a rape incident of her standard 7, 12-year-old granddaughter who was staying with her mother and stepfather in Tsabong when she was raped by the stepfather. The child did not report the incident and her mother did not notice anything the morning after the incident. It was until she was in school that the class teacher noticed that the girl had difficulties walking and when sitting down. When asked, she revealed that her stepfather had raped her during the night.

"The incident was discovered by the teachers while the mother did not notice that, because she has a problem with... (made a drinking gesture). They noticed this from how the child was walking which was unusual, and I would think that you can also realise when the child is not able to seat well." TS/IDI/CAG/_#038

Reporting Rape

Testimonies across the first rape cases reported in the study suggest that the immediacy of reporting of rape incidences by the victims depended on several factors including the closeness to the accused perpetrator, and the level of violence the perpetrator demonstrated during the rape incident. In cases where the accused rapists were close relatives or where they threatened to harm the child or any relatives, children often hesitated to report, taking more than a day or longer periods. In instances where the accused is a non-relative, children often report immediately. The stories of the three vignettes highlight the patterns of victims reporting cases.

In vignette 1, the victim immediately reported the incident to her mother, the same day of the incidence:

“We went to the chief Mr. D. who advise us to report to the police. Immediately we took her to the police. The police went to arrest the perpetrator and locked him behind bars. He didn't refuse anything, instead he said it that he raped the child.”
MA/IDI/CAG/_#045

In vignette 2, the victim did not report to anyone until her class teacher noticed:

“The teachers reported to the police and the police took her to the hospital where she underwent some tests, and she was also treated to prevent sexually transmitted infections.” TS/IDI/CAG/_#038

Caregiver Opinions about Services

Narratives across districts suggest police are the first point of contact for almost all criminal cases reported in this study. Police response varied across districts, stations, and history of the case as demonstrated in the verbatim accounts based on caregivers' perspectives. There are inconsistencies in service provision across all service providers. However, there are a few isolated cases where the child is met with minimum standard of care and collaboration among service providers.

- **Police Services**

The following verbatim shows the disappointment of not being informed and not knowing why the accused was released after few days.

“They locked him behind bars, but then they released him. I'm told he is in the village. People see him, but we don't know why he was released.” MA/IDI/CAG/_#045

A respondent reported that for two years, the incident was never resolved, and the stepfather who was accused of raping his 12-year-old stepdaughter was never charged.

“I have no clue my brother, it's just quiet. I wanted to go there and ask their boss (the police) why are they so quiet like this? There is no progress and no feedback. The whole process is very slow.” MA/IDI/CAG/_#045

- **Health Services**

The police referred the child to the hospital where she was tested for HIV and given HIV prophylaxis. Narratives suggest health services focus on assessing if the rape took place, HIV testing and provision of prophylaxis.

- **Social Services**

The mother reported that the area social worker came on the scene after it was reported to the chief and accompanied the caregiver to the police. However, narratives suggest social welfare officers do not provide on-going trauma management or therapy on children who have experienced violence.

- **Counselling services**

The grandmother recounted that she did not receive any counselling services during the ordeal.

“I know minors normally receive some counselling. This didn't happen since we were told that we are not going to court, then we went back home. [...] The social workers never visited the child here at home...”

State of the Child

Caregivers reported that victims of rape displayed distress, fear and are often reserved following the incidents and ‘seem’ to slowly be able to return to ‘normalcy’.

“At first, she showed some signs of stress, worry, and was reserved. But nowadays she is much better and she can play with others.” MA/IDI/CAG/_#045

The mother of the raped daughter reported her disappointment when she heard that following the rape incident, students at her school were laughing at and teasing her. She was also troubled by rumours in the village that the man who raped the child was at the house for her and when he could not find her, he turned to the child.

“They would say to her that she was raped. Others decided to go and tell the teachers and they called all students and warned them. By then she was afraid to go to school. The rumours that say this man was coming to me is not true.” MA/IDI/CAG/_#045

11.2.2 Defilement

Vignette I: Defilement by Stepfather

A mother recalled her 15-year-old daughter who was defiled by her husband [stepfather] when the girl was in Form 3.

“The child was doing Form 3 at the time. She did not even tell me anything. One day she just came up, greeted me and proceeded to sleep. We were preoccupied with a motshelo and my husband [the stepfather] also came in. As soon as he came in the child left and he also left. I was suspicious as I called him back, but he did not respond... The following day, the child was about to leave for Sebina to her biological father when she was spotted about to hang herself with a tie. People rushed to the scene and when I asked her what happened, she told me to ask the stepfather.” FT/IDI/CAG/_#009

Vignette II: Defilement of 11-year girl

A grandmother recounted a defilement case of her 14-year-old granddaughter, who became pregnant in 2018 at 11 years old. She delivered in 2019; the baby was five years old during the interview. The child was enrolled in the destitute programme and received a uniform from social services. The mother did not know about the pregnancy until police officers, and the community scout group notified her about truancy.

"Many young schoolgirls are pregnant in our area, with a high dropout rate. The teachers sent scout members and police officers house to house inquiring about this vast number of school dropouts. I saw police officers coming to me with the child. They told me that my child had not been to school, and I asked them what the problem might be. They requested me to go with them to the police station. When we arrived there, the child told us that she was pregnant. The police officers asked her who had impregnated her, and she said the name, and I was shocked. I did not know she was pregnant. She used to wake up early in the morning, and I just thought they were going to school. The police officers did their work and opened the case." LT/IDI/CAG/_#024

Caregiver Responses

Narratives suggest that caregivers take different approaches to reporting defilement cases to the police, social services or other authorities. Most caregivers opt to forego taking the criminal route if the accused perpetrator agrees to care for the mother and the unborn child. In some instances, the caregivers do not do anything. In other occasions, if the accused refuses knowledge of impregnating a teenager, caregivers report to the police.

The accounts of caregivers below illuminate caregivers' approaches and attitudes towards defilement. A mother advised her pregnant 14-year-old to take the perpetrator as a fiancé. The pregnancy was never reported to the police or social services.

"I advised her to take the perpetrator as her fiancé." LT/IDI/CAG/_#019

The grandmother expressed concern about the indifference the mother of the victim displayed for neglecting to seek assistance from social services and the police. Another grandmother recounted a defilement case of her granddaughter who had fallen pregnant for the second time at the age of 14:

"She did not tell anyone. I noticed it myself. This is the second pregnancy, according to her mother. I am not sure what happened to the first pregnancy. She was with her parents. They never involved me as a granny[...] I also told you that this was her second pregnancy, and I am told the first one, she had a miscarriage. So, I referred her to the hospital and am glad she was in good hands. She even slept there for about two days." LT/IDI/CAG/_#20

When asked if the matter was reported to the police or social services, the caregiver reported to the police during the first pregnancy. However, she did not report the second pregnancy to the police but did report it to social services.

Social Service Response

The grandmother reported the matter to the social welfare office:

"She [social worker] said to take good care of her and bring her back after delivery. The mother has never been to the social worker again. The mother cares for her, and the perpetrator is nowhere to be found. She cannot return to school now because the child's father doesn't want to take charge. There is no way she could go back to school."
LT/IDI/CAG/_#018

Asked if she was satisfied with any services, the grandmother lauded the schoolteachers for promoting the call for children who drop out of school due to pregnancy to have an opportunity of returning to school. In a second incident, the social welfare officer advised the grandmother to ensure the girl returned to school after she delivered. The social welfare office did not take any further action.

"What she told me is that I should make sure the child goes back to school after delivery, yes! And the child couldn't go back to school due to the second pregnancy." LT/IDI/CAG/_#024

Police Response

The caregiver was not happy because no action had been taken since the case was registered with the police.

"I was not happy because the child got pregnant and there was no action and now, she is pregnant with the second child. They just wrote defilement case and that was it."
LT/IDI/CAG/_#024

Another caregiver expressed her dissatisfaction with services stating;

"I am not satisfied because this one is a beneficiary of the social services. So, I am not happy because when I report a case, they should have prosecuted the accused. I am unsatisfied because I have long reported, but they are doing nothing. The child gave birth, and the baby is a month old. However, no one is after the man who impregnated the child. The teachers came, and I told them about the issue. The law disappoints because it is like wasting time when you report." LT/IDI/CAG/_#025

11.2.3 Children in Conflict with the Law

Case I: 16-Year-old Accused of Domestic Violence

A sixteen-year-old brother who had been arrested by the police, accused of domestic violence and a threat to kill his girlfriend. The brother dropped out of school earlier in the year after his older brother killed his wife and committed suicide by shooting himself with a gun. The brother had been arrested at the cattle post, where he stayed with his parents and the alleged victim. When the brother committed suicide, the sixteen-year-old accused was with the brother. Earlier in 2020, his sister told the interviewer that her 91-year-old grandfather committed suicide by hanging himself. The sister recounted that his brother dropped out of school because "he saw his brother". The sister suspected the brother who committed suicide might have had mental health problems.

"The incident occurred at the cattle post. I received a call from him saying he was in police custody here in Sehithwa. I asked what the problem was, and he said, "the girl I have been dating here in the cattle post ran away from home while we were about to sleep, saying I beat her up. Now the police took me in."
MA/IDI/CAG/_#044

Case II: Attempted Suicide While on Drugs

A caregiver recalled lived experiences of her 18-year-old son, who came home one day under the influence of drugs and threatened to stab her. The son was doing form 5 at the time the incident happened. He continued displaying erratic and delinquent behaviours until one day. The police called the mother to say that her son was hospitalised because he attempted suicide. He had drunk paint.

"First, he came home with this behaviour, and I could not understand. At first, he was laughing excessively, and I wondered why he was so hyped and overjoyed to this extent. So, I called his father, who was not there then. He was in the village. He then said that if it was like that, it could mean he must have taken something."

"The child gets the knife and fights me, telling me to bring the money. I was able to get away from the house. I called the police, and the SSG came, and we left in a police car to the police station." GA/IDI/CAG/_#015

Challenges Faced by Child Perpetrators

Children in conflict with the law often face multiple and intersecting challenges. Most struggle with multiple social and economic issues in their homes and communities. These issues include dysfunctional family dynamics, a history of violence, trauma, peer pressure (bullying), and substance abuse, which may lead to deviant behaviour. The next section recounts caregivers' perspectives on how their children encountered the law and how they viewed the services the children received.

Arresting

According to a mother, at the police station, police were more interested in inquiring where her child got the drugs from, and whether she was willing to press the charge for threat to kill. When she declined to pen a case, the police suggested corporal punishment, administered at Tlokweng Kgotla. When she declined both, she was advised to go home.

Perceived Quality of Care

Caregivers expressed varying opinions on the services their children received while interacting with the police, social workers, and the courts. Some caregivers spoke well of the judicial processes:

"The police officers spoke nicely [to us], indicating they had talked to the boy. They pointed out that his emotions are not stable because he is a minor. They also indicated cooperation between them and him, and we agreed to spend time with him before he went to the cattle post." MA/IDI/CAG/_#044

"A social worker helped us. Now, we work hand in hand with them, like this case is going to Maun [Magistrate Court] on the fourth court appearance next month. The social workers will be taking us there. On our first court appearance, everything went well. I was with the police officer, and we found the social worker there [at the court]." MA/IDI/CAG/_#044

Other caregivers showed displeasure with services received as follows:

"Aah...actually, I have not seen the services the child received. He was just tested at the hospital. Nothing else." TS/IDI/CAG/_#042

"At the hospital, we arrived at night and waited in the emergency room until morning. At the police, we got help which was not pleasing." GA/IDI/_#015



Mental State of Victims and Accused Children

The narratives from caregivers suggest that most children accused of criminal offences and victims of negligence suffer from psychological distress and anxiety from traumatic experiences at a young age. Case stories of caregivers highlight the state of mind of some of the children who were accused of committing a crime or neglect. In a case of a 16-year-old boy accused of physical assault and a threat to kill his girlfriend, two sisters said this of him:

“This boy is sick. When his brother committed suicide, they were together. They were good friends. Our brother killed himself with a gun. He shocked everyone by killing his wife and then committed suicide at the land. His death affected him. A few months later, our grandfather committed suicide.”

The family and the accused did not seek counselling and never received any form of traumatic therapy following two suicides in their household. According to the mother, her son has mental challenges. A psychiatrist at Sbrana Psychiatric Hospital ruled that he was not mentally fit. Commenting on the mental state of her grandson, neglected as a toddler by his biological mother, the grandmother has this to say:

“He sometimes has much on his mind [...]. He never tells me what is weighing on his mind. Sometimes he is in a dark, lonely mood, as if he is angry or something you see. He does not tell me what bothers him. [...] There is a problem with his mind. Sometimes he is all right; other times, he sits quietly without saying a word.” TS/IDI/CAG/_#041

When asked if she received counselling services soon after her grandchildren were abandoned by their mother, she told the interviewer:

“No, they never! We also just let the matter go and did not approach them. Other people in the village would meet and tell them to stay strong and not give up. Social workers have never come to see me.” TS/IDI/CAG/_#041

To put this case in context, the biological mother abandoned the boy (and his siblings) after her husband (the boy's father) was sentenced to life imprisonment and accused of committing murder.

12. Cross-Cutting Findings

In this chapter, we discuss the cross-cutting findings that are overarching and applicable to all sectors.

12.1 Governance and Administration

Botswana's commitment to improving juvenile justice is shown through ratifying international treaties, domesticating CRC and ACRCW provisions, and aligning children's rights to the Sustainable Development Goals (SDGs).⁵ Despite these commitments, there is limited prioritisation of child rights and child protection at all levels of society in Botswana. Excerpts from the study highlight the current state of the child justice system.

12.1.1 The National Children's Council

Respondents highlighted the establishment of the National Children's Council (NCC) as one of the significant achievements of the child justice system in Botswana, as per the Children's Act (third Schedule, 4). Narratives from the legal professions (Attorney General's Chambers) indicate that the Government established the NCC as an overarching apex, authorised with a mandate to coordinate, support, monitor, and ensure the implementation of sectoral ministerial activities involving children; advocate for a child-centred approach to legislation, policies, strategies, and programmes; advocate for a substantive share of national resources allocated to children-related initiatives or activities. Commenting further on the role of the Council, a respondent stated:

"I believe the intention of Parliament was for the National Children Council to be an autonomous organisation accountable for its performance towards child welfare. According to the Act, members are high-level (Ministerial Permanent Secretaries and Attorney General)... They wanted to show that, as a country, we take children's matters seriously." GA/IDI/STR/ACG/_#001

However, the Council, under the leadership of the professionally elected chairperson (an outside member appointed by the Council's secretariat), performs their work under individuals appointed to represent the principals (permanent secretaries). These representatives do not have unilateral decision-making powers to advance the NCC mandate. Therefore, the NCC consistently fails to coordinate, support, monitor, and ensure the implementation of sectoral ministerial policies, strategies, and programmes involving children.

"I am a Principal Officer, but when I was appointed to the Council three years ago, I was a senior officer. Some issues require the Attorney General and ministerial PSs themselves. [...] Nevertheless, do your research and find out if they have ever come to observe during the Council's seating. So, we need commitment at that level..." GA/IDI/STR_#001

Commenting on the NCC organisational structure and the effectiveness of the current configuration and character in carrying its legal mandates, a respondent stated:

"You are given power with one hand and taken with the other. [...] The Council's organisational structure is ineffective. It does not support the magnitude of responsibility put on that Council by the law." GA/IDI/STR/AGC/#001

⁵ SDG #16: promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels; SDG#16.3: promote rule of law at national and international levels, ensure equal access to justice for all; SDG#16.6: develop effective, accountable, transparent institutions at all levels



12.1.2 Inadequate Financial and Human Resources

Respondents across participating government departments identified the lack of financial and human resources as the primary root cause of failure to fully implement the Children's Act in Botswana. Despite domesticating international and regional conventions into the Children's Act, there are no direct resources allocated for addressing child sexual abuse, exploitation and negligence. In addition, Botswana has an educated civil service which often underperforms due to a high workload and the need for professional development or skills building.

12.2 Legislation

One of the cross-cutting themes emerging from this study is that while the Children's Act is an outstanding achievement and a blueprint for creating a robust child justice system in Botswana, it has not been fully implemented. For example, the legal provisions to promote children's direct access to the justice system, full participation in decisions that involve them, punishing any caregiver or adults who fail to report or protect children, providing support during court proceedings, and using custodial punishment or corporal punishment as a last resort, none of these provisions is fully enforced. At the time of data collection, no trained probation officers or court assistants, required as part of the children's court, were operational in Botswana. The current child justice system does not enforce or allow:

- Victim impact statement
- Reading of the Miranda rights. In some instances, they are arrested in the absence of caregivers and often interrogated without supportive help from social workers or caregivers, violating the children's rights provisions.

In a comparative analysis of the Botswana Children's Act against the South African, Kenyan and Ugandan Acts, the study identified many similarities; however, among significant differences is that the South African Act derives its Bill of Rights from the country's supreme law, the South African Constitution. Such provision is lacking in Botswana (Kontle et al., 2022).

12.2.1 Children's Sentencing Protocol and Rehabilitation Options

Respondents characterised the Botswana child justice system's sentencing protocol as an adversary and the rehabilitation options as discriminatory and ineffective, requiring a total overhaul. The Botswana Children's Act provides that the presiding judicial officer discretion to make any of the following sentencing orders:

- Placing the child on probation for not less than six months or more than three years
- Sending the offender to a school of industries (Ikago) for a period not exceeding three years or until he or she attains the age of 21 years
- Sentencing the child to community service for such period as the court considers appropriate
- Sentencing the child to corporal punishment
- Custodian sentence to Moshupa Prison for boys.

However, some options are unavailable due to implementation failures, while others are not thoroughly followed during sentencing. The case analysis and respondents' narratives highlighted the following limitations:

- There are no probation officers to monitor children sentenced to probatory periods (suspended sentences), rendering the option harmful because the high likelihood of relapse.

- Ikago School of Industry is heavily under-utilised and had no rehabilitation programmes during data collection. Besides, Ikago only caters to male offenders while discriminating against their female counterparts sentenced to adult women's prisons, and
- There are no community service programmes for young offenders in Botswana.

Thus, the only available options for sentencing and rehabilitating children in conflict with the law are corporal punishment and custodial imprisonment, which conflict with the Children's Act and the children's rights conventions (the Beijing Rules, CRC, ACRCW).

As Botswana reviews the Children's Act (based on excerpts from the respondents), results from document analysis and case study analysis highlight areas requiring amending ambiguous and unfriendly sections of the Act:

- The children's court in its current form does not have children's court rules – making it difficult to consistently in handling children's cases
- Repeal section 90 of the Children's Act in the formal justice system under the common law and in all government institutions (schools)
- The Children Act provides jurisdiction to determine a charge against a person as young as four years (Section 83[1]), inconsistent with Penal Code being eight years old (Section 13[1]). The Penal Code and the Children's Act age of responsibility.
- Children's Act (2009) does not include disposition measures that are common elsewhere, such as diversion, financial penalties, compensation, restitution, and verbal sanctions.

12.2.2 Corporal Punishment

Excerpts from respondents across sample groups show that corporal punishment is widely inflicted on delinquent children and those considered deviant in public schools, at the customary court, and in homes.

“Corporal punishment is being meted out every day in traditional settings more than it has been done in the courts. I think you will find it more prevalent in the traditional setting than in the court system.” GA/IDI/ORG/DPP/_#002

Respondents reflected and offered their views on corporal punishment as a penal sanction in Botswana. The results present a wide array of legal, societal and personal perspectives.

Legal Perspective

“Section 90 of the Children's Act of Botswana says corporal punishment shall be used as a sanction but not be more than six strokes. Secondly, such punishments must be administered under the dictates of the Criminal Procedures and Evidence Act. I think Section 305. Because Section 3 of the Children's Act states that where any other law comes in conflict with the Children's Act, then the Children's Act takes precedence. So, if some international charter or other instrument says you shall not subject children to corporal punishment, the Children's Act takes precedence.” GA-LB/IDI/STR/HC/_#013

Human-Rights Perspective

Human rights advocates described corporal punishment as a barbaric, old way of punishing children that do not have beneficial effects and is inconsistent with the human rights and child-friendly justice Botswana aspires to achieve.



“Corporal punishment is one of the barbaric laws of the past...” GA/IDI/ORG/S&CD/_#012

Dikgosi Perspectives

Dikgosi told interviewers that they no longer administer corporal punishment in customary courts. However, customary courts reported that Dikgosi continue to administer corporal punishment upon request of parents/caregivers, and when cases of children who have committed minor crimes (stealing sweats, chocolates, phones) are sent to the village courts by the police or the magistrate.

Personally, my dad is a Headman. He tells me a little about his experience with getting men into line. He'll say they never come back. So, to a large extent, it works because I think our Dikgosi are still respected in the village setting. GA/IDI/ORG/LAB/_#001

Parental Perspectives

The argument about applying corporal punishment from a personal perspective varied among respondents, with some supporting it while others opposed it. The following excerpts show some of the opinions:

“Corporal punishment has not solved any problem. Moreover, I think it sometimes brings in a lot more problems. I will speak as a Motswana growing up in this country where you saw strict parents, and you think that their children would grow to become responsible children because their parents were beating them. Nevertheless, it is not the case. We must do away with corporal punishment and seek alternative ways of reprimanding children if they are wrong. We have to remember as a society that violence begets violence.” ORG/NSA/_#002

“As citizens, we must consider whether it breeds the desired results. Moreover, as a mother, I have noticed that it doesn't produce results. That is my personal opinion. So, it then meant that imposing corporal punishment didn't assist my son's growth or upbringing.” GA/IDI/STR/LAB/_#002

“Corporal punishment should be executed; it should, yes. It is part of rehabilitation. We have seen it work. If someone is given strokes, in most cases, there will be deterrence.” LT/IDI/IMP/POL/_#021

“Corporal punishment is the African way of addressing an unbecoming behaviour. We grew up from that, and it served its purpose; however, it has its pros and cons. The main discussion should be on how we administer it so that now it does not overstep into cruel punishment of children.” GA/IDI/STR/POL/_#012

Application in Schools

Many respondents across the respondent population reported a high prevalence of indiscriminate application of corporal punishment in public schools. Some educators participating in this study admitted using it without following the Education Act protocol or the Criminal Procedure and Evidence Act provisions. Respondents suggested making corporal punishment illegal in schools:

“But then there are also issues of corporal punishment at school. They tend to take it too far. Truly speaking, with the recent issues surrounding the issue, they take too far.” GA/IDI/ORG/LAB/_#001

12.3 Culture and CSAEN Awareness

Cultural norms and their conflict with customary norms emerged as one of the trajectories impacting children's rights in many communities in Botswana. The study found that knowledge and awareness about Children's rights conflict with the customary social norms affecting children's access to justice. Traditionally, children are expected to be obedient to their parents and may easily be coerced to withdraw rape or defilement charges. Children may also conform to arranged early marriages due to socio-cultural expectations. In some instances, socio-cultural expectations of how children must act breeds violence when children are perceived to have broken the social norms. The following excerpts show how socio-cultural norms and expectations may negatively impact children's rights.

Case Withdrawals

Respondents highlighted how socio-cultural norms undermine policing and implementing the Children's Act. Respondents cited factors such as culture, family background, parenting, and socioeconomic factors as significant determinants that motivate some parents to protect perpetrators accused of defiling or raping their children. The deliberate violation of children rights has created a social acceptance where child sexual abuse and exploitation has become a social norm.

“We have difficulties continuing with sexual offence cases reported by the school and other parties. Parents sometimes say: No, why did these people come to report? They should have brought this case to us. We could have solved it amicably at home, or some would say the child has been in love for a very long time; therefore, there was no need for somebody to come and report the case. In that insinuating that we should withdraw the cases.” LT/IDI/IMP/POL/_#023

Results also indicate that case withdrawals are also common when perpetrators are family members or friends of the family. Limited financial resources within a household also motivate parents to coerce a victim to withdraw a case when the perpetrator promises to provide monetary compensation.

Marriage in the Cultural Context

Respondents reported the continuing prevalence of child marriages in many cultural settings, however, no serious action is in place to curb the practices and no parent has been held accountable.

“Culture is one of the hurdles that we must go through when dealing with issues of children, especially in the country's rural areas, whereby there are people who still practice old religions or traditions they want to preserve. However, the Children's Act is clear. It takes precedence if anything is in contravention of the Children's Act. Despite everything we have [the laws], we still experience these challenges.” GA/IDI/STR/HC/_#003



Knowledge and awareness about children's rights conflict with the customary social norms affecting children's access to justice.



13. Discussion

In many countries around the world, millions of children do not have a justice system that is fair, accessible, and tailored to their needs and the type they deserve. The World Justice Project (2019) estimated that 5.1 billion people, of whom were children, had unmet justice needs. Available data on people's experience of justice is becoming increasingly clear that the world is off track to meet the United Nations Sustainable Development Goal (SDG) 16.3: "to ensure equal access to justice for all by 2030" (World Justice, 2019).

Botswana has aligned SDG goal 16.3 and other regional commitments, such as the African Agenda 2063, with the country's flagship national strategies, such as Vision 2036 (Government of Botswana, 2016). Pillar #2, the Human and Social Development of Vision 2036, aims to create a safe and enabling environment where a Botswana child grows up with love and support into a productive and responsible citizen through solid family support, a safe and secure environment, quality education and health. Botswana aspires to empower children to understand their rights and responsibilities (GoB, 2016).

The government intends to build on its current strengths and opportunities to address the study's identified challenges, gaps, and constraints of the children's justice system. The study forms the foundation for creating a model or blueprint to a friendlier children's justice system that is fair, accessible, tailored to children's needs and delivered cognizant to their age and maturity as prescribed in the Children's Bill of Rights (Part III, Sections 10 – 26 of the Children's Act). The situation analysis is the MoJ's largest qualitative research project on the children's justice system that drew respondents deemed experts in their field of work to provide insights about the state of the juvenile justice system justice.

The discussion highlights the meaning of the findings which answer the primary research aims and objectives. The discussion highlights the strengths and opportunities in the current system and the challenges and gaps that need to be addressed at strategic, organisation and implementation levels. Interpretation of the results led to the development of recommendations (section 15), which address the identified challenges, gaps, and constraints.

13.1 Strengths and Opportunities at Strategic Level

13.1.1 Governance and Administrative Structures

The establishment of the National Children's Council (Section 35), the Children's Consultative Forum (Section 34), and the Village Child Protection Committees (Section 33) are considered significant strengths and opportunities of the current child justice system. The existence of these governance and administrative structures are significant steps toward creating a friendlier child justice system. The NCC, for example, is an overarching child protection institution mandated to hold government departments within the justice system pipeline accountable by coordinating, monitoring and ensuring implementation of child-related sectoral ministerial activities while advocating for a child-centred approach to legislation, policies and strategies.

The Children's Consultative Forum (CCF) was established to involve children in influencing core issues in education, health, safety, and other issues that affect them. The CCF district committees were designed as platforms for children to express views and opinions concerning their experiences first-hand in their constituencies and make recommendations to the national CCF and NCC. ⁶



The district child protection committees (DCPC) are supposed to monitor and evaluate the implementation of child protection services at the district level and link the NCC with the village child protection committees (VCPC). The VCPCs are a notable governance strategy for involving communities in child welfare and rights matters. The VCPCs were intended to educate communities about neglect, ill-treatment, exploitation, or child abuse, promote and monitor the welfare of children in their respective communities (Sloth-Nielsen, 2012).

From a human rights perspective, according to the UNHRC (2020), good governance refers to the full respect of human rights, the rule of law, effective participation, and multi-actor partnerships and collaboration. Good governance hinges on the accountability of the above stated structures. Governance includes human and financial resources, collaboration mechanisms, ethics, leadership, and accountability aligned to address and regulate common concerns within a national context (UNHCR 2020; Bevir, 2012; Reed et al., 2015).

13.1.2 Legislative Statutes: The Enactment of the Children's Act of 2009

The foundation for creating a friendlier justice system for children in Botswana has been the acceptance, recognition, and institutionalisation of the Children's Bill of Rights through the domestication of most of the provisions of the CRC and ACRWC into the 2009 Children's Act. The Children's Act is a critical child protection dimension and a premise of the child-friendly index (African Child Policy Forum, 2018). Jurisprudence studies attest that domesticating international and regional child rights conventions into the Botswana Children's Act was momentous for creating a human-rights-centred justice system (Sloth-Nielsen, 2012; Lucas & Jongman, 2018; Ramabu, 2021; Jamu et al., 2017).



13.1.3 Budgetary Allocation

Literature suggests Botswana has one of Africa's highest per capita budgetary allocations for social protection programmes. Results from this study are consistent with the available literature. The 2008 African Child Forum ranked Botswana second out of 52 countries with the highest budgetary allocation to social protection services. The World Bank & UNICEF (2017) commend Botswana for allocating a substantial budget to social protection programmes. In the 2017/18 budget, Botswana allocated 4.4% of the GDP (BWP7.4 billion) to social protection programmes.

13.2 Strengths and Opportunities at Organisational Level

13.2.1 Child-friendly Infrastructure

Children who encounter the justice system inevitably have contact with the police. In many countries, the police are the first port of entry into the justice system and an integral part of the child protection system. The police arrest, interrogate, mediate, and reconcile two opposing parties (Kavitha et al., 2020). In Botswana, the police are the first port of entry into the Botswana formal justice system for children who need protection and justice and those in conflict with the law.

Child-friendly police stations are infrastructures designed and equipped to mitigate the inherent unfriendly police environment by organising stations to accommodate children's needs and ensure their safety and protection from revictimization. Child-friendly police stations provide a conducive environment where children encountering the justice system for the first time are treated fairly, with respect, and with dignity and accorded the protection they deserve, cognisant of their age and full rights based on their best interest (Eyasu et al., 2021). The establishment of child-friendly police stations in Botswana is, therefore, a significant ground-breaking achievement in Botswana.

13.3 Strengths and Opportunities at Implementation Level

13.3.1 Exemplary Child-friendly Procedures

Opinions, insights, and individual reflections from this study strongly show variations and inconsistencies in procedures professionals follow in handling child-related cases, resulting in procedural lapses and disparities. Despite multiple gaps, respondents in several sectors found exemplary child-friendly processes that met the minimum judicial procedural standards critical for building a robust child-friendly system. One of the exemplary child-friendly procedures involved a 12-year girl child in Tsabong whom her uncle had raped. The case revealed how professionals involved in the case demonstrated fairness, exemplary inter-departmental collaboration, and compassion from the start to the conclusion of the case. The case adjudication was swift, and the presiding magistrate made judiciary decisions that served the child's best interest.

In this case, a guidance and counselling teacher identified the child at school and immediately called a social worker and the police. The teacher, social worker, and the parent accompanied the victim to Tsabong, 250 kilometres from the village where the incident occurred. These officers supported the child at the police station and during medical examinations. Before the court proceedings, the social worker prepared the child and her caregiver with the court environment. The magistrate and the prosecutor showed interest in bringing justice within their mandates. The perpetrator was convicted and charged to serve a ten-year prison sentence. The child was transferred to a new school to reduce the stigma from fellow learners.

13.3.2 Child Protection and Confidentiality

Another exemplary best practice found in this study was that the courts largely maintain privacy and confidentiality in cases involving children. Excerpts and case study analysis found that:

- Court proceedings involving children are held 'in camera', i.e., not open to the public for the protection of their privacy consistent with section 16 of the Children's Act, and
- Their right to confidentiality is guaranteed, i.e., their names and addresses cannot be published without the court's permission, consistent with section 25 of the Children's Act.

13.4 Challenges, Gaps, and Constraints at Strategic Level

13.4.1 Governance and Administration Structures

Excerpts from NCC, district leadership, and Dikgosi revealed that the governance and administrative structures mentioned under the strengths section are not functioning as mandated due to challenges, gaps and constraints related to bureaucratic complexities, shortage of human and financial resources, and weak oversight and accountability among officers mandated to oversee these structures.

The current NCC secretariat configuration undermines attributes of good governance practices: accountability, responsiveness to the human rights needs of children, responsibility, and transparency. Thus, the NCC and its associated governance structures are unable to mobilise resources for child protection programmes and monitor, evaluate and collate lessons learned from implementation departments or civil societies to inform child protection policies and programmes. The NCC is also unable to fully hold ministerial departments and civil societies accountable for implementing the Children's Act and evaluating the quality and friendliness of children's rights services.

These findings are consistent with another study by Ramadu (2021) that found that the current governance and administrative structures of the NCC, CCF, DCPC, and VCPC were not functional and had failed their mandate. The ACRC Botswana State Report (2021) submitted to the African Committee of Experts on the Rights and Welfare of Children also concluded that the NCC's current form and character was inefficient in delivering its mandate.

Public management and administration literature suggest that the underlying root cause of the weak governance and administrative structure in their current form and character is due to the bureaucratic complexity of implementing a policy that involves multiple stakeholders (Stillman, 1996; Weaver, 1996; Mazmanian & Sabatier, 1989). In bureaucratically governed structures, the processes and practices which regulate decisions fail because multiple departments involved have different mandates, regulations, and professional conduct. In this formation, it is impossible to achieve high-level accountability, seamless coordination, and collaboration of programmes responsive to the people's needs (Weaver, 1996; Stillman, 1996; Mazmanian & Sabatier, 1989).

13.4.2 Legislative: Gaps in Implementation of the Children's Act of 2009

Analysis of excerpts from professional respondents interviewed in this study from government and non-state actors agree that one of the significant challenges undermining Botswana's pathway to an internationally recognised child-friendly justice system is due to Children's Act implementation failures. In addition to the bureaucratic complexity cited above, the causes of the implementation barriers cited included:

- The lack of a specific programme addressing CSAEN among the 29 social protection programmes
- Inadequate human and financial resources
- Limited recognition of CSAEN as a national social and health problem
- Role ambiguity among pertinent stakeholders
- Lack of clarity on operational guidelines for all sectors
- Implementation conflicts with other existing policies (e.g., Children's Act vs Customary Act)

- Weak coordination and collaboration mechanisms due to bureaucratic complexities among stakeholders responsible for implementing the Act
- Lack of specialised personnel trained to manage children-related social and judiciary matters to implement the Act
- Lack of human-rights-based monitoring, evaluation, and learning (MEL) mechanisms for holding pertinent organisations implementing child protection services accountable, and
- No quality assurance mechanism for creating a learning experience.

Several researchers have analysed the implementation barriers of the Children's Act (Ramabu, 2021; Jongman & Lucas, 2019) and major national projects in Botswana (Botlhale, 2017; UNDP, 2010). Ramabu (2021), for example, found in her analysis of the Children's Act implementation that some major impediments included the lack of functional, structural systems (governance and administrative structures), the conflict between the Act and the customary law and the lack of community involvement.

Jongman & Lucas (2018) found that the stakeholders within the child justice processes do not always have a mutual understanding of each other's roles and responsibilities as prescribed in the law, i.e., there is role ambiguity that breeds confusion and diversionary turf contests that derail justice delivery for children. Jongman & Lucas (2018) also noted that magistrates and social workers subscribe to different philosophical positions.

For example, magistrates followed rigid adversarial justice, while social workers tended to an interactive psychosocial approach. This variance often leads to magistrates dismissing social workers as weak and incompetent. Social workers are compelled by law to recommend the best possible remedies for dispensing child-related matters to the court, but magistrates sometimes misconstrue this as a usurpation of their powers to pass judgment on matters before them (Jongman & Lucas, 2018).

In his analysis of the implementation of the National Development Plan (NDP11) period (2017 – 2023), Botlhale (2017) concluded that public projects were poorly implemented due to constraints of cost, time, and scope. UNDP (2010) noted that while Botswana has good policies, their implementation is often inadequate and weak. They observed that for Botswana to realise implementation goals, the country needs stringent monitoring mechanisms at every level of the public sector.

13.4.3 Corporal Punishment

One of the 'Achilles Heels' of Botswana's children's rights is the legal provision of corporal punishment as a penal sanction in its justice system. Corporal punishment is a health, human rights, and social problem affecting half of the world's children. Evidence shows that corporal punishment has a long-lasting impact on future health and well-being (Valdebenito et al., 2020). The WHO (2020) reports that corporal punishment triggers harmful psychological and physiological responses that exacerbate sadness, fear, anger, shame, guilt, and pain. According to WHO, these psychological and physiological disturbances cause stress and neural pathways that may lead children to respond by becoming violent. Studies also show that physically abused children exhibit high hormonal reactivity to stress, nervousness, and changes in brain structure and function (WHO, 2020). Meta-analysis and longitudinal studies conducted across ethnic groups, races, socio-economic statuses, and countries consistently show that corporal punishment has no beneficial outcome on children's development. Instead, it is a detrimental risk factor determining aggression and antisocial behaviours (WHO, 2020; Durrant & Ensom, 2012).

Results from this study show that corporal punishment remains the primary form of punishment for delinquent children at home and in Botswana schools (from kindergarten through secondary education) and an alternative sentencing option in the penal institutions (customary, magistrates courts, prisons).



These findings are consistent with other studies conducted in schools where evidence of punitive and unregulated use was evident (Jotia & Boikhutso, 2012; Ngwenya, 2013; Kgomo et al., 2015). Teachers and parents perceived corporal punishment as a temporary remedial corrective behaviour with no long-term effects and often tantamount to punitive use, hence abusive when applied in schools. Jotia & Boikhutso noted that the application of corporal punishment in schools was undemocratic. The authors called for alternative methods for disciplining children. Kgomo et al. (2015) reported non-compliance in the administration of corporal punishment in Kang. In a study conducted to gain insights into the application of corporal punishment in Kweneng East, Botshelo (2008) describe educators as witch-hunters where corporal punishment was indiscriminately used, consistent with findings in this study.

Researchers in Botswana have characterised corporal punishment as a non-Tswana traditional practice but an inherited colonial form of punishment meant to dehumanise, humiliate, and degrade the recipient rather than a corrective measure (Tafa, 2002). Tafa (2002) described corporal punishment as a historically colonial authoritarian strategy rather than an 'African culture' punishment system. The catastrophic impact of corporal punishment is demonstrated in the case of France Kalodi, a 15-year-old boy of Tsetsebjwe Village who died at Nyangagwe hospital after complications his parents believed arose after being subjected to caning at Tsetsebjwe Customary Court (Modikwa, 2011).

After slapping his schoolmate in a disagreement, France was brought to the customary court. The chief ordered and administered four stokes on France's bare back (Modikwa, 2011). Cases of punitive caning of children have been reported in schools over the years, with more than 90% of learners reporting being subjected to corporal punishment at school (UNICEF, 2018).

Besides overwhelming scientific evidence that corporal punishment is a risk factor for aggression and antisocial behaviours, there is no evidence that corporal punishment molds children into productive and responsible citizens (Ma & Grogan-Kaylor, 2018; Alampay et al., 2017; Maneta et al., 2017; Flouri et al., 2017; Piché et al., 2016). Drawing from lived experiences highlighted in this study and supported by local and international studies, there is a compelling argument that Botswana's rationale for continued use of corporal punishment "as a beneficial traditional alternative aimed at building responsible future citizens" is unsubstantiated by available evidence.

Respondents recommended repealing corporal punishment in schools and within the administration of justice. These respondents described this method of punishment as backward, degrading, and dehumanising punishment intended to impose authority over defenceless children.

13.4.4 Budgeting Model of Child Protection Services

While Botswana provides one of the most significant investments in social protection programmes (UNICEF, 2022; Botlhale, 2010; the African Child Index, 2018), the current incremental budgetary allocation does not translate to the optimal prevention of child abuse, exploitation, and negligence (CSAEN) outcomes (Kavanagh, 2011). The allocation of resources for social protection is divided across 29 programmes implemented by ten agencies (World Bank & UNICEF, 2017). None of the 29 social protection programmes focus on preventing CSAEN. The current ministerial budgets are neither earmarked for CSAEN nor aligned to fully implementing the Children's Act.

For the Children's Act to be fully implemented, a costing analysis is needed, to allow allocation of sufficient funding and resources. A costing exercise or skillset analysis has not been done for the Children's Act, which has led to under resourced service providers, and leaving detrimental gaps in implementation. Budgets are important policy documents, and tools society deploys to cater to children's specific economic needs (Botlhale, 2010).

13.5 Challenges, Gaps and Constraints at Organisational Level

The study examined whether the child justice infrastructure, organisational systems and processes conform to child-friendly principles and standards.

13.5.1 Child-friendly Infrastructure

Because children differ from adults in their physical and psychological development, such differences constitute the basis for a separate child justice system with a differentiated and individualised approach. Conducive and separate infrastructure facilitates are less intimidating and create a sense of safety where children feel free to talk. Child-friendly infrastructure is the backbone of the children's best interests (UNICEF, 2021). The United Nations' approach to justice for children strongly recommends a separate child justice system that also requires child-specific institutional structures, such as specialised and separate infrastructure in the police, social services, the court system or civil societies representing or providing legal or other appropriate assistance (UNICEF, 2021).

While Botswana operates the children's courts (magistrates courts sitting as children's courts), its setup is not different to that of the adult court system. As one magistrate noted, "The court environment remains rigid and unfriendly to children." Solo & Nsengaali (2022) described the formal courts as rigid, requiring complex procedures, making the environment unfriendly for illiterate Batswana.



While individuals in different departments have attempted to create child-friendly spaces where they provide services, this study found only one child-friendly space at Broadhurst Child-friendly Police Station. Thus, the respondents decried the shortage of and inappropriate child-friendly spaces across departments in the justice system as one of the major constraints in providing services to children.



13.5.2 Organisational Systems and Processes

The levers of control for implementing and managing a child-friendly justice system include systems and processes for translating child-friendly principles and elements into judiciary procedural standards or 'soft laws' translated into implementable and measurable interventions. Botswana does not have standardised child-friendly procedural guidelines stipulating how to manage (interview, interact, act, or react) when dealing with children consistent with the human-right-centred approaches. The study found departmental standard operating procedures (for example, the police were developing standard procedures at the time of data collection)—however, none of the SOPs cut across justice system departments. There is a need to harmonise departmental efforts aligned to national child-friendly guidelines to cater to all organisations providing child protection and justice services in Botswana.

Child-friendly procedural standards promote children's rights to information, representation, and participation in judicial proceedings. They also give children a voice at all stages of the justice system procedures (Fernández-Molina et al., 2021). The guidelines build on five fundamental principles: participation, the best interest of the child, dignity, absence of discrimination and the rule of law, as well as detailed principles applicable before, during and after proceedings (Liefhard & Kilkelly, 2018). There were multiple incidences cited wherein these principles were not upheld.


Literature shows that the first encounter with the police shapes the child's impression of the processes that follow in the justice system. For many children, the police and police stations are inherently scary and unfriendly environments (Eyasu et al., 2021; Woldemarian, 2011; St Johns, Headley, & Harper, 2022). Children in conflict with the law often describe the police as inhumane, cruel, and harsh (Mugove, 2017). Lived experiences of children in conflict with the law interviewed in this study characterised their first encounter with the police as harsh, physically, and emotionally abusive. Most defilement victims described some officers as verbally abusive and disrespectful.

Results from the children's interaction with the police reveal inconsistencies in the police arrest, interview and detention procedures when handling cases of children in conflict with the law. Police arrest children in a hostile manner, then they try to interview them in a child friendly manner and proceed to detain them in a hostile environment. The procedure needs to be ironed out and made smooth throughout to comply with the requirements. There were also isolated instances where the police and the prison officers brought children to an open court, violating the child-friendly elements of protection and confidentiality. In addition, there were instances where the police revealed the identities of children who had committed serious crimes to the media.

13.5.3 Social Enquiry Reports

Magistrates and prosecutors who participated in this study cited social enquiry reports (SERs) as one of the most critical decision-making tools during prosecuting and sentencing cases involving children. Most judicial officers consider SER in their decision-making process during sentencing. However, magistrates, prosecutors, and police officers decried the slow process of preparing social enquiry reports among social welfare officers as one of the root causes of the untimely conclusion of criminal cases in the justice system. In some instances, magistrates complained of receiving incomplete SER that failed to influence judicial decision-making for children in conflict with the law.

A social enquiry is a report that social workers or probation officers prepare to describe the social circumstances of a person involved in criminal proceedings required by the prosecution and the courts before sentencing. SERs represent a vital exchange between two professional groups in the criminal justice system with different responsibilities, backgrounds, and perspectives during the pre-sentencing and sentencing (Beyers & Scheirs, 2010).



SERs consider the rules of natural justice to assist the court in knowing the juvenile's background and determining factors that may have influenced the juvenile's behaviour. It is a critical instrument that advances the rule of law and a child's best interest (Bonta et al 2005).

Studies conducted to examine the extent to which SERs influence the magistrates' or judges' sentencing outcomes in many developed countries suggest concordance between sentencing recommendations made in SERs and the actual sentence passed by the courts, particularly when a non-custodial sanction is recommended (Beyers & Scheirs, 2010). Studies also suggest that informative SERs with a high-quality standard are more likely to influence judges'/magistrates' decision-making process in sentencing decisions (Brown & Levy, 1998 in Scotland; and Bonta et al., 2005 in Canada). Roberts & Roberts (1982) found that the provision of SERs influenced the decision for magistrates to opt for community-based sentencing. As the child justice system evolves in Botswana, it is imperative to ensure that SERs' format, content and level of detail are formulated by the concerned parties. Such reports at the magistrate level or high court must be prepared by degreed, professionally specialised, licensed social workers or probation officers to meet the professional credibility of such reports.

13.5.4 The Child-friendly Toolkit

This study found that language is a major challenge in accessing justice for children in Botswana. When ill-prepared, children struggle to use explicit formal language to describe anatomic parts of a human body (genitals) as required in the courtroom. Most children use metaphors inconsistent with the court language. Best practices from other countries suggest that toy-like materials make it easier for children to communicate during court proceedings. Child-friendly professionals promote using anatomical dolls that can be dressed and undressed for sexual abuse cases or teddy bear cards to help children articulate their emotions. In Spain, for example, the court uses specially trained psychologists as intermediaries to video-record pre-trial proceedings instead of the court at the magistrate's/judge's discretion in CSAEN cases of young victims. Botswana can replicate this approach among young victims and children with disabilities who often lack specialised intermediaries in the current justice system.

13.5.5 Specialised and Professional Services

While most departments included in this study have professionalised personnel, most have not received human or child rights training on managing CSAEN matters. Thus, the current manner of handling children in contact with the justice system varies among individual officers. Officers often do not account for children's age, maturity, vulnerabilities, psychological and social needs creating unsafe and unfriendly environments. For example, our results showed that victims of rape often wait for many hours before examination at health facilities. Most traumatised children do not receive counselling services at health facilities or social services. Results also revealed that in many instances, police officers interview children in the absence of professional intermediaries (social workers/psychologists) or parental support.

Specialised and well-trained professionals in human rights with a particular focus on children's matters are integral to establishing a robust child-friendly justice system. All professionals dealing with victims of violence, witnesses, or children in conflict with the law must receive interdisciplinary training on the rights and needs of children of different age groups, and proceedings adapted to them. Child justice professionals should be able to work in interdisciplinary teams and be well-informed about the physical, psychological, mental, and social development of children and adolescents and about the unique needs of the most marginalised children in conflict with the law (European Union Agency for Fundamental Rights, 2017).

⁷ HM Inspectorate Probation Services. (March 2023). Restorative justice.
<https://www.justiceinspectorates.gov.uk/hmiprobation/research/the-evidence-base-youth-offending-services/>



In the study there were issues in many instances handling cases. For example, the child victim and perpetrator travelled in the back of the police van while three officers sat in the front. The child and caregiver never received counselling services or trauma therapy from social or health services. Despite conducting the court proceedings 'in camera', the victim and the accused met face-to-face, a major risk for revictimization.

13.5.6 Sentencing and Restorative Juvenile Justice System

Children's human rights advocates recommend restorative justice as a critical component of a child-friendly justice system. The restorative justice system entails a broad range of community practices which attempt to repair the harm a crime has caused rather than inflicting harm on an offending child (Sherman & Strang, 2012). In restorative justice systems, custodian services are used as a last resort where public security is compromised in cases involving children. For restorative justice to work within a dual legal system such as Botswana, there is a need for deliberation processes to decide what offenders should do that involve all people directly affected by a crime.


In court-ordered restorative justice, including court-ordered community service or payments that offenders pay to victims and victim-offender, mediation must always include social workers, probation officers and their families (Strang et al., 2013). The England and Wales HM Inspectorate of Probation Services (2023)⁷ identified restorative juvenile justice as effective for dealing with children in conflict with the law. Restorative justice delimits the intensity of punitive and adversary justice and instead prioritises children's rights. It focuses on diverting children from custodian services, reinforces restorative practices enabling the active participation of children, and promotes participatory and collaborative forms of decision-making.

Our study found that Botswana does not have a sentencing protocol for child offenders. While excerpts suggest that Judicial officers account for the offender's age and social circumstances, individual officer discretion may disadvantage child offenders who may not have social inquiry reports available during sentencing. A magistrate may sentence juvenile offenders to a custodian sentence in high-security prisons (Moshupa Boys Prison) or a law security rehabilitation facility (Ikago School of Industry and Trade), corporal punishment, or a wholly suspended sentence. The current options are considered punitive, adversary, and inconsistent with human rights provisions except for a suspended sentence.

Ikago School of Industry is significantly underutilised and was not offering any rehabilitative and vocational services at the time of this study. Some respondents suggest overhauling the Botswana rehabilitative services because it was not beneficial to children and was heavily discriminatory for girls. Currently, there are no restorative programmes at the community level and no probation officers to oversee the implementation of community-based programmes. Besides, the current rehabilitation system discriminates against girls sentenced to adult prison when found guilty of criminal offences.

13.5.7 Monitoring, Evaluation and Learning

Our study found that Botswana lacks a centralised system for reporting disaggregated data on children in contact with the law. Reliable information is necessary for all reporting decision-making on issues involving children in contact with the justice system, whether as offenders, victims, witnesses, or parties in court proceedings. However, the availability of reliable data remains a challenge in Botswana. There is a need for the NCC to develop a centralised data system with performance indicators to monitor and evaluate the impact of child justice policies and procedures related to children.



Robust administrative records and reporting systems would allow government officials and institutions to track the treatment of children by the system and the circumstances throughout the justice system pipeline.

13.5.8 Quality Standards and Licensing

Part XV of the Children's Act and the child protection regulations provide guidance, procedures, and tools for licensing institutions dealing with children-related welfare services. Results suggest that the quality standards and licensing obligations are not fully enforced to conform with child-friendly principles and standards. These findings are consistent with observations by the Botswana Child Rights Network (BCRN) (2021) which reported that the government was not enforcing these statutory quality standards and licensing institutions. In addition, they opined that the administrative processes of licensing child welfare institutions are poorly defined, ineffective, and slow.

Respondents identified inadequate number of specialised and licensed social service providers as one of the weaknesses in providing quality services for children needing protection, justice and those in conflict with the law. Social workers deal with complex social problems and intervene with individuals or families in various structural dimensions.

They have a substantial demand to address human injustice and suffering (Donaldson et al., 2014). Literature (Barsky & Spadola, 2021; Donaldson et al., 2014; Magiste, 2020) and excerpts from respondents suggest that professionalising social work services through licensure, protects the public and client system by promoting safe, competent, and ethical social work practice in Botswana. The professionalised and licensure of social work services would address one of the significant professional gaps for providing judicial services in Botswana. Creating a robust children-friendly justice system will require the secondment of qualified social workers as an integral part of the child-friendly police stations, children's courts and every institution providing services in Botswana. Professionalisation and licensure of social services will also allow every licensed social worker in government or civil society to provide services in courts or the police on cases involving children.

13.5.9 Inadequate Investment in Prevention

There are no consistent programmes in Botswana that focus on prevention of children's rights violations and prevention of criminal behaviour of youth. These measures are important, because many of the problems children face stem from a variety of underlying societal ills. There is for instance a link between child maltreatment and problematic behaviour or youth delinquency. In addition, child maltreatment can be related to parents with unattended psychiatric problems or parents who are drug addicts, have cognitive impairments, or have been victims of abuse themselves and never received adequate services to help them cope. Investing in a robust mental health system, has a social return on investment, and has a larger positive societal effect.

The problem is that the wider effects and cost effectiveness of these measures are not easy to measure and thus are often overlooked or not considered effective or necessary. Examples of investments like these are parenting support programmes so that caregivers can prevent abuse and provide supportive homes, provision of mental health support for people (including children) with behavioural problems and rehabilitation programmes.

13.6 Challenges, Gaps and Constraints at Implementation Level

13.6.1 Child-friendly Justice Principles and Elements

Child-friendly justice system entails all judicial and administrative procedural standards implemented in formal or informal sectors where children come in contact with the justice system. Child-friendly best practices are premised on five principles and elements that embody the UNCRC and ACRWC.



At the implementation level, the study examined how Botswana conforms to the principles and elements that constitute a child-friendly system in its implementation of child-related services for children coming in contact with the justice system. In these circumstances, children are either victims, witnesses or perpetrators when coming in contact with the justice system.⁸

a. Participation

Participation, or the right to be heard, is a fundamental principle of the child-friendly justice system. The principle calls for service providers to treat children as full bearers of rights. Children are entitled to exercise all their rights in a manner that considers their capacity to form their views and the circumstances of the case (European Union Agency for Fundamental Rights, 2017). The Botswana Children's Act (Section 8) not only ensures the child's right to participation but includes guidelines on how to facilitate this right (Section 8(2)).

Child-friendly studies suggest that children identify the professionals' behaviours as critical elements for facilitating participation in the justice system (European Union Agency for Fundamental Rights, 2017, p.13; Rap & Klep, 2021). Studies show that children who perceive professional behaviours with whom they interact as empathetic, friendly, caring, and respectful are likely to be open and feel safe to listen to them and take their views seriously. Studies emphasise the importance of providing adequate information regarding the proceedings in a language children understand.

Evidence suggests that children can express their views when these elements are met (European Union Agency for Fundamental Rights, 2017, p.19). Thus, the attitudes and behaviours of professionals and the sufficiency of the practice and technical conditions (informing, hearing, and supporting) are critical to account for every time children come in contact with the justice system.


Excerpts from children in conflict with the law and victims of defilement interviewed in this study repeatedly complained that they always felt unsafe. These children described most police officers as harsh, aggressive, disrespectful, and condescending. Besides, most children lacked sufficient information about their cases or court proceedings and felt ill-prepared to understand administrative, investigative and court proceedings. Children's excerpts were consistent with professionals' lived experiences and perspectives (police officers, social welfare officers, magistrates, district commissioners and council secretaries).

b. Best interest of the child

The best interest is one of the pillars of the child-friendly justice system and an anchor of children's rights. It entails all actions and decisions that the administrative, investigative institutions, and the courts make to safeguard and protect children's rights (Leloupo, 2019; European Union Agency for Fundamental Rights, 2017; UNCRC, 1989; Jobeta & Dinokopila, 2018).

It calls for professionals to ensure that any decisions they make respect children's fundamental Bill of Rights, taking account of their age, maturity, level of understanding, background, language, culture, ethnicity, and religious identity (Children's Act, Section 5 and 6). In addition, judicial officers and other professionals (police, social workers, educators, and health providers) must take special consideration when dealing with children with disabilities (UNCRC, 1989).

⁸ A Webinar on "Access to Child-Friendly Justice in Africa" Commemorating the Day of the African Child June 2020 https://au.int/sites/default/files/newsevents/conceptnotes/38637_cnfina_l_concept_note_dac_2020_english.pdf



Excerpts from respondents suggest that the principle of the best interest of the child forms the base of judicial judgement in cases involving children. Case narratives highlighted by magistrates showed examples in which the courts took decisive measures to uphold the principle of the best interest of the child. Our results are consistent with a case law review study (Jobeta & Dinokopila, 2018), which found evidence of applying the best interest in cases involving children.

Outside the court system, the study found that the application of 'best interest' varied among professionals managing administrative services, creating disparities. Within the police service, children are often interviewed in the absence of parental or social service support by more than two officers, often in the presence of the alleged perpetrator. The approach violates the principle of the child's best interest.

c. Dignity, Care and Respect

Dignity, care, and respect embody the idea that requires treating children with care, sensitivity and respect throughout any procedure or case with special attention to their well-being and needs and full respect for their physical and psychological integrity. The principle guarantees children fair treatment regardless of the reasons for coming into contact with the administration of judicial proceedings and regardless of their legal status or capacity (European Union Agency for Fundamental Rights, 2017).

Excerpts from this study show that Botswana fails to abide by the obligation of this principle. One of the violations of a child's dignity, care and respect is the application of corporal punishment as a penal sanction. Under the current legal provision, children have no protective mechanism from abuse when the punishment is unilaterally applied in schools, customary courts, prisons or at home. The right to dignity, care, and respect conflicts with the Tswana socio-cultural norms where children are "seen but not heard." Children are rarely consulted or considered a party to family decision-making (Maundeni, 2002; Maundeni, 2009; Jamu et al., 2015).

d. Protection from Discrimination

Protecting children from discrimination and inequality requires service providers to recognise that children are different. Despite their different circumstances (disabilities, homelessness, country of origin, social/ethnic group, religion, or the language they speak), they require equal treatment from any institution that provides services, including the courts. The Children's Act (Section 7) protects children against discrimination when in contact with the justice system.

Narratives from the magistrates, children and caregivers in the study found no evidence to suggest a deliberate discriminative approach towards children encountering the judiciary system based on their circumstances. However, inequalities and disparities within the court system were reported when handling children with disabilities who require specialised services. Social Workers reported that support programmes for destitute, such as providing food baskets during the COVID-19 pandemic, were discriminatory to non-Batswana children.

e. The Rule of Law

The rule of law includes due processes, including legality and proportionality, the presumption of innocence, the right to a fair trial, legal representation, and court access. The rule of law emphasises that the right to appeal should not be denied or minimised based on being a child (African Child Policy Forum, 2012). Jurisprudence literature notes that a strong Rule of Law entails clearly written and easily accessible laws that create certainty and enforceability of legal rights, an independent and impartial judiciary that promotes fairness and ensures transparent, timely and predictable resolution of disputes, and effective and efficient public institutions that empower individuals to make a positive contribution to the economy and society (UN Global Compact, 2023).



Botswana is one of the countries in the world with a judiciary system grounded in the rule of law. For example, the Children's Act includes the Children's Bill of Rights. However, Botswana suffers shortcomings in implementing human rights obligations (Cook & Sarkin, ndt ⁹). Excerpts from legal experts sampled in this study suggest that the judicial procedural lapses include:

- No child in Botswana has direct access to the justice system, contrary to the Children's Act provision (section 84)
- Legal representation is often not always available in cases involving children in conflict with the law.

13.6.2 Behavioural Problems and Substance Abuse among Children

This study found increased reported antisocial behaviours, sexual abuse, and common assault in schools and the community. Respondents reported a significant and persistent increase in substance abuse in violation of age-appropriate social expectations. In addition, community leaders perceived family units as disintegrating in which parents are abdicating their roles and uncles and other family members are no longer trusted to mould children into responsible citizens. In most instances, uncles and other family members have become sexual predators and abusers instead of child protectors.

Global studies suggest that alcohol and illegal substance use is rising among adolescents and young adults worldwide. The use and misuse of alcohol, for example, is exceptionally high during adolescence, significantly increasing the risk of developing alcohol use problems in adult life (Global Disease Burden on Alcohol Use, 2018). Studies show that substance abuse leads to antisocial behaviours (aggressive and intolerance, physical and verbal abuse, bullying, compliance with social norms, school rules and regulations, and destruction of property). It also may lead to sexual abuse and exploitation, which, if not positively corrected, may lead to criminality in adulthood (Ahmed et al., 2020; Cabrera et al., 2017;).


In a multi-country study of 12 countries, including Botswana, Balogun et al. (2014) examined the prevalence of alcohol consumption and its association with psychological distress among school-going students aged 13-15. In a study on the prevalence of al, Balogun et al. (2014) found a high prevalence of alcohol use and an increased risk of experiencing psychological distress in Botswana (19.6%) among the 2,1788 students who participated in the study. The study also found that 39.6% of alcohol users reported experiencing psychological distress. In a multivariable regression analysis, Balogun et al. (2014) found that alcohol use was associated with depression 72% of the time among students who used alcohol in the past 30-days and predicted 50% lifetime drunkenness in students who consumed alcohol.

Currently, there are no restorative community programmes for preventing substance abuse or addressing mental health problems that children and adolescents experience due to substance abuse besides corporal punishment. Evidence suggests using violence (corporal punishment) to address violence precipitates more violence (Cabrera et al., 2017).

13.6.3 Speedy Conclusion of Children's Cases

The undue delay in concluding criminal cases is one of the persistent challenges and a significant source of dissatisfaction with the Botswana children's justice system. Children's lived experiences and results from a case study analysis (Kontle et al., 2022) show that, on average, victimised children wait between three to five years to conclude.

⁹ Ndt: No reference information



According to respondents, these undue delays often lead to miscarriage of justice and infringement on children's rights, i.e., the adage: "justice delayed is justice denied". Thus, if a legal remedy is available for a party that has suffered an injury but is not forthcoming promptly, it is effectively the same as having no remedy. This principle is the basis for the right to a speedy trial because it is unfair for the victim to sustain the injury with delayed resolution.

Development research scientists at Harvard University suggest that the untimely conclusion of cases for victims of abused children who lack stable, responsive, and nurturing parental support or therapeutical remedy can lead to toxic stress with damaging long-term effects (Centre on the Developing Child, 2007). Toxic stress experienced early in life precipitates re-victimisation and repeated exposure to violence, often cumulating on an individual's physical and mental health. Adults with more adverse experiences in early childhood are also more likely to have health problems, including alcoholism and depression (Centre on the Developing Child, 2007).

13.6.4 Access to the Court for Legal Matters

Excerpts from legal practitioners and the police revealed that children lack direct access to the prosecution, court and police services for legal matters affecting them or requiring adjudicating under the jurisdiction of the children's court, unless accompanied by an adult persona, contrary to the Children's Act Section 94 (a). In the current system, children's legal matters can only be heard through an intermediary or third party, including caregivers, a legal representative, or a social worker acting in the child's interest.

13.6.5 Risk of Secondary Victimisation

Victims of CSAEN are exposed to multiple victimisations through the justice system and beyond. Studies suggest that one-third of CSAEN victims reported experiencing repeated victimisation and had a two to three times greater risk of adult re-victimisation than individuals without a history of child sexual abuse (Finkelhor et al., 2007). Re-victimisation may lead to self-blame, one of the major components of trauma associated with continuous exposure to violence (Cohen et al., 2002).

Excerpts from the current study suggest that child victims are at risk of traumatic events due to re-victimisation during investigation and court proceedings. Despite holding children's cases 'in camera', the current court system does not prevent children from secondary victimisation. Children often come face-to-face with accused persons when giving evidence and cross-examination. These findings are consistent with observations from the United Nations Committee on the Rights of the Child (May 2023). The UN Committee on Human Rights expressed concern over the continued subjection of children to interrogation by alleged perpetrators (UN Committee on Human Rights, 2023). Botswana does not have specialised facilities for children to testify or give evidence in the absence of the accused person, despite the provision of the Children's Act (Section 84).

13.6.6 Supportive Information and Advice

One of the elements of the child-friendly justice system is access to information and advice about matters concerning children's cases. In a child-friendly justice system, victims require ongoing information about the investigation progress, when charges are brought or arrests made, times and dates for court proceedings, and other relevant information and events. Both the CRC (article 40 (2)(b)(ii)) and the Beijing Rules (#7) require children alleged of having infringed the penal law the right to be informed promptly and directly of the charges against them (the African Child Policy Forum, 2012). Excerpts from children and caregivers interviewed in this study frequently complained about the lack of information about their cases. Respondents often did not have a clear idea or understanding of their cases or available options. Most children and caregivers give up when justice is not forthcoming.



13.7 Study Implications

The juvenile justice system is a complex entity composed of multiple partners requiring careful consideration. While results highlight significant milestones and opportunities Botswana has garnered to improve its juvenile justice system, most of the structures, systems and processes in the justice system provide sub-optimal services to child victims, witnesses, and those in conflict with the law. The services fall short in upholding human rights' child-friendly principles and elements. Evidence shows that chronic persistent suboptimal services in the children's justice system have several implications and significant consequences for children and their families, communities, and the country.

At an individual level, a suboptimal children's justice system can lead to a rise in recidivism and antisocial behaviours when children are denied adequate supportive and rehabilitative services within the system. Evidence shows that children may continue engaging in antisocial and criminal behaviours, fall within the cracks, and be trapped in the vicious cycle of offending. Second, a suboptimal children's justice system can perpetuate inequalities where children from socially disadvantaged families and communities become more marginalised, ending up in situations that deny them to overcome their challenges and become productive adult citizens.

More importantly, suboptimal systems have long-term effects on children's mental health and well-being. Studies show that children who lack access to adequate support services and supportive family and community environments may suffer from trauma, depression, and anxiety, which can impede their prospects. Persistent psychological manifestations often lead to adverse health outcomes. Thus, failure to address children's rights can negatively impact Botswana's pathway to Vision 2036.

13.8 Conclusion

Children are neither mere people in the making nor individuals to be seen but not heard. They are the bearers of equal status as human family members. The singling out of children's rights in international and regional conventions and Botswana's recognition and domestication of such conventions is a clear testimony of the country's commitment to advancing children's rights and needs. Against this backdrop, this situation investigated the state of the children's justice system to inform improvements in the delivery of services and instigate reforms to fully attained the rights-centric services and create a system that is accessible, fair, speedy, age-appropriate and serves children's best interest.

The experiential information from service providers and service recipients' lived experiences about the current state of the juvenile justice system highlighted strengths and opportunities on which to address the identified challenges, gaps and constraints undermining the optimal delivery of rights-centric services. As the primary duty bearer of children's rights, it is up to the government to examine and incorporate the suggested recommendations to address the identified structural, programmatic and implementation challenges, gaps, and constraints. The government's actions or inactions impact children more significantly than any other age cohort in society, and the costs of failing its children's rights and needs are enormous. Urgency for change in each sector of the justice system is critical to uphold children's rights and create a protective child friendly justice.

14. Recommendations

The recommendations form the basis for creating a model for child-friendly justice system in Botswana. Many of the recommendation were provided by the study's respondents, literature and promising practices in other countries that address the gaps and constraints identified in the study. The recommendations start with cross cutting issues for all sectors and then provide a few specific recommendations for each sector. The recommendations are categorised and in a numerical order for ease of reference.

14.1 General Recommendations (cross-cutting)

14.1.1 Legislation

1. **Include Children's Bill of Rights and Protection Provision in Constitution:** Include the Children's Bill of Rights in the constitution to ensure the absolute protection of children's rights.
2. **Review Children's Act and all Laws Pertaining to Child Justice:** The Government of Botswana is recommended to review the Children's Act and all other laws pertaining to child justice, such as the Affiliation Proceedings Act, Marriage Act, Adoption Act and the Domestic Violence Act. This is to ensure that all legislation in Botswana is consistent with child-friendly principles, such as the best interest of the child and their participation. The review should be done in consultation with all relevant stakeholders affected or mentioned in the Act. This should be done periodically to address and respond to emerging issues. The study recommends that this review considers the following recommendations:
 - **Harmonisation of the Children's Act with other national laws and International instruments:** It is recommended to harmonise the Children's Act's Bill of Rights and provisions with the Customary Act to address rights for children meeting the customary court for civil cases. Other statutes, such as the Criminal Procedure and Evidence Act and the Penal Code, need to be aligned where inconsistencies exist to ensure that processes are child-friendly. Harmonisation should also consider alignment with international children's rights instruments that Botswana ratified, such as the African Charter on the Rights and Welfare of the Child.
 - **Age of Criminal Responsibility:** The age of criminal responsibility in the current Children's Act and the Penal Code are currently not aligned. International treaties that Botswana ratified recommends the age to not be too low, because of children's vulnerabilities and prevention of criminalization of children. It is recommended to review the age of criminal responsibility in line with these internationally accepted and recommended standards.
 - **Legal Representation and Child Offenders:** The Act does not specifically mention legal representation for child offenders. The Act should specifically address children as offenders and make provisions on how they must be dealt with by the police and other stakeholders. Free legal representation, social and psychosocial support should be consistently, automatically provided for all child offenders.
 - **Access to Justice:** While the Children's Act section 94(a) states that a child may report a matter that needs adjudication, in practice this is not being implemented. Standardised guidelines for all sectors (e.g. police, education, social workers, health care workers) handling cases involving children need to be drafted and training provided on such.



- **Specialised Services:** To ensure children receive high quality services from specialised professionals, the Children's Act should make specific mention on the involvement of specialists in matters involving children, for instance child clinical psychologist specialising in child sexual abuse, child development cases, or involvement of criminal expert profilers in cases of child offenders to ensure a holistic overview of matters involving children.
- **Turnaround times:** To prevent lengthy processes and to ensure child-friendly services that are in their best interest, the Children's Act should include turn-around times for each service.

3. **Children's Court Rules:** Children's court rules need to be developed, stipulating how a child's case is to be processed. Within the rules, turnaround timelines should be strictly outlined, adhered to and aligned to the addition in the Children's Act. The procedures and process management tools for facilitating children's cases should be developed to and consistently utilised.
4. **Corporal punishment:** Within any government establishment, corporal punishment as a means of discipline and criminal punishment for children should be abolished. This will be in line with the international child rights treaties that Botswana ratified. It is critical to identify alternative methodologies of discipline, including classroom management techniques, discipline that teaches consequences for decisions, using love and logic methodology.
5. **Post Rape Abortion Protocol:** Despite the Penal Code making provision for the possibility of termination of pregnancy due to sexual assault, it does not provide clarity on roles and processes that guides what each stakeholder should do in the case of post-rape abortion. This unclarity often causes delays, resulting in termination timeline lapses. It is recommended that a post-rape abortion protocol is developed that outlines the roles and procedures.

14.1.2 Governance, Accountability Systems, Monitoring and Evaluation

Governance

6. **Restructuring National Children's Council:** The NCC needs urgent restructuring to be stronger positioned, more independent and empowered to carry out its functions independently. One such autonomous form is becoming a parastatal organisation with its own staff and budgetary allocation. Its administrative set-up, funding and resourcing, functions and performance need improvement. This improvement can help to ensure quality standards and to hold ministerial departments and non-state actors accountable for child-related activities in the justice system.
7. **Strengthen accountability systems:** To hold stakeholders accountable for their (under) performance, accountability systems should be strengthened and more focused on children. The following existing entities can play an important role in accountability and monitoring:
 - **Human Rights Commission under Office of the Ombudsman:** to effectively monitor children's rights protection and promotion the Human Rights Commission under the Office of the Ombudsman should consider setting up a children's rights desk to handle reports on the safeguarding or lack thereof of children's rights.
 - **Human Rights Unit/Office:** The Human Rights Unit needs to ensure that within government child rights are mainstreamed and child specific budget allocation and tracking is in place to promote and protect children's rights across all government.

- **Office of the Auditor General / Court of Auditors / Public Accounts Committee:** This committee should include periodic review of the child justice system to account for money and child related programme delivery spent on the child justice system. Reports should be published publicly to improve transparency and accountability towards the public.
- **(Members of) Parliament:** To make children's rights a priority, it is advisable to schedule periodic child rights' status in Botswana discussions in every Parliament seating. This helps Parliament hold the Cabinet permanently accountable for their performance.
- **National Planning Commission (NPC) prioritising children on the national agenda:** The establishment of the fairly new NPC provides opportunity to place child justice on the national agenda.

Monitoring, Evaluation and Learning


8. **Establish Comprehensive Quality Improvement Mechanisms:** The study recommends the government, through the proposed autonomous NCC, to develop a comprehensive quality assurance and MEL framework which holds each stakeholder to stringent performance indicators, ensuring delivery of quality services. Secondly, community structures such as VCPC or CSOs can conduct community led monitoring. The accountability structures described under recommendation #7 also play a key role in monitoring.
9. **Cross-sectoral Reporting Based on MEL Framework:** There should be regular analysis and reporting that informs decision making. Societal trends, such as drug abuse and criminal behaviour amongst children should also be closely monitored to inform policies and programmes. The findings need to be published and easily accessible. This framework should include beneficiaries' feedback on the system's performance. The NCC can lead this.
10. **District Performance:** Create performance indicators for the programmes related to the Children's Act. Establish a quality control mechanism to track performance and learnings in the district. The Ministries of the child justice sector at a national level should monitor, respond to emerging issues and concerns, guide, support their district departments based on the performance indicators. (For example, number of operational child protection committees, % of cases that are processed timely.)
11. **Evidence-informed approach:** Data needs to be collected to analyse the effectiveness of justice processes and interventions. Effective rehabilitation programmes or other interventions can help target which approaches yield the best results and are cost effective. Budgeting
12. **Costing and Budget Allocation Children's Act:** Without sufficient budget allocated for the implementation of the Children's Act, it is highly unlikely that it will be properly executed. Therefore, a full costing exercise of the Children's Act is required. Subsequently sufficient resources need to be allocated and monitored accordingly to ensure its full implementation. A good example is the costing exercise conducted in Lesotho to estimate the cost to the Government of Lesotho of implementing the different services envisaged by their Children's Protection and Welfare Act 2011 (Barberton et. al 2014).



13. **Children's Budgeting:** Children should be involved in the budgeting of the activities to ensure the activities reflect their needs. A budget request system for children is required. The UNCRC has recommended Botswana to "introduce a child rights perspective into the budgeting process that specifies clear allocations for children in the relevant sectors and agencies and includes specific indicators and a tracking system to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated for child programmes.
14. **Specific Programme Budget:** It is recommended to cost violence against children programmes specifically for child sexual abuse, exploitation and negligence.

14.1.3 Infrastructure, Systems, Platforms and Institutions

15. **Child-friendly Physical Buildings:** There is need for child-friendly infrastructure in all departments that provide services to children and allow differently abled (blind, deaf, dumb) children to access and utilise them. Child-friendly standards include privacy assurance, avoidance of contact with perpetrators, and creating an appealing environment such as colourful walls, soft interview rooms for consulting with children, child friendly toilets, sick bays.
16. **Children's Court Multidisciplinary Team:** Establish an integrated children's court multidisciplinary team with trained and specialised staff, including a children's court magistrate, social worker, probation officer, psychologists, investigators (linked to the child-friendly police stations), and support staff. The team would be available 24 hours on a rotating basis.
17. **Integrated Child-centered Service Provision (One stop shops):** Pilot the provision of integrated and centralised services for children, whereby different trained service providers organise their services efficiently around the child. The children will not have to visit all service providers separately where they normally must wait. Integrated services do not need to be provided in a separate building. It is ideally a multi-sectoral child focal team of professionals that are on stand-by to come to the child when needed. This is also known as a "one stop shop".
18. **Safe Houses or Shelters for Children:** Safe houses/protective custody shelters for children should be established across the country where children in need of care and protection can be placed. The centres must be complete with high security features and equipped with caretakers and other professionals such as counsellors and health personnel. They could be managed by independent Civil Society Organisations. District Councils could provide housing for this type of safe house or shelter.
19. **Review Boys Prisons:** In its current state Moshupa boys prison is an unfriendly environment for children and does not have rehabilitation programmes. The study recommends an evaluation of the prison operational systems, guidelines, personnel for handling of children
20. **Rehabilitation for Girls:** The justice system currently does not have a rehabilitation programme for the girl child offenders. It is recommended that a child-friendly programme be developed taking into consideration current best practices for rehabilitation of the girl child.

- 
21. **Legal Education:** Develop a deliberate programme to ensure legal education reaches hard to reach areas, delivered in local language and context (harmonised to local culture). Establish community-based structures friendly to children that serve as a resource to child justice issues. Legal Aid Botswana could expand with more offices and programmes to provide child friendly legal literature.
22. **Investment in Response to Behavioural Problems:** To respond to the increase in problematic behaviours of children, such as substance abuse, disobedient or aggressive behaviour or misconduct, criminal behaviour, investments need to be made in the mental health sector:
- Substance abuse programmes
 - Psychosocial support with more trained counsellors, psychologists, clinical social workers and psychiatric rehabilitation institutions
 - Database documenting the issues children face, the services and interventions received.
23. **Child-friendly Complaint Mechanisms:** Invest in an independent, inclusive, safe, effective, easily accessible and child-sensitive complaint and reporting mechanism that is established by law and in line with international human rights, norms and standards. This system should ensure their availability and accessibility for all children, including children deprived of their liberty, without discrimination of any kind. UNICEF developed “Child-friendly Complaint Mechanisms” to support child-friendly practices for National Human Rights Institutions (NHRIs) that can be used as a guiding tool. In Portugal, a specialised and free-of-charge helpline has been established to provide personalised assistance to children themselves or to whoever calls on their behalf.

14.1.4 Standard Operating Procedures

24. **Prioritising children’s cases:** It is recommended that all children’s cases are classified as priority and handled as such by all sectors. This avoids delays across all stakeholders and prevents re-victimisation of the child.
25. **Development of Guidelines with quality standards and SOPs:** Cross-sectoral guidelines, quality standards and SOPs for the implementation of the Children’s Act must be developed urgently for all sectors. These guidelines need to guide the handling of child-related cases and matters interlinking the roles of all relevant stakeholders (social welfare, education, health, police, justice). The guidelines need to include:
- **Role clarity:** Clear roles and responsibilities within and between sectors will ensure uniformity and an improved turnaround time in co-managing clients.
 - **Interlinked:** The guidelines need to be interlinked and complement each other, to ensure a smooth and child-friendly justice process.
 - **Prioritisation:** The guidelines need to incorporate the prioritisation of children’s cases, as mentioned in this section.
 - **Intersectoral Referral System:** Include an intersectoral official referral mechanism to ensure smooth handling of cases between stakeholders.
 - **Detection Systems for Children in Need of Protection:** All professionals in the frontline (especially health professionals and teachers) must be able to recognise signals and



know what procedures to follow and alert the relevant stakeholders whenever they encounter a child who is pregnant or seeking treatment for STIs, bruising and trauma trusting the relevant stakeholder to proceed in such a manner as not to deter victims from seeking services. Detection systems should also include community groups and parents.

26. **Individual Performance Accountability System:** Currently, justice system stakeholders can execute harmful and un-child-friendly practices, without being held accountable for it or supported to improve performance. Therefore, systems should be in place to a.) incorporate child-friendly practices in job descriptions, b.) monitor the quality of each individual performance and if they meet the required quality standards, and c.) hold people accountable if they are underperforming in this area.

14.1.5 Specialisation and Capacity Building

27. **Continued and Consistent Capacity Building:** Ensure all staff of sectors across the justice system participate in a joint annual training on children's rights, child-friendly best practices, and the best interest of the child. It should also include role clarification, quality standards, guidelines and SOPs. Each sector should understand each other's SOPs and how they are interconnected.
28. **Train specialised police, social workers (Council and Hospital based), and guidance teachers:** in the use of similar counselling methodologies such as art, play and drama therapy to assist the child to verbalise an incident. On-going in-service training is recommended to be planned for and implemented across service providers to continuously build capacity and respond to emerging issues.
29. **Appoint Probation Officers and Probation Committee:** As stated in the Children's Act (section 91) (1), the Minister of Local Government and Rural Development should appoint probation officers and a Probation Committee. A plan needs to be developed first to ensure they can carry out their role, including how many probation officers are needed, how they are equitably distributed across the country, training requirements and plans, monitoring and support systems.
30. **Child-friendly Service Certification:** Introduce a certification system for specialised staff within departments. Periodically (to be decided by sector) the police, social workers, guidance and counselling teachers, health providers should be assessed (observations and testing) for child-friendly services to renew their department child-friendly competency certificate. This would be accompanied by periodic assessment and training of staff.
31. **Invest in more specialised staff:** An analysis of gaps and distribution of specialists who are required in the child-friendly justice system should be conducted across all sectors, such as the need for child psychologists, trauma counsellors, etc. This is required to allocate sufficient resources and to hire, appoint and allocate enough qualified specialists.
32. **Tertiary institutions and Training Academies:** The training and education curriculum of social workers, police, guidance and counselling teachers in tertiary institutions and training academies should be reviewed, based on the child-friendly quality requirements, and amended to meet the required standards as well as a key topic on children's rights according to the Children's Act and ratified international treaties.


14.1.6 Community interventions and prevention measures

33. **Awareness Campaigns on child rights:** Design interventions that aim to increase community awareness on children's rights, the importance of bringing cases to the (formal) justice system, and the importance of children receiving comprehensive and child-friendly services (and demanding those rights), where they can find those services, and the right to attain legal support and representation. Campaigns should ensure they cater for different people, taking into consideration differences in ability, culture, language and educational background.
34. **Prevention Measures and Community Interventions:** Invest in prevention measures that address underlying problems of children in conflict with the law, and children facing violations of their rights:
- **Parenting support programmes:** Scale up the evidence-based parenting programme, Parenting for Lifelong Health, coined Pinagare in Botswana, that improves the safety and stability in the homes, reducing violence, and teaching caregivers how to support (access to services) and protect their children including those with special needs and the differently abled.
 - **Development of Family Policy:** A family policy was drafted in 2011, but it is still in draft form and is not finalised. The draft family policy needs to be reviewed and finalised, so that it can guide processes to improve the situation for children in their family situation. The family policy falls under the responsibility of DSD.
 - **Investment in Mental Health System:** Invest in private sector, public sector programmes for a strong mental health system with specialised psychologists, psychiatrists, counsellors and clinical social workers.

14.2 Justice Sector Recommendations

In line with the cross-cutting recommendations of developing a multi-sector team for child justice, it is critical that Ministry of Justice invest in the infrastructure, court rules and sentencing and timelines to cater for children. Below are specific recommendations related to the Justice Sector.

35. **Diversion and Restorative sentencing options and rehabilitation:**
- **Children Sentencing Guidelines:** The justice sector must develop comprehensive sentencing guidelines inclusive of other sentencing options such as rehabilitation, community service, and probation. Therefore, it is suggested that children with civil, less serious crimes enter a comprehensive rehabilitation programme, preferably available in each locality/district. To ensure the guidelines are followed, it should be incorporated in a statute such as a in the form of a Schedule under the Penal Code, the Children's Act, or as a stand-alone Act.
 - **Establish comprehensive rehabilitative programmes:** Fully utilise the premises of Ikago and develop targeted rehabilitative programmes that are measured regularly for impact. The rehabilitation should focus on any child offender.
 - **Expand Rehabilitative Sentencing Options:** The dispositions provided for under the Act (while aimed at rehabilitating the child and ensuring their successful reintegration into the community) are limited and should be extended to include the following orders: care, guidance, community service, restitution, and treatment or counselling, as




provided by the UNCRC and other international standards on juvenile justice. It is worth reviewing the South African standalone children's legal system that promotes diversion, restorative justice and alternative sentencing for children in conflict with the law.

36. **Establishment of Children's Courts:** The establishment of Children's Courts is urgently needed to attend to all cases involving children instead of them queueing with the rest of the cases. The absence of Children's Courts (and its stipulated related guidelines, rules and standard operating procedures) allows magistrates to approach cases differently, causing inconsistent facilitation of children's cases across the country. A technical working group including children should be formed to contribute to the design and establishment of the courts. In Mauritius in any proceedings, a child "capable of discernment" may request to be heard by the judge alone, with a legal counsel or person of his/her choice.
37. **Adequate Resources for Court Equipment:** Ensure Magistrate (Children's) Courts are equipped with requisite resources (specialists, cameras, audio visuals etc.) to meet the requirements for creating a conducive environment for children, such as holding sessions in- camera.
38. **Court Toolkit:** The police and court toolkit that helps children prepare for court that is used in South Africa could be adapted in Botswana, inclusive of a layout of the court room, pictures of a lawyer, judge, social worker and use it as a game for practice.
39. **Provision of Counselling:** It was suggested to provide debriefing and counselling for all justice system officers who are hearing violent cases of children as it can be traumatising.
40. **Children's Court Assistant:** Implement the provision of the Children's Act, that calls for the appointment of a Court Assistant to all magistrate courts who would advise and ensure all procedures are followed accordingly.

14.3 Police Recommendations

41. **Physical Building:** Build on the current child friendly police stations by providing separate and secluded offices, with child friendly furniture and décor, designed in such a way as to protect the privacy and confidentiality for children. The police should consider setting up soft interview rooms for children across all police stations to ensure they are interviewed in rooms that are not traumatising and unfriendly. Police should have separate detention rooms for children in police custody so that they are not detained with adults.
42. **Child Focal Persons:**
 - **Increase Qualified Female Focal Persons:** The number of female police officers who are often assigned to handle children's cases in a child-friendly way should be considerably increased.
 - **No uniform:** Only non-uniformed police officers must interview children and accompany them to health facilities for medical examination.
43. **Specialisation for differently abled children and with special needs:** Since differently abled and children with special needs (mentally unfit, drug users, intoxicated, young mothers with children, different language, etc.) require specific treatment, depending on their disabilities



and needs, it is recommended to increase the number of police officers that are trained to assist these children, particularly those with hearing and speech impairment.

44. **Unmarked police vans:** To ensure anonymity and protection of privacy of children, all vehicles following up children and transporting them must be unmarked.
45. **Recording of statement:** Victims interact with multiple officers within and across departments when reporting. To avoid re-victimisation of children, it is recommended that there be video recording of the child's statement so as to avoid repeating the ordeal.
46. **Early detection protocols:** There is need for police guidelines in responding to domestic violence calls to enquire with the adults and ensure that the welfare and safety of children in the household or lives of those involved is addressed. The police officer must liaise with the social workers to follow up on the status of the child.
47. **Early involvement of a social worker:** Make it mandatory for the police to engage social workers right at the beginning when the case is reported, regardless of whether it is for a child in conflict with the law or a child victim of crime. No interview should commence in the absence of the social worker, leading to the cross-cutting recommendation of a comprehensive care, one stop shop.
48. **Continued Focus on Strengthening and Improvement of Gender and Child Protection Units and Child-friendly Police Stations:** There is a need to enhance monitoring of the functioning and effectiveness of the child-friendly police stations to determine their impact. Additionally, sufficient resources need to be allocated to ensure they can carry out their mandate.

14.4 Social Services Recommendations

49. **Child Protection Committees (CPCs) and Children's Consultative Forums (national and district level):** DSD reviews the current functioning of all CPCs and the NCTPC, ICPCC, NCCF/DCCF, VCPC/DCPC, and develops an improvement plan to support districts for their full operation. Districts will require a specific budget for CPCs and DCCFs to be trained, for community activities, the provision of monitoring and support, data collection, and reporting. Accountability systems need to be put in place.
50. **Workload social workers:** Review the workload of social workers including the caseload, the other responsibilities and diverse tasks covering a large geographic area.
51. **Capacity Building:** Ensure that there is a specialised cadre within the social work profession specifically trained and specialised on legal/judicial services.
 - Social workers need to be up skilled in key child protection capacity areas including identifying and treating trauma, child development and effects of abuse on the brain, child friendly language, to name a few core areas.
 - Provide basic legal training for social workers, particularly on the application of the Children's Act, and guidelines on the preparation of effective SERs.
52. **Council for Social Workers:** Botswana should have a council for social workers to professionalise and regulate services for children and ensure quality.



53. **Share justice tasks with NGOs:** Non-state actors suggested that government must consider allowing qualified social workers working in civil societies to do forensic social work and participate in the justice system to fill the gap where government social workers are unable to undertake such activities. This would require strong quality standards for those non-governmental social workers with proper monitoring systems.
54. **24/7 availability:** Children that need urgent attention from a social worker can currently only access those services during working hours on workdays. It is therefore recommended to ensure that social services are available 24 hours per day, 7 days a week, so that cases can be attended to immediately, as it is the case in clinics and police stations. A possibility is that every police station must have a resident social worker on call that can be called when it concerns a child's case.

14.5 Ikago Recommendations

55. **Enhance Ikago to reach its potential:** DSD should create an improvement plan for the facility and programmes including the following activities:
- Engage a CSO to collaborate with MoLG to draw up an individualised education, psychosocial, rehabilitation and skills programme for every child currently in the centre.
 - Indicate the measures to be taken when the child is ready for release: conditions into which he is being released, the kind of support (financial, psycho-social and any other) needed to settle back into the community. This plan should also consider the family of the child and how they can be incorporated as part of his reintegration plan.
 - Deploy departmental staffing to implement programmes including a social worker and resident nurse to the centre and collaborate with NGOs to provide services.
 - Monitor the processes and effectiveness of the services provided in the centre.
 - Consider Ikago as the custodian rehabilitation centre instead of Moshupa Prison, which can be used for serious crimes only.

14.6 Health Recommendations

56. **Alert police in cases of child sexual abuse who report to health services first:** Health professionals must alert the police whenever they encounter a child victim of sexual violence (such as teenagers seeking prenatal care and treatment for STIs), so that the police can take appropriate action against the perpetrator. It is in the best interest of the child to obtain medical assistance. This would be included in the health for child justice protocols and monitored.
57. **Prioritise children's cases and protection of privacy:** It is needed that child victims of sexual violence accompanied by the police should be classified as medical emergency and given priority in health facilities. This prevents further traumatizing of a child in distress, and protects the privacy and confidentiality for the child, because they don't have to wait in the communal area. Ideally, concrete turn-around times for handling child related cases are included in their SOPs.



14.7 Education Recommendations

58. **Invest in guidance and counselling teachers:** More professional guidance and counselling teachers should be trained to respond to needs. Their specific duty should be providing counselling not teaching in the classroom. They should be appointed based on qualifications not promotions.
59. **Early detection:** Second to the parents or guardians, teachers are in the first line of detection for child victims of rape, defilement, incest, physical abuse or negligence. In districts with available boarding facilities, teachers can better utilise boarding accommodation for such victims. However, it is not every district that has boarding facilities. It is therefore recommended that, where a teacher identifies a student in need of protection, they always report the case to the police and social workers, who can remove the child to a place of safety and who can ensure the victim receives counselling services.
60. **Collaboration with community-based structures:**
- **VCPCs:** The VCPC must increase their presence in the schools where most children spend a significant part of their day. This will allow them to appreciate first-hand the school environment and engage with student-based governance structures such as the SRC and other social clubs. The VCPC (where it exists and functions) should facilitate dialogue between all the community structures dealing with children's issues and those that are in the school system.
 - **Other local structures:** There are several village/community-based structures such as PTA, VDC, that play some kind of role in the welfare of children in the community. Communication between these community structures and school-based student structures is fragmented in many of the study areas.
61. **Circles of Support:** Revive circles of support at schools. Schools are recommended to promote the well-being of students, keep parents and community stakeholders informed of developments with schools and reach out to stakeholders on issues that matter to children.

14.8 District Administration and Tribal Administration Recommendations

62. **Training of Dikgosi:** It is recommended that traditional leaders are involved in the child protection system to play an active role and influence promotion and protection of children's rights. Guidelines on how to handle cases of child abuse of any kind have been developed, yet need to be disseminated and training is required. More training for them is needed on the Children's Act, their role, and how to support a child in bringing cases to justice.



A possibility is that every police station must have a resident social worker on call that can be called when it concerns a child's case.

References

- African Child Policy Forum (ACPF). 2012. Achieving child-friendly justice in Africa. Addis Ababa, Ethiopia: The African Child Policy Forum.
- Ahmed d, S., Foulkes, L., Leung, J. T., Griffin, C., Sakhardande, A., Bennett, M., Dunning, D. L., Griffiths, K., Parker, J., Kuyken, W., Williams, J. M. G., Dalgleish, T., & Blakemore, S. J. (2020). Susceptibility to prosocial and antisocial influence in adolescence. *Journal of Adolescence*, 84, 56–68. <https://doi.org/10.1016/j.adolescence.2020.07.012>
- Alampay, L. P., Godwin, J., Lansford, J. E., Bombi, A. S., Bornstein, M. H., Chang, L. et al. (2017). Severity and justness do not moderate the relation between corporal punishment and negative child outcomes: A multicultural and longitudinal study. *International Journal of Behavioral Development*, 41(4), 491–502.
- Artz, L., Burton, P., Ward, C.L., Leoschut, L., Phyfer, J., Lloyd, S., & Kassanje, R. (2016). Optimus Study South Africa: Technical Report Sexual victimisation of children in South Africa Final report of the Optimus Foundation Study. Zürich. Available at: www.optimusstudy.org.
- Avdibegović, E., & Brkić, M. (2020). Child Neglect – Causes and Consequences. *Psychiatria Danubina*, 32(Suppl 3), 337–342.
- Balogun, O., Koyanagi, A., Stickley, A., Gilmour, S., & Shibuya, K. (2014). Alcohol consumption and psychological distress in adolescents: A multi-country study. *The Journal of Adolescent Health: Official publication of the Society for Adolescent Medicine*, 54(2), 228–234. <https://doi.org/10.1016/j.jadohealth.2013.07.034>
- Barberton, C., Carter, J., and Abdoll, C., 2014. 'Costing the Children's Protection and Welfare Act, 2011 of Lesotho', Report for the Ministry of Justice and Correctional Service, Maseru, Lesotho. https://resourcecentre.savethechildren.net/pdf/final_report_costing_2800229.pdf/
- Barsky, A., & Spadola, C. (2021). "Don't shame me; walk with me": the impact of sanctions for social work licensing violations. *Advanced in Social Work*, 21(4), 1300 – 1315, doi:10.18060/25190
- Beyens, K., & Scheirs, V. (2010). Encounters of a different kind: Social enquiry and sentencing in Belgium. *Punishment & Society*, 12(3), 309–328. <https://doi.org/10.1177/1462474510369445>
- Bevir, M. (2012). Governance: A very short introduction. Oxford, UK: Oxford University Press.
- Bonta, J., Bourgon, G., Jessemann, R., & Yessine, A. (2005). Pre-Sentence Reports in Canada 2005–03. Ottawa: Public Safety & Emergency Preparedness Cat No: PS3-1/2005-4EPDF.
- Botlhale, E. (2010). The case for children's budgeting in Botswana. In Maundeni, T. Reflection on children in Botswana 2010 (pp 82-88). Gaborone, Botswana: United Nations Children's Fund (UNICEF).
- Botlhale, E. (2017). Enhancing public project implementation in Botswana during the NDP 11 period. *Africa's Public Service Delivery and Performance Review*, 5(1). <https://link.gale.com/apps/doc/A520368443/AONE?u=anon-d47c4b6b&sid=googleScholar&xid=341b6748>
- Boyce, C., & Neale, P. (2006). *Conducting in-depth interviews: Guide for designing and conducting in-depth interviews for evaluation input*. Massachusetts: Pathfinder International.
- Cabrera, F. J. P., Herrera, A. D. R. C., Rubalcava, S. J. A., & Martínez, K. I. M. (2017). Behaviour Patterns of Antisocial Teenagers Interacting with Parents and Peers: A Longitudinal Study. *Frontiers in Psychology*, 8, 757. <https://doi.org/10.3389/fpsyg.2017.00757>
- Centre on the Developing Child. (2007). The impact of early adversity on child development (In Brief). A series of brief summaries of the Scientific Presentations at the National Symposium in Early Childhood Science and Policy. Retrieved from www.developingchild.harvard.edu on May 10, 2023.
- Cleland J. A. (2017). The qualitative orientation in medical education research. *Korean journal of medical education*, 29(2), 61–71. [https://doi.org/10.3946/kjme.2017.53Cohen, J. A., Perel, J. M., DeBellis, M. D., Friedman, M. J., & Putnam, F. W. \(2002\). Treating traumatised children: Clinical implications of the psychobiology of posttraumatic stress disorder. *Trauma, Violence, & Abuse*, 3\(2\), 91–108. <https://doi.org/10.1177/15248380020032001>](https://doi.org/10.3946/kjme.2017.53Cohen, J. A., Perel, J. M., DeBellis, M. D., Friedman, M. J., & Putnam, F. W. (2002). Treating traumatised children: Clinical implications of the psychobiology of posttraumatic stress disorder. Trauma, Violence, & Abuse, 3(2), 91–108. https://doi.org/10.1177/15248380020032001)
- Cole, R. (2010). Juvenile offenders and criminal justice system in Botswana: Exploring the restorative approach. In: Maundeni, T. (ed). *Thari ya Bana: Reflections of children in Botswana*, 2010, 54 – 57. Gaborone, Botswana: United Nations Children's Fund.
- Coley, D. (2014). *Child Protection and Sexual Offences in Botswana: Comprehensive Policy Review*.



- Committee on the Rights of the Child (CRC): Date of examination tbc, deadline for LOIPR briefing 1 November 2020.
- Committee on the Elimination of Discrimination Against Women (CEDAW): Date of examination tbc, deadline for LOI briefing 15 June 2020. Cook, A., & Sarkin, J. (ndt). Is Botswana the miracle of Africa? Democracy, the rule of law, and human rights versus economic development. *Transnational Law & Contemporary Problems*, 19(453), 458 – 488.
- CPF (2008). *The African Report on Child Wellbeing 2008: How child-friendly are African governments?* African Child Policy Forum.
- CRIN (2014). Access to justice for children: Botswana. Available at: https://archive.crin.org/sites/default/files/botswana_access_to_justice_0.pdf
- CRIN (2014). *Access to justice for children: Botswana. United Kingdom*: Child Rights International Network.
- CRIN (2015). 'Access to justice for children: global ranking'. *Child Rights International Network*. Available at: <https://archive.crin.org/en/access-justice-children-global-ranking.html> (Accessed: 11 November 2021).
- Denny, E., & Weckesser, A. (2019). Qualitative research: what it is and what it is not: Study design: qualitative research. *BJOG: an international journal of obstetrics and gynaecology*, 126(3), 369. <https://doi.org/10.1111/1471-0528.15198>
- Donaldson, L. P., Hill, K., Ferguson, S., Fogel, S., & Erickson, C. (2014). Contemporary Social Work Licensure: Implications for Macro Social Work Practice and Education. *Social Work*, 59(1), 52–61. <http://www.jstor.org/stable/23719542>
- Durrant, J., & Ensom, R. (2012). Physical punishment of children: lessons from 20 years of research. *CMAJ : Canadian Medical Association journal = journal de l'Association medicale canadienne*, 184(12), 1373–1377. <https://doi.org/10.1503/cmaj.101314>
- Ebneyamini, S., & Sadeghi Moghadam, M. R. (2018). Toward Developing a Framework for Conducting Case Study Research. *International Journal of Qualitative Methods*, 17(1), 160940691881795. <https://doi.org/10.1177/1609406918817954>
- European Union Agency for Fundamental Rights. (2017). *Child-friendly justice: Perspective and experiences of children involved in judicial proceedings as victims, witnesses, or parties in nine EU member countries*. Luxembourg: European Union for Fundamental Rights. ISBN 979-92-9491-4941-1.
- Eyasu, N., Haile, S., & Tesfaye, Y. (2021). Challenges and Prospects of the Criminal Justice System in Handling Child Victims and Alleged Offenders in Ethiopia. *International Journal of Offender Therapy and Comparative Criminology*, 65(2–3), 221–243. <https://doi.org/10.1177/0306624X20944669>
- Faria-Schützer, D. B., Surita, F. G., Alves, V. L. P., Bastos, R. A., Campos, C. J. G., & Turato, E. R. (2021). Seven steps for qualitative treatment in health research: The clinical-qualitative content analysis. *Ciencia & Saude Coletiva*, 26(1), 265–274. <https://doi.org/10.1590/1413-81232020261.07622019doi>
- Fernández-Molina, E., Bermejo, M., & Baz, O. (2021). Observing Juvenile Courtrooms: *Testing the Implementation of Guidelines on Child-Friendly Justice in Spain*. *Youth Justice*, 21(2), 192–209. <https://doi.org/10.1177/1473225420918027>
- Finkelhor, D., Ormrod, R. K., & Turner, H. A. (2007). Poly-victimisation: A neglected component in child victimisation. *Child abuse & neglect*, 31(1), 7–26.
- Flouri, E., & Midouhas, E. (2017). Environmental adversity and children's early trajectories of problem behaviour: The role of harsh parental discipline. *Journal of Family Psychology*, 31(2), 234–243.
- Friese, S. (2021). *Qualitative Data Analysis with ATLAS.ti*. Thousand Oaks, CA: SAGE Publications
- Gaudet, S., & Robert, D. (2015). *A journey through qualitative research: From design to reporting*. Washington DC: Sage. *Gender Links and Women Affairs Department (2012). Gender-based Violence Indicators Study Botswana*. Key findings of the Gender Based Violence Indicators Study. Gaborone, Botswana.
- GBD 2016 Alcohol Collaborators (2018). Alcohol use and burden for 195 countries and territories, 1990–2016: a systematic analysis for the Global Burden of Disease Study 2016. *Lancet* (London), 392(10152), 1015–1035. [https://doi.org/10.1016/S01406736\(18\)31310-2](https://doi.org/10.1016/S01406736(18)31310-2)
- Gershoff, E. T., Goodman, G. S., Miller-Perrin, C. L., Holden, G. W., Jackson, Y., & Kazdin, A. E. (2018). The strength of causal evidence against physical punishment of children and its implications for parents, psychologists, and policymakers. *American Psychologist*, 73(5), 626–638.

- Goldsmith, L. J. (2021). Using framework analysis in applied qualitative research. *The Qualitative Report*, 26(6), 2061-2076. <https://doi.org/10.46743/2160-3715/2021.5011>.
- Guest, G., Namey, E., & Chen, M. (2020). A simple method to assess and report thematic saturation in qualitative research. *PloS one*, 15(5), e0232076. <https://doi.org/10.1371/journal.pone.0232076>
- Health Policy Project (2014). Capacity development resource guide: Implementation barriers. Washington, DC: Futures Group, Health Policy Project.
- Hemsworth, C. (1972). The Botswana Customary Law Act, 1969. *Journal of African Law*, 16(1), 4 – 18. Doi:10.1017/S0021855300009025.
- Jamu, S.M., Mahloko, T., Rieff, J.A., Gilika, M., Jamu, L. (2017) *Activating accountability in protecting children's rights in Botswana: Conversations with Dikgosi* (Chiefs). Gaborone, Botswana. (not published)
- Jamu, S.M., Mahloko, T., Letshabo, K., Ajasi, A., Pavey, L., Jamu, L. (2015). Gaining traction by action – activating accountability to protect the right of children: Evaluation of preparedness in government services against child sexual abuse and exploitation in Botswana. Gaborone, Botswana.
- Jobeta, T., & Dinokopila, B.M. (2018). The best interest of the child principle in Botswana. *University of Botswana Law Journal*, 20 – 42.
- Jotia, A.L., & Boikhutso, K. (2012). How corporal punishment undermines a democratic society: Is its use necessary in Botswana schools? *Journal of Sociology Anthropology*, 3(2), 119 – 126.
- Koboyankwe, O.K. (2014). *Legal pluralism and discriminatory application of progressive laws to women subject to customary Law in Botswana*. A thesis presented to the Faculty of the Rule of Law for Development (PROLAW) Program as a partial fulfilment for the Master of Law. Chicago, Illinois: University of Loyola University.
- Kavanagh, S.C. (2011). Zero-based budgeting: Modern experiences and current perspectives. The City of Calgary: Government Finance Officers Association, Research Consulting Centre
- Kavitha, P., Sekar, K., & Subair, K.K. (2020). Child-friendly juvenile police through social work approach. *International Journal of Arts, Science and Humanities*, 8(2), 70 – 76. <https://doi.org/10.34293/sijash.v8i2.3370>
- Kgomotso, M., Tshogofatso, A. and Boipono, M. (2015) Perceptions of teachers on the use of corporal punishment in schools: A case of Kang Secondary Schools, Gaborone, Botswana College of Agriculture.
- Kontle, M., Jamu, S.M., Mahloko, C., & Rieff, J. (2022). Assessing the state of child-friendly justice in Botswana: A case analysis of the children court case note in Botswana. Gaborone, Botswana: Stepping Stones International.
- Lansdown, G. (2000). Implementing children's rights and health. *Archives of Disease Childhood*, 83, 286-288.
- Leloupo, M. (2019). The principle of best interests of the child in the expulsion case law of the European court of human rights: Procedural rationality as a remedy for consistency. *Netherland Quarterly of Human Rights*, 37(1), 50 – 68. Doi:10.1177/0924051918820986
- Liefaard, T., & Doek, J.E. (2015). *Ligating the child's rights: The U.N. convention on the rights of the child in domestic and international jurisprudence*, (Eds). Dordrecht, Switzerland: Springer Science.
- Liefaard T, Kilkelly U (2018) Child-friendly justice: Past, present, and future. In: Goldson B (ed.) *Juvenile Justice in Europe: Past, Present and Future* (pp, 57 -73). New York, NY: Routledge.
- Lucas, T. B. (2010). 'Juvenile justice system and Social Work in Botswana: an appraisal', 42(2010), pp. 45–55.
- Lucas, T. and Jongman, K. (2017). 'Social Work and Child Justice: The Case of Botswana', *Journal of Education, Society and Behavioural Science*, 22(3), pp. 1–11. Doi: 10.9734/jesbs/2017/ 34928.
- Ma, J., & Grogan-Kaylor, A. (2017). Longitudinal associations of neighbourhood collective efficacy and maternal corporal punishment with behaviour problems in early childhood. *Developmental Psychology*, 53(6), 1027–1041.
- Macharia-Mokobi, E. (2013). 'Sentencing of Children in Conflict with the Law in Botswana,' in Maundeni, T. and Mnyepi, M. (eds) *Thari ya Bana: Reflections of Children in Botswana*. Gaborone: UNICEF, University of Botswana, pp. 10–24.
- Magiste, E. J. (2020). Prevalence rates of substantiated and adjudicated ethics violations. *Journal of Social Work*, 20(6), 751-774. <https://doi.org/10.1177/1468017319837521>
- Maneta, E. K., White, M., & Mezzacappa, E. (2017). Parent-child aggression, adult-partner violence, and child outcomes: A prospective, population-based study. *Child Abuse & Neglect*, 68, 1–10.



- Maheer, L., & Dertadian, G. (2018). Qualitative research. *Addiction* (Abingdon, England), 113(1), 167–172. <https://doi.org/10.1111/add.13931>
- Maundeni, T. (2009). Care for children in Botswana: The social work role. *Social Work and Society Internal Online Journal*, 7(1), 13 – 27.
- Maundeni, T. (2002). Seen but not heard? Focusing on the needs of children of divorced parents in Gaborone and surrounding areas, Botswana. *Childhood*, 9(3), 277–302. <https://doi.org/10.1177/0907568202009003807>
- Modikwa, O. (2011). Youth dies after flogging. *The Monitor Newspaper*, 24 August 2011 available @ <http://www.crin.org/resources/infodetail.asp?id=25915> accessed on 26 September 2022.
- Moher, D., Altman, D.G., Schulz, K.F. Simera, I. and Wager, E. (2014). *Guidelines for reporting health research: A user's manual*. New York, NY: John Wiley & Sons, Ltd. <https://doi.org/10.1002/9781118715598.fmatter>
- Mugove, K. (2017). Perceptions of street children on law enforcement agencies in Harare, Zimbabwe. *International Journal of Development in Social Sciences and Humanities*, 3, 19 – 29, <http://www.ijdsch.com>
- Mupedziswa, R., & Ntseane, D. (2011). The role of social protection in promoting development in Botswana. Paper presented at International Symposium on Social Protection in Southern Africa: New Opportunities: Held at Center for Social Development in Africa, University of Johannesburg, 24 – 26 May 2021.
- Mutsvara, S. (2020). *Inhuman sentencing of children: a focus on Zimbabwe and Botswana*.
- National Institute for Health and Care Excellence (NICE). (2017). *Antisocial behaviour and conduct disorders in children and young people: recognition and management*. (2017). London, UK: National Institute for Health and Care Excellence.
- Ngwenya, V.C. (2013). The perceptions of parents and teachers in Botswana towards the abolishment of corporal punishment. *Asian Journal of Research*, 1(x), 1-16.
- Nkhwalume, L., & Mashalla, Y. (2019). Maternal mortality trends at the Princess Marina and Nyangabwe referral hospitals in Botswana. *African health sciences*, 19(2), 1833–1840. <https://doi.org/10.4314/ahs.v19i2.50>
- O'Brien, B. C., Harris, I. B., Beckman, T. J., Reed, D. A., & Cook, D. A. (2015). Standards for reporting qualitative research: a synthesis of recommendations. *Academic Medicine: Journal of the Association of American Medical Colleges*, 89(9), 1245–1251. <https://doi.org/10.1097/ACM.0000000000000388>
- Oates K. (2011). Physical punishment of children: can we continue to accept the status quo? *Journal of Paediatrics and Child Health*, 47(8), 505–507. <https://doi.org/10.1111/j.1440-1754.2011.02144.x>
- O'Brien, W. & Foussard, C. (2020). *Violence against children in the justice system: the global perspective on prevention*. New York, NY: Routledge.
- Omotoye, M. (2018). Public policy implementation prospects and challenges in Botswana: Case of the national policy on care for people with disabilities. Working Papers 49, Botswana Institute for Development Policy Analysis
- Patterson G. T. (2018). Introduction to evidence-based practices and principles in the criminal justice system. In Patterson G.T., & Graham W.K. *Clinical Interventions in criminal Justice settings: Evidence-Based Practices* (pp1 – 16). Cambridge, MA: Academic Press, doi:10.1186/2194-7899-1-5
- Piché, G., Huýnh, C., Clément, M-È., & Durrant, J. E. (2016). Predicting externalising and prosocial behaviours in children from parental use of corporal punishment. *Infant and Child Development*. 26(4), 1–18.
- Powell, M.B., Wilson, J. C., Gibbons, C., & Croft, C.M. (2008) Children's conception of police authority when responding to requests for assistance. *International Journal of Police Practice and Research*, 9 (1), 5-16, DOI: 10.1080/15614260801969888
- Ramabu, N.M. (2021). Botswana child sexual abuse legal framework: An analysis of the implementation of Children's Act 2009. *Children and Youth Services Review*, 21, 105887, ISSN 0190-7409, <https://doi.org/10.1016/j.childyouth.2020.105887>.
- Rap, S. & Klep, K.F.M. (2021). Child participation as the holy grail: Effective and meaningful participation in judicial proceedings? In Broderick, A., Coomans, F., Moerland, R. (Eds). *Myth or lived reality on the (in)effectiveness of human rights* Asser Press: Charm, Switzerland.

- Reed, J., Deakin, L., & Sunderland, T. (2015). What are 'integrated landscape approaches' and how effectively have they been implemented in the tropics: A systematic map protocol. *Environ Evidence* 4(2). <https://doi.org/10.1186/2047-2382-4-2>.
- Ritchie, J. & Spencer, L. (1994). Qualitative data analysis for applied policy research. In: Bryman, A. and Burgess, B., (Eds.), *Analysing qualitative data*. Routledge, London. <http://dx.doi.org/10.4324/9780203413081>
- Roberts, J., & Roberts, C. (1982). Social enquiry reports and sentencing. *The Howard Journal*, XXI, 76–93.
- Rohrs, S. (2016). Realising children's rights to be protected from maltreatment: The need for the legal ban of corporal punishment in the home. Cape Town, University of Cape Town: Law and Society in Africa.
- Semomung, B. et al. (2012). 'Juvenile justice in Botswana: Challenges and constraints facing children in conflict with the law', *Thari ya bana: Reflections on Children in Botswana*. Edited by T. Maundeni and M. Nnyepi, pp. 60–65.
- Sharma, K. C., Molomo, M. G. and Lekorwe, M. (2005). 'The role of traditional leaders in the administration of justice. In: Re-inventing African chieftaincy in the age of AIDS, gender, and development. Ray DI, Quinlan T, Sharma KC, Owusu-Sarpong A. (ed).', *Chieftain: The Journal of Traditional Governance*. Accra: Ghana: Final Report of the IDRC project F # 003927, TAARN, 2005, pp. 77–86.
- Skelton, A. (2009). The development of fledgling child rights jurisprudence in East and Southern Africa based on international and regional instruments. *African Human Rights Law Journal*, 9(2), 482 – 500.
- Skelton, A. (2015). South Africa. In Liefwaard, T., & Doek, J.E. (ed). *Ligating the child's rights: The U.N. convention on the rights of the child in domestic and international jurisprudence*, pp. 12 –31. Dordrecht, Switzerland: Springer Science.
- Skelton, A. (2019). Too much of a good thing? Best interests of the Child in South African jurisprudence. *De Jure Law Journal* 557-579. <http://dx.doi.org/10.17159/2225-7160/2019/v52a32>.
- Skelton, A. (2020). A hiding to something: Reduction of violence against children in South Africa's justice system. In: O' Brien, W., & Foussard, C. (ed). *Violence Against Children in the Criminal Justice System: Global perspective on prevention*. New York, NY: Taylor and Francis.
- Sloth-Nielsen, J. (2012). A new children law in Botswana: Reshaping family relations for the twenty-first century. *The International Survey of Family Law*, 27, 28 – 41.
- Sloth-Nielsen, J. (2015). *Children's Rights Litigation in the African Region: Lessons from the Communications Procedure under the ACRWC*. In Liefwaard, T., & Doek, J.E. (ed). *Ligating the rights of the Child: The U.N. convention on the rights of the child in domestic and international jurisprudence*, pp 248 – Dordrecht, Switzerland: Springer Science.
- Somolekae, G. M. and Lekorwe, H. M. (1998). 'The Chieftainship system and politics in Botswana.', in Edge, W. A. and Lekorwe, M. H. (eds) *Botswana: Politics and Society*. Pretoria, South Africa: JL van Schaik.
- Spencer, L., Ritchie, J., Ormston, R., O'Connor, W., & Barnard, M. (2014). Analysis: Principles and processes. In J. Ritchie, J. Lewis, C. M. Nicholls, & R. Ormston (Eds.), *Qualitative research practise: A guide for social science students and researchers* (2nd ed., pp. 269-290). Sage
- Srivastava, A., & Thomson, S. B. (2015). Framework analysis: A qualitative methodology for applied policy research. *Journal of Administration and Governance*, 4(2), 72 – 79.
- St John, V.J., Headley, A.M., & Harper, K. (2022). Reducing adverse police contact would heal wounds for children and their communities. Juvenile Justice System Transformation. Retrieved from <https://www.childtrends.org/publications/reducing-adverse-police-contact-would-heal-wounds-for-children-and-their-communities>
- Stillman II, R. J. (1996). *Public administration: Concepts, and cases* (6th ed). Boston, MA: Houghton Mifflin Company.
- Strang, H., Sherman, L.W., Mayo-Wilson, E., Woods, D., & Ariel, B. (2013). Restorative justice conferencing (RJC) using face-to-face meetings of offenders and victims: Effects on offenders' recidivism and victim satisfaction. A systematic review. *Campbell Systematic Reviews*, 9(1), 1-59, <https://doi.org/10.4073/csr.2013.2202>
- Tafa, E., M. (2002). Corporal Punishment: The brutal face of Botswana's authoritarian schools. *Educational Review*, 54, 17-26, doi: 10.1080/00131910120110848

- Taylor, S.J., Bogdan, R., & DeVault, M.L. (2015). *Introduction to qualitative research methods: A guidebook and resource*. Hoboken, NJ: John Wiley & Sons, Inc.
- Tong, A., Sainsbury, P., & Craig, J. (2007). Consolidated criteria for reporting qualitative research (COREQ): a 32-item checklist for interviews and focus groups. *International journal for quality in health care: journal of the International Society for Quality in Health Care*, 19(6), 349–357.
<https://doi.org/10.1093/intqhc/mzm042>
- UNICEF (2010). *Mapping and Analysis of the Justice for Children in Botswana*. Gaborone.
- UNICEF (2011). *The situation Analysis of Children and their Families in Botswana. Summary Report: Findings and Recommendations to Policy Makers 2010/11*.
- United Nations Children's Fund (UNICEF) Botswana. (2017). *Social protection budget brief 2017*. Gaborone, Botswana: UNICEF.
- United Nations Children's Fund (UNICEF) Botswana. (2022). *Country office annual report 2022: Botswana*. Gaborone, Botswana: UNICEF Country Office.
- UNCRC (2018) UNCRConcluding Observations on the second and third reports of Botswana.
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsjSluRx3nKo6YLMx9Yh9ug8ZspNXEoqJ8oVfLj7IKi3JO%2FTykdMTktGexZvylrNlsazHM2ppHZ88tqyn5yZAJagYYoDoDoiO%2F4%2BvyWmCz%2FSf>
- United Nations Development Programme (UNDP). (2010). *Strengthening national capacity for national development strategies and their management: An evaluation of UNDP's contribution - country study – Botswana*. Gaborone, Botswana: UNDP.
- United Nations Global Compact. (2023). Rule of law: Promoting the Rule of law to protect citizens and businesses. <https://unglobalcompact.org/what-is-gc/our-work/governance/rule-law>
- United Nations Human Rights Council. (2020). *Intersectional seminar on the role of good governance in the promotion and protection of human rights and best practices in the implementation of sustainable development Goals, including Goal 16 in this regard*. Report of the Office of the United Nations High Commissioner for Human Rights. Annual Report of the UN High Commissioner for Human Rights, A/HRC/43/34.
- United Nations (1985). 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice: (The Beijing Rules). Adopted by General Assembly Resolution 40/33 of 29 November 1985'.
- United Nations Human Rights. (2023). About good governance. Retrieved from <https://www.ohchr.org/en/good-governance/about-good-governance>. Geneva, Switzerland: Office of the Commissioner, United Nations Human Rights
- United States Department of State Bureau of Democracy Human Rights and Labor (2019). *Botswana 2019 Human Rights Report*. Available at: <https://www.state.gov/wp-content/uploads/2020/02/BOTSWANA-2019-HUMAN-RIGHTS-REPORT.pdf>.
- Universal Periodic Review (UPR) (2021). Session 40, deadline for briefing tbc
- Valdebenito, S., Murray, A., Hughes, C., Băban, A., Fernando, A. D., Madrid, B. J., Ward, C., Osafo, J., Dunne, M., Sikander, S., Walker, S. P., Thang, V. V., Tomlinson, M., Fearon, P., Shenderovich, Y., Marlow, M., Chaturika, D., Taut, D., & Eisner, M. (2020). Evidence for Better Lives Study: a comparative birth-cohort study on child exposure to violence and other adversities in eight low- and middle-income countries - foundational research (study protocol). *BMJ Open*, 10(10), e034986.
<https://doi.org/10.1136/bmjopen-2019-034986>
- Woldemariam, G. A. (2011). The predicaments of child victims of crime seeking justice in Ethiopia: a double victimisation by the justice process. *Afrika Focus*, 24(1), 11–31.
<https://doi.org/10.1163/2031356x-02401004>
- World Health Organisation. (2018) *INSPIRE Handbook. Action for implementing the seven strategies for ending violence against children*. Geneva: WHO.
- World Health Organisation. (2020). *Global status report on preventing violence against children 2020*. Geneva, Switzerland: World Health Organisation. Licence: CC BY-NC-SA 3.0 IGO.
- World Justice Project. (2019). *Measuring the justice gap: A people-centred assessment of unmet justice needs around the world*. Washington, DC: The World Justice Project.

Annex 1. Technical Advisory Committee

Name	Organisation	Position / Department
Mr M.R. Lubinda (Chair TAC)	Ministry of Justice	Dept. Permanent Secretary- Judiciary & Legal Services
Ms S.T. Nong (Coordinator)	Ministry of Justice	Department Research
Ms D. Mogami	Ministry of Defence, Justice and Security	Secretary of Justice
Ms S. Mosweunyane	Ministry of Defence	Head of Research
Mr B. Madandume	Ministry of Youth, Sports, Culture and Gender Affairs	Gender Officer 1
Mr M. Letsholathebe	Ministry of Education and Skills Development	Special Support Services
Ms T. Dibeela	Directorate of Public Prosecution (DPP)	Assistant Director
Ms M. Modiakgotla	Department of Social Protection (MLGRD)	Child Protection Services
Mr M. Dipate	Administration of Justice	Chief Magistrate Lobatse
Mr Kelediyakgotla	Prisons Service (headquarters and rehabilitation)	Sr. Superintendent
Ms C. Rauwe	Botswana Police Service (head quarters)	Assistant Commissioner of Police
Ms L. Oremeng	Botswana Police Service (headquarters)	Assistant Commissioner of Police
Ms R. Ramaretlwa	Ministry of Defence, Justice and Security	Assistant legal officer
Ms M. Kamanakao	National Children's Council (NCC)	Chair
Mr P. Tlotleng	Tribal Administration	Director
Ms G. Rasesigo	UNICEF country office	Child Protection Specialist
Ms K. Mashaka	University of Botswana, Sociology Department	Lecturer Criminology, Criminal Justice Unit
Ms B. Nyatshane	Delegation of the European Union to Botswana and SADC	Programme Manager Social Affairs
Mr T.C. Mahloko	Stepping Stones International	Human Rights Advisor
Ms T. Samboma	The Botswana Institute of Development Policy Analysis (BIDPA)	Researcher







