

An Accessible and Friendlier Future:

Transforming Botswana's Children's Justice System

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Summary

The results derived from the triangulated social research designs, the most extensive qualitative study in Botswana comprised of over 300 respondents, are not new. Rather, it confirms findings from previous studies. These results reemphasise the serious governance and administrative weaknesses, inadequate and non-earmarked budgetary allocations, inadequate human and operational resources, insufficient accountability, and weak coordination and collaboration among pertinent ministerial departments and civil societies mandated to protect children from violence and harm. These lapses contribute to the weak Children's Act implementation resulting in suboptimal children's rights outcomes. Consequently, children in contact with the justice system are processed in unfriendly environments. Most children in conflict with the law, even victims of defilement, experience trauma going through the system. They often encounter unprofessional behaviours that fail to account for their age, level of maturity, and needs. Due to inconsistencies in managing children's related matters among service providers in the justice system pipeline, most children are deprived of their rights and the support they need and deserve.

Key Recommendations

- Develop a comprehensive Children's Bill of Rights in the Botswana Constitution,
- Reconfigure the NCC as an autonomous parastatal organisation,
- Create an earmarked and costed budget aligned to Children's Act implementation.
- Develop a specific child protection programme that upholds the rights and needs of children, including preventing sexual abuse, exploitation and negligence and children in conflict with the law.
- Prioritise and mainstream child protection by operationalising Children Act into a standardised strategy/protocol/guidelines premised on child-friendly principles.
- Create professional teams at the police, health service, and courts to ameliorate inter-department coordination and collaboration challenges.
- Create child-friendly spaces and infrastructure to cater for the needs of children, including those with disabilities.
- Eliminate punitive sentencing protocol by developing diversion, restorative, and community services that address the root causes of antisocial and delinquent behaviours.
- Scale-up community engagement human rights programmes that incorporate evidence-based parenting programmes and the active role of Dikgosi as community gatekeepers.

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Introduction

Jurisprudence evidence suggests the recognition, adaptation and domestication of the United Nations Convention on the Rights of the Child (UNCRC).^{12,3} , and the African Charter for the Rights and Welfare of Children (ACRWC)⁴ forms the foundation of building a justice system that respects and protects the rights and needs of children who come in contact with the system, whether as victims, witnesses, offenders or in need of care or protection.⁵ The domestication of most of the provisions of the UNCRC and ACRWC into the Children Act was one of the milestones to creating a juvenile justice system that respects and protects children's rights.^{6,7}

The domestication of international and regional rights included the legal establishment of governance and administrative structures, the National Children's Council, the Children Consultative Forum and Village Child Protection Committees and other⁴ child protection coordinating structures was another major step toward a rights-centric justice system.⁶

However, domesticating CRC and ACRWC and establishing the governance and administrative structure to oversee, coordinate and streamline child protection interventions have not produced a children's justice system that is accessible, friendlier, age-appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child. They require operationalisation, effective governance and administrative structures, systems, processes, and resources to achieve optimal goals. The child-friendly principles and elements are considered the critical step to operationalise children's rights.⁸

Statement of the Problem

Justice systems worldwide fail to protect children and uphold their most basic rights. A child-friendly justice system is considered a bedrock for operationalising national laws, UNCRC, and ACRWC by respecting and protecting the rights and needs of children who come into contact with the law, whether as victims, witnesses, offenders or needing

care or protection.^{9,10,11} A child-friendly justice system is accessible, age-appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child. It also ensures that children can participate in and understand the proceedings and that their privacy, family life, integrity and dignity are respected.¹²

The significance of a child-friendly justice system is that it can prevent or reduce the harm and trauma that children may experience when they interact with the law. It can also help children to access justice and remedies for violations of their rights. A child-friendly justice system can also promote the rehabilitation and reintegration of children who have committed offences and prevent their stigmatisation or criminalisation.

Purpose and Objectives

Recognising the urgent need to create a juvenile system adapted to and focused on the rights and needs of Botswana children, the Ministry of Justice commissioned a situational analysis to identify the juvenile justice system's strengths, opportunities, challenges, gaps, and constraints at the strategic, organisational, and implementation levels with specific objectives to:

- To deepen understanding of the judicial system's status, functioning, and processes for children, all stakeholders and service recipients,
- To recommend reform for the weaknesses and gaps of the current judicial to accommodate a sustainable child-friendly justice system, and
- To inform a model to promote access to child-friendly justice for child victims, witnesses and offenders and cater for complainants consistent with the statutory provisions of the Children's Act.

⁴Other child protection bodies established to coordinate and streamline child protection include the National Child Protection Technical Committee, the Inter-agency child protection committee, and the district child protection committees.

Research Methods and Procedures

The study employed qualitative social research that triangulated a phenomenological qualitative in-depth interview with comparative legislative and retrospective case study analyses.¹³

Design	Aim	Advantage
Phenomenological qualitative design	Obtains rich experiential insights and realities on the ground. •Gathers adulterated lived experiences and perceptions of what matters most to service recipients.	Provides accurate accounts of realities and critical information on the 'blind spots' that quantitative research cannot reach
Comparative document analysis	•Garner critical information from countries with similar contextual factors	Provides best practices and lessons Botswana can replicate
Retrospective case analysis in the children's court system [Case notes analysis]	•Provide an accurate account of a case: context and judiciary processes in the Botswana children's court system.	Examined the court processes measured using child-friendly principles and elements

Results

Despite progressive child protection law, educated and professionalised child protection departments, substantive budgetary allocation to social protection programs, promising practices and new child-friendly initiatives, Botswana continues to produce sub-optimal outcomes that undermine the rights and needs of children. The results summarise a few selected key findings.

Weak Governance and Administrative Structures for Child Protection Services.

The current governance and administrative structures (the NCC, CCF, DCPCs, and VCPCs) aimed at overseeing, coordinating, monitoring and implementing the Children's Act's, in their current structural configuration and character, have failed to achieve their legal mandates. Consequently, there is a lack of accountability, quality assurance mechanisms, monitoring, evaluation and learning to inform continuous service improvement in the justice system.

"...The Council's organisational structure is ineffective. It does not support the magnitude of responsibility put on that Council by the law."

Children's Act Implementation Barriers

Most of the Children's Act provisions are not comprehensively implemented by the ministerial department mandated to do so due to multiple challenges and constraints, including complex bureaucratic configurations of governance and administrative structures and pertinent stakeholders, inadequate financial, human and operational resources, and lack of supportive operational processes. None of the existing social protection programmes focuses on preventing child sexual abuse, exploitation, and negligence (CSAEN) and the underlying causes of antisocial and delinquent behaviours among children.

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Unfriendly Infrastructure and Systems: Except for the 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. In most instances, the police are characterised as harsh, rude and condescending when dealing with children in conflict with the law and victims of defilement.

Lack of Centralised National Quality Improvement and Monitoring Evaluation and Learning Systems:

No centralised/national quality improvement system (NQI) and monitoring, evaluation and learning (MEL) frameworks are used to inform the justice system performance and generate evidence-based decisions, 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.

"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."

Lack of restorative, full-scale diversion, formalised mediation or community service sentencing

Botswana primarily use punitive sentencing [incarceration of jail and corporal punishment and lacks restorative and mediatory community sentencing alternatives. The Ikago School of Industry, the only boy rehabilitation centre, is largely underutilised.

Lack of Guidelines, Standard Operating Procedures and Processes

Botswana does not have standardised guidelines and operating procedures for handling children who come in contact with the justice system.



Weak adherence to Child-friendly Principles and Elements

Children in contact with the justice system lack full access, participation and consistent provision of legal representation, psychological counselling, support and assistance before, during and after court proceedings.

Lack of Specialisation and Training

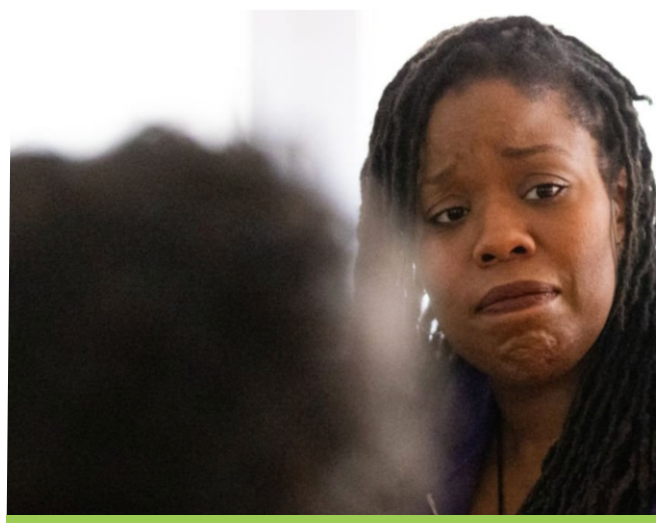
More than 70% of the respondents do not have specialised training for working with children, such as providing trauma counselling for rape victims and children in conflict with the law. Most professionals cited the need for human rights training on how to communicate and interact with children sensitively and respectfully.

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

Dissatisfied Children and Caregivers

Results from child victims and those in conflict with the law reported being dissatisfied with the current services—most experienced unfriendly and delayed resolutions to their grievances.

"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."



Implications

Chronic persistent suboptimal services in the children's justice system have severe implications and consequences for children and their families, communities, and the country. A suboptimal child justice system can lead to a rise in recidivism and antisocial behaviours resulting in adult-life criminality.

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 the opportunity to overcome their challenges and become productive citizens. More importantly, suboptimal systems have long-term effects on children's mental health and well-being, even passing on to the next generation.

Conclusion

This study 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.

Despite progress made in the past decade, the current juvenile justice system has structural, programmatic and implementational barriers that hamper the country's political and national aspirations for creating a safe and secure environment for a Motswana child.

As the primary duty bearer of children's rights, the government's actions or inactions impact children more significantly than any other age cohort, given Botswana's young population. Therefore, the societal costs of failing to address children's rights and needs are enormous.

Recommendations

This section needs creative formatting - any diagram that matches the content is welcome. Despite progressive laws, educated and professional civil service, and the high proportion of budgetary allocation to social protection programmes, Botswana continues to face persistent suboptimal outcomes limiting its advance to a robust child-friendly juvenile justice system.

Restructure Governance and Administrative Structures

Restructure NCC into an autonomous parastatal organisation. All coordinating structures must fall under the NCC and be accountable to the responsible Minister and the National Parliament. Legislation: Children as Equal Bearers of Rights Include a comprehensive Children's Bill of Rights in the Botswana Constitution to solidify the position of children as equal bearers of rights.

Review Children Act:

- Repeal corporal punishment as a penal code sanction in all government establishments,
- Harmonise the age of criminal responsibility (Children's Act Section 83[1] and Penal Code, Section 13[1], and raise the above eight years.
- Develop children's court rules for the children's court.

Children's Rights Budgeting

Develop a costed and adequate budgetary resource for government departments mandated to implement child protection and justice interventions.

Prioritising and Mainstreaming Children's Rights

Government must operationalise the Children's Act and rights by developing a standardised and cross-cutting strategy/protocols/guidelines to mainstream children's rights premised on the principles and elements of a child-friendly justice system.

Prioritising Children's Cases

Consider prioritising children's cases, emulating lessons learned from the gender-based violence courts to safeguard children's safety and promote speedy conclusions.

Create a learning justice system:

The NCC must develop a stringent national quality improvement (NQI) to promote continuous child-friendly quality improvement. Besides, the NCC must design a national child protection monitoring, Evaluation and Learning (MEL) framework to uphold ministerial departments and NGOs accountability for child-friendly justice principles and elements.

An example of a learning organisation – use internal and research data – take research out.

- Replace clinicians with professional staff.
- Replace patients with children in need of care and justice
- Justice suggestion for



Develop Child-friendly Infrastructure:

There is an urgent need to create a whole government/civil society with child-friendly spaces and infrastructure in all departments that provide services to children accounting for children with disabilities. The long-term goal, for example, is to create a standard alone children's court, scale up child-friendly police stations, re-model youth-friendly clinics to serve children of sexual abuse, exploitation and negligence.

Create Integrated Professional Teams

To address weak stakeholder coordination and collaboration, the government must create integrated professional teams within child-friendly police stations, children's courts, and youth-friendly clinics as a matter of urgency.

For example, each children's court must include a trained and specialised team, including a children's court magistrate, social workers/probation officers, psychologists, and court assistants (a prosecutor as provided in the Children's Act) to improve the provision of services.

Diagram
Unavailable

Develop Specialised Services:

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 to capitalise on promising practices, attitudes, and behaviours identified in the study.

Development of Guidelines, SOPs, and Processes

Develop standardised SOPs for implementing the Children's Act for all sectors based on child-friendly principles and elements.

Video Recorded and Conferencing Testimonies

Consistent with the Children Act, the government must implement video-recorded or conferencing testimonies in the children's court under the guidance of qualified personnel. In addition, testimonies during court proceedings must be through video conferencing to limit child re-victimisation.

Use of Age-appropriate Tools and Aids

To account for the age, maturity and vulnerability of children who struggle to articulate or mention human genital parts during administrative, investigation and court proceedings, the government must consider investing in visual and dolls materials that would aid children effectively communicating by showing what happened to them instead of using metaphors that often result in the miscarriage of justice.

Community Interventions

In conjunction with Legal Aid Botswana, child protection committees and civil societies must scale up interventions that aim to increase community awareness of 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) and the right to attain legal support and representation.

Parenting programmes

Tailor community interventions with the scale the evidence-based parenting programmes to support and protect their children from abuse and descale inhuman and punitive punishment such as physical and verbal abuse in community settings.

Support Programs

Government must allow registered civil societies with qualified social workers and psychologists to support children during their encounters with the justice system where government civil servants are unavailable. Besides, the government must expand child protection programming through CSOs, such as providing psychosocial support, violence prevention, substance abuse programs and sexual reproductive and health and rights.

Dialogue and Training of Dikgosi

Initiate a constructive dialogue with Dikgosi to address Dikgosi's concerns regarding children's rights and train them on the subject.

A Sample of Best Practices in Child-friendly Justice Systems

There is no definitive ranking of countries on their child-friendly justice system, as different countries may have different strengths and weaknesses. Some countries that have been recognised for their efforts or achievements in implementing child-friendly justice practices are:

South Africa has a robust legal aid system that is available and accessible to children. It has a standalone children's legal system that promotes diversion, restorative justice and alternative sentencing for children in conflict with the law.

Despite a diverse range of legal frameworks, European countries built their juvenile justice system on the precepts of **child-friendly principles and elements**: respecting children's rights; the rule of law - applying the principle of proportionality; promoting diversion and alternatives to detention; providing specialised courts personnel; ensuring procedural judicial safeguards; involving parents or guardians; applying restorative justice approaches; providing individualised treatment; ensuring continuity of care; preventing recidivism; monitoring quality standards; cooperating with international human rights conventions.

The European Union Agency for Fundamental Rights (FRA) ranks Greece is ranked high for adopting measures to ensure that children are treated with respect and dignity, such as providing free legal aid, appointing specialised judges and prosecutors, using child-friendly language and facilities, and applying diversion and mediation whenever possible.

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